

OREGON BULLETIN

Supplements the 2007 *Oregon Administrative Rules Compilation*

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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, ext. 240, 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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OTHER NOTICES

A CHANCE TO COMMENT ON PROPOSED APPROVAL OF CLEANUP AT FLOWERS BY VICTOR SITE

COMMENTS DUE: January 30, 2007

PROJECT LOCATION: 4057 North Mississippi Avenue, Portland, Oregon

PROPOSAL: Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the no further action recommendation for the Flowers by Victor site.

HIGHLIGHTS: In January of 2006, a Phase II Environmental Site Assessment on this property determined that chlorinated pesticides from the former greenhouse operation were present in near-surface soils at levels that exceeded health-based cleanup goals. The site was intended to be redeveloped for mixed commercial and residential use. Approximately 253 tons of soil were subsequently removed from the site and disposed of at Coffin Butte Landfill in Corvallis, Oregon. A risk assessment of soil sample analytical data indicates remaining contamination does not pose an unacceptable risk to human health and the environment. DEQ is 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 January 30, 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/>

A CHANCE TO COMMENT ON PROPOSED APPROVAL OF CLEANUP AT NEIGHBORHOOD PARK SITE

COMMENTS DUE: January 30, 2007

PROJECT LOCATION: 3508 SW Moody Avenue, Portland, Oregon

PROPOSAL: Pursuant to ORS 465.320 the Department of Environmental Quality (DEQ) invites public comment on the no further action recommendation for the Neighborhood Park site.

HIGHLIGHTS: In September of 2005, the Portland Development Commission acquired the property at 3508 SW Moody Avenue with the intent to create a neighborhood park. The site had been utilized historically for industrial and commercial uses. Petroleum hydrocarbon and lead contamination were discovered in soils on-site. Two underground storage tanks were also discovered and removed. Approximately 1,100 tons of soil containing contaminants above residential cleanup standards were removed from the site and disposed of at Hillsboro Landfill. Low levels of petroleum hydrocarbons and volatile organic compounds remain in deeper soil and in groundwater that appear to originate from off-site sources. A risk assessment was completed that indicates remaining contamination in soil and groundwater does not pose an unacceptable risk to human health and the environment. 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 January 30, 2007. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a mem-

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OPPORTUNITY TO COMMENT RECORD OF DECISION, UNION PACIFIC RAILROAD LA GRANDE RAIL YARD, LA GRANDE, OREGON

COMMENT DUE: January 31, 2007

PROJECT LOCATION: La Grande, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on a draft Record of Decision and draft Scope of Work for the Union Pacific Railroad (UPRR) La Grande Rail Yard. 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 UPRR La Grande Rail Yard located near the center of downtown La Grande, Oregon. Current operations at the Rail Yard consist of rail car switching, main line crew change outs, and track maintenance and operations activities. No fueling operations occur at the site. 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 and The Dalles offices, and can be reviewed in person by contacting the project manager at the number below to arrange for an appointment. In addition, the draft DEQ Record of Decision, draft Scope of Work, and other project-specific documents can also be reviewed on the DEQ website. Due to web site renovations the web address for the UPRR La Grande web page will be changed. Please contact Katie Robertson by e-mail and the new web page address will be provided.

HOW TO COMMENT: The public comment period will extend from January 1 through January 31, 2007. Please address all comments and/or inquiries to the 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 UPRR La Grande Rail Yard. DEQ will provide written responses to all received public comments.

PROPOSED PARTIAL NO FURTHER ACTION DETERMINATION, ANDERSON BROTHERS PROPERTY, PORTLAND, OREGON

COMMENTS DUE: January 31, 2007

PROJECT LOCATION: 5275-5315 NW St. Helens Road

PROPOSAL: The Department of Environmental Quality is proposing to issue a partial No Further Action determination following excavation and offsite disposal of petroleum contaminated soil from the Anderson Brothers site. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: The site consists of three parcels of industrial-zoned land totaling 4.8 acres. It is bounded on the southwest by a steep hill leading up to Forest Park. NW St. Helens Road runs along

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the northeast boundary of the site. Beyond this road are Burlington Northern Railroad tracks and the Tosco Refining Company facility. The Willamette River lies beyond the Tosco facility, about 2,000 feet from the Anderson Brothers site.

The site is currently used as a millwright contracting facility. The property is also used for storage of equipment, machinery and field supplies. A trucking company operated on the site from 1948 through 1988. Site activities during that time included engine repair, parts cleaning, and handling of agricultural products and petroleum products.

In October 2005, 68 tons of petroleum contaminated soil was removed from an area adjacent to and beneath a former petroleum dispenser island. Soil was sampled from 18 borings installed throughout the site. Groundwater was sampled at six locations on the site. Samples analytes included petroleum hydrocarbons, volatile organic compounds, polynuclear aromatic hydrocarbons and metals.

Soil and groundwater contaminant concentrations are below acceptable risk levels. However, storm water from the site eventually drains to the Willamette River within the area designated as the Portland Harbor Superfund Site. Investigation of the potential impact of this site on the Willamette River is still underway. A decision regarding a full No Further Action determination has therefore not yet been made.

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

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

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

To schedule an appointment or to obtain a copy of the staff report, please contact Mr. Schwarz as well. Written comments should be sent by January 31, 2007.

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

A CHANCE TO COMMENT ON PROPOSED RECOMMENDATION FOR NO FURTHER ACTION FOR THE FORMER P&M CEDAR/CAL CEDAR MILL SITE IN ROSEBURG

Oregon Department of Environmental Quality (DEQ) invites public comment on a proposed No Further Action finding for a cleanup of petroleum hydrocarbon and contamination in soil at the former P&M Cedar/Cal Cedar Site, located at 4852 Diamond Lake Blvd. in Roseburg. The property is currently owned by Schiller Enterprises.

DEQ has completed an environmental review of the investigation and cleanup of petroleum hydrocarbon and metals contamination at the Site. A saw mill and planer mill has operated on the Site since the 1940's. Diesel and hydraulic contamination was found as a result of spillage from ground fuel tanks and equipment maintenance. Elevated chromium was detected in the area of the former wigwam burner.

All contamination exceeding the DEQ generic risk-based cleanup concentrations for petroleum hydrocarbons, and related compounds had been removed from the Site. All areas of soil containing chromium in excess cleanup levels have also been removed from the site.

Approximately 65 tons of contaminated soil was excavated from the wigwam burner, the debarker, and the truck shop area.

Due to the shallow depth of the contamination and the absence of drinking water wells on or adjacent to the site, no groundwater data was collected; however, there is no reason to believe groundwater contamination exists at the site.

Project documents for this site are available for public review at DEQ's Roseburg office, 725 SE Main, Roseburg 97470. Contact the file specialist at (541) 440-3338 for an appointment. Please send written comments to Claudia Johansen, at 221 Stewart Avenue, Suite

201, Medford 97501 or via email at johansen.claudia@deq.state.or.us. DEQ must receive written comments by 5 p.m., January 31, 2006.

CHANCE TO COMMENT ON PROPOSED DETERMINATION OF NO FURTHER ACTION FOR SEVEN FORMER AREAS OF CONCERN FOR SOIL CONTAMINATION AND NORTH DRAIN SYSTEM COMPONENTS AT WAH CHANG IN MILLERSBURG, OREGON

COMMENTS INVITED: Through February 1, 2007

PROPOSAL: The Oregon Department of Environmental Quality (DEQ) is holding a 30-day public comment period to solicit questions, comments, or additional information on its proposal to issue no further action determinations for 7 former areas of concern at the Wah Chang plant in Millersburg and for portions of the North Drain System.

PROJECT LOCATION: Wah Chang is north of Albany in Millersburg, Oregon at 1600 Old Salem Road NE. The plant occupies 110 acres bounded by I-5 and the Willamette River, and an additional 65 acres one mile north of the 110 acres.

FACILITY OPERATIONS: Wah Chang manufactures zirconium and other specialty metals. Operations at the Millersburg plant began in 1956. Facilities were constructed at the site primarily to produce zirconium and hafnium metal products. Melting and fabrication operations were added in 1959. The metals refined at the plant are turned into a wide range of products ranging from tubes and plates to wire.

HIGHLIGHTS: From 1980 until closure in 2001, Wah Chang operated an industrial furnace under a Resource Conservation and Recovery Act (RCRA) Hazardous Waste Facility Permit application submitted to DEQ. This application allowed the facility to store and treat by incineration hazardous wastes resulting from on-site manufacturing operations. Between 1996 and October 2001, Wah Chang modified routine site operations and submitted proposals to demonstrate closure of the permit. In October 2001, it was determined that routine site operations were appropriately modified and the permit was closed.

Following closure of the furnace, Wah Chang is required to investigate and address all historic releases of hazardous waste and materials that may have occurred at the facility. This investigation and cleanup is called the RCRA Corrective Action process and is conducted with oversight by the Environmental Protection Agency (EPA) and DEQ. The process is a phased approach consisting of assessment, investigation, identification and evaluation of cleanup alternatives, and implementation of a selected alternative.

Under the direction of EPA and DEQ, the assessment phase of the process was conducted at Wah Chang by an EPA contractor and the results were documented in a final report in August 1997. Based upon the findings of the assessment, a total of 387 "units" or locations were recommended for further evaluation and investigation to help determine if additional action is needed for these locations. A "unit" is a container, tank or particular location where a chemical release has or may have occurred. Of the 387 units identified in the initial EPA assessment, 345 are individual catch basins and sumps connected to the facility-wide drain system, of which 195 are proposed for closure under this action. The remaining 42 units, plus one additional unit added after EPA's initial assessment, are "non-drain" related locations, 32 of which have been previously closed. Contaminants of potential concern that may have been released at these locations include: Solvents; PCBs; Petroleum Compounds; Metals; Radionuclides; Fluorides; and Nitrates.

DEQ previously closed 32 of the 43 non-drain units in February of 2005 on the basis of information submitted by Wah Chang, demonstrating that releases or suspected releases of contaminants at 32 locations met one of the following conditions:

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- Are or were non-existent or posed no risk to human health or the environment;
- Currently permitted or regulated under another authority;
- Mitigated by implementation of cleanup remedies (site excavations and disposal actions, capping of contaminated areas to prevent exposure); and
- Impractical to completely investigate and/or mitigate, with current and future facility environmental programs in-place to mitigate exposure to people or environmental receptors by potential contaminants.

Based on additional investigation conducted by Wah Chang during 2005, DEQ proposes to close another seven non-drain units.

In addition, DEQ proposes to close 195 of the 345 drain related units. The basis for closure of these units is that they pose little or no risk of release of a hazardous material to the environment.

Based on the review of information for these seven non-drain and 195 drain units, DEQ has determined that no additional investigation or action is required at these locations. A no further action does not preclude DEQ from modifying their decision should new or previously undisclosed information indicate that there is, or may be, a release from the location that poses a threat to human health or the environment.

DEQ has requested additional information on the remaining non-drain units and six of the drain units. The remaining drain units will be evaluated as part of a review to be conducted in 2007.

HOW TO COMMENT: Comments must be received by 5:00 PM on February 1, 2007. The investigative reports, and other project files are available for public review at DEQ's Eugene Office. To schedule an appointment to view the files, please call the Eugene Office at (541)686-7819, toll free at 1-800-844-8467, TTY at 541-687-5603. For questions or comments about the no further actions, please call or send written comments by fax or email to: Geoff Brown, Project Manager, 541-686-7819 (toll free & TTY above), Fax: 541-686-7551, brown.geoff@deq.state.or.us. Comments may also be mailed to Geoff Brown at 1102 Lincoln, Suite 210, Eugene, OR 97401

THE NEXT STEP: DEQ will consider all public comments received by the February 1, 2007 deadline before making a final decision on the no further actions. The issuance of the no further actions does not affect the continuing Corrective Action work. Additional 30-day public comment periods will be held in the future to address the remaining locations.

PROPOSED NO FURTHER ACTION CLEAR PINE MOULDING, PRINEVILLE, OREGON

COMMENTS DUE: January 31, 2007

PROJECT LOCATION: 1155 North Main Street, Prineville
Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the proposed No Further Action (NFA) determination for the Clear Pine Moulding site located at 1155 North Main Street in Prineville, Oregon.

The proposed No Further Action determination is documented in the No Further Action Decision Document, dated December 7, 2006. The site is an active, secondary wood products manufacturing plant. Wood was treated with pentachlorophenol (penta) for an unspecified period of time until the penta underground storage tank (UST) was decommissioned in October 1984. A release of penta was documented impacting both soil and groundwater.

Soil and groundwater with penta concentrations exceeding generic RBCs remain on-site in the vicinity of the dip tank. Impacted soil and groundwater is currently capped by the building concrete slab, limiting the potential for occupational or construction workers to come in contact with the contaminated media. Additional remedial activities will be necessary to address the remaining contamination if the zoning changes from heavy industrial or if the building is removed in the future.

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

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

OPPORTUNITY TO COMMENT NO FURTHER ACTION, PHASE ONE COLD SPRINGS SUBDIVISION, SISTERS, OREGON

COMMENT DUE: February 2, 2007

PROJECT LOCATION: NE Corner of McKinney Butte Road and McKinney Ranch Road, Sisters, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) is providing notice for a public opportunity to review and comment on a draft No Further Action (NFA) finding for Phase One of the Cold Springs Subdivision, which is located in Sisters, Oregon. The draft DEQ staff report details the analysis of residual risk related to investigation and cleanup of contaminated environmental media that was conducted within Phase One of the Cold Springs Subdivision. More information concerning site-specific investigations and/or the proposed NFA is available by contacting Mr. Cliff Walkey, DEQ's project manager for this site.

The Administrative File for this facility is archived at the DEQ's Bend, Oregon office, and can be reviewed in person by contacting Mr. Cliff Walkey at (541) 388-6146 extension 224 to arrange for an appointment. The DEQ draft staff report recommending the NFA for the Phase One Subdivision at the Village at Cold Springs can be viewed on the internet at the following internet address: www.deq.state.or.us/lq/cu/er/VillageColdSprings

HOW TO COMMENT: The public comment period will extend from January 2, 2007 through February 2, 2007. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

Cliff Walkey
Department of Environmental Quality
2146 NE 4th Street, Suite 104
Bend, Oregon 97701
(541) 388-6146, ext. 224
walkey.cliff@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 NFA for Phase One of the Cold Springs Subdivision. DEQ will provide written responses to all received public comments.

NO FURTHER ACTION AT THE FORMER ROSEBURG FOREST PRODUCTS WINCHESTER MILL SITE IN WINCHESTER

PROJECT LOCATION: Former Roseburg Forest Products Winchester Mill Site, 425 Del Rio Road, Winchester

HIGHLIGHTS: The site is a former softwood plywood mill. During July 2006, approximately 15 cubic yards of soil was removed from the former Wigwam burner location and disposed of offsite. During the site investigation, arsenic was detected above industrial standards near the former wigwam burner area. Groundwater solvent contamination is above human health levels on site. However no one is drinking the water, drinking water for the site is available from a public water district, and a deed restriction will be placed on the property prohibiting installation of drinking water wells in the future.

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A worst case scenario model was applied to determine the extent of potential groundwater contamination off site, and no residences downgradient of the site would be impacted. There is no unacceptable human health residual risk for this site, as arsenic contaminated soils have been removed and disposed of and groundwater contamination is not impacting residences off site. DEQ recommends no further action at the site. A public comment period was held during September 2006.

HOW TO COMMENT: A file containing detailed information for the site is available for review at DEQ's Eugene Office. The Eugene office is located at 1102 Lincoln Street, Suite 210 in Eugene, Oregon. Questions concerning this site should be directed to Mindi English at 1102 Lincoln Street, Suite 210, Eugene, Oregon 97401 or (800)844-8467 extension 7763.

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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

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Appraiser Certification and Licensure Board Chapter 161

Rule Caption: Amend requirements for acceptable appraisal experience.

Date:	Time:	Location:
1-22-07	9 a.m.	Parks & Rec Dept. 725 Summer St. NE, Rm 124A Salem, OR

Hearing Officer: Craig Zell

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

Other Auth.: Title XI of the Federal Financial Reform, Recovery and Enforcement Act of 1989 (12 USC 3310 et. seq.)

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

Proposed Amendments: 161-010-0025

Last Date for Comment: 1-22-07, close of hearing

Summary: The Board proposes to amend Oregon Administrative Rules chapter 161, division 10 regarding requirements of acceptable appraisal experience.

Rules Coordinator: Karen Turnbow

Address: Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, OR 97303

Telephone: (503) 485-2555

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

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

Date:	Time:	Location:
1-26-07	10-10:15 a.m.	Rm. 445 800 NE Oregon St. Portland, OR 97232

Hearing Officer: Nancy Dunn

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681

Proposed Adoptions: 335-070-0055

Proposed Amendments: 335-010-0060, 335-010-0070, 335-060-0005, 335-070-0020, 335-070-0030, 335-070-0040, 335-070-0050, 335-095-0050, 335-095-0060

Last Date for Comment: 1-24-07, 5 p.m.

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

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

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

Rules Coordinator: Brenda Felber

Address: Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St., Suite 407, Portland, OR 97232-2162

Telephone: (971) 673-0220

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

Date:	Time:	Location:
1-26-07	10-10:15 a.m.	Rm. 445 800 NE Oregon St. Portland, OR 97232

Hearing Officer: Nancy Dunn

Stat. Auth.: ORS 681

Stats. Implemented: ORS 681

Proposed Amendments: 335-001-0000, 335-001-0005, 335-005-0030

Last Date for Comment: 1-24-07, 5 p.m.

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

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

Rules Coordinator: Brenda Felber

Address: Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St., Suite 407, Portland, OR 97232-2162

Telephone: (971) 673-0220

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Board of Examiners of Licensed Dietitians Chapter 834

Rule Caption: License-fee Reduction.

Stat. Auth.: ORS 691.405 - 691.535

Stats. Implemented: ORS 691.405 - 691.535

Proposed Amendments: 834-010-0050

Last Date for Comment: 1-22-07, 5 p.m.

Summary: The rule intends to lower the price of a license by prorating the license fee monthly. The price to be changed is \$150 for 13-24 months or \$75 (for 12 months or less).

Rules Coordinator: Doug Van Fleet

Address: 800 NE Oregon St., Portland, OR 97232-2187

Telephone: (971) 673-0190

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Board of Nursing Chapter 851

Rule Caption: Rules Established for Clinical Nurse Specialists Whose Graduate Education Took Place Outside the U.S.

NOTICES OF PROPOSED RULEMAKING

Date: 2-15-07
Time: 9 a.m.
Location: Portland State Office Bldg.
Rm. 135
800 N.E. Oregon St.
Portland, OR 97232

Hearing Officer: Sandra Theis, Board President
Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.370, 678.372, 678.385, 678.390
Proposed Amendments: 851-054-0040
Last Date for Comment: 2-13-07, 5 p.m.

Summary: These rules cover the standards and scope of practice for Clinical Nurse Specialists. These rule amendments will allow a credentials evaluation service, such as the Commission on Graduates of Foreign Nursing Schools (CGFNS) or the International Education Research Foundation (IERF) to make a determination whether the graduate program outside the United States was equivalent to the Commission on Collegiate Nursing Education (CCNE) or the National League for Nursing Accreditation Commission Inc. (NLNAC) accredited programs in the United States.

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

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Rule Caption: Advanced Practice Formulary Updated.

Date: 2-15-07
Time: 9 a.m.
Location: Portland State Office Bldg.
Rm. 135
800 N.E. Oregon St.
Portland, OR 97232

Hearing Officer: Sandra Theis, Board President
Stat. Auth.: ORS 678.385, 678.390
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390
Proposed Amendments: 851-056-0012
Last Date for Comment: 2-13-07, 5 p.m.

Summary: The Board is authorized by ORS 678.385 and 678.390 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner or clinical nurse specialist under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the November and December 2006, and January and February 2007 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

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

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Rule Caption: Rules Established for Nurse Practitioners Whose Graduate Education Took Place Outside the U.S.

Date: 2-15-07
Time: 9 a.m.
Location: Portland State Office Bldg.
Rm. 135
800 N.E. Oregon St.
Portland, OR 97232

Hearing Officer: Sandra Theis, Board President
Stat. Auth.: ORS 678.150
Stats. Implemented: ORS 678.375, 678.380, 678.385, 678.390
Proposed Amendments: 851-050-0002
Last Date for Comment: 2-13-07, 5 p.m.

Summary: These rules cover the standards and scope of practice for nurse practitioners. These rule amendments will allow a credentials evaluation service, such as the Commission on Graduates of Foreign Nursing Schools (CGFNS) or the International Education Research Foundation (IERF) to make a determination whether the graduate program outside the United States was equivalent to the Commission

on Collegiate Nursing Education (CCNE) or the National League for Nursing Accreditation Commission Inc. (NLNAC) accredited programs in the United States.

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

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Department of Administrative Services, Public Employees' Benefit Board Chapter 101

Rule Caption: Temporary Rule amends OAR 101-010-0005 immediately to incorporate recent IRS dependent definition changes.

Stat. Auth.: ORS 243.061 - 243.302
Other Auth.: ORS 279
Stats. Implemented: ORS 243, 659, 743
Proposed Amendments: 101-010-0005
Last Date for Comment: 1-21-07

Summary: This rulemaking amends the current rule governing the eligibility for benefits and procedures of the Public Employees' Benefit Board and is made a part of OAR chapter 101 generally. Experience in using the rule, changes and clarification of federal regulations governing Internal Revenue Service Code, and the ongoing development of the agency-specific PEBB Administrative Manual have identified the need for amendment of the existing rule.

Rules Coordinator: Zue Matchett
Address: Department of Administrative Services, Public Employees' Benefit Board, 775 Court St. NE, Salem, OR 97301
Telephone: (503) 378-8423

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Department of Agriculture Chapter 603

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

Date: 1-29-07
Time: 1 p.m.
Location: Dept. of Agriculture,
Conference Rm. D
635 Capitol St. NE
Salem, OR 97301-2532

Hearing Officer: Kathleen Wickman
Stat. Auth.: ORS 561, 571, 632
Stats. Implemented: ORS 561, 571, 632
Proposed Amendments: 603-051-0856, 603-051-0857, 603-051-0858, 603-051-0859
Last Date for Comment: 1-29-07, 5 p.m.

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

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

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Rule Caption: Housekeeping changes to Plant Division rules: correct spelling, italicization, update distributions, weed list, and dates.
Stat. Auth.: ORS 561.190
Stats. Implemented:

NOTICES OF PROPOSED RULEMAKING

Proposed Amendments: 603-052-0114, 603-052-0115, 603-052-0120, 603-052-0129, 603-052-0150, 603-052-0360, 603-052-0450, 603-052-1200, 603-052-1221

Last Date for Comment: 1-22-07

Summary: Proposed changes would: add Jackson County in the list of counties under quarantine for Dutch Elm disease (603-052-0114), correct spelling and italicize *Rhagoletis mendax* in blueberry maggot quarantine (603-052-0115), exempt tissue culture plantlets from oak wilt quarantine (603-052-0120), correct italicization in phytophagous snail quarantine (603-052-0129), update references to most recent Pest Management Guides in the cherry fruit fly control areas (603-052-0150), clarify that landowners are responsible for cull onion disposal in the Malheur County onion maggot control area (603-052-0360), correct, italicization in the cherry bark tortix quarantine (603-052-0450), reconcile noxious weed quarantine with state noxious weed list by adding Jubata grass and deleting short-fringed knopweed and wild proso millet (603-052-1200), and corrects italicization in glassy-winged sharpshooter quarantine (603-052-1221).

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Department of Consumer and Business Services, Insurance Division Chapter 836

Rule Caption: Licensing, Renewal, Prelicensing Training and Continuing Education Requirements for Insurance Producers.

Date:	Time:	Location:
1-31-07	9:30 a.m.	Conference Rm. B (basement) 350 Winter St. NE Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244, 744.067, 744.072

Stats. Implemented: ORS 741.058, 744.064, 744.067, 744.072

Proposed Adoptions: 836-071-0146

Proposed Amendments: 836-071-0180, 836-071-0215, 836-071-0220, 836-071-0242, 836-071-0250

Last Date for Comment: 2-15-07

Summary: This proposed rulemaking affects licensing, renewal, pre-licensing training and continuing education requirements for insurance producers. The changes proposed in this rulemaking will further licensing reciprocity for Oregon resident insurance producers and increase consistency between the licensing laws of Oregon and those of other states.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Rule Caption: Rulemaking Permitting Recognition of Preferred Mortality Tables for use in Determining Minimum Reserve Liabilities.

Date:	Time:	Location:
1-24-07	9:30 a.m.	Conference Rm. B (basement) 350 Winter St. NE Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244, 733.306

Stats. Implemented: ORS 733.306

Proposed Adoptions: 836-031-0800, 836-031-0805, 836-031-0810, 836-031-0815

Last Date for Comment: 1-31-07

Summary: This rulemaking proposes to recognize, allow and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum

reserve liabilities, in connection with life insurance, for policies sold on or after January 1, 2007.

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Department of Corrections Chapter 291

Rule Caption: Inclusion of Domestic Partner in Definition of Immediate Family for Inmate Visitation

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

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

Proposed Amendments: 291-127-0210

Last Date for Comment: 2-15-07

Summary: The rule amendment is necessary to include a definition of domestic partner and include domestic partner in the definition for immediate family for purposes of visiting inmates in DOC correctional facilities. This will permit inmates in special housing and on basic visiting status to visit with their domestic partner, as well as other immediate family members.

Rules Coordinator: Janet R. Worley

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

Telephone: (503) 945-0933

Department of Fish and Wildlife Chapter 635

Rule Caption: 2007 Columbia River salmon, sturgeon and miscellaneous seasons.

Date:	Time:	Location:
2-9-07	8 a.m.	Seaside Convention Center 415 First Ave. Seaside, OR 97138

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 506.119, 506.129, 507.020

Stats. Implemented: ORS 496.012, 496.162, 506.109, 506.129, 507.030

Proposed Adoptions: Rules in 635-023, 041, 042

Proposed Amendments: Rules in 635-023, 041, 042

Proposed Repeals: Rules in 635-023, 041, 042

Last Date for Comment: 2-9-07

Summary: The Columbia River Compact Agencies of Oregon and Washington will meet jointly to consider amendment of rules related to: 1) commercial fishing in the Columbia River below Bonneville Dam and select areas; 2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and 3) sport fishing in the main-stem Columbia River.

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

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

Rule Caption: Commercial and Recreational Gear and Harvest Regulations for the Razor Clam Fishery.

Date:	Time:	Location:
2-9-07	8 a.m.	Seaside Convention Center 415 First Ave. Seaside, OR 97138

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.109, 506.119, 506.129, 506.755

Stats. Implemented: ORS 496.012, 496.138, 496.162, 506.036, 506.109, 506.119, 506.129, 506.755

Proposed Adoptions: Rules in 635-005, 039

Proposed Amendments: Rules in 635-005, 039

NOTICES OF PROPOSED RULEMAKING

Proposed Repeals: Rules in 635-005, 039

Last Date for Comment: 2-9-07

Summary: Establish requirements that would standardize harvest methods for the commercial and recreational razor clam fishery by prohibiting the use of the clam gun/tube for commercial harvest methods and define the minimum diameter of a recreational clam gun/tube. Define the proper method for the release of sub-legal clams in the commercial fishery by establishing language for the immediate return and placement back to the sand.

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

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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Rule Caption: Establish Dungeness crab pot limits, buoy tags, pot/permit stacking, and crab fishery permit review board.

Date:	Time:	Location:
2-9-07	8 a.m.	Seaside Convention Center 415 First Ave. Seaside, OR 97138

Hearing Officer: Fish and Wildlife Commission

Stat. Auth.: ORS 496.146, 506.109, 506.119, 506.129, 506.755, 508.921

Stats. Implemented: ORS 506.109, 506.119, 506.129, 506.755, 508.921, 508.936, 508.941

Proposed Adoptions: Rules in 635-005, 006

Proposed Amendments: Rules in 635-005, 006

Proposed Repeals: Rules in 635-005, 006

Last Date for Comment: 2-9-07

Summary: Establish a gear limitation program for all vessels fishing off Oregon in the commercial ocean Dungeness crab fishery. The program may include provisions for permits, licenses, gear requirements and restrictions, fishing area restrictions, cost recovery, reporting requirements, and a process for appeals before the Crab Fishery Permit Review Board.

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

Rules Coordinator: Casaria Tuttle

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

Telephone: (503) 947-6033

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Department of Human Services, Child Welfare Programs Chapter 413

Rule Caption: Changing OARs affecting Child Welfare programs.

Date:	Time:	Location:
1-22-07	8:30 a.m.	Rm. 254 500 Summer St. NE Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 418.005

Other Auth.: Title IV-E and Title XIX of the Social Security Act available at http://199.173.224.109/OP_Home/ssact/comp-toc.htm

Stats. Implemented: ORS 418.005, 418.470

Proposed Amendments: 413-090-0000, 413-090-0005, 413-090-0010, 413-090-0030, 413-090-0040, 413-090-0050, 413-090-0100, 413-090-0110, 413-090-0120, 413-090-0130, 413-090-0140, 413-090-0150, 413-090-0160, 413-090-0170, 413-090-0180, 413-090-0190, 413-090-0200, 413-090-0210

Proposed Repeals: 413-090-0220

Last Date for Comment: 2-2-07

Summary: The Department is amending rules about maintenance and treatment payments, special rates, and personal care for clients of Child Welfare. These amendments change the foster care basic rates, Family Shelter Care, and Family Group Home payment rates,

and the Special Rate/Personal Care Hourly Reimbursement and Transportation reimbursements; most of these changes were made initially by temporary rules on October 13, 2006. These rules are also being amended to clarify and update language and conform to current practices. OAR 413-090-0050 is being amended to extend the time period for out-of-state payment for family foster care and relative caregivers. OAR 413-090-0170 is being amended to state the current practice on reimbursement for school transportation. OAR 413-090-0220 about the location of procedures and forms is being repealed.

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, Child Welfare Programs, 550 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

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Department of Human Services, Director's Office Chapter 407

Rule Caption: Department authority for reimbursement of providing public records.

Date:	Time:	Location:
1-22-07	2:30-3:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137C Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 192.430, 409.050

Stats. Implemented: ORS 192.430, 192.440, 409.010

Proposed Adoptions: 407-003-0000, 407-003-0010

Last Date for Comment: 1-22-07, 5 p.m.

Summary: These rules provide the authority for the Department of Human Services to charge fees for cost reimbursement of providing public records.

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, Director's Office, 500 Summer St. NE, E-03 Salem, OR 97301

Telephone: (503) 947-5250

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Rule Caption: Oregon Pain Management Commission definitions, structure, and continuing education requirements for licensed health care professionals.

Date:	Time:	Location:
1-22-07	1:30-2:30 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 137C Salem, OR

Hearing Officer: Staff

Stat. Auth.: ORS 409.500, 409.560, 409.570

Stats. Implemented: ORS 409.500 - 409.570

Proposed Adoptions: 407-020-0000, 407-020-0005, 407-020-0010, 407-020-0015

Last Date for Comment: 1-22-07, 5 p.m.

Summary: Senate Bill 885 was passed in the 2001 legislative session and became effective January 1, 2002 as ORS 409.500 through 409.570, with Senate Bill 285 added later to 409.520 and 409.560. The statute established duties of the Pain Management Commission, membership and appointment requirements, funding matters and a continuing education requirement in pain management for most licensed health care professionals in Oregon. These rules will serve to provide further interpretation of those components with general applicability and which are not clearly defined in existing statutory language.

Proposed rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>

For hardcopy requests, call: (503) 947-5250.

NOTICES OF PROPOSED RULEMAKING

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

.....
**Department of Human Services,
Public Health
Chapter 333**

Rule Caption: Childhood Diabetes Database.

Date: 1-29-07 **Time:** 1 p.m. **Location:** Portland State Office Bldg.
800 NE Oregon St., Rm. 140
Portland, OR

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 444.300

Stats. Implemented: ORS 444.300 - 444.330

Proposed Adoptions: 333-010-0600 – 333-010-0660

Last Date for Comment: 1-31-07, 5 p.m.

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

Rules Coordinator: Christina Hartman

Address: Department of Human Services, Public Health, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (971) 673-1291

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**Department of Human Services,
Self-Sufficiency Programs
Chapter 461**

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

Date: 1-22-07 **Time:** 10 a.m. **Location:** Rm 254, 500 Summer St. NE
Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060, 411.070, 411.598, 411.600, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.070, 411.598, 411.600, 411.816, 418.100

Proposed Amendments: 461-155-0180, 461-155-0235

Last Date for Comment: 1-22-07, 10 a.m.

Summary: OAR 461-155-0180 and 461-155-0235 are being amended to reflect the annual increase in the federal poverty levels published in the Federal Register and cross-reference rules that explain technical terms. These rules include income and premium standards based on the federal poverty levels.

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, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301

Telephone: (503) 945-6067

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**Department of Transportation,
Board of Maritime Pilots
Chapter 856**

Rule Caption: Amends training for licensure on the Columbia-Willamette River pilotage ground.

Date: 1-23-07 **Time:** 10 a.m. **Location:** 800 NE Oregon St., Rm. 125
Portland, OR 97232

Hearing Officer: Board of Maritime Pilots

Stat. Auth.: ORS 776.115(7)

Stats. Implemented: ORS 776.115(4)(a), (c) & (e)

Proposed Amendments: 856-010-0010, 856-010-0011, 856-010-0012, 856-010-0015

Last Date for Comment: 1-23-07

Summary: Amends training for original licensing requirements and degrees of licenses for Columbia — Willamette River pilotage ground. Improves training by extending total training time, expanding the number of certified training trips, and provide flexibility in assigning training experiences. A few amendments address administrative details such as the schedule for submission of license renewal physicals, training certifications, grading of exams, and some housekeeping.

Rules Coordinator: Susan Johnson

Address: Department of Transportation, Board of Maritime Pilots, 800 NE Oregon St. #507, Portland, OR 97232

Telephone: (971) 673-1530

.....
**Department of Transportation,
Driver and Motor Vehicle Services Division
Chapter 735**

Rule Caption: Commercial Driver License with Passenger Endorsement.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Other Auth.: 49 CFR § 383.117

Stats. Implemented: ORS 807.070, 807.080, 807.170 & 807.175

Proposed Amendments: 735-062-0150

Last Date for Comment: 1-22-07

Summary: OAR 735-062-0150 establishes when a passenger endorsement will be added to commercial driving privileges and a commercial driver license (CDL). The rule was previously amended in January 2005 to comply with federal standards for placing a driving privilege restriction on commercial driving privileges and on the CDL when the holder is issued a passenger endorsement. That rule amendment put specific time-periods on sections of the rule that specified what would occur between certain dates or after a certain date. DMV proposes to remove those sections in rule that no longer apply and to remove specific dates listed if the date is no longer relevant. Other changes are made for clarity.

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, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

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**Department of Transportation,
Rail Division
Chapter 741**

Rule Caption: State Oversight of Rail Transit Agencies.

Stat. Auth.: ORS 184.616, 184.619, 823.011 & 824.045

Other Auth.: 49 CFR Part 659 & 49 USC 5330

Stats. Implemented: ORS 824.045

Proposed Adoptions: 741-060-0025, 741-060-0035, 741-060-0095

Proposed Amendments: 741-060-0010, 741-060-0020, 741-060-0030, 741-060-0040, 741-060-0050, 741-060-0060, 741-060-0070, 741-060-0080, 741-060-0090, 741-060-0100, 741-060-0110

Last Date for Comment: 1-22-07

Summary: These rules establish state oversight of rail transit agencies. The amendments bring state oversight into compliance with the changes made to the federal rules governing this program, 49 USC 5330 and 49 CFR part 659. The federal regulations became effective May 31, 2005.

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

NOTICES OF PROPOSED RULEMAKING

Address: Department of Transportation, Rail Division, 1905 Lana Ave. NE, Salem, OR 97314
Telephone: (503) 945-5278

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**Department of Transportation,
Transportation Safety Division
Chapter 737**

Rule Caption: Requirements for Traffic Safety Education Courses, Instructors and Equipment,

Date:	Time:	Location:
1-16-07	9 a.m.	ODOT Bldg, Rm. 122 355 Capitol St. NE Salem, OR

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619 & 802.345

Stats. Implemented: ORS 336.800, 336.805, 336.810, 802.110, 802.345 & 807.065

Proposed Adoptions: 737-015-0110

Proposed Amendments: 737-015-0020, 737-015-0030, 737-015-0050, 737-015-0060, 737-015-0070, 737-015-0090, 737-015-0100

Proposed Repeals: 737-015-0040, 737-015-0080

Last Date for Comment: 1-16-07

Summary: These rules relate to traffic safety education courses, instructors and equipment required for the instruction of persons less than 18 years of age. ODOT's Transportation Safety Division (TSD) is responsible for monitoring the schools and instructors who provide this traffic safety course. The 2005 Oregon Legislature amended ORS 336.805 (HB 2112) increasing the amount reimbursed to public schools and facilities offering a course in traffic safety from \$150 to \$210 per eligible student. OAR 737-015-0090 is amended to reflect this change. Other rules pertaining to the program have not been updated in six years. These proposed rule amendments clarify and define exactly what is required for an approved driver education provider. The new language updates curriculum concepts and delivery requirements and outcomes of students completing an approved traffic safety course. These rules outline the requirements and qualifications for driver education instructors. These proposed amendments are part of an on-going process to make these rules better for the safety and mobility of young drivers of Oregon choosing to complete an ODOT-TSD approved course. The proposed amendments eliminate inconsistencies in state-approved driver education requirements for public and private providers.

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, Transportation Safety Division, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

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

Rule Caption: OAR 471-030-0074 and OAR 471-030-0075.

Date:	Time:	Location:
1-22-07	2 p.m.	Employment Dept. Auditorium 875 Union St NE, Salem, OR 97311

Hearing Officer: Lynn Nelson

Stat. Auth.: ORS 657.100, 657.167, 657.221

Stats. Implemented: ORS 657.167, 657.221

Proposed Amendments: OAR 471-030-0074, 471-030-0075

Last Date for Comment: 1-22-07, 5 p.m.

Summary: OAR 471-030-0074 is being amended to clarify "employment," and define "relevant period" for the proper application of ORS 657.167 and 657.221.

OAR 471-030-0075 is being amended to add language to make the rule consistent with federal guidelines. The language added includes in paragraph (1) ...immediately following the academic year, term, vacation period or holiday recess which is in the same or similar

capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

Paragraph (2) the definition of "substantially less" is added.

Paragraph (3) the definition of "same or similar capacity" is added.

Rules Coordinator: Lynn M. Nelson

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

Telephone: (503) 947-1724

.....
**Land Conservation and Development Department
Chapter 660**

Rule Caption: Permanent Measure 37 Rules Clarifying Requirements for Claims and Local Authorizations, Including Notice to State.

Date:	Time:	Location:
1-25-07	8:30 a.m.	Agriculture Bldg. 635 Capitol St. NE Basement Hearing Rm. Salem, OR

Hearing Officer: LCDC

Stat. Auth.: ORS 197.040, 197.045, 197.090, 197.175, 197.180 & 197.352

Other Auth.: OAR 125-145; Statewide Land Use Planning Goals 2-4, 11 & 14 (OAR 660-015-000(2)-(4), (11) & (14)).

Stats. Implemented: ORS 197.040; 197.045; 197.090; 197.175; 197.180; 197.250, 197.352 & 197.646

Proposed Adoptions: 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030, 660-041-0040, 660-041-0050

Proposed Repeals: 660-041-0000(T), 660-041-0020(T), 660-041-0030(T)

Last Date for Comment: 1-25-07

Summary: The proposed permanent rules adopt OAR chapter 660, division 041. The purpose of these rules is to do three things. First, the rules clarify the requirements for Measure 37 claims submitted to the State after December 4, 2006, where the claim is based on one or more DLCD land use regulations. There is substantial confusion among property owners concerning what Measure 37 requires after this date. The rules specify that claims based on an existing DLCD statute, land use planning goal, or rule must include a final decision by a local government that applies one or more of these state lands use regulations as approval criteria to deny or condition an application for the use that the claimant desires to carry out. Claims based on new state land use regulations may be made without applying for a local decision, so long as they are made within two years of the date of enactment or adoption. These rules apply only to claims filed with the State after December 4, 2006 that are based on DLCD land use regulations. The Oregon Department of Administrative Services has adopted rule amendments that address claims based on other state land use regulations. Second, the proposed rules also require local governments to notify DLCD prior to a decision on a permit or other authorization of a use based on a Measure 37 waiver. This will ensure that State and local actions on Measure 37 claims are coordinated and consistent to the extent possible. Third, the proposed rules would clarify that owners of real property in rural areas must file Measure 37 claims with both the State and with the county that the property is located in, and have both the State and county act to "modify, remove, or not to [sic] apply" the applicable local and state land use regulations before they may lawfully obtain a local permit or other authorization to proceed with a use of their property under Measure 37. This is another area of confusion for property owners who have filed or who are considering filing a Measure 37 claim.

The Commission may consider other clarifications to these subjects that may be proposed during the public comment period.

An advisory committee was not used to assist the agency in drafting the proposed rule due to the need to act quickly to clarify requirements for the large number of property owners who have filed

NOTICES OF PROPOSED RULEMAKING

Measure 37 claims in the past several months, and the need to put a more formal structure in place quickly to coordinate state and local action on Measure 37 claims.

Rules Coordinator: Shelia Preston

Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540

Telephone: (503) 373-0050, ext. 222

.....
**Oregon Board of Dentistry
Chapter 818**

Rule Caption: Creates, repeals or amends rules regarding Exceptions, Hearings, Fees, Unprofessional Conduct, Prohibitions and Dental Hygienists.

Date:

Time:

Location:

2-8-07

7 p.m.

OHSU School of Dentistry
611 SW Campus Dr.
Rms. 220 & 225
Portland, OR

Hearing Officer: Board President or Designee

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 183.341, 183.460, 183.480, 679.010(3), 679.020(1)(2), 679.025(2)(j), 679.140(1)(c) & (2), 679.170(6), 679.250(7), 680.050(2)(a), 680.100

Proposed Adoptions: 818-035-0072

Proposed Amendments: 818-001-0087, 818-012-0030, 818-035-0025, 818-035-0040

Proposed Repeals: 818-001-0015, 818-001-0021

Last Date for Comment: 2-8-07

Summary: The Board is repealing 818-001-0015, Filing Exceptions and Argument to the Board, as this is a duplication of procedures that already exist in the Administrative Procedures Act.

The Board is repealing 818-001-0021, Petition for Reconsideration or Rehearing as Condition for Judicial Review, as this procedure already exists in Administrative Procedures Act.

The Board is amending 818-001-0087, Fees, to create a fee for Dental Hygiene Restorative Functions Endorsement.

The Board is amending 818-012-0030, Unprofessional Conduct, to include the requirement to release photographs; adding the addiction and dependency or abuse of alcohol, illegal or controlled drugs or mind altering substances; and require a Dentist or Dental Hygienist to work in a clinic owned by an Oregon licensed dentist except as described under ORS 679.020(3) and ORS 680.205(1)(2).

The Board is amending 818-035-0025, Prohibitions, to allow Dental Hygienists to perform restorative functions pursuant to OAR 818-035-0072.

The Board is amending 818-035-0040, Expanded Functions of Dental Hygienists, to require that an applicant must submit an application to receive this endorsement.

The Board is creating 818-035-0072, Restorative Functions of Dental Hygienists, to allow the placement and finishing of direct alloy and direct composite restorations.

Rules Coordinator: Sharon Ingram

Address: Oregon Board of Dentistry, 1600 SW 4th Ave., Suite 770, Portland, OR 97201

Telephone: (971) 673-3200

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

Rule Caption: Special education rules to be amended to reflect federal changes, to reorganize and update language.

Date:

Time:

Location:

2-21-07

1 p.m.

Dept. of Education
255 Capitol St. NE, Rm. 251A
Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 343 & 20 USC 1400 et. seq.

Other Auth.: 34 CFR Part 300

Stats. Implemented: ORS 343.035, 343.041, 343.045, 343.055, 343.065, 343.146, 343.151, 343.155, 343.157, 343.159, 343.164, 343.165, 343.167, 343.173, 343.177, 343.181, 343.183, 343.221, 343.223, 343.236, 343.239, 343.243, 343.247, 343.261, 343.285, 343.455, 343.465, 343.475, 343.485, 343.495, 343.507, 343.511, 343.513, 343.513, 343.517, 343.521, 343.523, 343.527, 343.531, 343.533, 343.534, 343.961, 326.695, 326.700, 326.712

Proposed Adoptions: 581-015-2060, 581-015-2075, 581-015-2085, 581-015-2105, 581-015-2110, 581-015-2225, 581-015-2230, 581-015-2255, 581-015-2275, 581-015-2350, 581-015-2355, 581-015-2465, 581-015-2475, 581-015-2485

Proposed Repeals: 581-015-0033, 581-015-0051, 581-015-0071, 581-015-0072, 581-015-0074, 581-015-0702, 581-015-0704, 581-015-0085, 581-015-0087, 581-015-0709, 581-015-0111, 581-015-0115, 581-015-0750, 581-015-0805, 581-015-0811, 581-015-0816, 581-015-0820, 581-015-0825

Proposed Ren. & Amends: 581-015-0005 to 581-015-2000, 581-015-0035 to 581-015-2005, 581-015-0038 to 581-015-2010, 581-015-0048 to 581-015-2015, 581-015-0049 to 581-015-2020, 581-015-0057 to 581-015-2025, 581-015-0054 to 581-015-2030, 581-015-0600 to 581-015-2040, 581-015-0601 to 581-015-2045, 581-015-0602 to 581-015-2050, 581-015-0560 to 581-015-2055, 581-015-0605 to 581-015-2065, 581-015-0062 to 581-015-2070, 581-015-0037 to 581-015-2080, 581-015-0039 to 581-015-2090, 581-015-0042 to 581-015-2095, 581-015-0700 to 581-015-2100, 581-015-0701 to 581-015-2115, 581-015-0053 to 581-015-2120, 581-015-0073 to 581-015-2125, 581-015-0051(1) to 581-015-2130, 581-015-0051(2) to 581-015-2135, 581-015-0051(3) to 581-015-2140, 581-015-0051(4) to 581-015-2145, 581-015-0051(5) to 581-015-2150, 581-015-0051(6) to 581-015-2155, 581-015-0051(7) to 581-015-2160, 581-015-0051(8) to 581-015-2165, 581-015-0051(9) to 581-015-2170, 581-015-0051(10) to 581-015-2175, 581-015-0051(11) to 581-015-2180, 581-015-0063 to 581-015-2190, 581-015-0067 to 581-015-2195, 581-015-0068 to 581-015-2200, 581-015-0568 to 581-015-2205, 581-015-0066 to 581-015-2210, 581-015-0703 to 581-015-2215, 581-015-0064 to 581-015-2220, 581-015-0070 to 581-015-2235, 581-015-0059 to 581-015-2240, 581-015-0060 to 581-015-2245, 581-015-0061 to 581-015-2250, 581-015-0701 to 581-015-2260, 581-015-0141 to 581-015-2265, 581-015-0126 to 581-015-2270, 581-015-0131 to 581-015-2280, 581-015-0711 to 581-015-2285, 581-015-0712 to 581-015-2290, 581-015-0133 to 581-015-2295, 581-015-0606 to 581-015-2300, 581-015-0094 to 581-015-2305, 581-015-0075 to 581-015-2310, 581-015-0079 to 581-015-2315, 581-015-0099 to 581-015-2320, 581-015-0101 to 581-015-2325, 581-015-0102 to 581-015-2330, 581-015-0095 to 581-015-2335, 581-015-0097 to 581-015-2340, 581-015-0081 to 581-015-2345, 581-015-0080 to 581-015-2360, 581-015-0096 to 581-015-2365, 581-015-0086 to 581-015-2370, 581-015-0088 to 581-015-2375, 581-015-0091 to 581-015-2380, 581-015-0084 to 581-015-2383, 581-015-0093 to 581-015-2385, 581-015-0108 to 581-015-2390, 581-015-0109 to 581-015-2395, 581-015-0550 to 581-015-2400, 581-015-0551 to 581-015-2405, 581-015-0552 to 581-015-2410, 581-015-0553 to 581-015-2415, 581-015-0554 to 581-015-2420, 581-015-0555 to 581-015-2425, 581-015-0556 to 581-015-2430, 581-015-0557 to 581-015-2435, 581-015-0558 to 581-015-2440, 581-015-0559 to 581-015-2445, 581-015-0705 to 581-015-2450, 581-015-0166 to 581-015-2455, 581-015-0151 to 581-015-2460, 581-015-0706 to 581-015-2470, 581-015-0171 to 581-015-2480, 581-015-0707 to 581-015-2490, 581-015-0196 to 581-015-2495, 581-015-0708 to 581-015-2500, 581-015-0191 to 581-015-2505, 581-015-0186 to 581-015-2510, 581-015-0156 to 581-015-2515, 581-015-0607 to 581-015-2530, 581-015-0608 to 581-015-2535, 581-015-0291 to 581-015-2540, 581-015-0292 to 581-015-2545, 581-015-0293 to 581-015-2550, 581-015-0294 to 581-015-2555, 581-015-0295 to 581-015-2560, 581-015-0296 to 581-015-2565, 581-015-0044 to 581-015-2570, 581-015-0017 to 581-015-2575, 581-015-0016 to 581-015-2580, 581-015-0301 to 581-015-2585, 581-015-0415 to 581-015-2590,

NOTICES OF PROPOSED RULEMAKING

581-015-0505 to 581-015-2595, 581-015-0603 to 581-015-2600, 581-015-0604 to 581-015-2605, 581-015-0015 to 581-015-2610, 581-015-0900 to 581-015-2700, 581-015-0910 to 581-015-2705, 581-015-0920 to 581-015-2710, 581-015-0930 to 581-015-2715, 581-015-1045 to 581-015-2720, 581-015-1110 to 581-015-2725, 581-015-0938 to 581-015-2730, 581-015-0939 to 581-015-2735, 581-015-0937 to 581-015-2740, 581-015-0940 to 581-015-2745, 581-015-0964 to 581-015-2750, 581-015-0966 to 581-015-2755, 581-015-0935 to 581-015-2760, 581-015-0962 to 581-015-2765, 581-015-1010 to 581-015-2770, 581-015-0945 to 581-015-2775, 581-015-0946 to 581-015-2780, 581-015-0949 to 581-015-2785, 581-015-0941 to 581-015-2790, 581-015-0943 to 581-015-2795, 581-015-0955 to 581-015-2800, 581-015-0960 to 581-015-2805, 581-015-0968 to 581-015-2810, 581-015-0970 to 581-015-2815, 581-015-0972 to 581-015-2820, 581-015-0980 to 581-015-2825, 581-015-0990 to 581-015-2830, 581-015-0995 to 581-015-2835, 581-015-1120 to 581-015-2840, 581-015-1000 to 581-015-2845, 581-015-1002 to 581-015-2850, 581-015-1003 to 581-015-2855, 581-015-1005 to 581-015-2860, 581-015-1020 to 581-015-2865, 581-015-1030 to 581-015-2870, 581-015-1008 to 581-015-2875, 581-015-1125 to 581-015-2880, 581-015-1051 to 581-015-2885, 581-015-1052 to 581-015-2890, 581-015-1090 to 581-015-2895, 581-015-1100 to 581-015-2900, 581-015-1105 to 581-015-2905, 581-015-1106 to 581-015-2910

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

Summary: The 2004 Amendments to the Individuals with Disabilities Education Act (IDEA), effective July 2005, and corresponding regulations, effective October 2006, require changes to existing state special education regulations. In addition, the state regulations have been reorganized and renumbered in a more logical sequence so that information is easier to find. Regulations have also been updated to reflect more current language, and some regulations have been amended for clarity or to align more closely with the federal statutes and regulations. Obsolete rules have been repealed, and reorganization has prompted repeal of some rules that have been combined with new or amended rules. The proposed rules include amendments to rules in all sections, including: definitions, general supervision, free appropriate public education, child find, consent, evaluation and eligibility, parent participation, IEP, placement and least restrictive environment, children in public schools placed by a private agency, procedural safeguards, Section 504 hearings, discipline for children with disabilities, children in private schools enrolled by their parents, use of public or private insurance, regional programs, special programs, and early intervention/early childhood special education.

Rules Coordinator: Paula Merritt

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

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

Rule Caption: Revision of Student Record rules to comply with federal law (Family Education Rights and Privacy).

Date:	Time:	Location:
1-24-07	1 p.m.	Dept. of Education, Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.565, 34 CFR Sec. 99

Stats. Implemented: ORS 326.565

Proposed Adoptions: 581-021-0255, 581-021-0265, 581-021-0371, 581-021-0372, 581-021-0391

Proposed Amendments: 581-021-0220, 581-021-0250, 581-021-0260, 581-021-0270, 581-021-0330, 581-021-0340, 581-021-0350, 581-021-0360, 581-021-0380, 581-021-0400, 581-021-0410

Proposed Repeals: 581-021-0440

Last Date for Comment: 1-24-07, 5 p.m.

Summary: Federal law regarding student records is contained in the Family Education Rights and Privacy Act (FERPA). Oregon administrative rules regarding student records must reflect current

FERPA requirements and these new rules and amendments will result in that alignment.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Rule Caption: The proposed rule adopts the current version of the AG's Model Rules of Procedure.

Date:	Time:	Location:
1-24-07	1 p.m.	Dept. of Education Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Proposed Amendments: 581-001-0005

Last Date for Comment: 1-24-07, 5 p.m.

Summary: The proposed amendments will incorporate the most recent version of the Attorney General's Model Rules of Procedure and will update reference to the most recent version of the federal law, the Individuals with Disabilities Education Act.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Rule Caption: Proposed revisions will clarify process required to allocate state school funds for alternative education programs.

Date:	Time:	Location:
1-24-07	1 p.m.	Public Services Bldg. Rm. 251A Salem, OR

Hearing Officer: Randy Harnisch

Stat. Auth.: ORS 326.051, 326.310, 327.125

Other Auth.: 2004 Oregon Student Personnel Accounting Manual

Stats. Implemented: ORS 326.125

Proposed Amendments: 581-023-0006

Last Date for Comment: 1-24-07, 5 p.m.

Summary: The proposed amendments to OAR 581-023-0006 will clarify the application of the appropriate funding method for public school students placed in an alternative education program. The proposed amendment will serve to ratify the clarification given in the ODE Executive Memoranda # 022-2005-06.

Rules Coordinator: Paula Merritt

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

Telephone: (503) 947-5746

Oregon Liquor Control Commission Chapter 845

Rule Caption: Amend two rules in Division 6 to make minor housekeeping changes.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.030, 471.040, 471.175, 471.178, 471.200, 471.313, 471.315, 471.405(1), 471.408, 471.412, 471.675, 471.730

Proposed Amendments: 845-006-0345, 845-006-0482

Last Date for Comment: 2-1-07

Summary: OAR 845-006-0345 Prohibited Conduct: This rule describes the types of licensee and permittee conduct specifically prohibited by the Commission. We intend to make housekeeping-type amendments to the rule, including: amending the Statutes Implemented section to accurately and completely cite all Oregon Revised Statutes which this rule implements; and correcting a reference in section (9) to the underlying statute.

OAR 845-006-0482 Closure of Premises for Private Uses: This rule describes requirements when Limited On-Premises Sales

NOTICES OF PROPOSED RULEMAKING

licensees and Full On-Premises Sales licensees close all or part of their licensed premises for private uses. We intend to make house-keeping-type amendments to this rule, including: removing language regarding the "5-day" opening requirement which was discontinued with the repeal of OAR 845-006-0427, effective May 1, 2006; and removing section (7) which contains expired language applying to dispenser licenses.

Rules Coordinator: Jennifer Huntsman

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

Telephone: (503) 872-5004

Oregon Public Employees Retirement System

Chapter 459

Rule Caption: Clarifies requirements for withdrawal from OPSRP programs.

Date:	Time:	Location:
1-23-07	2 p.m.	Boardroom PERS Headquarters 11410 SW 68th Parkway Tigard, OR

Hearing Officer: Daniel Rivas

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.120, 238A.375

Proposed Adoptions: 459-075-0020, 459-080-0020

Last Date for Comment: 1-26-07

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

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

Rules Coordinator: Daniel Rivas

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

Telephone: (503) 603-7713

Oregon State Lottery

Chapter 177

Rule Caption: Deletes primary business and dominant use purpose determination; prohibits casinos; adds process for determining casinos.

Date:	Time:	Location:
1-23-07	2-3 p.m.	Oregon Lottery 500 Airport Road SE Salem, OR

Hearing Officer: Larry Trott

Stat. Auth.: ORS 461

Other Auth.: Oregon Constitution, Article XV, §4

Stats. Implemented: ORS 461.300

Proposed Amendments: 177-040-0017, 177-040-0061

Last Date for Comment: 1-23-07, 3 p.m.

Summary: The Oregon State Lottery has initiated permanent rule-making to amend the above two rules. The Lottery intends to amend Rule -0017 to delete primary activity or primary business as criteria for denying a Video LotterySM contract. The Lottery intends to amend Rule -0061 to delete the process for determining a retailer's "dominant use" and "dominant purpose", including the 60% Lottery income provisions. It intends to further amend the rule to prohibit the placement of Video LotterySM terminals in establishments that operate as a casino, and to set forth the process for determining if an establishment is or will be operating as a casino, including adding a 50% Lottery income threshold, and factors to be used in that analysis and determination when the 50% threshold is reached.

Rules Coordinator: Mark W. Hohlt

Address: Oregon State Lottery, 500 Airport Rd. SE, Salem, OR 97301

Telephone: (503) 540-1417

Oregon State Marine Board Chapter 250

Rule Caption: Amendments to rules for safe boat operation below Willamette Falls.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110, 830.175 & 830.195

Proposed Amendments: 250-010-0032

Last Date for Comment: 2-28-07

Summary: A new fish passageway constructed at the Portland General Electric Sullivan power plant has changed the river flow at the tailrace of the power plant. For public safety reasons the Clackamas County Sheriff's Office requested the Marine Board to revise the current boating deadline for fishing on the Willamette River below the Willamette Falls. The Board considered the request at its meeting December 14, 2006 and directed Staff to initiate a rulemaking project. Comment will be accepted through the end of February, 2007. The Board will consider comments received at the meeting Scheduled for March 14, 2007 in Salem.

Rules Coordinator: Jill E. Andrick

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

Telephone: (503) 378-2617

Rule Caption: Amendments to rules for safe boat operation on Plat I Reservoir in Douglas County.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

Stats. Implemented: ORS 830.110, 830.175 & 830.195

Proposed Amendments: 250-010-0102

Last Date for Comment: 2-28-07

Summary: The Board received a petition requesting amendments to boating rules for Plat I Reservoir in Douglas County. In addition, a letter from the Sutherlin Water Control District supporting the petitioners was provided to the Board. The Board considered the request at its meeting December 14, 2006 and directed Staff to initiate a rule-making project. Comment will be accepted through the end of February, 2007. The Board will consider comments received at the meeting Scheduled for March 14, 2007 in Salem.

Rules Coordinator: Jill E. Andrick

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

Telephone: (503) 378-2617

Oregon University System, University of Oregon Chapter 571

Rule Caption: Clarifies that delegation from President authorizes student government full authority to recognize student organizations.

Date:	Time:	Location:
1-24-07	3 p.m.	University of Oregon EMU, Alesa & Coquille Rms. Eugene, OR

Hearing Officer: Connie Tapp

Stat. Auth.: ORS 351 & 352

Stats. Implemented: ORS 352.510

Proposed Amendments: 571-011-0015

Last Date for Comment: 1-25-07, 12 p.m.

Summary: The current delegation of authority to student government regarding student organizations has been in effect since 1977. For some time granting of recognition has been used for decisions in addition to use of certain campus facilities. Also, the University has abandoned the category of "registered" student organizations. This amendment makes the rule consistent with current practice and allows the ASUO to continue its review of student organizations to determine they are eligible to participate in the Incidental Fee process.

Rules Coordinator: Connie Tapp

NOTICES OF PROPOSED RULEMAKING

Address: Oregon University System, University of Oregon, 1226 University of Oregon, Eugene, OR 97403
Telephone: (541) 346-3082

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

Date:	Time:	Location:
1-23-07	3 p.m.	University of Oregon Erb Memorial Union Alsea/Coquille Rms. Eugene, OR

Hearing Officer: Connie Tapp

Stat. Auth.: ORS 36.175, 351.070

Stats. Implemented: ORS 36.175

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

Last Date for Comment: 1-24-07, 12 p.m.

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

Rules Coordinator: Connie Tapp

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

Telephone: (541) 346-3082

Parks and Recreation Department Chapter 736

Rule Caption: Revise the language on the required historic plaque. Old language does not accurately reflect intent of program.

Stat. Auth.: ORS 358.475

Stats. Implemented: ORS 358.475

Proposed Amendments: 736-050-0120

Last Date for Comment: 1-31-07

Summary: Revise the existing language in OAR 736-050-0120(3) to read as follows: "An owner of specially assessed property certified after July 1, 1996 shall install a SHPO-approved plaque on the property in a location that is readable from the public right-of-way. The plaque shall include language that identifies it as a National Register-listed property, and as a participant in the Special Assessment Program."

Rules Coordinator: Pamela Berger

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

Telephone: (503) 986-0719

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend and better define scope of practice standards applicable to therapists in a school setting.

Date:	Time:	Location:
1-25-07	4:30 p.m.	Portland State Office Bldg. 800 NE Oregon St., Suite. 445 Portland, OR

Hearing Officer: James Heider

Stat. Auth.: ORS 688.160

Stats. Implemented: ORS 688.160(6)(c)

Proposed Adoptions: 848-040-0175

Proposed Amendments: 848-001-0000, 848-001-0010, 848-010-0015, 848-010-0033, 848-010-0035, 848-015-0010, 848-015-0020, 848-020-0000, 848-040-0100, 848-040-0110, 848-040-0117, 848-040-0125, 848-040-0130, 848-040-0135, 848-040-0140, 848-040-0145, 848-040-0150, 848-040-0155, 848-040-0160

Last Date for Comment: 1-25-07

Summary: Amendments include adding or clarifying definitions for the terms: aide, patient, plan of care, IEP, IFSP, IDEA, record, permanent record, screening, and student. Further, the amendments more adequately define the scope of practice standards as applicable to therapists in a school setting. Proposed language includes changes or clarification for the use of physical therapist assistants in a school setting, identifying who qualifies as an aide, clarifies the distinction and, requirements of, a record verses the permanent record and change to the timeframe for reassessment requirements for therapists in the school setting from calendar days to school days. Although most of the proposed amendments will not universally impact all therapists, the definitions, screening services and record keeping amendments will have some impact on most therapists regardless of their professional setting. For a full copy of the specific proposed language changes access the Board website at www.ptboard.state.or.us

Rules Coordinator: James Heider

Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232

Telephone: (971) 673-0203

Secretary of State, Audits Division Chapter 162

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

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Proposed Adoptions: 162-10-0115

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

Proposed Repeals: 162-10-0180

Last Date for Comment: 1-21-07

Summary: The amendments propose the following changes:

1. Some minor edits and language clarifications for changes in statutes and professional accounting standards.
2. Amend language where necessary to include the word "biennial" when addressing budget matters.
3. OAR 162-10-0115 - Adopt to recognize professional standard on *Required Supplementary Information*.
4. OAR 162-10-0140 - Remove unnecessary verbiage for Schedule of Accountability for Independently Elected Officials.
5. OAR 162-10-0150 - Simplify Schedule of Property Tax Transactions or Acreage Assessments.
6. OAR 162-10-0180 - Delete requirement to present a Schedule of Endorsed Warrants Outstanding

Rules Coordinator: Julie A. Sparks

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

Telephone: (503) 986-2255

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

Stat. Auth.: ORS 297

Stats. Implemented: ORS 297.465

Proposed Adoptions: 162-040-054

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

NOTICES OF PROPOSED RULEMAKING

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

Proposed Repeals: 162-040-0025, 162-040-0030, 162-040-0035, 162-040-0040, 162-040-0045, 162-040-0800

Last Date for Comment: 1-21-07

Summary: The amendments propose the following changes:

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

Rules Coordinator: Julie A. Sparks

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

Telephone: (503) 986-2255

Travel Information Council Chapter 733

Rule Caption: Clarify definitions and qualifications for Tourist Attraction Logo signs and related highway sign rules.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Proposed Amendments: Rules in 733-030

Last Date for Comment: 1-21-07

Summary: The Travel Information Council held a quarterly meeting on November 17, 2006. The Council proposed rule changes to adopt changes under highway sign rules to more clearly define terms for Tourist Attraction, region, regional significance, and cultural district; and to create consistent language and correct cross-references between rule sections.

Rules Coordinator: Diane Cheyne

Address: Travel Information Council, 229 Madrona Ave. SE, Salem, OR 97302

Telephone: (503) 378-4508

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

Rule Caption: Reinstatements, Residence, and Renewal Grace Periods.

Adm. Order No.: BAE 7-2006

Filed with Sec. of State: 12-13-2006

Certified to be Effective: 12-13-06

Notice Publication Date: 10-1-06

Rules Amended: 806-010-0060, 806-010-0145

Subject: This rule clarifies which subsection applies for reinstatement from inactive status and when the inactive status begins. This rule also eliminates the residency requirement for being eligible for a waiver of continuing professional education (CPE) requirements for renewal and reinstatements.

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

806-010-0060

Abandonment and Reinstatement of Practice

(1) **Inactive Status.** Unless otherwise provided by the Board, a licensee's certificate becomes inactive at the end of the grace periods, or on the 61st day following the renewal deadline date if registrant fails to meet renewal requirements as designated by statute or rule (including, but not limited to, failure to comply with the continuing professional education (CPE) program or failure to pay renewal fees or accrued penalties). A registrant may also request inactive status prior to the 61st day following the renewal deadline date. An inactive Oregon certificate prohibits an architect from practicing architecture in Oregon, as defined by statute and rule. An inactive Oregon certificate also prohibits use of the architect title in Oregon, as defined by statute and rule.

(2) The Board may reinstate an inactive licensee's certificate to practice architecture to active status from inactive status as provided in this rule:

(a) **Inactive for less than or equal to five years.** An inactive licensee whose certificate has been inactive in Oregon for less than, or equal to, five years may gain reinstatement to active status only after:

(A) Filing an application for reinstatement;

(B) Demonstrating current professional proficiency, as outlined under subsection (3)(a) or (3)(b) of this rule; and

(C) Paying the reinstatement fee (See Schedule of Actual Fees, OAR 806-010-0105).

(b) **Inactive over five years.** An individual who held a previously active license in Oregon whose license has been inactive for greater than five years, may gain reinstatement to active status only after:

(A) Filing a current reinstatement application;

(B) Payment of the reinstatement fee and the registration fee (See Schedule of Actual Fees, OAR 806-010-0105);

(C) Demonstration of current professional proficiency, as outlined under subsection (3)(b) or (3)(c) of this rule;

(D) Providing verification of meeting the National Council of Architect Registration Board (NCARB)'s seismic requirements, or the equivalent, as determined by this Board; and

(E) Passing a jurisprudence examination and oral interview by the Board.

(c) **"Architect Emeritus".** An Architect Emeritus seeking reinstatement of his or her Oregon registration that became inactive as an "Architect Emeritus" may gain reinstatement as follows:

(A) An Architect Emeritus in that status **for equal to or less than five years** may gain reinstatement to active status, at the discretion of the Board, only upon:

(i) Filing a reinstatement application;

(ii) Demonstration of current professional proficiency, as outlined in subsection (3) of this rule; and

(iii) Payment of the reinstatement fee.

(B) An Architect Emeritus in that status **for greater than five years** may gain reinstatement to active status only upon meeting the requirements listed in OAR 806-010-0060(2)(b).

(3) **"Current Professional Proficiency".** For purposes of this rule, current professional proficiency may be established by any one of the following:

(a) Submitting to the Board verifiable evidence of compliance with the aggregate continuing professional education (CPE) requirements for the reporting periods that the certificate was inactive in Oregon;

(b) Individuals registered in another jurisdiction that has a mandatory CPE requirement and is recognized by this Board may submit a copy of the certificate of architect registration, or equivalent documentation that

demonstrates substantial compliance with Oregon's CPE requirements during the period that the individual's Oregon registration was inactive;

(c) Satisfying the requirements of OAR 806-010-0020 or 806-010-0035.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.080

Hist.: AE 5, f. 12-22-64; AE 2-1978, f. & ef. 3-6-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1980, f. & ef. 10-3-80; AE 1-1987, f. & ef. 3-30-87; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 2-2004, f. & cert. ef. 3-2-04; BAE 7-2006, f. & cert. ef. 12-13-06

806-010-0145

Continuing Professional Education

(1) Every person holding a certificate of registration, as provided for in ORS 671.010 to 671.220, who desires to continue to practice the profession in Oregon, shall annually, complete and submit documentation of continuing professional education as part of the annual renewal process (which covers the annual reporting period of July 1st through June 30th and is due by the close of business on July 1st of each year) per OAR 806-010-0090.

(2) Purpose and Scope:

(a) These rules provide for a continuing professional education program to insure that all architects remain informed of those technical subjects necessary to safeguard life, health, property, and promote the public welfare. These rules shall apply to all architect certificate holders in Oregon;

(b) Documentation submittal for continuing professional education shall begin with license renewals effective after June 30, 2000 (first submittal due with 2001 renewals). All architects will be required to show compliance with the education requirements as a condition for renewing registration.

(3) **Requirements:** To renew or reinstate registration, in addition to other requirements, an architect must have acquired continuing professional education for each 12-month period since the architect's last renewal of initial registration, as the case may be, or be exempt from these continuing professional education requirements as provided below. Failure to comply with these requirements may result in non-renewal of the architect's registration, or other disciplinary action or both.

(4) **License Period and Carryover Hours:** Within any 12-month license period, a minimum of 12 contact hours shall be acquired:

(a) Of those 12 hours, a minimum of 8 contact hours shall be public protection subjects, safeguarding life, health, property and promoting the public welfare, acquired in structured educational activities. All 12 hours may be acquired in such subjects and activities;

(b) If an architect exceeds the continuing professional education requirement in a renewal period, the architect may carry a maximum of 12 contact hours forward into the subsequent renewal period. A minimum of 12 contact hours, including the 8 hours of public protection subjects and the allowed carryover hours, shall be obtained and reported annually.

(5) Reporting and Record Keeping:

(a) A registered architect shall complete and submit forms approved by the board certifying to the architect's having acquired the required continuing professional education hours;

(b) Architect's submission may be selected for review by the board for verification of compliance with these requirements. Evidence of compliance shall be maintained by the architect for two years after the period for which the form was submitted. If selected for the CPE review by the Board, the applicant must provide such evidence to verify attendance at reported CPE activities;

(c) If the board disallows any continuing professional education hours, the architect shall have six months from notice of disallowance to make up the deficiency by acquiring the required number of contact hours and reporting evidence of the completion of such hours to the Board. Such contact hours shall not again be used for any subsequent renewal. No such allowance will be made if the board finds following notice and hearing that the architect willfully disregarded these requirements;

(d) One continuing professional education hour shall represent a minimum of 50 minutes of actual course time. No credit will be allowed for introductory remarks, meals, breaks, or administration matters related to courses of study;

(e) Failure to fulfill the continuing professional education requirements and/or file the required annual report, properly and completely, including all required signatures, shall result in non-renewal of an architect's certificate of registration or disciplinary action, or both, unless the completed renewal has been resubmitted and received by the Board prior to the deadline and the minimum CPE requirements have been met;

ADMINISTRATIVE RULES

(f) Continuing professional education shall be acquired during the 12 months immediately preceding the license renewal period, with the exception of the allowed hours carried forward from the previous renewal period (as allowed under OAR 806-010-0145(4)) and the hours allowed during the grace period (as allowed under OAR 806-010-0090 and 806-010-0105);

(g) Any false statements or misrepresentations with respect to course attendance or any other aspect of continuing professional educational activity shall subject the architect to license revocation or other disciplinary action.

(6) **Initial Registration:** An architect, registered in Oregon for less than 12 months from date of initial registration, shall not be required to report continuing professional education hours at the first registration renewal. An architect registered in Oregon for at least 12 months, shall be required to report 12 contact hours, which includes a minimum of 8 hours in public protection subjects, earned in the 12 months preceding the first renewal.

(7) **Activities:** The following suggested list may be used by all registrants in determining the types of activities, which may fulfill continuing professional education requirements. (Refer to section (5) for reporting and record keeping procedures.)

(a) Contact hours in attendance at short courses or seminars, dealing with architectural subjects and sponsored by colleges or universities;

(b) Contact hours in attendance at technical presentations on architectural subjects which are held in conjunction with conventions or at seminars related to materials use and function. Such presentations as those sponsored by the American Institute of Architects, Construction Specifications Institute, Construction Products Manufacturers Council or similar organizations devoted to architectural education may qualify;

(c) Contact hours in attendance at short courses or seminars, relating to business practice or new technology and offered by colleges, universities, professional organizations or system suppliers;

(d) Contact hours acquired in self-study courses such as those sponsored by the National Council of Architectural Registration Boards, American Institute of Architects or similar organizations;

(e) Three preparation hours for each class hour spent teaching architectural courses or seminars. College or University faculty may not claim credit for teaching regular curriculum courses;

(f) Contact hours spent in architectural research, which is published or formally presented to the profession or public;

(g) Reading designated articles in Architectural Record and on Architecturalrecord.com, or similar professional journals, and receiving a certificate of completion issued by the provider. The professional journal articles dated before two years prior to the date of testing will not be allowed as acceptable CPE. The Board will allow continuing professional education (CPE) credit for renewal for no more than 8 hours of CPE each renewal period for professional journal articles meeting this criteria;

(h) College or University credit courses dealing with architectural subjects or business practice. Each semester hour shall equal 15 contact hours. Each quarter hour shall equal 10 contact hours;

(i) Contact hours spent in professional service to the public which draws upon the registrant's professional expertise on boards and commissions, such as: serving on planning commissions, building code advisory boards, urban renewal boards, or code study committees;

(j) Contact hours spent in educational tours of architecturally significant buildings, where the tour is sponsored by a college, university or professional organization;

(k) A maximum of 2 contact hours in health, safety, and welfare subjects annually may be claimed for serving as a mentor or sponsor for the Intern Development Program (IDP);

(l) A maximum of 2 contact hours in practice-related subjects annually may be claimed for participation in a teaching program sharing professional skills, such as the Architects in Schools (AIS) Program.

(8) **Activities Not Allowed:** The purpose of the CPE requirement is to require architects to obtain regular and continual education during the course of their professional life. As such, contact hours spent on the same CPE, even if obtained on different dates, may be used only once during a renewal period to meet the annual renewal/CPE requirements.

(9) **Exemptions:** A registered architect shall be deemed to have complied with the foregoing continuing professional education (CPE) requirements if the architect submits acceptable documentation that for not less than 10 months of the preceding one year period of registration, the architect has met one of the following exemption criteria:

(a) Has served honorably on active duty in the military service (exceeding ninety consecutive days);

(b) Is actively registered as an architect in another jurisdiction, recognized by this Board, that has a mandatory continuing professional education requirement for renewal of an architect registration;

(c) Is a government employee working as an architect and assigned to duty outside the United States;

(d) Special Exemption — The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.125 & 671.080

Hist.: BAE 1-2000, f. & cert. ef. 2-23-00; BAE 2-2000, f. & cert. ef. 7-24-00; BAE 3-2001, f. & cert. ef. 10-4-01; BAE 3-2002, f. 7-10-02 cert. ef. 7-15-02; BAE 4-2002, f. & cert. ef. 8-7-02; BAE 1-2003, f. & cert. ef. 1-15-03; BAE 5-2004, f. & cert. ef. 5-5-04; BAE 7-2006, f. & cert. ef. 12-13-06

Board of Chiropractic Examiners
Chapter 811

Rule Caption: Allows a signed affidavit for liberal arts and science college transcripts.

Adm. Order No.: BCE 5-2006

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06

Notice Publication Date: 11-1-06

Rules Amended: 811-010-0085

Subject: Allows applicants for a Doctor of Chiropractic license to provide a signed affidavit in lieu of college transcripts for liberal arts and science college transcripts.

Rules Coordinator: Dave McTeague—(503) 378-5816

811-010-0085

Application and Examination of Applicants

(1) Applicants shall be examined according to ORS 684.050 or 684.052.

(2) The Board shall issue a Candidate's Guide, which contains all necessary examination information. The Guide shall be mailed to each applicant, along with other examination information for a fee of \$10.

(3) Fee and application deadlines are as follows:

(a) Application and \$150 fee for chiropractic exams must be postmarked no later than 30 days prior to the first exam day.

(b) Request for retake of any section of the exam must be submitted in writing with a \$100 reexamination fee postmarked no later than 30 days prior to the first exam day.

(c) Supporting documentation must be postmarked no later than 30 days prior to the first exam day.

(d) Deadlines may be waived by the Board for good cause.

(e) A complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board.

(f) Criminal background check fee of \$52 must be postmarked no later than 30 days prior to the first exam day.

(4) Documents to be submitted prior to approval to take the Oregon Specifics Examinations:

(a) A completed, official application including a recent photograph and fingerprints;

(b) Evidence of the applicant's good moral character on the letterhead stationery of a Chiropractic physician;

(c) A signed affidavit attesting to successful completion of at least two years of liberal arts and sciences study in an accredited college; Original transcripts must be provided if requested by the Board; and

(d) A transcript certified by the registrar, from an approved chiropractic college, including transcripts of coursework as required by OAR 811-020-0006 (minimum Educational Requirements for physiotherapy and minor surgery/ proctology). A transcript of grades is necessary from each chiropractic college attended.

(e) An official transcript of passing grades from the National Board of Chiropractic Examiners on Part I, II and III and physiotherapy.

(5) Documents and fee to be submitted prior to licensure include:

(a) \$100 initial license fee.

(b) A diploma or other evidence of graduation certified by the registrar from an approved Chiropractic college.

(c) An official transcript of passing grades from the National Board of Chiropractic Examiners Part IV.

ADMINISTRATIVE RULES

(6) All applicants must take and pass the Oregon Specifics Examination consisting of written examination in ethics and jurisprudence, obstetrics and gynecology, minor surgery and proctology. Applicants who have previously taken and passed obstetrics and gynecology, and/or minor surgery and proctology within the last five years from the date of application as received by the Board are not required to retake these tests, however all applicants must take and pass ethics and jurisprudence.

(7) Oregon Specifics Examination Grades:

(a) The Board shall determine the passing scores. Each section of the examination shall be graded separately using the Angoff Method, a criterion referenced model. Passing scores may fluctuate between sections and between examinations. All examinations are designed to test minimal competency to protect the public health and safety.

(b) Examination grades will be released within seven working days following approval.

(8) Regrades: any request for regrade must be submitted in writing to the Board no later than 45 days after the date of the examination. A regrade involves a manual tally of points earned for the specific examination requested.

(9) An applicant failing to achieve a passing grade, as determined by the Board for each examination section, may make application to the Board for a re-examination in the failed sections.

(10) An applicant must take at least one of the failed section(s) within 13 months following the date when the applicant took the entire examination. If the applicant fails to re-test on at least one failed section within 13 months of the last examination, the file shall become in-active and the applicant must re-apply and take the entire examination.

(11) An applicant attempting to give aid or accepting aid from another while examinations are in progress shall fail the examination and will not be allowed to take the examination for a period of five (5) years.

(12) Refunds:

- (a) The application fee is non-refundable; and
- (b) The retake fee can be refunded until 10 days prior to the test date.
- (c) The background check fee is non-refundable.

(13) The Board may reject applications for good cause, including evidence of unprofessional behavior.

(14) Effective June 1, 2001 applicants who have completed all requirements for licensure, including passage of all required examinations, must submit the initial license fee to obtain license within one year from the date they completed all the requirements. An applicant's initial license will be valid for a minimum of 180 days. However, if the applicant's next birth date is within the 180 days, the initial license will be valid for an additional 12 months beyond the applicant's birth date.

Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.050 & 684.052
Hist.: 2CE 3, f. 10-9-59; 2CE 7, f. 7-9-68; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 6-1993(Temp), f. 9-29-93, cert. ef. 11-3-93; CE 1-1994, f. & cert. ef. 7-26-94; CE 4-1995, f. & cert. ef. 12-6-95; CE 2-1997, f. & cert. ef. 7-29-97; CE 3-1997(Temp), f. & cert. ef. 9-25-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2004, f. & cert. ef. 6-7-04; BCE 2-2006, f. & cert. ef. 2-9-06; BCE 5-2006, f. & cert. ef. 11-24-06

Board of Examiners for Engineering and Land Survey Chapter 820

Rule Caption: Adopt, amend, or repeal for clarity the rules pertaining to licensure and professional conduct.

Adm. Order No.: BEELS 2-2006

Filed with Sec. of State: 11-21-2006

Certified to be Effective: 11-21-06

Notice Publication Date: 10-1-06

Rules Adopted: 820-010-0204, 820-010-0206, 820-010-0208, 820-010-0226, 820-010-0227, 820-010-0228, 820-010-0231, 820-010-0400

Rules Amended: 820-001-0000, 820-001-0020, 820-010-0010, 820-010-0200, 820-010-0205, 820-010-0207, 820-010-0225, 820-010-0230, 820-010-0255, 820-010-0300, 820-010-0305, 820-010-0605, 820-010-0617, 820-010-0622, 820-010-0635, 820-015-0005, 820-015-0010, 820-015-0026, 820-020-0005, 820-020-0025, 820-020-0030, 820-020-0035, 820-020-0045, 820-040-0040

Rules Repealed: 820-010-0618, 820-020-0010

Subject: ADOPT: OAR 820-010-0204 — Implement and clarify standards to apply for registration as a professional engineer based on examination in another jurisdiction, but not yet licensed.

OAR 820-010-0206 — Implement standards to apply for registration as a professional land surveyor based on examination in another jurisdiction, but not yet licensed.

OAR 820-010-0208 — Implement standards to apply for registration as a registered professional photogrammetrist based on examination in another jurisdiction, but not yet licensed.

OAR 820-010-0226 — Implement and clarify educational qualifications to take the fundamentals of land surveying examination for enrollment as a land surveying intern.

OAR 820-010-0227 — Implement and clarify a combination of educational and experience qualifications to take the fundamentals of engineering examination for enrollment as an engineering intern.

OAR 820-010-0228 — Implement and clarify a combination of educational and experience qualifications to take the fundamentals of land surveying examination for enrollment as a land surveying intern.

OAR 820-010-0231 — Implement and clarify information required for application as a professional land surveyor.

OAR 820-010-0400 — Reinstatement of the previous OAR 820-010-0200(5) to (7).

AMEND: OAR 820-001-0000 — Clarifies the method and to whom will be noticed of any permanent rule adopted on or after 01/01/2006 by the Board.

OAR 820-001-0020 — Clarifies methods to obtain public records.

OAR 820-010-0010 — Clarifies definitions pertaining to licensure.

OAR 820-010-0200 — Housekeeping. Clarifies rule to pertain only to applications for registration as a professional engineer based on licensure by another jurisdiction. This rule had previously unrelated rules and covered too much content, therefore confusing to the reader.

OAR 820-010-0205 — Clarifies rule to pertain only to applications for registration as a professional land surveyors based on licensure by another jurisdiction.

OAR 820-010-0207 — Clarifies rule to pertain only to applications for registration as a registered professional photogrammetrist based on licensure by another jurisdiction.

OAR 820-010-0225 — Housekeeping. Clarifies rule to pertain only to educational qualification to take the fundamentals of engineering examination. This rule had previously unrelated rules and covered too much content, therefore confusing to the reader.

OAR 820-010-0230 — Separates the requirements for professional engineers from other professionals registered with the board.

OAR 820-010-0255 — Includes required references for comity applicants and renames "stamp" to "seal."

OAR 820-010-0300 — Housekeeping. Changes rule to conform with the change of an outside party administering examinations.

OAR 820-010-0305 — Housekeeping. Includes fee for application for registration as a registered professional photogrammetrist.

OAR 820-010-0605 — Revises the requirement to notify the Board in writing of an address change from 6 months to 30 days.

OAR 820-010-0617 — Clarifies the Board's current practices of assessing civil penalties.

OAR 820-010-0622 — Housekeeping. Changes wording for consistency with other rules ("stamp" to "seal").

OAR 820-010-0635 — Includes additional method to receive professional development hours.

OAR 820-015-0005 — Adds definition of "complainant" and removes redundant definition of "Board."

OAR 820-015-0010 — Clarify the Board's current complaint procedures.

OAR 820-015-0026 — Clarify the Board's current practices of failing to comply with professional development requirements.

OAR 820-020-0005 — Removes unnecessary language and adds reference to photogrammetric mapping.

OAR 820-020-0025 — Removed potential free speech restrictions.

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ORAR 820-020-0030 — Clarifies obligation of registrants to act in professional matters or each employer or client as faithful agents or trustees, and to avoid conflicts of interest.

ORAR 820-020-0035 — Broadens rule to include applicant and definition of registrant's associate and clarifies political contributions.

ORAR 820-020-0045 — Expands unprofessional behavior rule to include applicants and actions taken by other licensing Boards.

ORAR 820-040-0040 — Housekeeping. Clarifies language for recognizing that a person may become a geotechnical engineer without examination (prior to having an accepted examination).

REPEAL: ORAR 820-010-0618 — Repeal rule. Civil penalty amount already established in ORS 672.325.

ORAR 820-020-0010 — Repeal rule.

Rules Coordinator: Mari Lopez—(503) 362-2666, ext. 26

820-001-0000

Rule Changes

Before permanently adopting, amending, or repealing any rule, the Oregon Board of Examiners for Engineering and Land Surveying will give notice of the intended action:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least twenty-one (21) days prior to the effective date.

(2) By mailing or electronic mailing a copy of the notice to persons on the agency's mailing list established pursuant to ORS 183.335(8) at least twenty-eight (28) days before the effective date of the rule.

(3) By mailing or electronic mailing a copy of the notice to the legislators specified in ORS 183.335(15) at least forty-nine (49) days before the effective date of the rule; and

(4) By mailing, electronic mailing, or furnishing a copy of the notice to:

(a) Publications:

(A) The Associated Press; and
(B) Portland Business Today.

(b) State Societies:

(A) American Council of Engineering Companies of Oregon;
(B) Professional Engineers of Oregon;
(C) Professional Land Surveyors of Oregon;
(D) Structural Engineers Association of Oregon; and
(E) Oregon Association of County Engineers and Surveyors.

(c) Local branches and chapters of the national societies listed below:

(A) American Society of Heating, Refrigeration, and Air Conditioning Engineers;

(B) American Institute of Industrial Engineers;
(C) American Society of Civil Engineers;
(D) American Society of Mechanical Engineers;
(E) Institute of Electrical and Electronic Engineers;
(F) Illuminating Engineers Society; and
(G) American Institute of Chemical Engineers.

(d) Colleges, universities and community colleges within the State with an engineering and/or land surveying degree program.

(e) Capitol Press Room.

(5) The agency may update the mailing list described in section (2) of this rule annually by requesting persons to confirm that they wish to remain on the mailing list. If a person does not respond to a request for confirmation within twenty-eight (28) days of the date that the agency sends the request, the agency will remove the person from the mailing list. Any person removed from the mailing list will be immediately returned to the mailing list upon request, provided that the person provides a mailing address or electronic mailing address to which notice may be sent.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 18, f. & ef. 1-13-76; EE 1-1981, f. 5-19-81, ef. 6-1-81; EE 2-1985, f. 12-4-85, ef. 12-16-85; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2006 (Temp.), f. & cert. ef. 6-23-06 thru 12-12-06; BEELS 2-2006, f. & cert. ef. 11-21-06

820-001-0020

Public Records Requests

(1) Scope and Applicability. This rule governs requests for inspection of Board documents under the Public Records Law, ORS Chapter 192.

(2) All requests must be submitted in writing for copies of public records pertaining to the Board.

(3) The Board charges fees as follows for reimbursement of the actual cost in making public records available upon request:

(a) Postage/freight — First Class or rate(s) based on weight for public records mailed or sent by carrier.

(b) Audio Cassette — 90 minute — \$10.00 each.

(c) List of licensees — \$50.

(d) Photocopies — \$0.25 per page.

(e) Compact disc — 80 minute — \$10.00 each.

(f) A waiver or reduction of fees requested under ORS 192.440 must be submitted in writing, show how a waiver or reduction is in the public interest and that availability will benefit the general public.

(g) No fees are charged:

(A) To Board members when conducting official Board business;

(B) For first five pages of any Board documents;

(C) To public libraries, public educational institutions, or federal, state, county or city agencies participating in a cooperative program with the Board; or

(D) To examine records readily available which do not require supervision during the inspection.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0010

Definitions

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

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

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

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before an applicant is 18 years old "Technician work" does not include engineering work as described in section (4), land surveying work as described in section (7) or photogrammetric work as described in section (10). Engineering "technician work" includes, but is not limited to, work as an inspector, a laboratory assistant, a design assistant, a survey technician, or a draftsman. Land Surveying "technician work" includes, but is not limited to, work as a survey technician, a draftsman, an instrument plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, or decisions on boundary location. Photogrammetric mapping "technician work" includes but is not limited to, work as a photogrammetric mapping technician to perform technical photogrammetric or remote sensing tasks to extract spatial data from photographic imagery, digital imagery or other remotely-sensed data under close supervision and not requiring the exercise of judgment in project design or decisions related to authoritative photogrammetric measurements.

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

(5) As provided in ORS 672.002(9)(a), "responsible charge of engineering work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution and suitability of materials, without relying upon instruction from their superior, and of supplying deficiencies in plans, or correcting errors in design without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans, written specifications, and directed computations made in connection with engineering works when guided solely by rough sketches, general information, and field measurements; or

(c) Experience as a full-time assistant professor or above, in a Board-approved engineering curriculum, may be considered at the discretion of the Board as "charge of engineering work of a character satisfactory to the Board."

(6) "Practice of land surveying" refers to ORS 672.005(2) and 672.007.

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

(8) As provided in ORS 672.002(9)(b), "responsible charge of land surveying work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution, design of a survey system, the research and evaluation of evidence, the preparation of maps, or plats for record without relying upon advice or instruction from their superior, and the supplying of deficiencies or correcting errors in surveys or maps without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans and directed computations in connection with land surveying work when guided solely by general guidelines and information;

(c) Experience as a full-time assistant professor or above, in a Board-approved land surveying curriculum may be considered at the discretion of the Board as "charge of land surveying work."

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

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

(11) "Responsible charge of photogrammetric work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to make decisions involving project design, imagery requirements, ground control requirements for points to be set by a professional land surveyor and the determination of topography, area, contours and location of planimetric features using photogrammetric methods or similar remote sensing technology; or

(b) The applicant must have undertaken projects that entail the evaluation and measurement of land that is limited to the determination of the topography, area, contours and location of planimetric features, by using photogrammetric methods or similar remote sensing technology; or

(c) Experience as a full-time assistant professor or above, in a Board-approved photogrammetry curriculum, may be considered at the discretion of the Board as "charge of photogrammetric work of a character satisfactory to the Board."

(12) As provided in ORS 672.002(10), "supervision and control" shall be construed to mean that the engineer, land surveyor or photogrammetrist providing such supervision shall have made the decisions on technical matters of policy and design and shall have exercised their own professional judgment in all engineering, land surveying or photogrammetric matters that are embodied in the plans, design, specifications, or other documents involved in the work. By applying their seal to the final documents, they accept responsibility thereof.

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

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

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

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

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

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

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

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

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

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

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

(24) Acronyms:

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

(b) ACCE — American Council for Construction Education;

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

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

(e) EAC — Engineering Accreditation Commission of ABET;

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

(g) ECEI — Engineering Credential Evaluation International;

(h) EI — Engineering Intern;

(i) ELSSES — Engineering Land Surveying Examination Services;

(j) FE — Fundamentals of Engineering;

(k) FLS — Fundamentals of Land Surveying;

(l) LSI — Land Surveying Intern;

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

(n) TAC — Technology Accreditation Commission of ABET.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

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

820-010-0200

Application for Registration as Professional Engineers (PE) Based on Licensure by Another Jurisdiction

(1) Professional engineers registered in other jurisdictions may file applications for registration on the basis of comity as provided in ORS 672.148. NCEES verified records may be accepted to document registration. NCEES verified records must be current within the last two years. Other records will be verified by the Board.

(2) The other jurisdiction that issued the certificate of registration must have had substantially equivalent requirements for registration as Oregon had at the time the other jurisdiction issued the certificate of registration.

(3) The Board may require the applicant to provide documentation of the requirements for registration by such other jurisdiction in effect at the time the applicant obtained a certificate of registration.

(4) Before receiving a certificate of registration to practice professional engineering in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

ADMINISTRATIVE RULES

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1993, f. 1-28-93, cert. ef. 2-1-93; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0204

Applications for Registration as Professional Engineer (PE) Based on Examination by Another Jurisdiction

(1) Applicants who are not registered in another jurisdiction but who meet all the requirements for registration in Oregon may be considered for registration if the application is submitted within two years following passing the practical examination as a professional engineer in another jurisdiction. This includes, for example, applicants who have passed the FE and PE examinations in another jurisdiction, but who are not registered in that jurisdiction. This rule does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates of registration.

(2) Before receiving a certificate of registration to practice professional engineering in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0205

Applications for Registration as Professional Land Surveyors (PLS) Based on Licensure by Another Jurisdiction

(1) Professional land surveyors registered in other jurisdictions may file applications for registration on the basis of comity as provided in ORS 672.148. NCEES verified records may be accepted to document registration. NCEES verified records must be current within the last two years. Other records will be verified by the Board.

(2) The other jurisdiction that issued the certificate of registration must have had substantially equivalent requirements for registration as Oregon had at the time the other jurisdiction issued the certificate of registration.

(3) The Board may require the applicant to provide documentation of the requirements for registration by such other jurisdiction in effect at the time the applicant obtained a certificate of registration.

(4) Before receiving a certificate of registration to practice professional land surveying in Oregon, each applicant must successfully pass a state specific examination covering Oregon law relating to land surveying.

(5) Before receiving a certificate of registration to practice professional land surveying in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 5-2005(Temp), f. & cert. ef. 9-23-05 thru 3-21-06; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0206

Applications for Registration as a Professional Land Surveyor (PLS) Based on Examination by Another Jurisdiction

(1) Applicants who are not registered in another jurisdiction but who meet all the requirements for registration in Oregon may be considered for registration if the application is submitted within two years following passing the practical examination as a professional land surveyor in another jurisdiction. This includes, for example, applicants who have passed the FLS and PLS examinations in another jurisdiction, but who are not registered in that jurisdiction. This rule does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates of registration.

(2) Before receiving a certificate of registration to practice professional land surveying in Oregon, each applicant must successfully pass a state specific examination covering Oregon law relating to land surveying.

(3) Before receiving a certificate of registration to practice professional land surveying in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0207

Applications for Registration as Professional Photogrammetrists Based on Licensure by Another Jurisdiction

(1) Professional photogrammetrists registered in other jurisdictions may apply for registration on the basis of comity as provided in ORS

672.148. NCEES verified records may be accepted to document registration. NCEES verified records must be current within the last two years. Other records will be verified by the Board.

(2) The other jurisdiction that issued the certificate of registration must have had substantially equivalent requirements for registration as Oregon had at the time the other jurisdiction issued the certificate of registration.

(3) The Board may require the applicant to provide documentation of the requirements for registration by such other jurisdiction in effect at the time the applicant obtained a certificate of registration.

(4) Before receiving a certificate of registration to practice photogrammetric mapping in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0208

Applications for Registration as a Photogrammetrist Based on Examination by Another Jurisdiction

(1) Applicants who are not registered in another jurisdiction but who meet all the requirements for registration in Oregon may be considered for registration if the application is submitted within two years following passing the examination as a photogrammetrist in another jurisdiction. This rule does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates of registration.

(2) Before receiving a certificate of registration to practice professional photogrammetric mapping in Oregon, each applicant must pass a take-home examination on the laws and rules in Oregon.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0225

Educational Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI)

Applicants for admission to examination for enrollment as an EI will be required to submit the following evidence to show eligibility to take the FE examination:

(1) Official transcripts demonstrating completion of an engineering curriculum satisfactory to the Board, as described in (3) below.

(2) If taking the examination in the applicant's senior year, a statement signed by an official from the school, university or college that all work necessary to complete a curriculum satisfactory to the Board has been or will be completed within four months following the examination as provided in ORS 670.010. An official transcript verifying completion must be received to allow enrollment as an EI. Scores will not be released until the official transcript is received.

(3) For entrance to the FE examination, a curriculum acceptable to the Board shall include:

(a) Graduation from an EAC of ABET accredited engineering program;

(b) Graduation from a TAC of ABET baccalaureate engineering program;

(c) Graduation from an ACCE accredited four-year baccalaureate construction engineering management program;

(d) Graduation from a graduate degree program in engineering at a college or university that has an EAC of ABET accredited undergraduate degree program in the same field as the graduate degree program, combined with completion of 21 semester/32 quarter hours of engineering related technical course work. The courses shall include at least six of the following nine subjects: Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

(e) Graduation from TAC of ABET accredited two-year Engineering Technology program or graduation from a two-year Associate of Applied Science program in Engineering Technology that includes the following:

(A) A total of at least 64 semester/96 quarter hours;

(B) At least 32 semester/48 quarter hours in technical courses. (Skills and knowledge of appropriate methods, procedures and techniques; experience in carrying out established engineering procedures);

(C) At least 16 semester/24 quarter hours in math and science, including:

(i) 4 semester/6 quarter hours in basic science (physics, chemistry, earth and life sciences);

(ii) 8 semester/12 quarter hours in mathematics (not including courses below the level of college algebra or courses in computer programming);

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(D) At least 9 semester/13 quarter hours in social science, humanities and communications; and

(E) In addition to the educational requirements set forth in paragraph (e) of subsection (3), graduates from two-year programs shall complete two or more years of engineering work before qualifying to take the FE examination for enrollment as an EI. In the alternative, graduates from two-year programs may complete additional course work consisting of 21 semester/32 quarter hours in Differential Equations, Physics, Statistics, Statics, Dynamics, Thermodynamics, Fluid Mechanics, Electrical Fundamentals and Strength of Materials.

(f) Completion of a curriculum that the Board finds has adequately prepared the application for enrollment as an EI.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1986, f. 2-4-86, ef. 2-15-86; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1996, f. & cert. ef. 10-3-96; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0226

Educational Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI)

Applicants for admission to examination for enrollment as an LSI will be required to submit the following evidence to show eligibility to take the FLS examination:

(1) Official transcripts demonstrating completion of a land surveying curriculum satisfactory to the Board, as described in (3) below.

(2) If taking the examination in the applicant's senior year, a statement signed by an official from the school, university or college that all work necessary to complete a curriculum satisfactory to the Board has been or will be completed within four months following the examination as provided in ORS 670.010. An official transcript verifying completion must be received to allow enrollment as an LSI. Scores will not be released until the official transcript is received.

(3) For entrance to the FLS Examination, a curriculum acceptable to the Board shall include:

(a) Graduation from an EAC of ABET accredited four-year baccalaureate land surveying program;

(b) Graduation from an ASAC of ABET accredited four-year baccalaureate land surveying program;

(c) Graduation from a TAC of ABET accredited four-year baccalaureate land surveying program;

(d) Graduation from an EAC of ABET accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(e) Graduation from a TAC of ABET accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(f) Graduation from an ACCE accredited four-year baccalaureate engineering program with 11 semester/16 quarter hours of surveying instruction and surveying law.

(g) Graduation from a graduate degree program in land surveying at a college or university that has an ABET accredited undergraduate degree program in the same field, combined with completion of 11 semester/16 quarter hours of surveying instruction.

(h) Graduation from an ASAC of ABET accredited two-year Surveying Technology program, a TAC of ABET accredited two-year Surveying Technology program, or a two-year Association of Applied Science program in Surveying Technology or Engineering Technology that includes the following:

(A) A total of at least 64 semester/96 quarter hours;

(B) At least 32 semester/48 quarter hours in technical courses, of which a minimum of 11 semester/16 quarter hours shall be in surveying instruction;

(C) At least 16 semester/24 quarter hours in subjects such as math, science, basic electricity, hydraulics, road design, construction management and estimating engineering economics with college level algebra, trigonometry and statistics;

(D) At least 9 semester/13 quarter hours in social science, humanities and communications; and

(E) In addition to the educational requirements set forth in paragraph (h) of subsection (3), graduates from two-year education programs shall complete two or more years of active practice in land surveying work before qualifying to take the FLS examination for enrollment as an LSI.

(i) Completion of a curriculum that the Board finds adequately prepared the applicant for enrollment as an LSI.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0227

Educational and Experience Qualifications to Take the Fundamentals of Engineering (FE) Examination for Enrollment as an Engineering Intern (EI) and Application Based on Non-Accredited Degrees

(1) An applicant that does not qualify pursuant to OAR 820-010-0225 may apply for admission to the FE examination based on a combination of education and experience in the practice of engineering. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the FE examination.

(2) Degrees from educational institutions not identified in OAR 820-010-0225 may be considered as qualifying if they are evaluated by ECE, ECEI, or CPEES, and the Board determines that the degree or course work is substantially equivalent to the educational degrees or courses required for degrees for those institutions listed in OAR 820-010-0225. The cost for such evaluation will be borne by the applicant.

(3) Course work from institutions that are identified in OAR 820-010-0225 may be considered as qualifying if the coursework involves engineering principles or was obtained by the applicant while enrolled in an engineering program.

(4) Where an applicant applies for admission to the FE examination on the basis of sections (1) through (3) of this rule, the applicant must also demonstrate that the applicant's years of education when combined with the applicant's years of engineering work total at least 8 years. Work experience in excess of that needed to satisfy this requirement may be included by applicant in a subsequent application to apply for admission to the PE examination.

(5) The Board may give credit for qualifying course work in proportion to the amount of course work completed relative to the degree towards which the course work would apply. For example, completion of one year of a two-year Engineering Technology program may be considered equivalent to one year of education, requiring 7 years of engineering work experience, in accordance with section (4). Qualifying course work includes classes in engineering ethics, fundamentals and design.

(6) An applicant may qualify for admission to the FE examination on the basis of 8 years of engineering work without any qualifying degree or course work.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0228

Combined Educational and Experience Qualifications to Take the Fundamentals of Land Surveying (FLS) Examination for Enrollment as a Land Surveying Intern (LSI) and Application Based on Non-accredited Degrees

(1) An applicant that does not qualify pursuant to OAR 820-010-0226 may apply for admission to the FLS examination based on a combination of education and experience in the practice of land surveying. Applicants will be allowed to submit as qualifying work experience that work experience obtained based on employment up to the date of the FLS examination.

(2) Degrees from educational institutions not identified in OAR 820-010-0226 may be considered as qualifying if they are evaluated by ECE, ECEI, or CPEES, and the Board determines that the degree or course work is substantially equivalent to the educational degrees or courses required for degrees for those institutions listed in OAR 820-010-0226. The cost for such evaluation will be borne by the applicant.

(3) Course work from institutions that are identified in OAR 820-010-0226 may be considered as qualifying if the coursework involves land surveying principles or was obtained by the applicant while enrolled in a land surveying program.

(4) Where an applicant applies for admission to the FLS examination on the basis of sections (1) through (3) of this rule, the applicant must also demonstrate that the applicant's years of education when combined with the applicant's years of land surveying work total at least 8 years. Work experience in excess of that needed to satisfy this requirement may be included by applicant in a subsequent application to apply for admission to the PLS examination.

(5) The Board may give credit for qualifying course work in proportion to the amount of course work completed relative to the degree towards which the course work would apply. For example, completion of one year of a two-year Surveying Technology program may be considered equivalent to one year of education, requiring 7 years of engineering work experience, in accordance with section (4). Qualifying course work includes classes in engineering ethics, fundamentals and design.

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lent to one year of education, requiring 7 years of surveying work experience, in accordance with section (4). Qualifying course work includes classes in land surveying ethics, fundamentals and application.

(6) An applicant may qualify for admission to the FLS examination on the basis of 8 years of land surveying work without any qualifying degree or course work.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0230

Information to be Furnished by Professional Engineer Applicants

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

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

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

(2) Active practice in engineering work shall be practice in the applicant's area of competence, in responsible charge performed under the direction and supervision of a licensed engineer.

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

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0231

Information to be Furnished by Professional Land Surveyor Applicants

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

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

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

(2) Active practice in land surveying work shall be under the responsible charge performed under the direction and supervision of a licensed land surveyor.

(3) Graduation from a post-baccalaureate degree program in engineering or surveying at a college or university which has an ABET accredited undergraduate degree program in the same field as the post-baccalaureate degree program may be substituted for one year of the four years of active practice required by this rule so long as the degree was not the basis for admission to the fundamental examination under OAR 820-010-0226(3)(g).

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0255

References

(1) Engineering, land surveyor, and photogrammetrist applicants and those engineering and land surveying intern applicants requesting admission to the examination on the basis of experience or a combination of education and experience must supply to their references special forms provided by the Board for this purpose. Each reference must have knowledge of the applicant's work for a period of at least one year. A minimum of five references is required by the Board and at least three of the five references must be registrants in the field of practice in which the applicant seeks to be registered. The signature and seal of the reference, if licensed, must appear on the returned form. Qualifying experience accrued by the applicant must be included in the application and all qualifying experience shall be certified by the person supervising the work as meeting the definition of engineering work, land surveying work or photogrammetric work as defined in OAR 820-010-0010. The Board may, for good cause upon written application, reduce the number of references required.

(2) Engineering, land surveyor, and photogrammetrist applicants requesting registration on the basis of comity or examination by another jurisdiction must supply to their references special forms provided by the Board for this purpose. Each reference must have knowledge of the applicant's work for a period of at least one year. A minimum of five references is required by the Board and at least three of the five references must be registrants in the field of practice in which the applicant seeks to be registered. The signature and seal of the reference, if licensed, must appear on the returned form. Qualifying experience accrued by the applicant must be included in the application and all qualifying experience shall be certified by the person supervising the work as meeting the definition of engineering work, land surveying work or photogrammetric work as defined in OAR 820-010-0010. The Board may, for good cause upon written application, reduce the number of references required.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0300

Refunds and Charges

(1) Application fees are non-refundable.

(2) Refunds of application fees will not be made to individuals who fail to complete the application process, to qualify for, withdraw from, or do not appear for, the examination.

(3) Comity application fees will not be refunded, but may be applied toward examination fee if requested by the applicant and the application has not been denied.

(4) If the Board receives payment of any fees by check and the check is deposited and returned to the Board, the payor of the fees will be assessed a charge of \$20 in addition to the required payment of the fees.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1985, f. 12-4-85, ef. 12-16-85; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0305

Fees

(1) The Board has determined an outside testing provider will administer examinations on behalf of the Board. In addition to state fees, all approved applicants are charged for the test administration fee in addition to any book or scoring fees or any other examination-related fees. The applicant must pay all these costs in advance to the Board and the outside testing provider. The amount for each specific application is compiled in section (2) of this rule. Where applicable, the initial activation and certificate fee must be included. The total amount for each specific application is compiled in a fee schedule published separately. The amount to be submitted will be equal to a total of items (a) through (c) in this section. Actual dollar amounts for application, initial activation, renewal and certificate are listed in sections (2) and (3) of these rules:

(a) Fee for application.

(b) Fee for initial activation equal to one year renewal (one time fee applies to PE, PLS, and CWRE only; not applicable to reexamination).

(c) Fee for issuance of first certificate (one time fee applies to PE, PLS, and CWRE only).

(2) Fees for examination application:

(a) Initial fundamentals of engineering examination application —

\$35.

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- (b) Initial fundamentals of land surveying examination application — \$35.
 - (c) Initial professional engineering (PE) examination application — \$100.
 - (d) Initial professional structural engineering examination application — \$575.
 - (e) Initial professional land surveying examination application — \$140.
 - (f) Initial professional photogrammetric mapping examination application — \$120.
 - (g) Certified Water Right Examiner test application — \$50.
 - (h) Fundamentals of engineering examination re-application — \$25.
 - (i) Fundamentals of land surveying examination re-application — \$25.
 - (j) Professional engineering (PE) examination re-application — \$90.
 - (k) Professional structural engineering examination re-application — \$565.
 - (l) National portion of professional structural engineering examination re-application — \$85.
 - (m) Oregon requirement of professional structural engineering examination re-application — \$480.
 - (n) Professional land surveying (PLS) examination re-application — \$130.
 - (o) Oregon law portion of PLS examination re-application — \$55.
 - (p) National portion of PLS examination re-application — \$75.
 - (q) Professional photogrammetric examination re-application — \$110.
 - (r) Certified Water Rights Examiner test re-application — \$40.
 - (3) Fees for certification, registration, and renewal:
 - (a) First registered professional engineer certificate — \$10.
 - (b) First registered professional land surveyor certificate — \$10.
 - (c) First registered professional photogrammetrist certificate — \$10.
 - (d) First certified water right examiner certificate — \$10.
 - (e) Application for registration as a professional engineer — \$110.
 - (f) Application for registration as a professional land surveyor — \$140.
 - (g) Application for registration as a registered professional photogrammetrist — \$120.
 - (h) Temporary permit issued under ORS 672.135 and Enrolled SB 55, section 5a — \$50.
 - (i) Re-issuance of lost or mutilated certificate — \$25.
 - (j) Re-issuance of lost or mutilated pocket card — \$10.
 - (k) Issuance of certificate without examination based on experience as provided under ORS 672.255 and Enrolled SB 55, section 4 — \$225.
 - (l) Re-score of an Oregon specific examination — \$50.
 - (m) Annual renewal of a professional engineering certificate — \$40.
 - (n) Annual renewal of a professional land surveyor certificate — \$40.
 - (o) Annual renewal of a registered professional photogrammetrist certificate — \$40.
 - (p) Annual renewal of exempt professional engineering or professional land surveying certificate as defined in OAR 820-010-0010(19) which meets the requirements for exemption under OAR 820-010-0635(6) — \$20.
 - (q) Annual renewal of water right examiner certificate — \$20.
 - (r) The penalty for late payment of a renewal fee under subsections (l), (m), (n), (o), or (p) of this section is equal to the accumulated total of the amount of the delinquent renewal. The late penalty becomes due and payable 30 days after the date of expiration.
 - (s) Verification of exam/licensure — \$15.
- Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: EE 2-1980, f. & ef. 5-14-80; EE 4-1981, f. & ef. 12-14-81; EE 2-1984(Temp), f. & ef. 5-7-84; EE 2-1984(Temp), f. & ef. 5-7-84; EE 4-1984, f. & ef. 12-11-84; EE 2-1987, f. & ef. 7-2-87; EE 3-1987, f. & ef. 8-25-87; EE 2-1989, f. 1-3-89, cert. ef. 1-15-89; EE 1-1990(Temp), f. & cert. ef. 5-21-90; EE 1-1991(Temp), f. 8-14-91, cert. ef. 9-1-91; EE 2-1991, f. & cert. ef. 9-23-91; EE 1-1992, f. & cert. ef. 2-3-92; EE 2-1992, f. & cert. ef. 2-4-92; EE 4-1992, f. & cert. ef. 7-22-92; EE 2-1993(Temp), f. & cert. ef. 2-22-93; EE 3-1993, f. & cert. ef. 6-3-93; EE 2-1994, f. & cert. ef. 7-22-94; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; EE 2-1997, f. & cert. ef. 8-6-97; BEELS 3-1998, f. & cert. ef. 5-11-98; BEELS 1-1999, f. 5-27-99, cert. ef. 7-1-99; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2000, f. 3-17-00, cert. ef. 3-20-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 4-2002, f. & cert. ef. 12-3-02; BEELS 6-2005, f. & cert. ef. 12-13-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0400

Application for Registration as a Geotechnical Engineer

- (1) The Board shall grant registration as a geotechnical engineer, as defined in OAR 820-040-0040(2), if an applicant:

- (a) Holds an unexpired, valid Oregon certificate of registration as a professional engineer;
- (b) Passes the geotechnical engineering examination offered by the Board; and
- (c) Submits evidence satisfactory to the Board demonstrating at least four years of qualifying experience in geotechnical engineering, as that term is defined in OAR 820-040-0040(1).
- (d) Up to one year of credit may be given in lieu of experience for possession of a post-graduate degree from a Board approved engineering program with major studies in soil engineering. Credit will not be given for possession of a post-graduate degree if that degree was the basis for experience used by the applicant to obtain a certificate of registration as a professional engineer.

- (2) Until one year has passed from the date on which the Board first gives a geotechnical engineering examination, a registered professional engineer may qualify for registration as a geotechnical engineer without taking a geotechnical examination provided that the applicant:

- (a) Holds an unexpired, valid Oregon certificate of registration as a professional engineer; and
- (b) Submits evidence satisfactory to the Board demonstrating at least four years of qualifying experience in geotechnical engineering, as that term is defined in OAR 820-040-0040(1).

- (3) "Qualifying experience," as used in subsections (1)(c) and (2)(b) of this rule, means having responsible charge of soil engineering projects while registered as a professional engineer and engaged in the practice of geotechnical engineering, as that term is defined in OAR 820-040-0040(1).

- (a) The application for registration as a geotechnical engineer must contain a description of the pertinent geotechnical aspects of each project claimed as part of the qualifying experience.

- (b) Teaching soil engineering and related courses at a Board approved school of engineering will be considered qualifying experience.

- (4) Unless waived by the Board, an applicant for registration as a geotechnical engineer must provide at least three references acceptable to the Board from professional engineers substantiating the applicant's experience in geotechnical engineering.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0605

Address Changes; Service of Notice

- It is the registrant's responsibility to inform the Board in writing, within 30-days, of any address change. Notice by registered or certified mail to the registrant's last address on file with the Board shall constitute service.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1980, f. & ef. 5-14-80; EE 1-1992, f. & cert. ef. 2-3-92; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0617

Civil Penalty Factors

- (1) In establishing the amount of a civil penalty to be assessed pursuant ORS 672.325, the Board may consider the following factors:

- (a) The nature, gravity and magnitude of the violation;
- (b) Prior violations, including administrative, civil or criminal proceedings in any state;
- (c) Whether the violation was repeated or continuous;
- (d) Whether the violation was an inadvertent act or an intentional act;
- (e) The history of the respondent in taking steps necessary or appropriate to correct any violation;
- (f) The opportunity for and the difficulty in correcting the violation at issue.

- (2) In considering the factors set forth in section (1) of this rule, the applicable factors may be given varying weight depending upon the circumstances of the violation.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 4-1981, f. & ef. 12-14-81; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0622

Modifying Designs or Documents Prepared by Another Professional Engineer

- (1) Registrants modifying designs or documents prepared and sealed by another Professional Engineer must meet all of the following requirements:

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(a) Only a registered Professional Engineer may make changes to designs or documents prepared and sealed by another Professional Engineer.

(b) A registrant will not change or modify another Professional Engineer's design or document unless they are competent in the field that is covered by the work being changed.

(c) A registrant making a change to another Professional Engineer's design or document will cloud; encircle; or in some other way clearly indicate the portion of the design or document they are changing or revising and refer the viewer to a separate design or document.

(d) The registrant making the change will seal and sign the separate design or document.

(2) Registrants modifying designs or documents not sealed must provide all the engineering services that would have been required had they started the work from its origin.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-010-0635

Continuing Professional Development

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

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

(2) PDH units may be earned as follows:

(a) Successful completion of college courses.

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

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

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

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

(f) Active participation in professional or technical societies.

(g) Self study.

(h) Mentoring of engineering topics.

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

(j) Passing a board prepared take home test.

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

(a) 1 College Semester hour equals 45 PDH.

(b) 1 College Quarter hour equals 30 PDH.

(c) 1 Continuing Education unit equals 10 PDH.

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

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

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

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

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

(i) Mentoring of nonlicensed individuals not under your supervision in the field of engineering. Each 10 hours spent mentoring will provide 1 PDH with a maximum of 2 PDH per year.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Out of Jurisdiction Resident. Continued Professional Development requirements will be satisfied when a non-resident certifies to be licensed in and having met the mandatory Continued Professional Development requirements of any NCEES member jurisdiction.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.375

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

820-015-0005

Definitions

(1) "Complainant" means a person who submits a complaint to the board.

(2) "Respondent" means a person or firm that is the subject of a complaint.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 3-1984, f. & ef. 6-18-84 ; BEELS 2-2006, f. & cert. ef. 11-21-06

820-015-0010

Processing Complaints

The Board will process complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person. Complaints must be in writing and include evidence to document all charges.

(2) The Board will conduct a preliminary review of the complaint to establish that there is sufficient evidence to justify proceeding and that the allegations against the respondent are such that, if proven, would result in a penalty or sanction.

(3) If the Board concludes that the complaint may be valid, the Board will contact the respondent by mail and request written comments. Written comments must be received by the Board within two weeks after the Board's request was mailed, unless the Board authorizes an extension.

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Otherwise, the Board will evaluate the complaint using available evidence other than respondent's comments.

(4) The Board will evaluate all evidence and analysis, including any documentation or comments received from the respondent, Board investigators, Board expert witnesses or peer reviewers, Board staff or a committee of the Board. The Board will then proceed as follows:

(a) If the Board determines that the evidence is insufficient to issue a notice of intent to sanction, the complainant and respondent will be so notified in writing;

(b) If the Board determines that the evidence is sufficient to issue a notice of intent to sanction, the Board will issue such notice.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 3-1984, f. & ef. 6-18-84; BEELS 2-2006, f. & cert. ef. 11-21-06

820-015-0026

Failure to Comply with Continuing Professional Development Requirements

(1) Any registrant who fails to satisfy the Continuing Professional Development requirements in OAR 820-010-0635 will be subject to suspension of the registrant's license. Failure to satisfy the Continuing Professional Development requirements will not be the sole basis for license revocation.

(2) Before suspending a registrant's license, the Board may allow a grace period of up to one year for a registrant to satisfy the requirements of OAR 820-010-0635(1). When a grace period is allowed, the registrant must complete all deficient Continuing Professional Development requirements and satisfy all current Continuing Professional Development requirements within the grace period. If the registrant fails to obtain all required deficient and current PDH units within the grace period, the Board will suspend the registrant's license.

(3) If the registrant responds to any Board notification and, if requested, completes a Continuing Education Request Form, and is not otherwise subject to Board investigation or discipline, the Board will grant a grace period provided that the registrant has failed to satisfy the Continuing Professional Development requirements by 15 or fewer PDH units.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2006, f. & cert. ef. 11-21-06

820-020-0005

Preamble

(1) In order to safeguard life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the following Rules of Professional Conduct shall be binding on every person holding a certificate of registration or enrolled as an intern.

(2) All persons registered under ORS 672.002 to 672.325 are charged with having knowledge of these Rules of Professional Conduct, and are deemed to be familiar with their provisions and to understand them. Such knowledge encompasses the understanding that the practice of engineering, land surveying, and photogrammetric mapping is a privilege and not a right.

(3) In these Rules of Professional Conduct, the word "registrant" means any person holding a license or certificate issued by this Board.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 14, f. 4-26-72, ef. 5-15-72; EE 20, f. & ef. 12-15-77; EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 3-2002, f. & cert. ef. 11-13-02; BEELS 2-2006, f. & cert. ef. 11-21-06

820-020-0025

Obligation of Registrants to Issue Statements only in an Objective and Truthful Manner

(1) Registrants must be objective and truthful and include all relevant and pertinent information in professional reports, statements or testimony.

(2) Registrants may express a professional opinion on technical subjects only when that opinion is founded upon adequate knowledge of the facts and the registrant is competent in the subject matter.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 2-2006, f. & cert. ef. 11-21-06

820-020-0030

Obligation of Registrants to Act in Professional Matters for Each Employer or Client as Faithful Agents or Trustees, and to Avoid Conflicts of Interest

(1) Registrants must disclose all known or potential conflicts of interest to their employers or clients by promptly informing them, in writing, of any business association, interest, or other circumstances that could influ-

ence their judgment or the quality of their services. For purposes of this rule, a "conflict of interest" includes, but is not limited to, an interest in any property or any other thing of value that is related in any way to or potentially affected by the services that the registrant provides.

(2) A registrant may not accept any thing of value, including any forgiveness of debt, directly or indirectly, from a person other than the registrant's employer or client for services offered or performed for the employer or client, unless the registrant makes full written disclosure and the registrant's employer or client consents in writing.

(3) A registrant who is a member, advisor or employee of a governmental body shall not participate in decisions made by that governmental body with respect to professional services solicited from or provided by the registrant or a business or firm that employs the registrant or in which the registrant holds an ownership interest and through which the registrant offers or provides professional services.

(4) A registrant may not solicit or accept employment or a contract for professional services from a governmental body for which a registrant's associate is a member or officer unless the registrant discloses all pertinent facts and circumstances of the registrant's relationship to the registrant's associate and the governmental body provides written consent. For purposes of this rule, a "registrant's associate" refers to a registrant's employer or an owner or officer of a business or firm that employs the registrant or in which the registrant holds an ownership interest and through which the registrant offers or provides professional services.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 2-2006, f. & cert. ef. 11-21-06

820-020-0035

Obligation of Registrants to Avoid Improper Solicitation of Professional Employment

(1) An applicant or registrant may not falsify or permit misrepresentation of the academic or professional qualifications of the applicant or registrant, another registrant, or a registrant's associate. For purposes of this rule, a "registrant's associate" refers to a registrant's employer or an owner or officer of a business or firm that employs the registrant or in which the registrant holds an ownership interest and through which the registrant offers or provides professional services.

(2) An applicant or registrant may not misrepresent or exaggerate the responsibility for performance of prior assignments by the applicant or registrant, by any other registrant, or by a registrant's associate.

(3) A registrant may not offer, give, solicit or receive, either directly or indirectly, any commission or gift or other valuable consideration in order to secure work.

(4) A registrant may not make any political contribution intended to influence the award of a contract by a governmental body.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 2-1981, f. 5-19-81, ef. 6-1-81; BEELS 2-2006, f. & cert. ef. 11-21-06

820-020-0045

Obligation Not to Engage in Unprofessional Behavior

(1) An applicant or registrant will not, by word or conduct, act in a manner intended to place a client, another registrant, a board member, a board employee, or an examination proctor in fear of imminent serious physical injury.

(2) An applicant or registrant will not engage in reckless, knowing or willful conduct that causes serious physical injury to a client, another registrant, a board member, a board employee or an examination proctor.

(3) An applicant or registrant must make timely and full payment to the Board of all Board assessed fees, fines and penalties.

(4) An applicant or registrant must give written notification to the Board of any disciplinary action or sanction related to the practice of engineering, land surveying, or photogrammetric mapping imposed by any licensing agency immediately upon receiving notice of the action or sanction.

(5) An applicant or registrant will not assist or aid the unsupervised or unlawful practice of engineering, land surveying, or photogrammetric mapping.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 2-2006, f. & cert. ef. 11-21-06

820-040-0040

Geotechnical Engineering

(1) Geotechnical engineering is defined as the investigation and the evaluation of the physical and engineering properties of earth materials,

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such as soil and rock, including impacts of ground water and earthquakes, and their application to the design and construction of civil engineering works, such as foundations, earth dams, retaining walls, and similar, using soil and rock mechanics and earthquake engineering principles and related engineering laws, formula, and procedures. Further, the practice involves the application of soil and rock mechanics and related engineering laws and procedures to an evaluation of the performance of constructed civil engineering works as influenced by earth materials, groundwater, and earthquakes and to an evaluation of the performance, including stability, of natural and man-made slopes, including man-made fills and embankments, and for the design of mitigation measures to reduce risk and/or hazards as disclosed by the evaluation.

(2) A "geotechnical engineer" is a registered professional engineer recognized by the Board to practice geotechnical engineering and who meets the other necessary qualifications for registration under ORS 672.002 to 672.325.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 2-2006, f. & cert. ef. 11-21-06

Rule Caption: Clarify requirements for final documents and official seals and to include photogrammetrists.

Adm. Order No.: BEELS 3-2006(Temp)

Filed with Sec. of State: 12-5-2006

Certified to be Effective: 12-5-06 thru 6-3-07

Notice Publication Date:

Rules Adopted: 820-010-0621

Rules Amended: 820-010-0620

Subject: OAR 820-010-0620 — Clarify requirements for official seals and designate seal for photogrammetrists. Delete verbiage related to final documents.

OAR 820-010-0621 — Clarify requirements for final documents and separate from requirements for official seals.

Rules Coordinator: Mari Lopez—(503) 362-2666, ext. 26

820-010-0620

Official Seal

(1) Seals, as referenced by ORS 672.020(2) and 672.025(2), must contain the printed name of the registrant, the date of registration, the number of the registrant's certificate of registration, and the registrant's professional title. The registrant's printed name on the seal will be exactly the same as the name printed on registrant's certificate of registration.

(2) The size, design and content of the seal will be an exact replica, in size and style, of the examples shown in **Exhibit 1** (Official Seals) for the profession or branch of the profession in which the registrant is licensed. (A tolerance of 1/4" is permitted as to the size of the seal). The expiration date may be made part of the seal. Reduced or enlarged seals are not permitted on final documents. In addition to these requirements, registrants will use the following seals:

(a) Professional engineers holding a structural engineering certificate will use the seal with the designation "Structural" above the words "Registered Professional Engineer," as shown in **Exhibit 1-b**. Other registered professional engineers will use the seal shown in **Exhibit 1-a**.

(b) Registered professional traffic engineer, who may practice only traffic engineering (as indicated by the initials "PTE" after their license number) will use the seal shown in **Exhibit 1-f**.

(c) Registered professional land surveyors will use the seal shown in **Exhibit 1-c**.

(d) Registered professional photogrammetrists will use the seal shown in **Exhibit 1-d**.

(e) Registered water rights examiners will use the seal shown in **Exhibit 1-e**. [Exhibit 1 not included. See Ed. Note].

(3) The seal may be applied to a document by rubber stamp or by handwriting or it may be computer-generated onto the document.

(4) The registrant will sign through the middle of the seal or in the place on the seal as indicated for signature, in handwriting, and in permanent ink.

(5) Only individuals registered as professional engineers, professional traffic engineers, professional land surveyors, professional photogrammetrists, or certified water rights examiners may use a seal with a shape, form or wording similar to those shown in **Exhibit 1**. Using such a seal without registration constitutes falsely representing that the person is authorized to practice the profession.

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

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 4-1987, f. & ef. 12-1-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07

820-010-0621

Final Documents

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

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

Stat. Auth.: ORS 670.310 & ORS 672.255

Stats. Implemented: ORS 672.002 - 672.325

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

Board of Naturopathic Examiners

Chapter 850

Rule Caption: Updates the formulary compendium and classification for substances prescribed by Naturopathic physicians.

Adm. Order No.: BNE 4-2006

Filed with Sec. of State: 12-11-2006

Certified to be Effective: 12-11-06

Notice Publication Date: 11-1-06

Rules Amended: 850-060-0225, 850-060-0226

Subject: Adds Pseudoephedrine and Naltroxone to the list of substances a ND can prescribe.

Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0225

Naturopathic Formulary Compendium

The following substances have been recommended for addition to the Formulary Compendium after review by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed.

- (1) Abacavir;
- (2) Acarbose;
- (3) Acetic Acid;
- (4) Acetylcysteine;
- (5) Acitretin;
- (6) Acyclovir;
- (7) Adapalene;
- (8) Adenosine Monophosphate;
- (9) Albuterol Sulfate;
- (10) Alendronate;
- (11) Allopurinol;
- (12) Alprostadil;
- (13) Amino Acids;
- (14) Amino Aspirins;
- (15) Aminoglycosides;
- (16) Aminolevulinic Acid;
- (17) Aminophylline;
- (18) Aminosalicic Acid;
- (19) Ammonium Chloride;
- (20) Ammonium lactate lotion 12%;
- (21) Amoxicillin;
- (22) Amoxicillin & Clavulanate;
- (23) Amphotericin B;
- (24) Ampicillin;
- (25) Ampicillin & Sulbactam;

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- (26) Anastrozole;
- (27) Anthralin;
- (28) Atorvastatin;
- (29) Atropine;
- (30) Atropine Sulfate;
- (31) Auranofin;
- (32) Azelaic Acid;
- (33) Azithromycin;
- (34) Bacampicillin;
- (35) Bacitracin;
- (36) Baclofen;
- (37) Becaplermin;
- (38) Belladonna;
- (39) Benazepril;
- (40) Benzodiazepines;
- (41) Benzoic Acid;
- (42) Benzonatate;
- (43) Betaine;
- (44) Betamethasone;
- (45) Bethanechol Chloride;
- (46) Bichloroacetic Acid*;
- (47) Bimatoprost Solution 0.03%;
- (48) Biologicals;
- (49) Biphosphonates;
- (50) Bromocriptine;
- (51) Budesonide;
- (52) Buprenorphine;
- (53) Butorphanol;
- (54) Cabergoline;
- (55) Calcipotriene;
- (56) Calcitonin;
- (57) Calcitriol;
- (58) Carbamide Peroxide;
- (59) Carbidopa;
- (60) Carbol-Fuchsin;
- (61) Captopril;
- (62) Cefaclor;
- (63) Cefdinir;
- (64) Cefibuten;
- (65) Cefadroxil;
- (66) Cefditoren;
- (67) Cefixime;
- (68) Cefonicid Sodium;
- (69) Cefpodoxime Proxetil;
- (70) Cefprozil;
- (71) Cefibuten;
- (72) Cefuroxime;
- (73) Celecoxib;
- (74) Cellulose Sodium Phosphate;
- (75) Cenestin;
- (76) Cephalixin;
- (77) Cephradine;
- (78) Chirocaine*;
- (79) Chloramphenicol;
- (80) Chloroquine;
- (81) Citrate Salts;
- (82) Clarithromycin;
- (83) Clindamycin;
- (84) Clioquinol;
- (85) Clostridium botulinum toxin (ab);
- (86) Cloxacillin;
- (87) Codeine;
- (88) Colchicine;
- (89) Colistimethate;
- (90) Collagenase;
- (91) Condylox;
- (92) Cortisone;
- (93) Coumadin;
- (94) Cromolyn Sodium;
- (95) Cyanocobalamin;
- (96) Cycloserine;
- (97) Danazol;
- (98) Deferoxamine/Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
- (99) Demeclocycline Hydrochloride;
- (100) Desmopressin;
- (101) Desoxyribonuclease;
- (102) Dexamethasone;
- (103) Dextran;
- (104) Dextromethorphan;
- (105) Dextrose;
- (106) Dextrothyroxine;
- (107) Dicloxacillin;
- (108) Dihydroergotamine Migranal;
- (109) Didanosine;
- (110) Dimethyl Sulfone (DMSO);
- (111) Digitalis;
- (112) Digitoxin;
- (113) Digoxin;
- (114) Dinoprostone;
- (115) Diphylline;
- (116) Dirithromycin;
- (117) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
- (118) DMSA;
- (119) Doxercalciferol;
- (120) Doxycycline;
- (121) Dronabinol;
- (122) Dyclonine;
- (123) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
- (124) Electrolyte Solutions;
- (125) Emtricitabine;
- (126) Enalapril;
- (127) Ephedrine;
- (128) Epinephrine*;
- (129) Epinephrine (auto-inject);
- (130) Ergoloid Mesylates;
- (131) Ergonovine Maleate;
- (132) Ergotamine;
- (133) Erythromycins;
- (134) Erythropoietin;
- (135) Estradiol;
- (136) Estriol;
- (137) Estrogen-Progestin Combinations;
- (138) Estrogens, Conjugated;
- (139) Estrogen, Esterified;
- (140) Estrone;
- (141) Estropipate;
- (142) Ethyl Chloride;
- (143) Etidronate;
- (144) Ezetimibe;
- (145) Famciclovir;
- (146) Fentanyl;
- (147) Fibrinolytic;
- (148) Flavoxate;
- (149) Fluconazole;
- (150) Fludrocortisone Acetate;
- (151) Flunisolide;
- (152) Fluorides;
- (153) Fluoroquinolones;
- (154) Fluoroquinolones;
- (155) Fluorouracil;
- (156) Fluticasone propionate;
- (157) Fluvastatin;
- (158) Fosinopril;
- (159) Gaba Analogs;
- (160) Gabapentin;
- (161) Galantamine H. Br.;
- (162) Ganciclovir;
- (163) Gentamicin;
- (164) Gentian Violet;
- (165) Griseofulvin;
- (166) Guaifenesin;
- (167) Heparin — subcutaneous, sublingual and heparin locks;
- (168) Hexachlorophene;
- (169) Homatropine Hydrobromide*;
- (170) Human Growth Hormone;
- (171) Hyaluronic Acid;
- (172) Hyaluronidase;

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- (173) Hydrocodone;
(174) Hydrocortisone;
(175) Hydrogen Peroxide;
(176) Hydromorphone;
(177) Hydroquinone;
(178) Hydroxychloroquine;
(179) Hydroxypolyethoxydodecane*;
(180) Hyoscyamine;
(181) Iloprost Inhalation Solution;
(182) Imiquimod Cream (5%);
(183) Immune Globulins*;
(184) Insulin;
(185) Interferon Alpha b w/Ribavirin;
(186) Iodine;
(187) Iodoquinol;
(188) Iron Preparations;
(189) Isosorbide Dinitrate;
(190) Isotretinoin;
(191) Itraconazole;
(192) Kanamycin Sulfate;
(193) Ketoconazole;
(194) Lactulose;
(195) Lamivudine;
(196) Letrozole;
(197) Leucovorin Calcium;
(198) Levalbuteral;
(199) Levodopa;
(200) Levonorgestrel;
(201) Levorphanol;
(202) Levothyroxine;
(203) Lincomycin;
(204) Lindane;
(205) Liothyronine;
(206) Liotrix;
(207) Lisinopril;
(208) Lisuride;
(209) Lithium;
(210) Lovastatin;
(211) Mebendazole;
(212) Meclizine;
(213) Medroxyprogesterone;
(214) Medrysone;
(215) Mefloquine;
(216) Megestrol Acetate;
(217) Mercury, Ammoniated;
(218) Mesalamine;
(219) Metformin;
(220) Methadone;
(221) Methimazole;
(222) Methoxsalen;
(223) Methscopolamine;
(224) Methylergonovine;
(225) Methylprednisolone;
(226) Methylsulfonylethane (MSM);
(227) Methyltestosterone;
(228) Methysergide;
(229) Metronidazole;
(230) Miglitol;
(231) Minerals (Oral & Injectable);
(232) Minocycline;
(233) Misoprostol;
(234) Moexipril;
(235) Monobenzene;
(236) Morphine;
(237) Mupirocin;
(238) Nafarelin acetate;
(239) Naloxone;
(240) Naltrexone;
(241) Natamycin;
(242) Nateglinide;
(243) Nicotine;
(244) Nitroglycerin;
(245) Novobiocin;
(246) Nystatin;
(247) Olsalazine;
(248) Omeprazole;
(249) Opium;
(250) Over the Counter (OTC)
(251) Oxacillin;
(252) Oxamniquine;
(253) Oxaprozin;
(254) Oxtriphylline;
(255) Oxycodone;
(256) Oxygen;
(257) Oxymorphone;
(258) Oxytetracycline;
(259) Oxytocin*;
(260) Pancrelipase;
(261) Papain;
(262) Papavarine;
(263) Paramethasone;
(264) Paregoric;
(265) Penciclovir;
(266) Penicillamine (Board approved certification required before therapeutic IV chelation is allowed);
(267) Penicillin;
(268) Pentosan;
(269) Pentoxifylline;
(270) Pergolide;
(271) Perindopril;
(272) Permethrin;
(273) Phenazopyridine;
(274) Phenylalkylamine;
(275) Phenylephrine*;
(276) Physostigmine;
(277) Pilocarpine;
(278) Pimecrolimus Cream 1%;
(279) Podophyllum Resin;
(280) Polymyxin B Sulfate;
(281) Polysaccharide-Iron Complex;
(282) Potassium Iodide;
(283) Potassium Supplements;
(284) Pramoxine;
(285) Pravastatin;
(286) Prednisolone;
(287) Prednisone;
(288) Pregabalin;
(289) Progesterone;
(290) Progestins;
(291) Propionic Acids;
(292) Propylthiouracil;
(293) Prostaglandins;
(294) Proton Pump inhibitor;
(295) Pseudoephedrine;
(296) Pyrazinamide;
(297) Pyrethrins;
(298) Quinapril;
(299) Quinidine;
(300) Quinilones;
(301) Quinine Sulfate;
(302) Quinines;
(303) Quinolines;
(304) Ramopril;
(305) Rauwolfia Alkaloids;
(306) Rho(D) Immune globulins*;
(307) Rifabutin;
(308) Rifampin;
(309) Risendronate;
(310) Salicylamide;
(311) Salicylate Salts;
(312) Salicylic Acid;
(313) Salsalate;
(314) Scopolamine;
(315) Selenium Sulfide;
(316) Silver Nitrate;
(317) Simvastatin;
(318) Sodium Polystyrene Sulfonate;
(319) Sodium Thiosulfate;
(320) Spironolactone;
(321) Stavudine;

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- (322) Spectinomycin;
- (323) Sucralfate;
- (324) Sulfasalazine;
- (325) Sulfonamide/Trimethoprim/Sulfones;
- (326) Tazarotene topical gel;
- (327) Tacrolimus;
- (328) Telithromycin;
- (329) Tenofovir;
- (330) Testosterone;
- (331) Tetracycline;
- (332) Theophylline;
- (333) Thiabendazole;
- (334) Thyroid;
- (335) Thyroxine;
- (336) Tiagabine;
- (337) Tibolone;
- (338) Tiludronate;
- (339) Tinidazole;
- (340) Tobramycin;
- (341) Topical steroids;
- (342) Tramadol;
- (343) Trandolapril;
- (344) Tretinoin;
- (345) Triamcinolone;
- (346) Triamterene;
- (347) Trichloroacetic Acid*;
- (348) Trioxsalen;
- (349) Triptans;
- (350) Troleandomycin;
- (351) Undecylenic Acid;
- (352) Urea;
- (353) Urised;
- (354) Ursodiol;
- (355) Valacyclovir;
- (356) Vancomycin;
- (357) Verapamil;
- (358) Vidarabine;
- (359) Vitamins (Oral & Injectable);
- (360) Yohimbine;
- (361) Zalcitabine;
- (362) Zidovudine;
- (363) Zolpidem;
- (364) Local Anesthetics:
 - (a) Benzocaine*;
 - (b) Bupivacaine*;
 - (c) Chloroprocaine*;
 - (d) Dyclonine*;
 - (e) Etidocaine*;
 - (f) Lidocaine*;
 - (g) Lidocaine (non-injectable dosage form);
 - (h) Mepivocaine*;
 - (i) Prilocaine*;
 - (j) Procaine*;
 - (k) Tetracaine*.
- (364) Vaccines:
 - (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus Inactivated*;
 - (p) Poliovirus-Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;

- (u) Tetanus Toxoid*;
- (v) Typhoid*;
- (w) Varicella*;
- (x) Yellow Fever*;
- (365) SkinTests:
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*.

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05; BNE 5-2005, f. & cert. ef. 6-10-05; Renumbered from 850-010-0225, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06

850-060-0226

Naturopathic Formulary Compendium by Classification

The following classifications for substances listed in 850-060-0225 have been recommended by the Board of Naturopathic Examiners Formulary Council established by the 65th Oregon Legislature. Substances listed on the formulary compendium can be prescribed in any dosage or any dosage form. Products marked with an asterisk (*) may be used by Naturopathic Physicians, but may not be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), not listed in the Formulary, except non-legend drugs, may not be prescribed. A double asterisk (**) indicates examples include but are not limited to the substances listed.

- (1) Antiestrogens;
 - (a) Nafarelin Acetate;
 - (b) Tibolone;
- (2) Antigout;
 - (a) Colchicine;
 - (b) allopurinol;
- (3) Anti-infective Agents;
 - (a) Anthelmintics;
 - (A) Thiabendazole.
 - (B) Oxamniquine.
 - (C) Mebendazole.
 - (b) Antibacterials;
 - (A) Aminoglycosides**;
 - (i) Gentamicin;
 - (ii) Kanamycin Sulfate;
 - (iii) Tobramycin;
 - (B) Cephalosporins**;
 - (i) Cefaclor;
 - (ii) Cefadroxil;
 - (iii) Cefdinir;
 - (iv) Cefditoren;
 - (v) Cefbuten;
 - (vi) Cefixime;
 - (vii) Cefonicid Sodium;
 - (viii) Cefpodoxime Proxetil;
 - (ix) Cefprozil;
 - (x) Cefibuten;
 - (xi) Cefuroxime;
 - (xii) Cephalexin;
 - (xiii) Cephadrine;
 - (C) Chloramphenicol;
 - (D) Macrolides and Ketolides**;
 - (i) Azithromycin;
 - (ii) Clarithromycin;
 - (iii) Dirithromycin;
 - (iv) Erythromycins;
 - (v) Telithromycin;
 - (vi) Troleandomycin;
 - (E) Penicillins**;
 - (i) Amoxicillin and Clavulanate;
 - (ii) Amoxicillin;
 - (iii) Ampicillin and Sulbactam;
 - (iv) Ampicillin;
 - (v) Bacampicillin;
 - (vi) Cloxacillin;
 - (vii) Dicloxacillin;

ADMINISTRATIVE RULES

- (viii) Oxacillin;
- (ix) Penicillin;
- (F) Quinolones**;
- (i) Fluoroquinolones;
- (ii) Quinolines -all;
- (G) Sulfonamides;
- (i) Sulfonamide/Trimethoprim/ Sulfones;
- (H) Tetracyclines**;
- (i) Demeclocycline Hydrochloride;
- (ii) Doxycycline;
- (iii) Minocycline;
- (iv) Oxytetracycline;
- (v) Tetracycline;
- (I) Misc. antibacterials;
- (i) Bacitracin;
- (ii) Clindamycin;
- (iii) Colistimethate;
- (iv) Lincomycin;
- (v) Novobiocin;
- (vi) Polymyxin B Sulfate;
- (vii) Spectinomycin;
- (viii) Vancomycin;
- (c) Antifungals;
- (A) Azoles**;
- (i) Fluconazole;
- (ii) Itraconazole;
- (iii) Ketoconazole;
- (iv) Tinidazole;
- (B) Amphotericin B;
- (C) Gentian Violet;
- (D) Griseofulvin;
- (E) Nystatin;
- (d) Antimycobacterials;
- (A) Aminosalicilic Acid;
- (B) Cycloserine;
- (C) Pyrazinamide;
- (D) Rifabutin;
- (E) Rifampin;
- (e) Antivirals;
- (A) Interferon**;
- (B) Nucleoside/nucleotide analogs**;
- (i) Abacavir;
- (ii) Acyclovir;
- (iii) Didanosine;
- (iv) Emtricitabine;
- (v) Famciclovir;
- (vi) Ganciclovir;
- (vii) Lamivudine;
- (viii) Penciclovir;
- (ix) Stavudine;
- (x) Tenofovir;
- (xi) Valacyclovir;
- (xii) Viarabine;
- (xiii) Zalcitabine;
- (xiv) Zidovudine;
- (f) Antiprotozoal;
- (A) Iodoquinol;
- (B) Metronidazole;
- (C) Quinines;
- (i) Chloroquine;
- (ii) Hydroxychloroquine;
- (iii) Mefloquine;
- (iv) Quinine Sulfate;
- (g) Misc;
- (A) Immune Globulins* **;
- (B) Lindane;
- (C) Permethrin;
- (D) Pyrethrins;
- (4) Antineoplastic Agents;
- (a) Anastrozole;
- (b) Letrozole;
- (5) Anti-thyroid;
- (a) Thionamides;
- (A) Methimazole;
- (B) Propylthiouracil;
- (6) Autonomic Drugs;
- (a) Parasympathomimetic;
- (A) Bethanechol;
- (B) Galantamine H. Br;
- (b) Anticholinergic;
- (A) Atropine Sulfate;
- (B) Atropine;
- (C) Belladonna;
- (D) Flavoxate;
- (E) Homatropine Hydrobromide*;
- (F) Hyoscyamine;
- (G) Meclizine;
- (H) Methscopolamine;
- (I) Physostigmine;
- (J) Pilocarpine;
- (K) Scopolamine;
- (c) Sympathomimetic;
- (A) Ephedrine;
- (B) Epinephrine*;
- (C) Epinephrine (auto-inject);
- (D) Pseudoephedrine;
- (d) Sympatholytic;
- (A) Yohimbine;
- (e) Skeletal Muscle Relaxants;
- (A) Clostridium botulinum toxin (ab);
- (B) Baclofen;
- (f) Misc;
- (A) Nicotine;
- (7) Biologicals;
- (a) Enzymes**;
- (A) Collagenase;
- (B) Desoxyribonuclease;
- (C) Fibrinolytin;
- (D) Hyaluronidase;
- (E) Pancrelipase;
- (F) Papain;
- (b) Hormones — see hormone;
- (c) Immune globulins — see anti-infective, misc;
- (d) Interferons — see antivirals;
- (e) Prostaglandins**;
- (A) Alprostadil;
- (B) Bimatoprost;
- (C) Iloprost;
- (D) Dinoprostone;
- (E) Misoprostal;
- (f) Blood derivatives;
- (8) Blood Formation and Coagulation;
- (a) Coumarin;
- (b) Erythropoietin;
- (c) Heparin; subcutaneous, sublingual and heparin locks;
- (9) Cardiovascular Drugs;
- (a) Cardiac;
- (A) Adenosine Monophosphate;
- (B) Digitalis;
- (C) Digitoxin;
- (D) Digoxin;
- (E) Quinidine;
- (b) Antilipemic;
- (A) HMG CoA Reductase Inhibitors**;
- (i) Atorvastatin;
- (ii) Fluvastatin;
- (iii) Lovastatin;
- (iv) Pravastatin;
- (v) Simvastatin;
- (B) Ezetimibe;
- (c) Diuretics;
- (A) Spironolactone;
- (B) Triamterene;
- (d) Hypotensive;
- (A) Lisuride;
- (B) Rauwolfia Alkaloids;
- (e) Vasodilating;
- (A) Nitrates**;
- (i) Isosorbide Dinitrate;
- (ii) Mononitrate;

ADMINISTRATIVE RULES

- (iii) Nitroglycerin;
- (B) Papavarine;
- (f) Calcium Channel blockers;
- (A) Phenylalkylamine**;
- (i) Verapamil;
- (g) ACE inhibitors**;
- (A) Benazepril;
- (B) Captopril;
- (C) Enalapril;
- (D) Fosinopril;
- (E) Lisinopril;
- (F) Moexipril;
- (G) Perindopril;
- (H) Quinapril;
- (I) Ramopril;
- (J) Trandolapril;
- (10) Central Nervous System Agents;
- (a) Analgesics and Antipyretics;
- (A) NAIDS;
- (i) Amino Aspirins;
- (ii) Celecoxib;
- (iii) Mesalamine;
- (iv) Olsalazine;
- (v) Oxaprozin;
- (vi) Propionic Acid Derivatives**;
- (aa) Fenoprofen;
- (bb) Flurbiprofen;
- (cc) Ibuprofen;
- (dd) Ketoprofen;
- (ee) Oxaprozin;
- (ff) Naproxen;
- (vii) Salicylic Acid;
- (viii) Salicylamide;
- (ix) Salicylate Salts;
- (x) Salsalate;
- (xi) Sulfasalazine;
- (B) Opioids**;
- (i) Buprenorphine;
- (ii) Butorphanol;
- (iii) Codeine;
- (iv) Dextromethorphan;
- (v) Fentanyl;
- (vi) Hydrocodone;
- (vii) Hydromorphone;
- (viii) Levorphanol;
- (ix) Methadone;
- (x) Morphine;
- (xi) Opium;
- (xii) Oxycodone;
- (xiii) Oxymorphone;
- (xiv) Paregoric;
- (xv) Tramadol;
- (b) Opioid Antagonists;
- (A) Naloxone;
- (B) Naltrexone;
- (c) Anticonvulsants;
- (A) Gaba Analogues**;
- (i) Gabapentin;
- (ii) Pregabalin;
- (iii) Tigabine;
- (d) Anti-Parkinson's;
- (A) Bromocriptine;
- (B) Carbidopa;
- (C) Cabergoline;
- (D) Levodopa;
- (E) Pergolide;
- (e) Psychotherapeutic;
- (A) Anxiolytics, sedatives and hypnotics;
- (i) Benzodiazepines**;
- (ii) Zolpidem;
- (B) Anti-Manic;
- (i) Lithium;
- (f) Misc;
- (A) Triptans**;
- (11) Diabetic;
- (a) Acarbose;
- (b) Insulin;
- (c) Metformin;
- (d) Miglitol;
- (e) Nateglinide;
- (12) Electrolytic;
- (a) Ammonium Chloride;
- (b) Bisphosphonates**;
- (A) Alendronate;
- (B) Etidronate;
- (C) Risendronate;
- (D) Tiludronate;
- (c) Cellulose Sodium Phosphate (calcium removing);
- (d) Dextran;
- (e) Dextrose;
- (f) Electrolyte Solutions;
- (g) Fluorides;
- (h) Iodine;
- (i) Iron Preparations;
- (j) Minerals (Oral & Injectable);
- (k) Polysaccharide-Iron Complex;
- (l) Potassium Iodide;
- (m) Potassium Supplements;
- (n) Sodium Polystyrene Sulfonate;
- (13) Ergot Derivatives**;
- (a) Dihydroergotamine;
- (b) Ergoloid Mesylates;
- (c) Ergonovine Maleate;
- (d) Ergotamine;
- (14) EENT preparations;
- (a) Acetic Acid;
- (b) Ophthalmic Solution (0.03%);
- (c) Carbamide Peroxide;
- (d) Natamycin;
- (e) Phenylephrine;
- (f) Prostaglandins — see Biologicals;
- (15) GI drugs;
- (a) Antidiarrhea — see opioids;
- (b) Cathartics and laxatives;
- (A) Lactulose;
- (c) Antiemetics;
- (A) Dronabinol;
- (d) Antiulcer and acid suppressants;
- (A) Misoprostol;
- (B) Proton Pump Inhibitors**;
- (i) Omeprazole;
- (C) Sucralfate;
- (e) Misc;
- (A) Citrate Salts;
- (B) Ursodiol;
- (16) Gold Compounds;
- (a) Auranofin;
- (17) Heavy Metal antagonists (see 850-060-225 for specific education requirements);
- (a) Deferoxamine/Desferroxamine;
- (b) DMPS;
- (c) DMSA;
- (d) EDTA;
- (e) Penicillamine;
- (f) Sodium Thiosulfate;
- (18) Hormones and synthetic substitutes**;
- (a) Adrenals;
- (A) Betamethasone;
- (B) Budesonide;
- (C) Cortisone;
- (D) Dexamethasone;
- (E) Fludrocortisone Acetate;
- (F) Flunisolide;
- (G) Fluticasone Propionate;
- (H) Hydrocortisone;
- (I) Paramethasone;
- (J) Prednisolone;
- (K) Prednisone;
- (L) Tibolone;
- (M) Triamcinolone;

ADMINISTRATIVE RULES

- (b) Androgens;
 - (A) Danazol;
 - (B) Methyltestosterone;
 - (C) Testosterone;
- (c) Contraceptives;
 - (A) Estrogen-Progestin Combinations;
 - (B) Progestins;
 - (d) Estrogens and antiestrogens;
 - (A) Cenestin;
 - (B) Estradiol;
 - (C) Estriol;
 - (D) Estrogen, Esterified;
 - (E) Estrogens, Conjugated;
 - (F) Estrone;
 - (G) Estropipate;
 - (e) Pituitary;
 - (A) Desmopressin;
 - (B) Human Growth Hormone;
 - (C) Oxytocin;
- (f) Progestins;
 - (A) Medroxyprogesterone;
 - (B) Medrysone;
 - (C) Megestrol Acetate;
 - (D) Methylprednisolone;
 - (E) Progesterone;
 - (F) Progestins;
- (g) Thyroid;
 - (A) Dextrothyroxine;
 - (B) Levonorgestrel;
 - (C) Levothyroxine;
 - (D) Liothyronine;
 - (E) Liotrix;
 - (F) Thyroxine;
- (19) Immunological;
 - (a) Tacrolimus;
 - (b) Rho(D) Immune globulins*;
- (20) Local anesthetics**;
 - (a) Benzocaine*;
 - (b) Betaine;
 - (c) Bupivacaine*;
 - (d) Chirocaine*;
 - (e) Chloroprocaine*;
 - (f) Dyclonine*;
 - (g) Ethyl Chloride;
 - (h) Etidocaine*;
 - (i) Hydroxypolyetho-xydodecane*;
 - (j) Lidocaine (non-injectable dosage form);
 - (k) Lidocaine*;
 - (l) Mepivocaine*;
 - (m) Pramoxine;
 - (n) Prilocaine*;
 - (o) Procaine*;
 - (p) Tetracaine*;
- (21) Prostaglandins — see Biologicals;
- (22) Skin and mucous membrane agents;
 - (a) Anti-infectives;
 - (A) Benzoic Acid,;
 - (B) Carbol-Fuchsin;
 - (C) Clioquinol;
 - (D) Hexachlorophene;
 - (E) Iodoquinol;
 - (F) Mercury, Ammoniated;
 - (G) Mupirocin;
 - (H) Selenium Sulfide;
 - (I) Silver Nitrate;
 - (J) Undecylenic Acid;
 - (b) Anti-inflammatory;
 - (A) Topical steroids;
 - (c) Antipruritics and local anesthetics;
 - (A) Pentosan;
 - (B) Phenazopyridine;
 - (d) Cell stimulants and proliferants;
 - (A) Anthralin;
 - (B) Tretinoin;
 - (e) Keratolytic;
 - (A) Adapalene;
 - (B) Aminolevulinic Acid;
 - (C) Bichloroacetic Acid;
 - (D) Imiquimod Cream (5%);
 - (E) Isotretinoin;
 - (F) Podophyllum Resin;
 - (G) Trichloroacetic Acid*;
 - (H) Urea;
 - (f) Misc;
 - (A) Acitretin;
 - (B) Ammonium lactate lotion 12%;
 - (C) Azelaic Acid;
 - (D) Becaplermin;
 - (E) Calcipotriene;
 - (F) Condylox;
 - (G) Fluorouracil;
 - (H) Hydroquinone;
 - (I) Methoxsalen;
 - (J) Monobenzone;
 - (K) Pimecrolimus Cream 1%;
 - (L) Tazarotene topical gel;
 - (M) Trioxsalen;
 - (23) Skin Tests**;
 - (a) Diphtheria*;
 - (b) Mumps*;
 - (c) Tuberculin*;
 - (24) Upper Respiratory;
 - (a) Acetylcysteine;
 - (b) Albuterol Sulfate;
 - (c) Benzonatate;
 - (d) Cromolyn Sodium;
 - (e) Guaifenesin;
 - (f) Levalbuteral;
 - (g) Nedocromil;
 - (h) Xanthines**;
 - (A) Aminophylline;
 - (B) Diphylline;
 - (C) Oxtriphylline;
 - (D) Pentoxifylline;
 - (E) Theophylline;
 - (25) Vaccines**;
 - (a) BCG*;
 - (b) Cholera*;
 - (c) Diphtheria*;
 - (d) DPT*;
 - (e) Haemophilus b Conjugate*;
 - (f) Hepatitis A Virus*;
 - (g) Hepatitis B*;
 - (h) Influenza Virus*;
 - (i) Japanese Encephalitis Virus*;
 - (j) Measles Virus*;
 - (k) Mumps Virus*;
 - (l) Pertussis*;
 - (m) Plague*;
 - (n) Pneumococcal*;
 - (o) Poliovirus — Inactivated*;
 - (p) Poliovirus — Live Oral*;
 - (q) Rabies*;
 - (r) Rubella*;
 - (s) Smallpox*;
 - (t) Tetanus IG*;
 - (u) Tetanus Toxoid*;
 - (v) Typhoid*;
 - (w) Varicella*;
 - (x) Yellow Fever*;
 - (26) Vitamins**;
 - (a) Calcitonin;
 - (b) Calcitriol;
 - (c) Cyanocobalamin;
 - (d) Doxercalciferol;
 - (e) Leucovorin Calcium;
 - (f) Vitamins (Oral & Injectable);
 - (27) Misc;
 - (a) Colchicine (gout);
 - (b) Dimethyl Sulfone (DMSO);

ADMINISTRATIVE RULES

- (c) Hyaluronic Acid;
- (d) Hydrogen Peroxide;
- (e) MSM;
- (f) OTC Substances;
- (g) Oxygen;
- (h) Urised

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef. 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06

Board of Nursing Chapter 851

Rule Caption: Timeframe for Transition of CNA 1 to CNA 2 Extended.

Adm. Order No.: BN 14-2006

Filed with Sec. of State: 11-29-2006

Certified to be Effective: 11-29-06

Notice Publication Date: 1-1-06

Rules Amended: 851-062-0016

Subject: These rules establish the standards for certification of nursing assistants and medication aides. This amendment extends the timeframe for the transition of a CNA 1 to a CNA 2.

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

851-062-0016

CNA 2 Categories

(1) Acute Care Category. The acute care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(2) Dementia Care Category. The dementia care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(3) Restorative Care Category. The restorative care category becomes available after the Board adopts the curriculum and competency evaluation for this category.

(4) Other categories as subsequently established by the Board.

(5) For three years following the implementation date of each CNA 2 category, a person with a current unencumbered CNA 1 may become a CNA 2 in that category by successfully completing the competency evaluation and such additional training as may be deemed necessary by the nursing assistant level 2 training program director. After that date, a CNA 1 may become a CNA 2 only by successfully completing the entire level 2 training program and competency evaluation.

Stat. Auth: ORS 678.442

Stats. Implemented: ORS 678.040, 678.050, 678.150

Hist.: BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 14-2006, f. & cert. ef. 11-29-06

Rule Caption: Specific Requirements for Licensing RNs and LPNs in Oregon.

Adm. Order No.: BN 15-2006

Filed with Sec. of State: 11-29-2006

Certified to be Effective: 11-29-06

Notice Publication Date: 10-1-06

Rules Amended: 851-031-0010

Subject: These rules establish the standards for licensure of Registered Nurses and Licensed Practical Nurses. This amendment deletes the language that allows students to be declared eligible to test prior to program completion/graduation. It also modifies language to allow re-entry nurses to apply for licensure by examination.

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

851-031-0010

Licensure by Examination

(1) Eligibility for Licensure by Examination:

(a) An applicant for registered nurse or practical nurse licensure by examination shall meet all standards for eligibility as established in OAR 851-031-0006; and

(b) Graduates of United States schools shall be allowed to take the licensing examination prior to receipt of an official transcript provided that the school has verified, in writing, completion of all requirements for graduation or program completion, including supervised clinical experience at

the level of licensure sought. An official transcript shall be on file with the Board before the license is issued.

(2) Limits on Eligibility for Licensure by Examination:

(a) Applicants for licensure by examination who have been previously licensed shall meet the practice and/or reentry requirements as stated in Board rules.

(b) Applicants for initial licensure by examination (not previously licensed in another state or country) shall be permitted to test no more than three years following graduation or program completion.

(c) An applicant who fails to pass the examination in three years shall not be eligible to reapply for licensure by examination, except that the applicant may subsequently enroll and successfully complete an approved program of nursing in order to be eligible to reapply for licensure by examination.

(3) Requirements and Procedures — Application for Licensure by Examination:

(a) An applicant for registered nurse or practical nurse licensure by examination shall meet all requirements as established in OAR 851-031-0006;

(b) The examination registration and fee shall be filed with the testing service authorized to administer the examination; and

(c) The licensure application and fee shall be filed with the Oregon State Board of Nursing.

(d) A completed application which establishes eligibility for examination shall be valid for the three years of eligibility as described in OAR 851-031-0010(3).

(4) Results of Examination:

(a) Results of the examination shall be reported to the applicant at the applicant's address of record on file.

(b) An applicant who passes the examination shall be granted a license to practice nursing in Oregon provided all other requirements for licensure have been met.

(c) An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Oregon.

(d) Reexamination following one or more failure(s):

(A) An applicant for reexamination shall file the required application and fee with the Board before being eligible to take the examination.

(B) The examination registration and fee shall be filed with the testing service under contract with the National Council of State Boards of Nursing (NCSBN) to develop and administer NCLEX.

(C) An applicant will be permitted to test no sooner than the 46th day following the previous test date.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.040, 678.050 & 678.150

Hist.: NER 25, f. 9-22-75, ef. 10-10-75; NER 3-1978, f. & ef. 6-30-78; NER 15-1980, f. & ef. 3-3-80; NER 5-1981, f. & ef. 11-24-81; NER 4-1983, f. & ef. 12-1-83; NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0156; NB 4-1997, f. 3-6-97, cert. ef. 5-1-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 14-1999, f. & cert. ef. 12-1-99; BN 7-2000, f. & cert. ef. 7-3-00; BN 5-2001(Temp), f. & cert. ef. 4-3-01 thru 9-25-01; BN 14-2001, f. & cert. ef. 10-16-01; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2003, f. & cert. ef. 12-9-03; BN 15-2006, f. & cert. ef. 11-29-06

Rule Caption: Rules Established for Advanced Practice Authority to Prescribe and Dispense Medications.

Adm. Order No.: BN 16-2006

Filed with Sec. of State: 11-29-2006

Certified to be Effective: 11-29-06

Notice Publication Date: 10-1-06

Rules Amended: 851-002-0020, 851-002-0035

Subject: These rules cover the fees for the authority to dispense and prescribe medication by Nurse Practitioners and Clinical Nurse Specialists.

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

851-002-0020

Nurse Practitioner Schedule of Fees

(1) Initial Nurse Practitioner Certification — \$150.

(2) First Category Renewal (combined with Prescriptive Privilege renewal) — \$105.

(3) Additional Category Renewal — \$50.

(4) Delinquent Renewal — \$12.

(5) Nurse Practitioner Prescriptive Authority Initial Application — \$75.

(6) Limited License for Reentry or Clinical Practicum — \$95.

Stat. Auth.: ORS 678.150 & 678.410

Stats. Implemented: ORS 678.410

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Hist.: NER 26(Temp), f. & ef. 12-11-75; NER 32, f. & ef. 5-4-76; NER 5-1981, f. & ef. 11-24-81; NER 2-1982, f. & ef. 8-25-82; NER 5-1983, f. 12-9-83, ef. 1-1-84; NER 5-1985, f. 7-30-85, ef. 10-1-85; NER 6-1986, f. & ef. 12-3-86; NB 5-1987, f. & ef. 7-1-87; NB 7-1987, f. & ef. 10-5-87; NB 1-1988, f. & cert. ef. 4-18-88; NB 2-1989, f. 6-22-89, cert. ef. 7-1-89; NB 2-1991, f. 6-14-91, cert. ef. 7-1-91; NB 3-1991, f. & cert. ef. 9-25-91; NB 5-1993, f. 6-15-93, cert. ef. 7-1-93; NB 7-1993, f. & cert. ef. 7-1-93; NB 13-1993, f. & cert. ef. 12-20-93; NB 5-1994, f. & cert. ef. 9-15-94; Renumbered from 851-020-0295; NB 8-1994, f. & cert. ef. 12-7-94; NB 7-1995(Temp), f. & cert. ef. 6-23-95; NB 2-1996, f. & cert. ef. 3-12-96; NB 9-1997, f. 7-22-97, cert. ef. 9-1-97; BN 6-1998(Temp), f. & cert. ef. 7-15-98 thru 12-31-98; Administrative correction 8-5-98; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1998, f. & cert. ef. 9-22-98; BN 4-1999, f. 5-21-99, cert. ef. 7-1-99, Renumbered from 851-031-0200; BN 16-2006, f. & cert. ef. 11-29-06

851-002-0035

Clinical Nurse Specialist Schedule of Fees

- (1) Initial Clinical Nurse Specialist Certification — \$150.
 - (2) Renewal of Certification without Prescriptive Authority — \$75.
 - (3) Renewal of Certification with Prescriptive Authority — \$105.
 - (4) Clinical Nurse Specialist Prescriptive Authority Initial Application — \$75.
 - (5) Delinquent Renewal — \$12.
 - (6) Limited License for Reentry or Clinical Practicum — \$95.
 - (7) Extension of Limited License — \$95.
- Stat. Auth.: ORS 678.150 & 678.410
Stats. Implemented: ORS 678.410
Hist.: BN 4-2001, f. & cert. ef. 2-21-01; BN 16-2006, f. & cert. ef. 11-29-06

Board of Radiologic Technology Chapter 337

Rule Caption: Define Equipment Operators of Computed Tomography & Merged Technologies and General Housekeeping and Clarification Amendments.

Adm. Order No.: BRT 2-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 337-010-0011

Rules Amended: 337-010-0010, 337-010-0012, 337-010-0030, 337-010-0031, 337-010-0055

Subject: Rules are being adopted 337-010-0011 allowing for Computed Tomography and Merged Technologies Equipment Operators, further clarification is achieved by modifying the current Limited Permit Examination rules in 337-010-0030 and other general housekeeping amendments.

Rules Coordinator: Linda Russell—(971) 673-0216

337-010-0010

Qualifications of Radiologic Technologist in Diagnostic Field

In addition to those qualifications set out in ORS 688.465, applicants for licensure as a radiologic technologist in the diagnostic field must:

- (1) Submit evidence of certification by the American Registry of Radiologic Technologists (ARRT) in radiography. This evidence shall consist of applicant being listed in the current ARRT directory. When the applicant is not listed in the current ARRT directory, he or she shall submit to the Board a certified copy issued by ARRT of the original registration certificate; or
- (2) Have successfully completed a course of study in an approved school of radiologic technology as defined in ORS 688.405(1) and obtain a passing score on the examination in diagnostic radiologic technology administered by The American Registry of Radiologic Technologists. A scaled score of 75 constitutes a minimum passing score.

Stat. Auth.: ORS 688
Stats. Implemented:
Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 2-1986, f. 4-29-86, ef. 7-1-86; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

337-010-0011

Qualifications of Computed Tomography Equipment Operators and Merged Technology Equipment Operators' Licensing

- (1) An operator of computed tomography equipment must be certified by the American Registry of Radiologic Technologists in Computed Tomography (CT) or in Radiography with training in the operation of CT equipment, or
- (2) In addition to qualifications to operate radionuclide imaging devices, Nuclear Medicine technologists seeking restricted licensing must submit evidence of completion of a minimum of twelve (12) hours training in the use of computed tomography for use only in conjunction with merged

or "fusion" technology exams from an approved source as determined by the board, or

(3) In addition to qualifications to operate radiation therapy devices, Radiation Therapy technologists seeking restricted licensing must submit evidence of completion of a minimum of twelve (12) hours training in the operation of computed tomography scanners only for use in non-diagnostic radiation therapy simulation from an approved source as determined by the board.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.555(1)
Hist.: BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

337-010-0012

Examination Fee and Deadline for Submitting Examination Fee and Supporting Documents for Licensed Radiologic Technologists

The Board of Radiologic Technology relies on the certification by the American Registry of Radiologic Technologists for examinations of fully licensed technologists in diagnostic or therapeutic radiologic technology. No State examination will be offered or coordinated.

Stat. Auth.: ORS 688
Stats. Implemented:
Hist.: RT 2-1979, f. & ef. 11-9-79; RT 2-1985, f. & ef. 7-1-85; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

337-010-0030

Limited Permits

(1) Applicants for Limited Permits in Diagnostic Radiologic Technology. Qualifications:

(a) An applicant for a limited permit in diagnostic radiologic technology shall be at least 18 years of age, pay an application fee, and, effective January 1, 2007, have successfully passed a course of instruction that reflects the current Core Module of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of Radiologic Technologists. The curriculum shall consist of not less than 52 hours of instruction approved by the Board in the following subjects:

- (A) Radiation physics;
- (B) Interaction of radiation with matter;
- (C) Radiation exposure, monitoring, and radiation units;
- (D) Principle of the radiographic equipment;
- (E) Biological effects of radiation;
- (F) Low-dose technique and minimizing patient exposure;
- (G) Applicable Federal and State radiation regulations;
- (H) Darkroom, film processing, and quality assurance;
- (I) Film and image critique;
- (J) Personnel protection;
- (K) Digital and computer-generated radiographic imaging;
- (L) Developing and using technique charts; and
- (M) Patient care.

(b) Have received a course of instruction in laboratory practice approved by the Board:

(A) Meeting the requirements stated in the Board's publication "Overview of Guidelines for Instructors of Courses in Preparation for the Limited Scope Examination in Diagnostic Radiologic Technology" dated August 31, 2006" which is incorporated by reference and made a part of this rule;

(B) Reflects the current Radiographic Procedure Module(s) of the "Content Specifications for the Examination for the Limited Scope of Practice in Radiography" published by the American Registry of Radiologic Technologists

(C) Taught by a licensed registered technologist specific to each category for which a limited permit is sought and have received the instructor's certification that the applicant has demonstrated all the positions/projections described in the Behavioral Objectives for each category. Effective January 1, 2007, the minimum hours in each category is as follows:

- (i) Skull/Sinus, 18 hours;
- (ii) Spine, 30 hours;
- (iii) Chest, 12 hours;
- (iv) Extremities, 60 hours;
- (v) Podiatric 10 hours.

(c) Have successfully completed a practical experience program approved by the Board specific to each category for which the applicant seeks a limited permit. The practical experience component shall consist of experience with live patients during which radiographic exposures are made and the processed images made by the students are evaluated and critiqued by an ARRT-registered, Oregon-licensed radiologic technologist Practical Experience Evaluator. If the Practical Experience Evaluator is not

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present to observe the student perform the radiographic examination, the following protocol must be used:

(A) Peer positioning must be used to demonstrate the positioning used to achieve the radiographs being evaluated;

(B) The student must provide the radiographic exposure factors used to achieve the radiographs being evaluated.

(d) The student may be evaluated using the Practical Experience Evaluation Form developed by the Board. If the Practical Experience Evaluator chooses to use a method for evaluation other than the Practical Experience Evaluation Form, that method must receive prior approval from the Board. The Practical Experience Evaluator must provide the student with a certificate of completion in the categories in which the student has successfully completed practical experience;

(e) Student status shall begin when an individual has successfully passed a Board-approved Core Module course and has successfully completed the didactic portion of a Radiographic Procedure Module relative to the anatomical area the student wishes to radiograph. If a student fails the limited scope examination, student status shall continue for one year from the date of completion of the didactic portion of the corresponding Radiographic Procedure Module. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in Board-approved Core Module and Radiographic Procedure Modules classes.

(2) Applicants for Limited Permits in X-ray Bone Densitometry: Qualifications:

(a) An applicant for a limited permit in x-ray bone densitometry shall be at least 18 years of age, pay an application fee set by the Board, and have successfully passed a Board approved 24 hour course of instruction which includes not less than 20 hours of radiation protection, equipment operation and quality control specific to x-ray bone densitometry, and meets the didactic and practical experience requirements stated in the Board's publication "Behavioral Objectives and Teaching Guide Bone Densitometry Equipment Operators dated August 31, 2006 which is incorporated by reference and made a part of this rule.

(b) Student status shall begin when the individual has successfully passed a Board-approved course in x-ray bone densitometry. If a student fails "Bone Densitometry Equipment Operators Examination" given by the American Registry of Radiologic Technologists, his student status shall continue for one year from the date of course completion. Student status expires at the end of the one-year period specified above; or seven days after the date on which an applicant becomes eligible for a limited permit in x-ray bone densitometry. Student status may be reinstated by the Board only upon verification of the student's re-enrollment in a Board-approved course in x-ray bone densitometry;

(c) Applications for a "grandfathered" limited permit in x-ray bone densitometry will be accepted through June 30, 1992, and must be accompanied by certification of successful completion of a minimum 24 hour training course in x-ray bone densitometry by a manufacturer's application specialist and certification that the applicant has one year of experience operating an x-ray bone densitometer with a minimum of 200 patient hours.

(3) Limited Scope Examination Fees:

(a) Students can sit for the examination throughout the year. The examination fee is \$20 for each examination category for which the student is tested, combined with an administration fee set by the American Registry of Radiologic Technologists (ARRT). These fees, together with the necessary certifications and verifications that the applicant has completed Board-approved Core Module course, Radiographic Procedure Module courses and a practical experience program must be submitted to the Board office. On submission and acceptance of the application materials, OBRT shall register the applicant with the ARRT, after which the applicant has 90 days in which to sit for the exam.

(b) The examination shall consist of two sections:

(A) Core Section (Radiation Use and Safety, Equipment Operation, Quality Control, Image Production, Image Evaluation, and Patient Care), which all applicants are required to pass; and

(B) Specific Radiographic Procedures (positioning and techniques) in the category or categories for which a limited permit is desired to be obtained. At least one category must be passed to obtain a permanent Limited Permit (ORS 688.515(h)). The Limited Permit may be issued only in those categories that are passed.

(c) A score of 75 percent constitutes a minimum passing score for each section of the limited scope examination;

(d) Limited scope examinations will be administered at computer-based testing sites identified by ARRT. The student is subject to rules regarding test administration at the testing site;

(e) The application fee for the limited permit examination is non-refundable.

(4) Time Frame for Completing Requirements for a Limited Permit: An applicant has a maximum of one year from the time of completion of a limited permit didactic class term to make application for a limited permit or add categories to an existing limited permit.

(5) Limited Permit students who wish to sit for the ARRT Limited Scope of Practice in Radiography Examination must have successfully completed a course of instruction both approved by the board and licensed by the Oregon Department of Education, Private Career School Section or otherwise approved or accredited by the Oregon Department of Higher Education.

(6) After January 1, 2007, the limited permit examination administered by the OBRT for abdomen will no longer be available. Applications for a "grandfathered" limited permit in abdomen will be accepted provided the applicant has met the requirements and applied for permanent licensure within the one year (student status) time frame for that category.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 388.555(1)

Stats. Implemented: ORS 688.515(4) & 688.515(8)

Hist.: RT 2-1978, f. & ef. 7-7-78; RT 2-1982, f. & ef. 3-11-82; RT 3-1982, f. & ef. 9-30-82; RT 2-1985, f. & ef. 7-1-85; RT 2-1986, f. 4-29-86, ef. 7-1-86; RT 1-1987, f. & ef. 1-27-87; RT 3-1987, f. & ef. 4-16-87; RT 5-1987, f. & ef. 10-19-87; RT 1-1988, f. & cert. ef. 4-13-88; RT 2-1988, f. & cert. ef. 11-9-88; RT 3-1988, f. & cert. ef. 11-9-88; RT 1-1989, f. & cert. ef. 1-24-89; RT 3-1990, f. & cert. ef. 11-7-90; RT 4-1990, f. & cert. ef. 11-7-90; RT 1-1991, f. & cert. ef. 1-30-91; RT 1-1992, f. & cert. ef. 1-15-92; BRT 4-1998, f. & cert. ef. 7-15-98; BRT 2-2002, f. & cert. ef. 11-18-02; BRT 1-2006, f. & cert. ef. 2-6-06; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

337-010-0031

Requirements for Limited Permits Program Sponsors

(1) Instructors of Core Module or Radiographic Procedure Module classes must provide the Board with the names of all students who have successfully completed the didactic portions of the limited permit program. The list must indicate the specific didactic portion(s) of the limited permit program the student has successfully completed and the completion date.

(2) Retention of Student Records: instructors of Core Module or Radiographic Procedure Module classes and practical experience evaluators must retain student grades and attendance records for a period of two years.

(3) Limited permit program sponsors must annually submit to the Board for review an outline of the limited permit program. The outline along with the names of all instructors teaching in the program must be submitted to the Board office no later than July 1 each year. In addition to a written outline, and as a condition of Board approval, each limited permit program site shall be inspected biannually or as needed by a Board member or an authorized representative of the Board. The site visit shall include an inspection of the physical premises on which limited permit programs are conducted as well as interviews with students currently enrolled in the limited permit program.

(4) A resource library shall be maintained at the program site and the resource materials shall be made available to students.

(5) Prior to the first class meeting, Board-approved limited permit programs must provide students with clear statements describing the course and program policies. These must include but are not necessarily limited to information regarding the following:

(a) Student costs including tuition, books, lab fees, limited permit examination fees, limited permit application and renewal fees;

(b) Tuition refund policies;

(c) How the practical experience requirement is to be fulfilled including a clear explanation of the responsibilities that will be assumed by the program and the responsibilities that will be assumed by the student;

(d) Employment guarantees, if any;

(e) Course outlines and minimum hourly requirements for each section of the course;

(f) The limited permit examination process including applications, deadlines for filing for the examination, and examination fees;

(g) Limited permits including applications and fees.

(6) Failure by the limited permit program sponsor to submit the outline required under this section or to cooperate in the site visit procedure shall constitute grounds for the Board's refusal to approve the program.

(7) If the Board's inspection of a limited permit program site reveals that corrective action needs to be taken, the Board or its representative will

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so notify the program director. The program director shall respond in writing to the Board within 20 days of receiving the information. The response shall consist of a description of the corrective action that will be taken.

(8) Any Limited Permit course of instruction, approved by the Board in order to satisfy the Board's requirement for didactic and clinical experience portions of the Limited Permit course of instruction, shall be made generally available to the public for purposes of enrollment in and completion of the course, unless the Board, for good cause, decides otherwise.

Stat. Auth.: ORS 688.555(1)
Stats. Implemented: ORS 688.515(3)(e)
Hist.: RT 1-1989, f. & cert. ef. 1-24-89; RT 3-1990, f. & cert. ef. 11-7-90; BRT 6-1998, f. & cert. ef. 10-16-98; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

337-010-0055

Enforcement and Inspections

In addition to those requirements set out in ORS 688.595, licenses and permits shall be on file in the department in which the licensee or permit holder works and shall be made available for inspection by the Radiation Protection Services (RPS), Department of Human Services, State of Oregon.

Stat. Auth.: ORS 688
Stats. Implemented:
Hist.: RT 2-1978, f. & ef. 7-7-78; BRT 2-2006, f. 12-15-06, cert. ef. 1-1-07

Bureau of Labor and Industries Chapter 839

Rule Caption: Amendment to July 1, 2006 State PWR/Davis-Bacon Wage Rates Publication.

Adm. Order No.: BLI 40-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-20-06

Notice Publication Date:

Rules Amended: 839-025-0700

Subject: This rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2006.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2006, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2006, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 30, 2006);

(b) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 14, 2006);

(c) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective August 4, 2006);

(d) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 1, 2006);

(e) Amendment to Oregon Determination 2006-02 (effective October 1, 2006);

(f) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 1, 2006);

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

(h) Correction to October 1, 2006 Amendment to Oregon Determination 2006-02 (effective October 4, 2006);

(i) Amendments/Corrections to October 1, 2006 Amendment to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective October 4, 2006);

(j) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 13, 2006);

(k) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective November 10, 2006).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act* dated July 1, 2006, 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

Rule Caption: Correction to Code of Federal Regulations citations.

Adm. Order No.: BLI 41-2006(Temp)

Filed with Sec. of State: 11-27-2006

Certified to be Effective: 11-27-06 thru 5-23-07

Notice Publication Date:

Rules Amended: 839-020-0004

Subject: This amendment changes the rules citations to the Code of Federal Regulations, which were inaccurate, to the correct cite.

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

839-020-0004

Definitions

As used in ORS 653.010 to 653.261 and these rules, unless the context requires otherwise:

(1) "Administrator" means the Administrator of the Wage and Hour Division.

(2) "Adult" means an individual of 18 years of age or more.

(3) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(4) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry and any practices performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. "Agricultural employment" is employment in "Agriculture" as herein defined.

(5) "Bureau" means Bureau of Labor and Industries.

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(6) "Casual basis" as used in ORS 653.020(2) and these rules means employment which is irregular and intermittent and which is not performed by an individual whose vocation is providing domestic services.

(7) "Child care service person" means an individual who performs child care services in the home of the individual or the child and who during any part of a 24 hour period provides custodial care and protection to infants or children.

(8) "Commissioner" means the Commissioner of the Bureau of Labor and Industries.

(9) "Commission" means the Wage and Hour Commission.

(10) "Commissions" or "pay on a commission basis" means payment based on a percentage of total sales, or of sales in excess of a specified amount, or on a fixed allowance per unit agreed upon as a measure of accomplishment or on some other formula and may be the sole source of compensation or payment in addition to other compensation.

(11) "Companionship services", as used in ORS 653.020(14) and in these rules, means those services which provide fellowship, care and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of the elderly or infirm person such as meal preparation, bed making, washing of clothes and other similar services. They may also include the performance of general household work; provided, however, that such work is incidental, i.e., does not exceed 20 percent of the total weekly hours worked. The term "companionship services" does not include services relating to the care and protection of the elderly or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a family home.

(12) "Division" means the Wage and Hour Division of the Bureau of Labor and Industries.

(13) "Domestic service" means services of a household nature performed by an employee in or about a family home (permanent or temporary) of the person by whom the employee is employed. The term includes, but is not limited to, employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, gardeners, and companions to the elderly and infirm.

(14) "Domicile" means the permanent residence of a person or the place to which that person intends to return even though that person may actually reside elsewhere.

(15) "Employed on a seasonal basis at", as used in ORS 653.020(10) and in these rules, means employment that occurs during the time the organized camp provides services to campers at the camp site where campers are located. The term includes employment at the camp site in duties preparatory to the opening or closing of the camp site. The term includes employment during the camping season only and does not include full time, year around employment.

(16) "Employer" has the same meaning as that in ORS 653.010(4).

(17) "Fair market value" means an amount not to exceed the retail price customarily paid by the general public for the same or similar meals, lodging or other facilities or services provided to the employee by the employer. In determining the fair market value of meals, lodging and other facilities and services, the bureau will be guided by these rules and by Title 29, CFR Part 531 — Wage Payments under the Fair Labor Standards Act of 1938, where applicable.

(18) "Family home", as used in ORS 653.020(2) and this section, means a residence, the purpose of which is to provide an abode for the owner or renter of the residence and family members of the owner or renter. For example, a boarding house or an adult foster care home are not family homes for purposes of ORS 653.020(2) and these rules. However, when casual domestic service work is performed in structures where the owner or renter resides and operates a business, such work may qualify as exempt under ORS 653.020(2) depending upon all the facts of the particular arrangement.

(19) "Homeworker" means any employee suffered or permitted to produce goods or services for an employer in or about a home, apartment or room in a residence in which that employee or other employees of an employer resides, regardless of the materials used by the homeworker in such production.

(20) "Hours worked" means all hours for which an employee is employed by and required to give to the employer and includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place and all time the employee is suffered or permitted to work. "Hours worked" includes "work time" as defined in ORS 653.010(12).

(21) "Immediate family" means grandfather, grandmother, father, mother, son, daughter, sister, brother, uncle or aunt.

(22) "Minimum wage" means the rate of pay prescribed in ORS 653.025 and 653.030.

(23) "Minor" means an individual of 17 years of age or less.

(24) "Organized camp" has the same meaning as that in ORS 653.010(7).

(25) "Primary duty" means, as a general rule, the major part, or over 50 percent, of an employee's time. However, a determination of whether an employee has management as the employee's primary duty must be based on all the facts of a particular case. Time alone is not the sole test and in situations where the employee does not spend over 50 percent of the employee's time in managerial duties, the employee might have management as a primary duty if other pertinent factors support such a conclusion. Factors to be considered include, but are not limited to, the relative importance of the managerial duties as compared with other duties, the frequency with which the employee exercises discretionary powers, the relative freedom from supervision and the relationship between the salary paid the employee and wages paid other employees for the kind of non-exempt work performed by the supervisor.

(26) "Primary school" means a learning institution containing any combination of grades Kindergarten - 8 or age level equivalent.

(27) "Reside" means a personal presence at some place of abode with no present intention of definite and early removal and with the intent to remain for an undetermined period, but not necessarily combined with the intent to stay permanently.

(28) "Resident manager" means an employee of an adult foster home who is domiciled at the home and who is directly responsible for the care of residents in the home on a day to day basis.

(29) "Salary" means a predetermined amount constituting all or part of the employee's compensation paid for each pay period of one week or longer (but not to exceed one month) and in no instance will be any amount less than required to be paid pursuant to ORS 653.025.

(30) "Salary basis" means a salary as defined in section (29) of this rule, which is not subject to deduction because of lack of work for part of a work week, however, deductions for absences of one day or more may be made if the employee is absent for other reasons. Deductions may not be made for absences of less than one day, except as permitted for employers covered by the federal Family and Medical Leave Act of 1993, Public Law 103-3, for part-day absences due to leave pursuant to that law. Employees who are not paid for workweeks in which they performed no work are considered to be on a salary basis provided they are paid on a salary basis in workweeks when work is performed.

(a) Payment of additional compensation is not inconsistent with the salary basis of payment.

(b) Compensation paid in the form of fees is not inconsistent with the salary basis of payment, provided the fees paid in each pay period are not less than the amount required to be paid pursuant to ORS 653.025 and meet the requirements for fee payments under the federal Fair Labor Standards Act, as stated in Title 29, Code of Federal Regulations, Parts 541.303, 541.304, and 541.605 and related rules.

(31) "Secondary school" means a learning institution containing any combination of grades 9 — 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(32) "Violation" means a transgression of any statute or rule, or any part thereof and includes both acts and omissions.

(33) "Willfully" means knowingly. An action is done knowingly when it is undertaken with actual knowledge of a thing to be done or omitted or action undertaken by a person who should have known the thing to be done or omitted. A person "should have known the thing to be done or omitted" if the person has knowledge of facts or circumstances which, with reasonably diligent inquiry, would place the person on notice of the thing to be done or omitted to be done. A person acts willfully if the person has the means to inform himself or herself but elects not to do so. For purposes of these rules, the employer is presumed to know the requirements of ORS 653.010 to 653.261 and these rules.

Stat. Auth.: ORS 653.040

Stats. Implemented: ORS 653.010 - 653.261

Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 3-1992, f. & cert. ef. 3-2-92; BL 5-1993(Temp), f. 5-7-93, cert. ef. 5-14-93; BL 12-1993, f. 10-29-93, cert. ef. 11-1-93; BL 9-1996, f. & cert. ef. 10-8-96; BL 9-1997, f. & cert. ef. 11-13-97; BL 1-2002, f. & cert. ef. 1-9-02; TIC 3-2006, f. & cert. ef. 11-24-06; BL 1-2006(Temp), f. & cert. ef. 11-27-06 thru 5-23-07

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Rule Caption: Amending hearings rules to clarify that new affirmative defense not allowed in amended answer.

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Adm. Order No.: BLI 42-2006
Filed with Sec. of State: 12-6-2006
Certified to be Effective: 12-6-06
Notice Publication Date: 11-1-06
Rules Amended: 839-050-0140

Subject: The previous rule language could be understood to permit a respondent to raise an affirmative defense not raised in an original answer, in an amended answer. This is inconsistent with OAR 839-050-0132(2), which provides that the failure of the party to raise an affirmative defense in the answer is a waiver of such defense. This rule amendment will clarify that a new affirmative defense is not allowed in an amended answer, thus making the contested case administrative rules internally consistent.

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

839-050-0140

Amendments

(1) Prior to the hearing a participant may amend its pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a participant may amend its pleading only by permission of the administrative law judge or by written consent of the other participants. Permissible amendments to charging documents include, but are not limited to: additions to or deletions of charges; changes to theories of liability; and increases or decreases to the damages, penalties, or other remedies sought. Permissible amendments to answers include, but are not limited to: additions to defenses other than affirmative defenses or deletions of any defenses. Permission to amend pleadings will be given when justice so requires.

(2)(a) Once the hearing commences, issues other than affirmative defenses not raised in the pleadings may be raised and evidence presented on such issues, provided there is express or implied consent of the participants. Consent will be implied when there is no objection to the introduction of such issues and evidence or when the participants address the issues. Any participant raising new issues must move the administrative law judge, before the close of the evidentiary portion of the hearing, to amend its pleading to conform to the evidence and to reflect issues presented. The administrative law judge may address and rule upon such issues in the Proposed Order.

(b) If evidence is objected to at hearing on the grounds that it is not within the issues raised by the pleadings, the administrative law judge may allow the pleadings to be amended to conform to the evidence presented. The administrative law judge will allow the amendment when the participant seeking to amend its pleading shows good cause for not having included the new matter in its pleading prior to hearing and the objecting participant fails to satisfy the administrative law judge that it would be substantially prejudiced by the admission of such evidence. The administrative law judge may grant a continuance to enable the objecting participant to meet such evidence.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0075; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 42-2006, f. & cert. ef. 12-6-06

Rule Caption: Amendment to July 1, 2006 State PWR/Davis-Bacon Wage Rates Publication.

Adm. Order No.: BLI 43-2006
Filed with Sec. of State: 12-7-2006
Certified to be Effective: 12-8-06
Notice Publication Date:

Rules Amended: 839-025-0700

Subject: This rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning July 1, 2006.

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

839-025-0700

Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in publications of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public*

Works Contracts in Oregon subject to BOTH the state PWR and federal Davis-Bacon Act dated July 1, 2006, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning July 1, 2006, and the effective dates of the applicable special wage determination and rates amendments:

(a) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective June 30, 2006).

(b) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective July 14, 2006).

(c) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective August 4, 2006).

(d) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective September 1, 2006).

(e) Amendment to Oregon Determination 2006-02 (effective October 1, 2006).

(f) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 1, 2006).

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

(h) Correction to October 1, 2006 Amendment to Oregon Determination 2006-02 (effective October 4, 2006).

(i) Amendments/Corrections to October 1, 2006 Amendment to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (effective October 4, 2006).

(j) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective October 13, 2006).

(k) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective November 10, 2006).

(l) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective November 24, 2006).

(m) Amendments/Corrections to July 1, 2006 PWR Rates for Public Works Contracts in Oregon subject to BOTH State PWR Law and federal Davis-Bacon Act (reflecting changes to Davis-Bacon rates effective December 1, 2006).

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* and *Prevailing Wage Rates for Public Works Contracts in Oregon* subject to BOTH the state PWR and federal Davis-Bacon Act dated July 1, 2006, 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,

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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

Commission for the Blind
Chapter 585

Rule Caption: Confidentiality and Inadmissibility of Mediation Communications.

Adm. Order No.: CFTB 1-2006(Temp)

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06 thru 5-23-07

Notice Publication Date:

Rules Amended: 585-001-0015

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

Rules Coordinator: Linda Mock—(971) 673-1588

585-001-0015

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the “mediator” in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency’s employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or

introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties’ agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an “agreement to mediate.” [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility:

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding;

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law;

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person;

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report;

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law;

(f) A party to the mediation may disclose confidential mediation communications to a person if the party’s communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree;

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure;

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement;

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements;

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are

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not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

- (A) A request for mediation; or
 - (B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or
 - (C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or
 - (D) A strike notice submitted to the Employment Relations Board.
- (I) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute;
- (m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

- (A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or
- (B) Attorney work product prepared in anticipation of litigation or for trial; or
- (C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or
- (D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or
- (E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the agency director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law;

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential;

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232
Hist.: CFTB 1-2006(Temp), f. & cert. ef. 11-24-06 thru 5-23-07

Construction Contractors Board Chapter 812

Rule Caption: Changes "license fee" to "application fee", requires a new license number upon a 24 month or longer lapse in license, and housekeeping.

Adm. Order No.: CCB 12-2006

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

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 812-002-0537, 812-003-0140, 812-003-0280, 812-003-0300, 812-005-0210

Subject: 812-002-0537 is amended to include OAR 812-005-0210 in the definition of owner.

812-003-0140 is amended to implement HB 200 (Chapter 432 OR Laws 2005) which changed the fee from a license fee to an application fee.

812-003-0280 and 812-003-0300 are amended to require a new license number upon a 24-month or more lapse of license; and 812-003-0280 is also amended to change "claim" to "complaint" and clarify language.

812-005-812-005- is amended clarify the amounts of increased bond required. Requiring a larger bond will provide for additional funds available to consumers who are damaged by construction contractors and hopefully reduce the number of unpaid final orders of the Board.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-002-0537

Owner

"Owner", as used in ORS 701.078, 701.102 and OAR 812-005-0210, means:

- (1) A person described as an "owner" in ORS 701.077;
- (2) A general partner in a limited partnership;
- (3) A majority stockholder in a corporation;
- (4) A manager in a manager-managed limited liability company;
- (5) A member in a member-managed limited liability company; or
- (6) A person who has a financial interest in a business and manages or shares in the management of the business.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.077 & 701.078

Hist.: CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-2006; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0140

Fees

(1) The fee for all categories for new license, renewal, or reissue applications is:

- (a) \$260 for two years; or
 - (b) \$520 for four years.
- (2) Fees will not be prorated.

(3) Except as provided in sections (4) and (5) of this rule, licensing, renewal, or reissue application fees are non-refundable and nontransferable.

(4) When an applicant withdraws their application for a new license or renewal prior to issuance or fails to complete the licensing or renewal process, the agency may refund the application fee, but will retain a processing fee of \$40.

(5) If a licensee paid an application fee for a four-year license at their own discretion as authorized by ORS 701.115(1) and voluntarily terminates their license within the first two-year license period, the agency may refund the unused two-year application fee only if the following conditions are met:

(a) The licensee will submit a written request for a voluntary termination of the license and a refund of the unused two-year fee;

(b) The licensee will return the original license card(s) to the agency; and

(c) The agency will retain a \$40 processing fee.

Stat. Auth.: ORS 670.310, 701.130 & 701.235

Stats. Implemented: ORS 701.115, 701.125 & 701.130

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 4-2005, f. 8-24-05, cert. ef. 10-1-05; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0280

Renewal and Reissue of License

(1) Notwithstanding OAR 812-003-0300(3), a license may be renewed or reissued upon:

(a) The applicant's completion of the renewal form or application form prescribed by the agency;

(b) Payment of the fee or fees,

(c) Receipt of the required certification of insurance coverage, and

(d) A non-cancelled bond on file. If it appears to the agency that the required surety bond has been cancelled, the applicant must submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond.

(2) A licensee may qualify for Limited Contractor license and reduce the bond to \$5,000 upon certification that:

(a) The licensee will not enter into contracts that exceed \$5,000;

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(b) The licensee's gross business sales of work subject to ORS Chapter 701 was less than \$40,000 in the previous twelve months and is expected to be less than \$40,000 during the next twelve months; and

(c) The licensee agrees that if the licensee's gross construction business volume exceeds \$40,000 during the coming year the licensee will immediately increase the bond amount to the amount required under OAR 812-003-0170, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category.

(3) A bond may be reduced under section (2) of this rule by submitting a decrease rider to an existing bond or submitting a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after.

(4) The agency may refuse to authorize a reduced bond amount under section (2) of this rule until any pending complaint against the licensee is resolved.

(5) If a licensee provides a decrease rider to an existing bond under section (3) of this rule before the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

Stat. Auth.: ORS 670.310, 701.235

Stats. Implemented: ORS 701.085, 701.105, 701.115, 701.125

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0300

Lapse in License

(1) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is backdated and renewed, reissued, or reinstated. During a period of lapse, the entity shall not perform the work of a contractor.

(2) A period of lapse will end and the license previously issued will again become valid on the date upon which the agency receives the missing items that caused the lapse. This includes, but is not limited to, a new bond or a notice of reinstatement for the existing bond or on the effective date of a backdated bond or backdated reinstatement for the existing bond.

(3) A license that has lapsed for 24 months or more must be issued a new identifying license number.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.055, 701.115 & 701.135

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07

812-005-0210

Conditions to Require an Increased Bond

(1) Under ORS 701.085(8), the agency may require a bond of up to five times the normally required amount, if it determines that a current or previous license of an owner or officer, as those terms are defined in division 2 of these rules, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance.

(b) Five or more breach of contract complaints filed under ORS 701.139 to 701.180 by five or more separate complainants within a one-year period from the date of filing of the most recent Dispute Resolution Services complaint.

(c) An unpaid construction debt as defined in ORS 701.005(2) that exceeds the amount of the bond.

(2) The amount of the increased bond required under subsection (1)(a) of this rule must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond in the amount of five times the normal amount required under ORS 701.085.

(3) The amount of increased bond required under subsection (1)(b) of this rule will be based on the agency's estimate of damages and must conform to the following schedule:

(a) If the sum of cumulative possible damages exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the amount required under ORS 701.085.

(b) If the sum of cumulative possible damages exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the

agency may require a bond three times the bond amount required under ORS 701.085.

(c) If the sum of cumulative possible damages exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond in the amount of five times the normal amount required under ORS 701.085.

(4) The amount of the increased bond required under subsection (1)(c) of this rule must conform to the following schedule:

(a) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the bond amount required under ORS 701.085.

(b) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085.

(c) If the sum of the unpaid construction debt exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond five times the bond amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.005, 701.077 & 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(a)-(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 12-2006, f. 12-12-06, cert. ef. 1-1-07

Rule Caption: Rewrite of Division 7.

Adm. Order No.: CCB 13-2006

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

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Rules Amended: 812-007-0000, 812-007-0010, 812-007-0020, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0060, 812-007-0070, 812-007-0080, 812-007-0090

Subject: 812-007-000, 812-007-0010, 812-007-0020, 812-007-0030, 812-007-0040, 812-007-0050, 812-007-0060, 812-007-0070, 812-007-0080, and 812-007-0090 are amended to rewrite Division 7, change the name from Health Division to Oregon Department of Human Services, to align language with Oregon Department of Human Services administrative rules on lead-based paint certification, and to delete language that applies to Department of Human Services procedures and do not apply to CCB's procedures/requirements.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-007-0000

Authority, Purpose, Scope

(1) Authority. These rules are promulgated in accordance with and under the authority of ORS 701.515.

(2) Purpose.

(a) The purpose of these rules is to address Oregon's need for a qualified and properly trained workforce to perform inspection, risk assessment and removal of hazards associated with lead-based paint, to safeguard the environment and protect human health, and the health of building occupants, especially for high risk groups (children under six years of age), from lead-based paint hazards.

(b) These rules prescribe the requirements for licensing of individuals and firms engaged in lead-based paint activities in target housing and child occupied facilities.

(c) These rules will establish work practice standards for the performance of lead-based paint inspection, risk assessment, and paint removal and stabilization activities for individuals and firms and will require that all lead-based paint activities be performed only by licensed individuals and firms.

(3) Scope.

(a) These rules apply to all individuals and firms who are engaged in lead-based paint activities as defined in ORS 701.505, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities be performed only by licensed individuals and firms.

(c) These rules prescribe the requirements for, and the manner of, licensing applicants for lead-based paint inspector, risk assessor, supervi-

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sor, project designer, and worker, and licensing of firms employing such individuals.

(d) These rules prescribe work practice standards for the removal or migration of lead-based paint hazards and for the performance of lead-based paint inspection and risk assessment, and those actions or circumstances that constitute failure to achieve or maintain a license, or that otherwise are contrary to the public interest, for which Construction Contractors Board may deny, suspend, or revoke a license;

(e) These rules establish fees to extent necessary to defray costs of those activities prescribed herein.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0005, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0010

Adoption by Reference

All standards, listings, and publications referred to in these rules are by those references made a part of these rules as though fully set forth.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0020

Definitions

As used in division 7 of these rules, terms defined in ORS 701.505 have the same meaning given those terms in ORS 701.505.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0015, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0030

Licenses Required

(1) No person, firm or public agency shall offer to perform or perform lead-based paint inspection, risk assessment, or abatement activities in target housing or child-occupied facilities without first receiving certification from the Oregon Department of Human Services and a license from the Construction Contractors Board except if such a person, firm or public agency is exempt from Construction Contractors Board licensing requirements.

(2) All licenses to perform lead-based paint activities issued under ORS 701.515 shall terminate within one year from date of issue and are renewable upon meeting all the requirements as determined by the Construction Contractors Board.

(3) Licensed persons or firms conducting lead-based activities shall comply with the work practice standards for performing lead-based paint activities as prescribed in these rules and OAR 333-069-0070. Painters shall follow the work practices described on the Permit application.

(4) It shall be considered a violation of these rules for any person to conduct any of the lead-based paint activities described unless the individual has received certification from the Oregon Department of Human Services and licensure from the Construction Contractors Board, except if such a person, is exempt from Construction Contractors Board licensing requirements.

(5) The Construction Contractors Board shall issue a numbered license to the individual. The Construction Contractors Board shall issue a numbered license to each firm.

(6) A firm or public agency that contracts with a certified firm or public agency to provide lead-based paint activities on its behalf need not be certified or licensed.

(7) Employees or agents of regulatory agencies are exempt from these rules if:

(a) Those employees or agents are acting in a regulatory capacity, and

(b) If they are carrying out activities within the scope of the agency's regulatory authority; and

(c) If they have been trained in a manner consistent with the public and environmental health objectives of these rules.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0020, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0040

Application Requirements

(1) No person, firm or public agency removing lead-based paint from or stabilizing lead-based paint in or on target housing and/or child-occupied facilities, shall conduct such activities without first applying to the Oregon Department of Human Services for and receiving a permit to conduct such activities and without first obtaining a license from the Construction Contractors Board to conduct such activities.

(2) An individual must do the following to qualify for a license.

(a) Submit an application on a form presented by the Construction Contractors Board together with the license fee; and

(b) Submit a copy of the certificate issued by the Oregon Department of Human Services showing that the individual is qualified to perform the activities.

(3) A firm must do the following to qualify for a license.

(a) Become licensed with the Construction Contractors Board as a Specialty or General Contractor, All Structures; and

(b) Have as an owner or employee one or more individuals who have obtained a license from the Construction Contractors Board to perform the activities; and;

(c) Submit an application on a form prescribed by the Construction Contractors Board together with the fee payment; and

(d) Submit a copy of the certificate issued by the Oregon Department of Human Services showing that the firm is qualified to conduct the activities.

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

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0025, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0050

Renewal

Applicants for license renewal shall submit required documentation and complete the Construction Contractors Board renewal form along with the appropriate fee.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0030, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0060

License Issuance

(1) The Construction Contractors Board shall inform the applicant, in writing, when his/her application is granted, denied or incomplete and of the additional information or documentation that is requirement to complete the application.

(a) When granted, the license shall be mailed to the applicant and the effective date of the license will be the date applicant meets all Construction Contractors Board requirements unless otherwise agreed in writing between the parties.

(b) A unique certification number will be assigned to each license holder.

(c) An application may be withdrawn at any time by written request to the Construction Contractors Board.

(2) If denied, the Construction Contractors Board shall state, in writing, the reasons for denial.

(3) A license shall be non-transferable and shall be effective for one year from date of issue.

Stat. Auth.: ORS 670.310, 701.235, 701.500 - 701.515

Stats. Implemented: ORS 701.500 - 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0035, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0070

Work Practice Standards

When performing paint removal or stabilization, or any lead-based paint activity described by a certified and licensed individual as an inspection, lead hazard screen, risk assessment or abatement, a certified and licensed person must perform that activity in compliance with these rules and OAR 333-069-0070.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

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812-007-0080

Denial, Suspension or Revocation of Certification

(1) The Construction Contractors Board may deny issuance of, suspend, or revoke a license for an individual or a firm for circumstances including but not limited to the following:

(a) Performing work requiring license at a job site without having a current valid original license identification card available at the job site for inspection;

(b) Permitting the duplication or use of the individual's own certificate or license by another;

(c) Performing work for which appropriate certification and license has not been received from the Oregon Department of Human Services and the Construction Contractors Board;

(d) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under Oregon Department of Human Services or Construction Contractors Board rules;

(e) Failing to comply with local, state, or federal statutes or regulations including execution of a consent agreement in settlement of an enforcement action;

(f) Failing to comply with work practices and standard set forth in these rules and other generally accepted work practices;

(g) Obtaining certification or license through fraudulent representation of documentation satisfying eligibility requirements;

(h) Failing to renew certification and license or to rectify in a timely manner.

(i) Gaining admission to and completing education through fraudulent representation of initial or previous education documents;

(j) Obtaining certification through fraudulent representation of certification requirements such as education, training, professional registration, or experience;

(k) Performing work requiring certification at a job site with individuals who are not certified;

(l) Failing to maintain required records; and

(m) Failing to comply with these rules including execution of a consent agreement in settlement of an enforcement action.

(2) The Construction Contractors Board may deny issuance of, suspend, or revoke license for an individual for circumstances including but not limited to the following:

(a) Obtaining training documentation through fraudulent means, and/or;

(b) Gaining admission to and completed education through fraudulent representation of initial or previous education documentation.

(3) The Construction Contractors Board may deny issuance of, suspend, or revoke license of a firm for circumstances including but not limited to the following:

(a) Performing work requiring certification or license at a job site with individuals who are not certified or licensed.

(b) Failing to maintain required records.

(4) Hearings on the denial, suspension or revocation of a license shall be conducted as a contested case in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.510 & 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0040, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

812-007-0090

Fees

The following fees are established:

(1) Contractor firms shall pay a non-refundable fee of \$50 for an endorsement on their Construction Contractors Board license in addition to the regular contractor license application fee that will allow them to perform lead-based paint activity for one year.

(2) Inspectors, risk assessors, supervisors and project designers shall pay a non-refundable license fee of \$50 for a one-year license.

(3) Abatement workers shall pay a non-refundable license fee of \$25 for a one-year license.

Stat. Auth.: ORS 670.310, 701.235 & 701.515

Stats. Implemented: ORS 701.515

Hist.: CCB 6-1996(Temp), f. & cert. ef. 11-26-96; Administrative Renumber from 812-007-0045, 5-19-97; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2006, f. 12-12-06, cert. ef. 1-1-07

Rule Caption: The home Inspector rule amendments are regarding education provider requirements and approval.

Adm. Order No.: CCB 14-2006

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

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 812-008-0040, 812-008-0072, 812-008-0074

Subject: 812-008-0040 is amended — revises the eligibility requirements regarding credit hours, points awarded, allows teaching for monetary compensation as an acceptable experience requirement, and rearranges the numbered order of listed items. HIAC members have recommended the changes.

812-008-0072 and 812-008-0074 are amended to clarify that CCB should only approve education providers for home inspector continuing education units; eliminates the course approval requirements; and strengthens the criteria used for education provider approval. The amendments also require education providers to provide completion certificates to course attendees within 30 days from date of course completion.

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-008-0040

Application Requirements and Eligibility Requirements

(1) An individual must submit the following to qualify for certification:

(a) An application on a form provided by the agency;

(b) The fee established in OAR 812-008-0110;

(c) If applicable, CCB number and name of employing licensee;

(d) Proof of minimum of 20 education points as set forth in sections (3) and (4) of this rule; and

(e) Evidence of successful passage of agency's test.

(2) A business must do the following to qualify for a license:

(a) Become licensed with the agency as a General Contractor, Specialty Contractor, or Inspector;

(b) Have as an owner or employee one or more individuals who have obtained a certificate from the agency to undertake certified home inspections;

(c) Submit an application on a form prescribed by the agency; and

(d) Submit the fee as prescribed in OAR chapter 812.

(3) In order to qualify to take the test, an applicant must provide the agency with acceptable documentation that the applicant has accumulated a minimum of 20 education points from the following choices:

(a) Ten points for a completed, 3-credit hour minimum class with a passing grade in home inspection at an accredited college or university, (10 points maximum).

(b) One point for each completed 3-hour minimum class with a passing grade in construction, remodeling, engineering, architecture, building design, building technology, or real estate at an accredited college or university, (10 points maximum).

(c) One point for each completed "ride-along" inspection performed under the direct supervision of an Oregon certified home inspector, (10 points maximum).

(d) One point for each completed 3-hour minimum class with a passing grade in approved subject areas in OAR 812-008-0074(1) by approved education providers under 812-008-0074(2) that are not colleges or universities, (10 points maximum).

(4) The applicant may substitute the following experiences for all or part of the education requirements in OAR 812-008-0040(3):

(a) Four points for each completed 12 months legally working as a home inspector in Oregon or another state or country (16 points maximum).

(b) Two points for each completed 12 months working or teaching at an accredited college or university, trade school or private business for monetary compensation in construction, remodeling, engineering, architecture, building design, building technology, real estate, or building inspections (16 points maximum).

(c) Four points for each certification as a member of a professional home inspector association whose membership criteria have been certified by the agency in the last 12 months (8 points maximum).

(d) One-half point for each letter of recommendation from an Oregon-certified home inspector (4 points maximum).

(e) One point for each building codes certification issued by a government agency (5 points maximum).

Stat. Auth.: ORS 670.310, 701.235, 701.350 & 701.355

Stats. Implemented: ORS 701.350 & 701.355

ADMINISTRATIVE RULES

Hist.: CCB 1-1998, f. & cert. ef. 2-6-98; CCB 2-1999, f. & cert. ef. 5-4-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 12-2000(Temp), f. & cert. ef. 10-16-00 thru 4-13-01; CCB 14-2000, f. & cert. ef. 12-4-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 7-2001(Temp), f. & cert. ef. 10-31-01 thru 4-29-02; CCB 3-2002, f. & cert. ef. 3-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07

812-008-0072

Approved Continuing Education Units

The following continuing education units (CEUs) are approved:

(1) One CEU for each completed clock hour of instruction of approved subject matter in OAR 812-008-0074(1) given by the following:

- (a) Education providers approved under OAR 812-008-0074(2).
- (b) Accredited colleges or universities.
- (c) Federal, state or local government agencies.

(2) One CEU for accompanying a plumbing, electrical, or heating and air conditioning contractor who is licensed with the Building Codes Division, on a repair or maintenance job that lasts a minimum of four hours. No more than one CEU shall be granted in each of the three areas per two-year renewal period for a total of three CEUs.

(3) One CEU for each year completed for serving as an officer of an Oregon or national home inspector professional trade association.

(4) One CEU for each Home Inspector Advisory Committee meeting attended as a Construction Contractors Board Home Inspector Advisory Committee member.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 4-1999, f. & cert. ef. 6-29-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 2-2000, f. 2-25-00, cert. ef. 3-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07

812-008-0074

Approved Course Subjects and Education Providers

(1) The following subject areas are approved for continuing education units: Report writing, communication skills, business practices, legal issues, ethics, home inspector study guide items, building codes, and home inspector standards of practice.

(2) Education provider applicants shall complete an application form prescribed by the agency that shall include but is not limited to the following information:

(a) An outline that demonstrates the goals and objectives of the education program are appropriate for Oregon Home Inspectors;

(b) Certification that the courses intended for Oregon Home Inspectors are in the approved subject matter stated in OAR 812-008-0074(1).

(c) Certification that the instructors are qualified and have:

- (A) Experience in subject matter.
- (B) Licenses, certificates, and/or degrees in subject matter.
- (C) Background in training or adult education; and
- (D) Knowledge of home inspection industry.

(d) Certification that the criteria used by the education provider to approve and evaluate instructors and courses are stringent and ongoing.

(3) Education providers offering continuing education units as defined in 812-008-0072(1) shall provide completion certificates to course attendees within 30 days from the date of course completion. Course completion certificates shall include but are not limited to the following:

- (a) Education provider's name;
- (b) Attendee's name;
- (c) Date of course;
- (d) Subject areas covered in course;
- (e) Number of clock hours or continuing education units; and
- (f) Signature of education program designee.

(4) Education providers' programs approved by the agency shall be granted retroactive credit for certified home inspectors for two years.

(5) The agency may terminate a provider's program if they do not meet the agency's approved criteria.

Stat. Auth.: ORS 670.310, 701.235 & 701.350

Stats. Implemented: ORS 701.350 & 701.355

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 14-2006, f. 12-12-06, cert. ef. 1-1-07

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Rule Caption: Clarify mailing provisions, clarify breach of contract complaint procedures, make housekeeping revisions, and change terminology.

Adm. Order No.: CCB 15-2006

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

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 812-001-0135, 812-002-0143

Rules Amended: 812-001-0130, 812-001-0500, 812-002-0140, 812-002-0250, 812-002-0440, 812-002-0460, 812-002-0480, 812-002-0540, 812-002-0670, 812-003-0150, 812-003-0160, 812-003-0175, 812-003-0260, 812-003-0400, 812-003-0430, 812-004-0001, 812-004-0110, 812-004-0120, 812-004-0140, 812-004-0160, 812-004-0180, 812-004-0195, 812-004-0210, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0350, 812-004-0360, 812-004-0400, 812-004-0420, 812-004-0440, 812-004-0450, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0510, 812-004-0520, 812-004-0530, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-004-0600, 812-005-0200, 812-005-0800, 812-009-0010, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0100, 812-009-0120, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0400, 812-009-0430, 812-010-0020, 812-010-0040, 812-010-0085, 812-010-0090, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0140, 812-010-0200, 812-010-0220, 812-010-0260, 812-010-0290, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0420, 812-010-0425, 812-010-0430, 812-010-0460, 812-010-0470, 812-010-0480

Rules Repealed: 812-002-0130

Subject: • 812-001-0135 is adopted to establish the date of receipt of documents and clarifying that a document received after 12:00:00 midnight is considered received the next day.

• 812-002-0143 is adopted to define complainant.

• 812-002-0460 is amended to change the word "claim" to "complaint" and to clarify the rule is meant to restore the complainant to the position he/she was in before construction started, which includes demolition costs and costs to restore property.

• 812-004-0210 is amended to change the word "claim" to "complaint", to simplify language, and to clarify that an initial notice of arbitration conducted by CCB must be sent registered or certified mail, but notices related to other arbitration proceedings may be sent by regular mail.

• 812-004-0440 is amended to change the word "claim" to "complaint", to simplify language and to allow the CCB to continue processing a complaint while waiting for a party to begin mediation or arbitration under the contract or waive their right to mediation or arbitration under the contract.

• 812-004-0450 is amended to change the word "claim" to "complaint", to simplify language and to clarify that the CCB may hold more than one on-site meeting.

• 812-004-0520 is amended to change the word "claim" to "complaint", to simplify language, correct cite reference, and add a new subsection (2)(d) that allow the agency to suspend complaint processing if an owner of a residential structure who is a complainant submits to the agency a copy of a notice of defect involving the structure at issue.

• 812-010-0020 is amended to change the word "claim" to "complaint", to simplify language and delete language no longer needed.

• 812-010-0260 is amended to change the word "claim" to "complaint", to simplify language and eliminate requirement that a recording be made on tape to allow for other types of recordings.

• 812-010-0420 is amended to change the word "claim" to "complaint", to simplify language and correct a cite reference.

• OAR 812-001-0130, 812-001-0500, 812-002-0140, 812-002-0250, 812-002-0440, 812-002-0480, 812-002-0540, 812-002-0670, 812-003-0150, 812-003-0160, 812-003-0175, 812-003-0260, 812-003-0400, 812-003-0430, 812-004-0001, 812-004-0110, 812-004-0120, 812-004-0140, 812-004-0160, 812-004-0180, 812-004-0195, 812-004-0240, 812-004-0250, 812-004-0260, 812-004-0300, 812-004-0320, 812-004-0340, 812-004-0350, 812-004-0360, 812-004-0400, 812-004-0420, 812-004-0460, 812-004-0470, 812-004-0480, 812-004-0500, 812-004-0510, 812-004-0530, 812-004-0535, 812-004-0540, 812-004-0550, 812-004-0560, 812-004-0590, 812-004-

ADMINISTRATIVE RULES

0600, 812-005-0200, 812-005-0200, 812-005-0800, 812-009-0010, 812-009-0020, 812-009-0050, 812-009-0070, 812-009-0090, 812-009-0100, 812-009-0120, 812-009-0140, 812-009-0160, 812-009-0200, 812-009-0220, 812-009-0400, 812-009-0430, 812-010-0040, 812-010-0085, 812-010-0090, 812-010-0100, 812-010-0110, 812-010-0120, 812-010-0140, 812-010-0200, 812-010-0220, 812-010-0290, 812-010-0300, 812-010-0320, 812-010-0340, 812-010-0360, 812-010-0380, 812-010-0425, 812-010-0430, 812-010-0460, 812-010-0470, and 812-010-0480 are amended to change the word "claim" to "complaint" and to simplify language

Rules Coordinator: Catherine Dixon—(503) 378-4621, ext. 4077

812-001-0130

Disposal of Large Objects Submitted as Exhibits

Large objects submitted with a complaint or as exhibits in a hearing or arbitration may be returned to the custody of the submitting party or disposed of by the agency after 90 calendar days following the date of the final order.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; Renumbered from 812-001-0007, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-001-0135

Receipt Date of Documents

Any document delivered to the agency, including documents delivered by mail, fax, e-mail, or any other type of delivery, before or at 12:00:00 midnight will be considered received on the day of delivery ending at midnight. Any document delivered to the agency after 12:00:00 midnight will be considered received on the day of delivery beginning immediately after midnight.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

Hist.: CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-001-0500

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(f) Mediation by an authorized representative acting on behalf of the Construction Contractors Board in which the parties to the mediation are parties to a complaint or arbitration filed under ORS 701.139 to 701.145, unless the mediator and the parties elect by written agreement consistent

with the form set out in section (8) of this rule to participate in a confidential mediation.

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under section (9) of this rule is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

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(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediation or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent that the agency administrator determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

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

Stat. Auth.: ORS 36.224, 670.310 & 701.235

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

Hist.: CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; Renumbered from 812-001-0040, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0140

Claims

"Complaint," as used in ORS chapter 812, has the same meaning as "claim" in ORS 701.139-701.180. Complaints are classified by type as follows:

(1) "Construction lien complaint" is a complaint filed by an owner against a primary contractor to discharge or to recoup funds expended in discharging a construction lien.

(2) "Employee complaint" is a complaint for unpaid wages or benefits filed by an employee of a licensee or by the State of Oregon Bureau of Labor and Industries to collect unpaid wages from a licensee for work done by the employee relating to the licensee's operation as a contractor under ORS chapter 701.

(3) "Employee trust complaint" is a complaint for unpaid payments for employee benefits filed by a trustee with authority to manage and control a fund that receives the employee benefit payments.

(4) "Material complaint" is a complaint filed by a supplier who has not been paid for materials sold to a licensee to be used and installed in a specific structure located within the boundaries of the State of Oregon, or for the rental of equipment to a licensee to be used in the performance of the work of a contractor in connection with such a structure.

(5) "Owner complaint" is a complaint filed by an owner for breach of contract, or for negligent or improper work subject to ORS chapter 701, or a construction lien complaint.

(6) "Primary contractor complaint" is a complaint by a primary contractor against a licensed subcontractor.

(7) "Subcontractor complaint" is a complaint filed by a subcontractor arising out of a contract between the subcontractor and a primary contractor for unpaid labor or materials furnished under the contract.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 87.058, 87.093 & 701

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0143

Complainant

"Complainant" means a person who files a claim against a contractor under ORS 701.139 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139 to 701.180

Hist.: CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0250

Direct Contractual Relationship

"Direct Contractual Relationship" as used in OAR 812-004-0320 has the following meanings:

(1) For an owner, construction lien or primary contractor complaint, "direct contractual relationship" means a relationship created by a contract between the complainant and the respondent providing that the respondent perform construction work in return for valuable consideration conveyed directly from the complainant to the respondent.

(2) For a material complaint or subcontractor complaint, "direct contractual relationship" means a relationship created by a contract between the complainant and the respondent providing that the complainant provide labor, material or rental equipment in return for valuable consideration conveyed directly from the respondent to the complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.235

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0440

Last-Known Address of Record

(1) "Last-known address of record" for a contractor, as used in ORS 701.080, or for a complainant means the most recent of:

(a) The mailing address provided by the contractor or complainant in writing to the agency, designated by the contractor or complainant as the contractor's or complainant's mailing address; or

(b) The forwarding address for the contractor or complainant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

812-002-0460

Monetary Damages

“Monetary damages” may include, but is not limited to :

(1) The dollar amount required in excess of the contract amount to provide the complainant what was agreed to be provided under the terms of the contract minus any amount due and unpaid the licensee; or

(2) The dollar amount paid to the licensee less the reasonable value of any work properly performed by the licensee, plus the cost to demolish work that has no value, and to restore the property to the condition it was in before work began.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085 & 701.140

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0480

Nature or Complexity

“Nature or complexity” includes, but is not limited to the following meaning:

(1) Involves issues requiring legal interpretation of statutes and case law that are not normally part of a construction complaint;

(2) In the interest of fairness and equity, requires rulings against persons or entities outside the jurisdiction of the agency; or

(3) Involves issues and fact determinations that are outside the expertise of the agency.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0540

Owner of a Structure

(1) “Owner of a structure” means a person not required to be licensed under ORS chapter 701 who:

(a) Has a structure built by contractor;

(b) Purchases or enters into an agreement to purchase a structure from a contractor or developer; or

(c) Owns, leases, or rents a structure on which alterations or repairs are being or have been made.

(2) “Owner of a structure” may also include:

(a) An association of unit owners that files a complaint related to the common elements of a condominium, as those phrases are defined in ORS 100.005.

(b) The following agents of persons described in section (1) of this rule:

(A) Property managers licensed under ORS chapter 696; or

(B) A person who is acting on behalf of an incapacitated person, based on guardianship, power of attorney, or other legal representation.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.010 & 701.225

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-002-0670

Respondent

“Respondent” means a contractor that a complaint is filed against under ORS 701.139 to 701.180 or that the board proposes to impose a civil penalty against under ORS Chapter 701, including but not limited to ORS 701.992.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139 & 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0150

Bonds Generally

(1) A properly executed bond must be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(2) A properly executed bond must include the following:

“NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a “contractor” as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS chapter 701.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days’ written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

This bond shall not be valid for purposes of licensing in accordance with ORS chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below.”

(3) If a complaint is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security must be held until final disposition of the complaint.

(4) Bond documents received at the agency office from a surety company or agent via electronic facsimile must be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0160

Entity Name Required on Bond

(1) The name of the entity as it appears on the bond must be the same as the name on the application and entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the bond must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the bond must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the bond must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the bond;

(e) If the entity is a corporation or trust, the bond must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company.

(2) If at any time an entity amends its entity name, the agency must be notified within 30 days of the date of the change.

(3) The inclusion or exclusion of business name(s) on a bond does not limit the liability of an entity. Complaints against a licensed and bonded entity will be processed regardless of business names used by an entity.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0175

Increased Bond Amounts, Past Unresolved Activity

(1) A business, including an individual person, applying for or renewing a license will file a bond in an amount up to five times the amount required for the category of license under OAR 812-003-0170, if:

(a) The business has unpaid debts under a final order or arbitration award of the board;

(b) An owner or officer of the business has unpaid debts under a final order or arbitration award of the board; or

(c) An owner or officer of the business was an owner or officer of another business at the time the other business incurred a debt that is the subject of a final order or arbitration award of the board and such debt remains unpaid.

(2) For purposes of this rule, “owner” means an “owner” as defined in ORS 701.077 and OAR 812-002-0537.

(3) For purposes of this rule, “officer” means an “officer” as defined in OAR 812-002-0533.

(4) Debts due under a final order or arbitration award of the board include amounts not paid by a surety on complaints.

Stat. Auth.: ORS 670.310, 701.085(8) & 701.235

Stats. Implemented: ORS 701.085(8)

Hist.: CCB 4-2006(Temp), f. & cert. ef. 3-9-06 thru 9-5-06; CCB 9-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

812-003-0260

Application for New License

(1) Each entity must complete an application form prescribed by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional business names, including assumed business names, under which business as a contractor is conducted, and Corporation Division registry numbers (if applicable);

(b) Mailing and location address of the business entity;

(c) Legal name, date of birth and driver license number of:

(A) The owner of a sole proprietorship;

(B) All partners of a general partnership or limited liability partnership;

(C) All joint venturers of a joint venture;

(D) All general partners of a limited partnership;

(E) All corporate officers of a corporation;

(F) All trustees of a trust; or

(G) All members of a limited liability company, and if one or more of the members is a partnership, limited liability partnership, joint venture, limited partnership, corporation, trust or limited liability company, the general partners, venturers, corporate officers, trustees or members of the entity that is a member of the limited liability company that is the subject of this paragraph.

(d) Social security number of the owner of a sole proprietorship;

(e) Class of independent contractor license and employer account numbers as required under OAR 812-003-0250;

(f) Category of license requested as required under OAR 812-003-0130;

(g) Name and identification number of the responsible managing individual who has completed the education and passed the examination required under ORS 701.072 or is otherwise exempt under Division 6 of these rules;

(h) The Standard Industrial Classification (SIC) numbers of the main construction activities of the entity;

(i) Names and certification numbers of all certified home inspectors if the entity will do work as a home inspector under ORS 701.350;

(j) Litigation, complaint, and licensing history;

(k) Criminal background;

(l) Independent contractor certification statement and a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) A complete license application includes but is not limited to:

(a) A completed application form as provided in section (1) of this rule;

(b) The new application license fee as required under OAR 812-003-0140;

(c) A properly executed bond as required under OAR 812-003-0150; and

(d) The certification of insurance coverage as required under OAR 812-003-0200.

(3) The agency may return an incomplete license application to the applicant with an explanation of the deficiencies.

(4) All entities listed in section (1) of this rule that are otherwise required to be registered with the Oregon Corporation Division must be registered with the Oregon Corporation Division and be active and in good standing. All assumed business names used by persons or entities listed in section (1) of this rule must be registered with the Oregon Corporation Division as the assumed business name of the person or entity using that name.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 25.270, 25.785, 25.990, 701.035, 701.072, 701.075, 701.085, 701.105, & 701.125

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 6-2006, f. 5-25-06, cert. ef. 6-1-06; CCB 8-2006, f. & cert. ef. 9-5-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0400

Restoration of Bond after Payment on Complaint

If a surety company pays all or part of a complaint against a licensed contractor from the contractor's surety bond, the agency must suspend or refuse to issue or reissue the contractor's license until the contractor submits to the agency:

(1) A properly executed bond in the amount required under ORS 701.085(2) through (5) unless the agency requires a higher amount under ORS 701.085(7) or (8); or

(2) A certificate from the contractor's surety company that the surety company remains liable for the full original penal sum of the bond notwithstanding the payment from the surety bond.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04, Renumbered from 812-003-0040; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-003-0430

Time Period for Perfecting a Lien or Complaint

For liens perfected and claims or complaints commenced on or after January 1, 1998:

(1) The time period under ORS 701.065(2)(a)(A) and 701.065(2)(c)(B) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(2) The time period under ORS 701.065(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0001

Application of Rules

(1) The rules in division 4 of OAR chapter 812 apply to a complaint involving work on a residential structure or an appurtenance to the structure and any other complaint filed under ORS 701.145.

(2) Except as provided in section (4) of this rule, the following rules apply to a complaint involving work on a large commercial structure or an appurtenance to the structure and any other complaint filed under ORS 701.146:

(a) OAR 812-004-0001 through 812-004-0240;

(b) OAR 812-004-0260 through 812-004-0320;

(c) OAR 812-004-0340, except 812-004-0340(2)(c), (2)(i) and (8);

(d) OAR 812-004-0420;

(e) OAR 812-004-0520; and

(f) OAR 812-004-0550 through 812-004-0600.

(3)(a) Except as provided in subsection (3)(b) of this rule, the rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure.

(b) The rules that apply to the complaint involving work on a large commercial structure under section (2) of this rule apply to a complaint involving work on a small commercial structure or an appurtenance to the structure if the complainant files the complaint under ORS 701.146.

(4) The rules that apply to a complaint involving work on a residential structure under section (1) of this rule apply to a complaint involving work on a large commercial structure or an appurtenance to the structure if:

(a) The complaint is filed by the owner of the structure;

(b) The total contract for the work is \$25,000 or less; and

(c) The complainant files the complaint under ORS 701.145.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.145 & 701.146

Hist.: CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-27-90, cert. ef. 6-1-90; CCB 2-1991, f. 6-28-91, cert. ef. 7-1-91; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0110

Claim Processing Fee; Waiver of Fee

(1) The complaint processing fee authorized under ORS 701.147 is \$50 for a complaint filed under ORS 701.145. There is no complaint processing fee for a complaint filed under ORS 701.146.

(2) The agency must collect the processing fee under OAR 812-004-0400.

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(3) A complainant may request that the agency waive the complaint processing fee described in section (1) of this rule by submitting a properly executed waiver request. The waiver request must be submitted on a form provided by the agency.

(4) The agency may waive the complaint processing fee if the waiver request submitted by the complainant shows that:

(a) The complainant is an individual;

(b) The complainant has no significant assets except the home that is the subject of the complaint and one automobile; and

(c) The complainant's gross income does not exceed the 2003 Department of Health and Human Services Poverty Guidelines published in the Federal Register, Vol. 68, No. 26, February 7, 2003, pp. 6456-6458.

(5) A complainant, who requests a waiver of the complaint processing fee under section (3) of this rule, must certify that the information on the request is true.

(6) The agency may require that the complainant pay a complaint processing fee of \$97 if the agency finds that the complainant provided false information on a request for a waiver of the complaint processing fee submitted under section (3) of this rule.

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

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.146 & 701.147

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0120

Liability of Licensee

A licensee, as defined in OAR 812-002-0620, participating in a corporation wholly-owned by the licensee, or a limited liability partnership, limited liability company, joint venture, limited partnership or partnership, may be held individually liable for complaints brought under ORS 701.139 to 701.180, whether or not the corporation, limited liability partnership, limited liability company, joint venture, limited partnership, or partnership was licensed as required by ORS Chapter 701.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.102, 701.139, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0140

Liability of Contractor for Complaint Related to Contractor's Property

(1) If an employee complaint, material complaint or subcontractor complaint arises from property owned by a licensed contractor, the licensed contractor is a contractor subject to ORS Chapter 701 unless the contractor supplies pre-contract written notice to suppliers, subcontractors, and other potential complainants that the property is for the contractor's personal use and that the contractor is not subject to ORS chapter 701, as provided in ORS 701.010(6).

(2) If a licensed contractor files a complaint against another licensed contractor arising from property owned by the contractor filing the complaint, the contractor filing the complaint is a contractor subject to ORS Chapter 701 unless the property is for the contractor's personal use and occupancy.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0160

Establishment of Co-Claimant

The agency may allow a person to become a co-complainant, with the complainant's permission, even though that person did not sign the complaint form if the person would otherwise qualify as a complainant.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.455, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0180

Complainant's Responsibility to Pursue Complaint

(1) Throughout the processing of a complaint, a complainant has the responsibility to pursue the complaint and to respond in a timely manner to requests from the agency for information or documents.

(2) The agency may close a complaint under OAR 812-004-0260 if:

(a) The complainant does not respond to a written request from the agency, or to provide requested information or documents within a time limit specified in that request; or

(b) The complainant does not respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.235 & 701.145

Stats. Implemented: ORS 183.415, 183.460 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0195

Exhibits

(1) If a party to a complaint submits a document that is larger than 8-1/2 inches by 14 inches or a photograph as an exhibit, the agency may require that the party submit four copies of the document or photo.

(2) The disposal of large exhibits is subject to OAR 812-001-0130.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.450 & 183.460

Hist.: CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0210

Address of Claimant and Respondent

(1) Initial notice of a contested case or of arbitration conducted by the agency directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a complaint is considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 days of any change in the party's address, withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the complaint and until 90 days after the date the agency notifies the parties that the complaint is closed.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0240

Exhaustion of Surety Bond

The agency may continue processing a complaint even though the surety bond related to that complaint is exhausted by prior complaints.

Stat. Auth.: ORS 670.310, 701.235 & 701.145

Stats. Implemented: ORS 813.415, 183.460, 701.085, 701.145 & 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0250

Award of Claim-Processing Fee, Attorney Fees, Interest and Other Costs

(1) Except as provided in section (2) of this rule and subject to OAR 812-010-0420, an order or arbitration award of the board awarding monetary damages in a complaint that are payable from respondent's bond required under ORS 701.085, including, but not limited to an order of the board arising from a judgment, award or decision by a court, arbitrator or other entity may not include an award for:

(a) Attorney fees;

(b) Court costs;

(c) Interest;

(d) Costs to pursue litigation or the complaint;

(e) Service charges or fees; or

(f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the complaint.

(2) An order or arbitration award by the board awarding monetary damages that are payable from respondent's bond required under ORS 701.085 may include an award for attorney fees, costs, interest or other costs as follows:

(a) An order in a construction lien complaint may include attorney fees, court costs, interest and service charges allowed under OAR 812-004-0530(5).

(b) An order or arbitration award in an owner complaint may include interest expressly allowed as damages under a contract that is the basis of the complaint.

(c) An order or arbitration award awarding monetary damages or issued under OAR 812-004-0540(6) may include an award of a complaint processing fee paid by the complainant under OAR 812-004-0110.

(d) An order or arbitration award may include attorney fees, court costs, other costs and interest included in an order or award of a court, arbi-

ADMINISTRATIVE RULES

trator or other entity that are related to the portion of the order or award of the court, arbitrator or other entity that is within the jurisdiction of the board if the order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

(A) That was initiated by the respondent; or

(B) That the agency required the complainant to initiate under ORS 701.145 because of the nature or complexity of the complaint.

(3) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0260

Order Closing a Complaint

(1) If the agency closes a complaint because the complainant did not act in response to a request from the agency, the closure of the complaint is an order that is not an order in a contested case. An order to close a complaint is subject to a motion for reconsideration under ORS 183.484 and OAR 137-004-0080 and an appeal for judicial review under ORS 183.484.

(2) The agency may close a complaint under this rule only if it complies with the following:

(a) The agency must include notice in its request to the complainant that failure to act as requested may result in closure of the complaint and that closure of the complaint will prevent access to the bond.

(b) The agency may not close the complaint sooner than 14 days after giving the notice required in subsection (2)(a) of this rule.

(c) The agency must notify the parties to the complaint that the complaint is closed and cite the statutes and rules under which the order may be appealed.

(3) The agency may reopen a complaint closed under this rule if the record of the complaint contains evidence that shows that the reason the complainant did not act as requested by the agency was due to excusable neglect by the complainant. The agency may reopen the complaint:

(a) In response to a motion for reconsideration; or

(b) On the agency's own initiative under OAR 137-004-0080 after receiving evidence supporting reconsideration of the order closing the complaint.

(4) At the agency's discretion, the agency may refer a complaint to the Office of Administrative Hearings for a contested case hearing on whether closure of the complaint under this rule is proper.

(5) A party must file a motion for reconsideration of an order closing a complaint under this rule before seeking judicial review of the order.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.480, 701.140 & 701.145

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0300

Filing Date of Complaints

(1) Except as provided under section (3) of this rule, a complaint submitted to the agency for processing under ORS 701.145 is deemed to have been filed when a Breach of Contract Complaint is received by the agency that:

(a) Meets the requirements of OAR 812-004-0340(1) and (2)(m); and

(b) Contains information sufficient to identify the complainant and respondent.

(2) The agency must return a Breach of Contract Complaint that does not meet the requirements of section (1) of this rule to the person who submitted the complaint.

(3) If the agency returns a Breach of Contract Complaint to a person under section (2) of this rule because the person did not meet the requirements of OAR 812-004-0340(2)(m) related to pre-complaint notice, that person may resubmit the Breach of Contract Complaint with the required evidence. If the resubmitted Breach of Contract Complaint satisfies the agency that the person met the requirements under OAR 812-002-0340(2)(m), before the agency received the original Breach of Contract Complaint, the complaint is deemed to have been filed on the date the Breach of Contract Complaint was first received by the agency.

(4) A Breach of Contract Complaint that does not fully comply with the requirements of OAR 812-004-0340 is subject to 812-004-0350.

(5) The date of filing of a complaint submitted to the agency for processing under ORS 701.146 is the date when the complainant complies with ORS 701.146(2) and 701.147(1).

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0320

Jurisdictional Requirements

(1) A complaint must be of a type described under ORS 701.140.

(2) A complaint must be filed with the agency within the time allowed under ORS 701.143.

(3) A complaint will be processed only against a licensed entity. Whether a respondent is licensed for purposes of this section must be determined as follows:

(a) For an owner, primary contractor or subcontractor complaint, the respondent will be considered licensed if the respondent was licensed during all or part of the work period.

(b) For a material complaint, the respondent will be considered licensed if one or more invoices involve material delivered while the respondent was licensed. Damages will be awarded only for material delivered within the period of time that the respondent was licensed.

(c) For an employee or employee trust complaint, the respondent will be considered licensed if the respondent was licensed on one or more days that the complainant or the employee that is the subject of the trust performed work that was not paid for. Damages will be awarded only for unpaid wages or benefits provided on days on which the respondent was licensed.

(4)(a) The complainant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the complaint requires that the complainant be licensed under ORS 701.055 in order to perform the work; and

(B) The complainant files a complaint arising out of a contract to construct the work at issue and the complaint is for unpaid labor or materials furnished under the contract.

(b) As used in section (4) of this rule, "properly licensed" means the complainant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the complaint;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0250 as they applied to the complainant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on the complainant's license.

(5) Complaints will be accepted only when one or more of the following relationships exist between the complainant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the complainant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim;

(c) A contract between the complainant and the respondent providing that the complainant is a trustee authorized to receive employee benefit payments from the respondent for employees of the respondent; or

(d) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(6) Complaints will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) The agency may refuse to process a complaint or any portion of a complaint that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a complaint previously filed by the same complainant against the same respondent, except that the agency may process a complaint that would otherwise be dismissed under this section (7) if the previously filed complaint was:

(a) Withdrawn before the on-site meeting;

(b) Closed or dismissed with an explicit provision allowing the subsequent filing of a complaint containing the same allegations as the closed or dismissed complaint; or

(c) Closed or withdrawn because the respondent filed bankruptcy.

(8) Nothing in section (7) of this rule extends the time limitation for filing a complaint under ORS 701.143.

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(9) A complaint by a person furnishing material, or renting or supplying equipment to a contractor may not include a complaint for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Complaints by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount.

(11) The agency may process a complaint against a licensed contractor whose license was inactive under OAR 812-003-0330, 812-003-0340, 812-003-0350, 812-003-0360 and 812-003-0370 during the work period.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0340

Form of Complaints, Pre-Complaint Notice

(1) A complaint must be submitted on a complaint form provided by the agency. The complaint form shall be entitled "Breach of Contract Complaint." The agency may require the use of the most recent revision of the complaint form.

(2) The complainant must submit the following information on or with the complaint form required under section (1) of this rule if applicable:

(a) The name, address and telephone number of the complainant;

(b) The name, address, telephone number and license number of the licensee;

(c) The amount, if known at the time the complaint is filed, that the complainant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the licensee to which the complainant agrees;

(d) Identification of the type of complaint;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the complaint, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets and counterclaims of the contractor, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the complainant that the information provided on the complaint form is true;

(l) If a court judgment or arbitration award is the basis for the complaint, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the complaint filed in the court action or arbitration;

(m) Documents described in section (9) of this rule that are related to the pre-complaint notice requirement in ORS 701.147.

(n) Additional information required under sections (3) through (8) of this rule.

(3) A subcontractor complaint must include copies of each original invoice relating to the complaint.

(4) An employee complaint must include copies of time cards or other evidence of the amount of wages or benefits requested.

(5) An employee trust complaint must include the name of each employee that is the subject of the complaint, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

(a) The hours worked without payment of employee benefits;

(b) The amount of the unpaid benefits;

(c) The address of the job site where the employee worked; and

(d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien complaint must include evidence that the complainant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lienor, if applicable, and any foreclosure documents.

(7) A material complaint must include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice

number, each invoice amount and a copy of each original invoice relating to the complaint.

(8) A complaint involving negligent or improper work must include a list of the alleged negligent or improper work. A complaint involving a breach of contract must describe the nature of the breach of contract.

(9) A complaint must include one of the following:

(a) A copy of the pre-complaint notice required under ORS 701.147 and of the certified or registered mail receipt for the pre-complaint notice; or

(b) Written evidence that the respondent had actual notice of the dispute that is the subject of the complaint at least 30 days before the complainant filed the complaint. The agency will only accept evidence under this subsection (9)(b) if it is in one of the following forms:

(A) A return receipt signed by the respondent indicating receipt of a notice of intent to file a complaint sent to the respondent by the complainant; or

(B) A letter signed by the respondent acknowledging receipt of a notice of intent to file a complaint.

(c) Written evidence that the complainant and the respondent are parties to mediation, arbitration or a court action arising from the same contract or issues that are the subject of the complaint. The agency will only accept evidence under this subsection (9)(c) if it is in one of the following forms:

(A) Copies of a complaint or answer in the court action; or

(B) Copies of a document that initiated the mediation or arbitration.

(d) Evidence that the complainant and the respondent are parties to another complaint filed with the agency arising from the same contract or issues that are the subject of the complaint.

(10) Except as provided in subsections (9)(c) and (9)(d), the agency may not accept a statement by the complainant alleging that the respondent had actual knowledge of the dispute as written evidence required under section (9) of this rule.

(11) The completed complaint form must be signed by the complainant or an agent of the complainant.

(12) A complaint form submitted to the agency that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0350

Procedure if Information on Complaint Form is Incomplete

If the agency receives a complaint form that does not meet the requirements of OAR 812-004-0340, the agency may close the complaint if the complainant does not provide the missing information in response to a written request for the information from the agency. The written request and closure must comply with OAR 812-004-0260.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0360

Addition of Complaint Items at On-Site Meeting

If the agency holds an on-site meeting, the complainant may add new complaint items up to and through the initial on-site meeting. New items added to a timely filed complaint under this rule are considered timely filed.

Stat. Auth.: ORS 670.310, 701.140, 701.145 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0400

Initial Administrative Processing of Complaints; Collection of Fee

(1) Upon receipt of a complaint, the agency must:

(a) Send a copy of the complaint to the respondent;

(b) Verify that the complainant has provided information required under OAR 812-004-0340 and request additional information from the complainant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the complaint based on the information provided by the complainant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the complaint and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee. Except as provided in section (2)

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of this rule, the agency may suspend processing of the complaint until complainant pays this fee.

(e) If the agency determines that the complaint should be dismissed based on the information submitted by complainant, the agency must issue a proposed order to dismiss under OAR 812-004-0550. If the complainant requests a hearing on the dismissal and the agency does not waive the complaint processing fee required under OAR 812-004-0110, the agency must request payment of the complaint processing fee and may not transmit the complaint to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the complainant does not pay the fee required under OAR 812-004-0110 within 60 days of written notification that the fee is due, the agency may close the complaint. The request for payment and closure must comply with OAR 812-004-0260.

(2) The agency may initiate an investigation to determine the validity of the complaint. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a complaint even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0420

Processing Owner and Primary Contractor Complaints Together

If an owner complaint based on the same facts and issues is received at any time during the processing of a primary contractor complaint, the two complaints will be processed together.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0440

Contracts with Arbitration Agreements

(1) If a complaint is based on a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as set forth in ORS 701.180. Unless the contract requires mediation or arbitration by the agency, the agency must take the following action:

(a) The agency must inform the complainant by written notice that complies with the requirements of OAR 812-004-0260 that the agency will close the complaint unless the agency receives within 30 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the complainant; or

(B) Evidence that the complainant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the complaint.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (1)(a) of this rule from the complainant within 30 days from the date of the written notice described in subsection (1)(a) of this rule, the agency may close the complaint under OAR 812-004-0260. The agency may not close the complaint under section (1) of this rule if the respondent initiates mediation or arbitration under the contract before the expiration of the 30-day period for providing the waiver or evidence that mediation or arbitration was initiated.

(c) The agency must inform the respondent by written notice that:

(A) If the respondent wants the issues in the complaint mediated or arbitrated under the contract, respondent must initiate the mediation or arbitration process under the contract within the time allowed under ORS 701.180 and submit evidence to the agency within 40 days from the date of the agency's written notice that the respondent initiated mediation or arbitration under the contract.

(B) If the respondent does not initiate mediation or arbitration and submit evidence within the time provided in paragraph (1)(c)(A) of this subsection, the respondent waives the right to mediation or arbitration under the contract;

(C) The agency will continue to process the complaint until the agency receives the evidence required under paragraphs (1)(c)(A) and (B) of this subsection; and

If the respondent submits timely evidence that the respondent began mediation or arbitration within the time allowed under ORS 701.180, the

agency will suspend processing of the complaint pending the outcome of the mediation or arbitration under the contract.

(d) If mediation or arbitration under the contract is properly commenced under this section (1) of this rule, the agency must suspend processing the complaint until the mediation or arbitration is complete.

(2) If a complaint is based on a contract that contains an agreement by the parties to mediate and arbitrate disputes arising out of the contract, the complaint must be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and arbitration within the time allowed under ORS 701.180 if:

(a) The respondent commences mediation within the time allowed under ORS 701.180; and

(b) If the complaint is not resolved in mediation, the respondent submits to arbitration within 30 days of the completion of mediation, unless the parties to the complaint mutually agree on a different schedule.

(3) Notwithstanding receipt of a notice of intent to file a complaint under ORS 701.147 or any prior communication from the agency referencing a complaint, for purposes of ORS 701.180, a respondent receives notice of a complaint when the agency sends the respondent the notice described under subsection (1)(c) of this rule.

(4) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the complaint as a contested case.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.180

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0053; 1BB 3-1984, f. & ef. 5-11-84; 1BB 2-1985(Temp), f. & ef. 3-5-85; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0015; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0042; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 14-2003(Temp), f. 12-24-03, cert. ef. 1-1-04 thru 6-18-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0450

On-site Meeting and Attendance of Claimant

(1) The agency may schedule one or more on-site meetings among the parties for the purpose of discussion of a settlement of a complaint and investigation of the complaint under ORS 701.145. The agency must mail notice of a meeting no less than 14 days before the date scheduled for the meeting. The notice must include notice of the requirements of section (2) and (3) of this rule and must comply with the requirements of OAR 812-004-0260.

(2) If the agency schedules an on-site meeting, the following apply:

(a) The complainant must allow access to the property that is the subject of the complaint.

(b) The complainant or an agent of the complainant must attend the meeting. An agent of the complainant must have knowledge of all complaint items included in the complaint and must have authority to enter into a settlement of the complaint. The agency may waive the requirement that an agent have authority to enter into a settlement of the complaint if there is evidence that the respondent will not attend the on-site meeting.

(c) The complainant must allow the respondent to be present at the on-site meeting as required by ORS 701.145.

(3) If the complainant does not comply with the requirements of section (2) of this rule, the agency may close the complaint under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.140 & 701.145

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0460

Agency Recommendation of Resolution

If it appears that the respondent has breached a contract or performed work negligently or improperly, the agency may recommend to the complainant and respondent a resolution consistent with the terms of the contract, generally accepted building practices, and industry standards.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0470

Challenge to Investigation Report

The complainant or respondent may challenge and offer evidence to disprove the agency's investigation report, if any, at an arbitration or contested case hearing.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

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Stats. Implemented: ORS 183.415, 183.460 & 701.145(12)
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00;
CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0580; CCB 5-2002, f.
5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert.
ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

2001, f. & cert. ef. 4-6-01CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-
004-0200; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0480

Resolution by Settlement and Construction of Settlement Agreement

(1) The agency may present a settlement proposal to the complainant and respondent for their consideration and agreement at an on-site meeting conducted under OAR 812-004-0450.

(2) If the complainant and respondent sign a settlement agreement, the agreement shall be binding upon each party unless breached by the other.

(3) Settlement agreements may be considered by the agency to be substituted contracts and damages may be based on the settlement.

(4) If at any time during the processing of the complaint, the complainant accepts a promissory note from the respondent or other compromise as settlement of the complaint, the agency may consider the agreement to be a substituted contract, and base the continued processing of the complaint on the substituted contract.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00;
CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 7-2005,
f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0500

Closure of Complaint After Settlement

If the complainant and respondent agree to a settlement, the following apply:

(1) The agency must notify the complainant that the complainant must notify the agency in writing whether the terms of the settlement have been fulfilled within 30 days from the date shown on the settlement for completion of the terms of the settlement. This notice must comply with the requirements of OAR 812-004-0260.

(2) If the complainant notifies the agency that the terms of the settlement agreement have been fulfilled, the agency must close the claim.

(3) If the complainant does not notify the agency as required under section (1) of this rule, the agency may close the complaint under OAR 812-004-0260.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-
24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-
2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2005, f. 12-7-05, cert.
ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0510

Court Judgments, Arbitration Awards and Other Entity Determinations

(1) As used in this rule, "a court judgment, arbitration award or other entity determination" means a judgment, award or determination by a court, arbitrator or other entity, as that phrase is defined in Division 2.

(2) A court judgment, arbitration award or other entity determination may constitute the basis for a complaint if a Breach of Contract Complaint is filed under OAR 812-004-0300 and 812-004-0340 within the time limit in ORS 701.143 and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the Board previously determined by a court, arbitrator or other entity will not be relitigated unless a party shows there was not a full and fair opportunity to be heard in the prior proceeding. A party asserting a prior determination must specify the facts and issues involved and provide a copy of appropriate parts of the record of the prior proceeding.

(4) A complaint based on a court judgment, arbitration award or other entity determination must be processed under OAR 812-004-0520. An award of damages on the complaint based on a court judgment, arbitration award or other entity determination may be limited under OAR 812-004-0250.

(5) This rule does not apply to a complaint filed and processed under ORS 701.146.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.470, 701.143, 701.145 & 701.146

Hist.: 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from
812-011-0054; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 3-
1987, f. 12-30-87, ef. 1-1-88; Renumbered from 812-004-0020; CCB 1-1989, f. & cert. ef. 11-1-
89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-
90; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 4-
1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from
812-004-0044; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-
2000(Temp), f. & cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-

812-004-0520

Processing of Complaint Submitted to Court, Arbitrator or Other Entity

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a complaint if:

(a) The respondent submits a complaint against the complainant to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against the respondent, including but not limited to a breach of contract claim or a suit to foreclose a lien involving the same contract at issue in the complaint;

(b) The complainant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the complaint filed against respondent; or

(c) The agency requires the complainant to submit the complaint to a court because the agency determined that a court is the appropriate forum for the adjudication of the complaint because of the nature or complexity of the complaint.

(d) The complainant in an owner claim involving a residential structure submits copies of a notice of defect required under ORS 701.565 and the registered mail receipt for the notice and the notice of defect relates to the same facts and issues contained in the complaint.

(3) If the agency suspends processing a complaint under section (2) of this rule, the agency must notify the complainant on the date it suspends processing the complaint that processing has been suspended. The following provisions apply to the agency and the complainant if processing is suspended:

(a) The notice of suspension of processing must include notice of the requirements contained in subsections (3)(b) and (d) of this rule and must comply with the requirements of OAR 812-004-0260.

(b) Beginning six months after the date that the agency suspends processing the complaint and no less frequently than every sixth month thereafter, the complainant must deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect.

(c) The agency may, at any time, demand from the complainant a written report describing the current status of the action before the court, arbitrator or other entity or with regard to the notice of defect. The demand must be in writing and must comply with the requirements of OAR 812-004-0260. The complainant must deliver a written response to the agency within 30 days from the date the agency mails the demand letter.

(d) Within 30 days from the date of final action by the court, arbitrator or other entity, the complainant must deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If the complainant complies with subsections (3)(b), (c) and (d) of this rule, the agency may resume processing the complaint. If the complainant does not comply with subsections (3)(b), (c) or (d) of this rule, the agency may close the complaint under OAR 812-004-0260.

(4) If the agency suspends processing a complaint under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant that the complainant must file the complaint as a counter-suit, complaint or counter-claim in the court, arbitration or other proceedings and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the complainant has done so within 30 days from mailing of the notice. The notice must comply with the requirements of OAR 812-004-0260.

(b) If the complainant does not submit the evidence as required under subsection (4)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(5) If the agency suspends processing a complaint under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency must notify the complainant, in a notice that complies with the requirements of OAR 812-004-0260, that agency has suspended processing the complaint and that the complainant must:

(A) File the complaint as a complaint in a court of competent jurisdiction within 90 days from notice that the agency has suspended processing the complaint; and

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(B) Submit evidence, including a copy of the complaint, to the agency that the complainant complied with paragraph (5)(a)(A) of this rule within 21 days of filing the complaint.

(b) If the complainant does not submit the evidence as required under subsection (5)(a) of this rule, the agency may close the complaint under OAR 812-004-0260.

(6) If the agency resumes processing a complaint under section (3) of this rule:

(a) The agency must accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the complaint.

(b) Based on the judgment, award or decision, the agency must issue a proposed default order to pay damages or to dismiss or refer the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing. The following apply to proceedings under subsection (6)(b) of this rule:

(A) The provisions of OAR 812-004-0560 and 812-004-0590 apply to a proposed default order or a referral to the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under section (6) of this rule must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the complaint to the Office of Administrative Hearings for arbitration or a contested case hearing, the arbitrator or administrative law judge must determine the portion of the final judgment, award or decision, if any, that is within the jurisdiction of the agency.

(7) At its discretion and with the agreement of the complainant and respondent, the agency may hold an on-site meeting under OAR 812-004-0450 before suspending complaint processing under section (2) of this rule if the agency finds that an on-site meeting may help the parties to resolve the complaint.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0530

Construction Lien Complaints

(1) Upon acceptance of a construction lien complaint, the agency must send a copy of the complaint to the respondent and must initiate an investigation to determine the validity of the complaint.

(2) For a construction lien complaint to be valid, the following conditions must be met:

(a) The complainant must have paid the respondent for work performed or materials supplied or equipment rented subject to ORS chapter 701 and the primary contractor must have failed to pay the subcontractor or material or equipment supplier, thereby causing the subcontractor or material or equipment supplier to file a lien against the complainant's property;

(b) The lienor must have delivered to the complainant a "Notice of Right to Lien" as specified in ORS 87.018, 87.021, and 87.025; and

(c) The lienor must have filed the lien with the recording officer of the county in accordance with ORS 87.035.

(3) If the respondent contends that payment has been made to the lienor, either directly or by the return of goods constituting a credit to the respondent's account, the respondent may subpoena the lienor and pertinent records to an arbitration or contested case hearing on a complaint processed under this rule.

(4) If at any time before the issuance of an order the agency determines that the lien is unenforceable or invalid, the agency must dismiss the complaint. Before such dismissal, the lienor must be notified, by certified mail, of the lienor's opportunity to become a party, as that term is defined in ORS 183.310, to the complaint and to request arbitration or a hearing.

(5)(a) A construction lien complaint may include attorney fees, court costs, interest and service charges if these items are included as part of the construction lien or incurred as costs to discharge the lien. An award to the complainant for attorney fees incurred to discharge the lien must not exceed the amount of the lien.

(b) A construction lien complaint may not include excess interest paid as a result of the inability of the complainant to refinance at a lower interest rate due to the existence of the lien.

(6) The agency may reduce the amount awarded to the complainant by:

(a) Any amount the complainant owes the primary contractor; and

(b) Any amount included for tools or equipment not fabricated into the structure.

(7) If a complainant files two or more complaints against the respondent relating to work performed under the same contract and if the complainant has not paid the respondent the full amount of the contract, the amount awarded on each complaint will be reduced on a pro rata basis. A proposed or final order may not be issued on a complaint until all complaints involving the complainant and the respondent filed within the same 90-day period are ready for an order.

(8) If an action is filed to enforce a lien that is the subject of a complaint, the agency must send notice to the complainant that:

(a) The complainant has the right to request a stay of the proceedings until the agency's processing of the complaint is complete;

(b) The agency will hold the complaint open for 60 days from the date of the notice to allow the complainant to obtain a stay or to file a counter-suit or complaint in the foreclosure action; and

(c) The agency may close the complaint under section (11) of this rule if the agency does not receive evidence within 60 days from the date of the notice:

(A) That the complainant obtained a stay; or

(B) That the complainant filed the complaint as a counter-suit or complaint in the court.

(9)(a) Upon timely receipt of evidence that the complainant obtained a stay, the agency will resume processing the complaint.

(b) Upon timely receipt of evidence that the complainant filed a counter-suit or complaint in the court under paragraph (8)(c)(B) of this rule, the agency must suspend processing the complaint and send notice to the complainant of the requirements of OAR 812-004-0520(3). Further processing of the complaint must be under OAR 812-004-0520.

(10) Time limitations in this rule supersede conflicting time limitations in OAR 812-004-0520.

(11) The agency may close a construction lien complaint under OAR 812-004-0260 if the agency does not receive evidence that the complainant obtained a stay or filed a counter-suit or complaint required under subsection (8)(c) of this rule within the time limitation in the notice required under section (8) of this rule.

(12) If a construction lien complaint involves the same facts and issues as any other open complaint, the agency must process the complaints together.

Stat. Auth.: ORS 87.057, 87.058, 670.310, 701.145 & 701.235

Stats. Implemented: ORS 87.058 & 701.145

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 1-1981, f. & ef. 3-11-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0069; 1BB 1-1985(Temp), f. & ef. 2-7-85; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 1-1997, f. & cert. ef. 5-15-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; Renumbered from 812-004-0046; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; Renumbered from 812-004-0220; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0535

Elements of Complaint That Must Be Proved

The following provisions apply to OAR 812-004-0540(5) and (6), 812-004-0550(2), 812-009-0100 and 812-009-0120:

(1) Except as provided in section (3) of this rule, in order for the agency to award damages to the complainant the record of the complaint must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) The complainant suffered damages;

(b) The respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

(c) The monetary value of those damages is substantiated on the record.

(2) The agency must dismiss the complaint if the evidence in the record of the complaint does not persuade the agency, arbitrator or administrative law judge of the existence of the facts described in section (1) of this rule.

(3) Notwithstanding the presence of evidence described in section (1) of this rule, a complaint for damages must be dismissed if the record of the complaint contains evidence that persuades the agency, arbitrator or administrative law judge that the complainant is not entitled to recover the damages. Evidence that the complainant may not be entitled to recover all or part of the damages alleged includes, but is not limited to a valid release of liability or a valid limitation of damages.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145, 701.146 & 701.147

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Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0540

Establishing Monetary Damages and Issuing Proposed Default Order or Referral for Hearing

(1) A complainant may seek monetary damages if the agency has not closed the complaint and:

(a) The complainant disagrees with the resolution recommended by the agency;

(b) The respondent cannot or will not comply with the recommended resolution; or

(c) The parties signed a settlement agreement but, through no fault of the complainant, the respondent failed to satisfy one or more terms of the settlement agreement, and the complainant so advises the agency in writing within 30 days from the date the settlement agreement was to have been completed.

(2) If the complainant seeks monetary damages or the agency so requests, the complainant must file a statement of damages stating the amount the complainant alleges the respondent owes the complainant, limited to complaint items listed in the Breach of Contract Complaint and those complaint items added up to and through any initial on-site meeting. The agency may require the complainant to submit, in support of the amount alleged:

(a) One or more estimates from licensed contractors for the cost to correct the claim items; or

(b) Other bases for a monetary award.

(3) If the agency does not hold an on-site meeting, the agency may issue a proposed default order or refer the complaint for an arbitration or contested case hearing under section (4) of this rule after each party to the complaint has had an opportunity to provide evidence supporting its position with regard to the complaint. The agency may require that the complainant file a statement of damages and supporting evidence described under section (2) of this rule, except that the statement of damages must be limited to complaint items listed in the Breach of Contract Complaint.

(4) After the agency receives documents required under sections (2) or (3) of this rule, the agency may:

(a) Issue a proposed default order proposing dismissal of the complaint under OAR 812-004-0550(2) or payment of an amount by the respondent to the complainant; or

(b) Refer the complaint to the Office of Administrative Hearings for an arbitration or contested case hearing to determine the validity of the complaint and whether the amount of damages alleged, or some lesser amount is proper.

(5)(a) The agency may issue a proposed default order that the respondent pay damages to the complainant only if the record of the complaint supports an award of damages under OAR 812-004-0535.

(b) The agency may issue a proposed default order that is not described in subsections (5)(a) or (6)(a) of this rule only if the record of the complaint contains evidence that persuades the agency of the existence of facts necessary to support the order.

(6)(a) If the record of a complaint supports an award of damages to the complainant under OAR 812-004-0535 and the respondent pays the complainant the amount of those damages after the complainant submits to the agency the complaint processing fee required under OAR 812-004-0110, the agency may issue a proposed default order proposing that the respondent reimburse the complainant the amount of the processing fee paid.

(b) Subsection (6)(a) of this rule does not apply if the respondent paid damages to the complainant to satisfy a written settlement agreement that the complainant signed.

(c) Before issuing a proposed default order under subsection (6)(a) of this rule, the agency must notify the respondent of the agency's intent to issue the proposed order and allow the respondent 30 days to submit written evidence that the respondent reimbursed the complaint processing fee to the complainant.

(7) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0550

Proposed Default Order to Dismiss, Other Resolution of Complaint by Proposed Default Order

(1) The agency may issue a proposed default order proposing dismissal of a complaint if the evidence in the complaint record persuades the agency that one of the following grounds for dismissal exists:

(a) The complaint is not the type of complaint that the agency has jurisdiction to determine under ORS 701.140.

(b) The complaint was not filed within the time limit specified under ORS 701.143.

(c) The complainant did not permit the respondent to comply with agency recommendations under ORS 701.145(3)(b).

(d) The complaint must be dismissed for lack of jurisdiction under OAR 812-004-0320(4) or (5).

(e) The respondent breached a contract or performed work negligently or improperly, but the monetary value of damages sustained by the complainant is less than an amount due to the respondent from the complainant under the terms of the contract.

(f) The complainant contends that the respondent did not fulfill the terms of a settlement that resolved the complaint but the agency finds that the respondent fulfilled the respondent's obligation under the settlement agreement.

(2) The agency may issue a proposed default order proposing dismissal of a complaint if the agency investigates the complaint and finds that the record of the complaint supports dismissal under OAR 812-004-0535.

(3) If the complainant makes a timely request for a hearing after the agency issued a proposed default order under section (1) or (2) of this rule, the agency may:

(a) Refer the complaint for an arbitration or contested case hearing solely to determine whether the dismissal was proper; or

(b) Require that the complainant file a statement of damages stating an amount the complainant alleges the respondent owes the complainant and refer the complaint for arbitration or a contested case hearing to determine if the complaint should be dismissed and if not, the validity of the complaint and whether the amount alleged, or some lesser amount is proper.

(4) The provisions of OAR 812-004-0560 apply to a proposed default order or a referral to the Office of Administrative Hearings issued under this rule.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0560

General Requirements for Proposed Default Order or Referral to Office of Administrative Hearings, Hearing Request

(1) A proposed default order on a complaint issued by the agency must include a contested case notice that complies with OAR 137-003-0505.

(2) A referral to the Office of Administrative Hearings for arbitration or a contested case hearing must:

(a) Comply with 812-004-0590, which regulates whether the complaint will be arbitrated or heard as a contested case hearing.

(b) Comply with OAR 137-003-0515, which sets out requirements for the referrals including, but not limited to formal requirements.

(c) Include a contested case notice if the agency did not issue a contested case notice under OAR 137-003-0505 before the agency's referral of the complaint to the Office of Administrative Hearings.

(3) If the agency refers a complaint to the Office of Administrative Hearings for arbitration or a contested case hearing on the amount, if any, that the respondent owes the complainant, the following requirements apply:

(a) The referral to the Office of Administrative Hearings must identify by date the statement of damages or the Breach of Contract Complaint that limits the amount that the respondent may be ordered to pay the complainant and state the amount that the order is limited to under OAR 812-009-0160 and 812-010-0420.

(b) The agency must serve on the parties an explanation of:

(A) The limitation on the amount a respondent may be ordered to pay a complainant under OAR 812-009-0160 and 812-010-0420; and

(B) The procedure to file a new statement of damages under OAR 812-009-0020 and 812-010-0110.

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(4)(a) To be timely, a request for hearing must be in writing and be received by the agency within 21 days from the date the agency mails a proposed default order.

(b) An untimely request for a hearing must comply with the requirements of OAR 137-003-0528. The agency may require that the request be supported by an affidavit setting out facts that affirmatively show that the failure to make a timely request was beyond the reasonable control of the party.

(5) The agency may issue a proposed default order under OAR 137-003-0670(4) that will automatically become a final order 21 days after the date of issue without further notice if no party makes a timely request for a hearing.

(6)(a) Except as provided in subsection (6)(b) of this rule, a contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record only for purposes of a default order issued under this rule and not for purposes of an order by default issued after a hearing under OAR 812-009-0140.

(b) If a proposed default order issued under this rule is an order to dismiss a complaint, a contested case notice issued under this rule must include a statement that the agency's file on the complaint is designated as the record for purposes of a default order issued under this rule and of an order by default issued after a hearing under OAR 812-009-0140.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 183.470, 701.145 & 701.147

Hist.: IBB 1-1986, f. & ef. 5-30-86; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-001-0004; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0590

Referral of Complaint to Arbitration or Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings conducts a hearing on a complaint:

(a) The hearing must be held as an arbitration under the rules in division 10 of this chapter, unless a party requests that the hearing be held as a contested case hearing under subsection (1)(b) of this rule or files the dispute in court under section (2) of this rule.

(b) Except as provided in sections (2) and (6) of this rule, the hearing must be held as a contested case hearing under OAR 137-003-0501 to 137-003-0700 and the rules in division 9 of this chapter if:

(A) A party to the complaint makes a timely written request under section (4) of this rule that the complaint be heard as a contested case; or

(B) The agency requests under sections (4) and (7) of this rule that the complaint be heard as a contested case.

(2) Subject to section (3) of this rule, a complaint must be decided in court if:

(a) The complainant files a complaint in court that alleges the elements of the complaint in the complaint; or

(b) The respondent files a complaint in court for damages, a complaint for declaratory judgment or other complaint that arises from the contract or work that is the subject of the complaint and that allows the complainant to file a response alleging the elements of the complaint.

(3) A copy of a complaint filed under section (2) of this rule must be received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration or contested case hearing is scheduled. Failure to deliver the copy of the complaint within the time limit in this rule constitutes waiver of the right to have the complaint decided in court and consent to the hearing being held as binding arbitration or a contested case hearing under section (1) of this rule. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(4) A request that a complaint be heard as a contested case filed under subsection (1)(b) of this rule is subject to the following:

(a) The request by a party or the agency must be in writing and received by the agency or the Office of Administrative Hearings no later than 30 days after the Office of Administrative Hearings sends the first notice that an arbitration is scheduled. Delivery must be either to the agency or the Office of Administrative Hearings as required by OAR 137-003-0520 or 812-010-0085, whichever is applicable.

(b) A referral of a complaint to the Office of Administrative Hearings by the agency for a contested case hearing shall be deemed a request that

the complaint be heard as a contested case under subsection (1)(b) of this rule.

(c) A party or the agency may not withdraw a request made under this section without the written consent of the agency and all parties to the complaint.

(5) Failure to deliver a timely written request for a contested case hearing under subsection (1)(b) and section (4) of this rule or a copy of a filed complaint under sections (2) and (3) of this rule constitutes consent to the hearing on the complaint being held as binding arbitration under subsection (1)(a) of this rule.

(6) Except as provided in paragraph (1)(b)(B) and section (7) of this rule, if the complainant in a complaint does not seek \$1,000 or more, a hearing on the complaint may not be conducted as a contested case hearing.

(7) Notwithstanding section (6) of this rule, the agency may request under paragraph (1)(b)(B) of this rule that a hearing be held as a contested case hearing if:

(a) The agency's jurisdiction to decide the complaint under ORS 701.139 to 701.180 is at issue; or

(b) The agency determines that the agency has an interest in interpreting the rules and statutes that apply to the complaint.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 701.145 & 701.147

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 3-2005, f. & cert. ef. 8-24-05; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-004-0600

Payment from Surety Bonds

(1) The agency may notify the surety company of complaints pending.

(2) The agency must notify the surety company of complaints ready for payment. This notice constitutes notice that payment is due on the complaints. A complaint is ready for payment when all of the following have occurred:

(a)(A) A final order was issued in a contested case and 30 days have elapsed to allow the respondent time to pay the order; or

(B) An arbitration award was issued and is ready for payment under OAR 812-010-0470 and 30 days have elapsed to allow the respondent time to pay the award;

(b) The agency has received no evidence that the respondent has complied with the award or final order;

(c) The agency has not granted a stay of enforcement of the final order or award pending judicial review by the Court of Appeals; and

(d) All other complaints filed against the respondent within the same 90-day filing period under ORS 701.150 have either been resolved, been closed or have reached the same state of processing as the subject complaint.

(3) Except as provided in section (5) of this rule, complaints related to a job that are satisfied from a surety bond must be paid as follows:

(a) If a surety bond was in effect when the work period began, payment must be made from that surety bond.

(b) If no surety bond was in effect when the work period began, but a surety bond subsequently became effective during the work period of the contract, payment must be made from the first surety bond to become effective after the beginning of the work period.

(c) A surety bond that is liable for a complaint under subsection (3)(a) or (b) of this rule is liable for all complaints related to the job and subsequent surety bonds have no liability for any complaint related to the job.

(4) Except as provided in section (5) of this rule, if during a work period the amount of a surety bond is changed and a complaint is filed relating to work performed during that work period, the complainant may recover from the surety bond up to the amount in effect at the time the contract was entered into.

(5) If the respondent maintains multiple surety bonds, the following apply:

(a) If multiple surety bonds were in effect when the work period began, payment must be made from all surety bonds in effect.

(b) If no surety bond was in effect when the work period began, but multiple surety bonds subsequently became effective during the work period of the contract and the effective dates of the surety bonds are substantially the same, payment must be made from multiple surety bonds.

(c) Payment to satisfy a complaint made under section (5) of this rule from a surety bond must be in the same proportion that the penal sum of the surety bond bears to the total of the penal sums of the multiple surety bonds.

ADMINISTRATIVE RULES

(6) If more than one complaint must be paid from a surety bond under section (3) of this rule or multiple surety bonds under section (5) of this rule and the total amount due to be paid exceeds the total amount available from those surety bonds, payment on a complaint must be made in the same proportion that the amount due on that complaint bears to the total due on all complaints that must be paid.

(7) The full penal sum of a bond must be available to pay complaints under this rule, notwithstanding that the penal sum may exceed the bond amount required under OAR 812-003-0170.

(8) Unless the order provides otherwise, if an award or a final order provides that two or more respondents are jointly and severally liable for an amount due to a complainant and payment is due from the surety bonds of the respondents, payment must be made in equal amounts from each bond subject to payment. If one or more of the bonds is or becomes exhausted, payment must be made from the remaining bond or in equal amounts from the remaining bonds. If one of the respondents liable on the complaint makes payment on the complaint, that payment shall reduce the payments required from that respondent's bond under this section by an amount equal to the payment made by the respondent.

(9) A surety company may not condition payment of a complaint on the execution of a release by the complainant.

(10) Inactive status of the license of the respondent does not excuse payment by a surety company required under this rule.

Stat. Auth.: ORS 670.310, 701.150 & 701.235

Stats. Implemented: ORS 701.150

Hist.: 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0075; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98, Renumbered from 812-004-0070; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-005-0200

Unpaid Final Orders that Exceed the Contractor's Bond

(1) Under ORS 701.085(7), the agency must suspend the license of a licensee if the agency issues a final order on a complaint that exceeds the amount of the bond available to pay the order.

(2) A suspension issued under section (1) of this rule must remain in effect until the unpaid amount of the order is paid or until the license of the licensee expires.

(3) The agency may not reinstate or renew a license suspended under section (1) of this rule until the final order described in section (1) of this rule and any subsequently issued order that is unpaid, is paid, or discharged in bankruptcy.

(4) As a condition of ending a suspension or renewing a license that was suspended under ORS 701.085(7) and section (1) of this rule, the agency may require a licensee to file a bond up to five times as much as the amount required of a licensee under ORS 701.085(2) to (5). The amount of the increased bond required must conform to the following schedule:

(a) If the sum of unpaid amounts on final orders described in section (4) of this rule exceeds the licensee's most recent bond by less than 50 percent, the agency may require a bond two times the amount required under ORS 701.085.

(b) If the sum of the unpaid final orders described in section (4) of this rule exceeds the licensee's most recent bond by 50 percent or more, but less than 100 percent, the agency may require a bond three times the bond amount required under ORS 701.085.

(c) If the sum of unpaid amounts on final orders exceeds the licensee's most recent bond by 100 percent or more, the agency may require a bond in the amount of five times the normal amount required under ORS 701.085.

Stat. Auth.: ORS 670.310, 701.085 & 701.235

Stats. Implemented: ORS 701.085

Hist.: CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; Renumbered from 812-003-0170(3)(c), CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-005-0800

Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the

agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and OAR 812-003-0120, when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0260: First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(4), issuance of a \$1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0130, the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(8), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS chapter 701, \$1,000.

(15) Failure to comply with any part of ORS chapters 316, 656, or 657, 701.035, 701.075 or 701.078, as authorized by ORS 701.100, \$1,000 and suspension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the

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license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279C.845; or

(e) Failing to comply with the posting requirements of ORS 279C.840: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(k) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(g), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0202 through 812-008-0214: \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0201(2)-(8): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertaking repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0201(4): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070: \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279C.590:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a breach of contract complaint with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(32) Violation of ORS 701.055(11)(a), failure to maintain the list of subcontractors: \$1,000 for the first offense; \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

(33) Violation of ORS 701.135(1)(f), knowingly providing false information to the Board: \$1,000 and suspension of the license for up to three months for the first offense; \$2,000 and suspension of the license for up to one year for the second offense; and \$5,000 and permanent revocation of license for the third offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310, 701.235 & 701.992

Stats. Implemented: ORS 87.093, 279C.590, 701.005, 701.055, 701.075, 701.078, 701.100, 701.135, 701.175, 701.227 & 701.992

Hist.: 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88;

BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 6-2004, f. 6-25-04, cert. ef. 9-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 5-2005, f. 8-24-05, cert. ef. 1-1-06; Renumbered from 812-005-0005, CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 2-2006, f. & cert. ef. 1-26-06; CCB 7-2006, f. & cert. ef. 6-23-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0010

Application of Rules

Subject to OAR 812-004-0590, contested case hearings on complaints arising under ORS 701.139-701.180 are governed by OAR 812-009-0020 – 812-009-0220 and 137-003-0501–137-003-0700.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413 - 183.470 & 701.145

Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0020

Amendment to Declaration of Damages

(1) If the agency refers a complaint to the Office of Administrative Hearings for a hearing on the amount the respondent owes the complainant, the complainant may amend the amount the complainant alleges the respondent owes the complainant by filing an amended statement of damages. An amended statement of damages must be delivered to the administrative law judge or Office of Administrative Hearings as required by OAR 137-003-0520 and 812-009-0085. An amended statement of damages filed under this section must be received by the administrative law judge or the Office of Administrative Hearings no later than 14 days before the scheduled date of a hearing on the matter.

(2) An amended statement of damages filed under section (1) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended statement of damages must state the amount alleged to be owed by the respondent, limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the complainant.

(3) An amended statement of damages making a significant change in the amount the complainant alleges that the respondent owes the complainant may be good cause to postpone the scheduled hearing under OAR 137-003-0525 if the time left before the hearing is insufficient to prepare for a hearing on the amended amount.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413, 183.415, 701.145 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0050

Providing Required Information to Parties

The agency delegates to the Office of Administrative Hearings or the administrative law judge assigned to hear a complaint the responsibility to provide the information required to be given to each party under ORS 183.413(2) and OAR 137-003-0510(1).

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8

Stats. Implemented: ORS 183.413, 183.415, 701.145 & 701.147

Hist.: CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0070

Suspending Processing

(1) An administrative law judge may suspend or cancel a hearing at any time if the administrative law judge finds that the nature or complexity of the issues is such that a court is a more appropriate forum for adjudication. If an administrative law judge suspends or cancels a hearing under this rule, the administrative law judge must refer the complaint to the agency with a memorandum recommending that processing of the complaint be suspended under ORS 701.145 and OAR 812-004-0520 and stating the basis of the recommendation. A copy of this memorandum must be served on the parties.

(2) If a complaint is referred to the agency under section (1) of this rule, the agency may:

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- (a) Suspend processing the complaint; or
 - (b) Refer the complaint back to the administrative law judge with instructions to resume the hearing.
- Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 701.145 & 701.147
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0090

Discovery and Subpoenas

(1) The agency delegates to the administrative law judge assigned to hear a complaint the authority to:

(a) Order and control discovery under OAR 137-003-0570 related to the hearing on the complaint, except an administrative law judge may not authorize a party to take a deposition that must be paid for by the agency.

(b) Issue subpoenas under OAR 137-003-0585 that are related to the hearing on the complaint.

(2) The agency waives receipt of notice that a party seeks to take the testimony of a witness by deposition under OAR 137-003-0570.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.425, 183.440, 183.445, 183.450, 701.145, 701.147
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0100

Burden of Proof and Failure to Meet Burden

The complainant must submit sufficient credible evidence into the record to support an award of damages under OAR 812-004-0535. If the complainant does not carry this burden of proof, the administrative law judge must dismiss the complaint.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183 & 701
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0120

Determination of Validity of Claim

In determining the validity of the complaint, the administrative law judge must determine:

(1) Whether the complaint arose out of a transaction within the scope of ORS Chapter 701;

(2) Whether the agency has jurisdiction over the matters at issue; and

(3) Whether the record of the complaint supports an award of damages under OAR 812-004-0535.

Stat. Auth.: ORS 670.310 & 701.235
Stats. Implemented: ORS 183 & 701
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 2-2004, f. 2-27-04, cert. ef. 3-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0140

Failure to Appear

(1) "Order" as used in this rule means a proposed and final order an administrative law judge is authorized to issue under OAR 812-009-0160 or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) If the administrative law judge notified the parties to a complaint of the time and place of a hearing on the complaint and a party did not appear at the hearing, the administrative law judge may enter an order by default under OAR 137-003-0670(1)(c) that:

(a) Is adverse to a party only upon a prima facie case made on the record as required by OAR 137-003-0670(3); or

(b) Dismisses the complaint based on a lack of evidence in the record supporting the complainant's complaint, but only if:

(A) The agency did not designate the agency's file as the record for purposes of an order by default issued in the contested case notice issued under OAR 812-004-0560; and

(B) The complainant did not appear at the hearing.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145, 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0160

Order Based on Hearing, Limitation on Order

(1) "Order" as used in sections (2) to (5) of this rule means a proposed and final order an administrative law judge is authorized to issue under section (6) of this rule or a final order an administrative law judge is authorized to issue under OAR 812-009-0200.

(2) Subject to sections (7) and (8) of this rule, if a complaint is referred for a hearing to determine the amount, if any, that a respondent owes a complainant, the administrative law judge may not issue an order in an amount greater than the total amount the complainant alleges the respondent owes the complainant in:

(a) The most recent statement of damages or amended statement of damages filed under OAR 812-004-0540, 812-004-0550 or 812-009-0020; or

(b) The Breach of Contract Complaint filed under OAR 812-004-0340, if no statement of damages was filed.

(3) If a complaint is referred for a hearing to determine whether any portion of a judgment is within the agency's jurisdiction, the administrative law judge may not issue an order requiring payment of an amount greater than the amount of the judgment.

(4) An order issued by an administrative law judge may direct specific performance on the part of the respondent, order the respondent to pay monetary damages to the complainant or dismiss the complaint.

(5) An administrative law judge must consider any amounts due to the respondent from the complainant under the terms of the contract and reduce the amount of an order by that amount.

(6) Except as provided in section (8) of this rule and OAR 812-009-0200, an administrative law judge must issue a proposed and final order under OAR 137-003-0645(4) that must automatically become a final order 21 days after the date of issue without further notice unless:

(a) A party files timely exceptions under OAR 812-009-0400;

(b) The agency requests that the administrative law judge hold further hearing or revise or amend the proposed order under OAR 137-033-0655(1);

(c) The agency issues an amended proposed order under OAR 137-003-0655(3); or

(d) The agency notifies the parties and the administrative law judge that the agency will issue the final order.

(7) If a limitation on damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(8) If a limitation of damages under section (2) of this rule is based on a statement of damages or Breach of Contract Complaint that does not include a request for an award of the complaint processing fee allowed as damages under OAR 812-004-0250, the limitation on damages allowed under section (2) of this rule shall be increased by the amount of the complaint processing fee paid by the complainant under OAR 812-004-0110 and 812-004-0400.

(9) If a complaint is referred for a hearing solely to determine if the Board has jurisdiction over the complaint and the administrative law judge finds that the Board has jurisdiction over the complaint, the administrative law judge must issue an intermediate order that the Board resume processing the complaint. The Board may accept the order to resume processing or issue a proposed and final order under OAR 137-003-0060 to dismiss the complaint for lack of jurisdiction.

Stat. Auth.: ORS 670.310, 701.145 & 701.235
Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0200

Final Order Without a Proposed Order

(1) Notwithstanding OAR 812-009-0160(6), an administrative law judge must issue a final order under OAR 137-003-0665 in a contested case without issuing a proposed order if:

(a) The total amount alleged to be due to any complainant in a hearing does not exceed \$2,500;

(b) The parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.415(5), except as provided in section (2) of this rule; or

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(c) The hearing was requested by the respondent after the parties voluntarily agreed to a settlement of a complaint and the following conditions exist:

(A) The settlement's essential terms are limited to the respondent's agreement to pay money to the complainant in exchange for the complainant's release of the complaint; and

(B) The amount of the final order does not exceed the amount the respondent agreed to pay under the settlement agreement.

(2) If the parties voluntarily agree to a settlement of a complaint in accordance with ORS 183.415(5) and the settlement agreement includes an agreement for future performance, the administrative law judge must issue an intermediate order containing any necessary findings of fact and return the complaint to the agency for further processing and issuance of the final order.

Stat. Auth.: ORS 670.310, 701.145, 701.235 & 1999 OL, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.415, 183.450, 183.460, 183.464, 183.470, 701.145 & 701.147
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0220

Petition for Reconsideration or Rehearing; Request for Stay

A petition for reconsideration or rehearing under OAR 137-003-0675 or a request for a stay under OAR 137-003-0690 of a final order on a complaint issued by an administrative law judge under this division must be filed with the agency.

Stat. Auth.: ORS 670.310, 701.235 & OL 1999, Ch. 849, Sec. 8
Stats. Implemented: ORS 183.482, 701.145 & OL 1999, Ch. 849, Sec. 12
Hist.: CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0400

Exceptions to Agency Orders, Complaints

(1) After a contested case complaint hearing, the complainant or respondent may file written exceptions if they believe that the administrative law judge made a procedural error or that the proposed order is not supported by evidence received at the hearing.

(2)(a) To be considered, the first exceptions must be received by the agency within 21 days from the date of mailing the proposed order.

(b) If one party files timely exceptions, the opposing party may also file exceptions if those exceptions are received by the agency within 14 days from the date the agency mails a copy of the first exceptions to the opposing party.

(3)(a) If written exceptions are not timely received, the order will become final under OAR 812-009-0160.

(b) If exceptions are timely received, the matter will be set for consideration by the Board's Appeal Committee at a regular meeting of the committee.

(4) The exceptions must substantially conform to the requirements of OAR 812-009-0430.

(5) Copies of exceptions filed will be mailed to the other side who may respond to the exceptions. Response and any written argument for or against the proposed order will be accepted up to 15 days before the Committee meeting date if the original exceptions were timely received.

(6)(a) If a party filing exceptions intends to rely on oral testimony given at the hearing, the party must include in the exceptions:

(A) A notice of the intention to rely on oral testimony; and

(B) A request for a copy of the tape of the hearing with the fee required under OAR 812-001-0160.

(b) After receipt, exceptions containing a notice of an intention to reply on oral testimony under subsection (6)(a) of this rule, the agency must send a copy of the tape of the hearing to the party that did not file the exceptions without charge unless that party also filed exceptions that included a notice of intention to reply on oral testimony.

(c) The party that filed the notice of intention to reply on oral testimony must prepare a typed transcript of the portions of the hearing testimony that the party contends support the exceptions. The party must deliver the transcript to the agency within 21 days from the date the agency mails the tape of the hearing to the party.

(d) The agency must mail a copy of the transcript to the other party to the complaint.

(7)(a) The party opposing the exceptions may prepare a typed transcript of the portions of the hearing testimony that the party contends support opposition to the exceptions. The opposing party must deliver the transcript to the agency within 21 days from the date the agency mailed the transcript under subsection (6)(d) of this rule.

(b) The agency must mail a copy of the transcript prepared under section (7) of this rule to the party that filed the exceptions.

(8) The Appeal Committee may refuse to consider evidence of oral testimony submitted by a party if the party does not comply with the requirements of sections (6) and (7) of this rule.

(9) The complainant and respondent may appear before the members of the Committee to argue for or against the proposed order.

(10) The agency may waive or extend the time limits in sections (5) through (7) of this rule on a showing of good cause by the person requesting the waiver.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.460 & 701.260

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-009-0430

Form of Exceptions to Agency Order in a Complaint

(1) Exceptions to an agency order filed by a party to a complaint under OAR 812-009-0400 or a respondent under 812-009-0420 must conform to the following requirements:

(a) Exceptions must be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the exceptions must be titled "Exceptions to Proposed Order." If the exceptions are filed in a complaint, the first page must show the file number, the names of the parties to the complaint and the party submitting the exceptions at the top of the page. If the exceptions are filed in an enforcement action, the first page must show the name of the respondent at the top of the page.

(c) Each page of the exceptions must be numbered at the bottom of the page.

(d) For each finding of fact in the proposed order that the party alleges is not supported by the evidence in the record the following information must be included in the exceptions:

(A) The pages on which the finding of fact appear and the number, if any, of the finding of fact;

(B) The text of the finding of fact; and

(C) An explanation or argument supporting the party's contention that the finding of fact is not supported by the evidence in the record.

(e) For each conclusion in the proposed order that the party alleges is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision the following information must be included in the exceptions:

(A) The pages on which the conclusion and the opinion that supports it appear;

(B) The text of the conclusion; and

(C) An explanation or argument supporting the party's contention that the conclusion is based on an erroneous interpretation or application of a statute or administrative rule or is contrary to an appellate court decision.

(f) For each procedural error committed by the administrative law judge that the party contends directly affected the decision in the proposed order in a manner prejudicial to the party the following information must be included in the exceptions:

(A) A description of the procedural error; and

(B) An explanation or argument supporting the party's contention that the procedural error affected the decision and was prejudicial to the party filing the exceptions.

(g) If the party intends to rely on oral testimony at the hearing, a notification that the party intends to rely on oral testimony must be included in the exceptions.

(h) The party submitting the exceptions must sign and date the exceptions.

(2) The Appeal Committee may refuse to consider exceptions that do not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 670.310, 701.145 & 701.235

Stats. Implemented: ORS 183, 701.145 & 701.147

Hist.: CCB 2-2001, f. & cert. ef. 4-6-01; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 7-2005, f. 12-7-05, cert. ef. 1-1-06; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0020

Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in division 10 of this chapter apply when:

(a) A complaint is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

ADMINISTRATIVE RULES

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely complaint is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board must arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 10 of this chapter, an arbitration conducted under this division is governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183, 701.139, 701.147 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0040

Arbitration of Disputes Outside Jurisdictional Requirements

Construction disputes which do not meet timeliness filing under ORS 701.143 or other jurisdictional requirements for complaints may be arbitrated by the agency if both parties agree in writing to submit the dispute to the Construction Contractors Board for binding arbitration. At the discretion of the agency, the agency may refuse to accept a dispute submitted for arbitration under this rule.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules must be filed as follows:

(a) With the agency before a complaint or dispute is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the complaint or dispute to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers a complaint or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document, correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration must serve copies of the document filed on the parties to the complaint or dispute or their counsel if the parties are represented. Service under this section must be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 812-004-0210, after the agency refers the complaint or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a party must notify the Office of Administrative Hearings or arbitrator, and other parties to the complaint or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183 & 701

Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0090

Request for Contested Case Hearing or Removal to Court

(1) If the Office of Administrative Hearings receives a request under OAR 812-004-0590 to conduct the hearing on a complaint as a contested case, the Office of Administrative Hearings must retain jurisdiction over the complaint. The Office of Administrative Hearings must hold the contested case hearing at the time scheduled for the arbitration unless good cause exists to reschedule the hearing date and time.

(2) If the Office of Administrative Hearings receives notice under OAR 812-004-0590 that a party to the complaint filed a court complaint and OAR 812-004-0590 requires that the complaint be decided in court, the Office of Administrative Hearings must return the complaint to the agency.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183, 701.147 & 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0100

On-Site Investigation, Settlement Discussions

(1) At the discretion of the agency, arbitration may be preceded by an on-site investigation or settlement discussions.

(2) At the discretion of the arbitrator, the arbitration may be preceded by settlement discussions.

(3) The arbitrator may request that the agency conduct an on-site investigation before arbitration. The agency may grant or deny the request at its discretion.

(4) If the parties to an arbitration settle a complaint referred to arbitration under OAR 812-004-0560, the parties may agree that the arbitrator may issue a final order under ORS 183.415(5).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0110

Declaration of Damages and Amendment to Declaration of Damages

(1) If the party asserting a complaint has not previously filed a Breach of Contract Complaint or statement of damages under OAR 812-004-0340, 812-004-0540 or 812-004-0550, the party must file with the agency on a form provided by the agency a statement of damages stating the amount that the party alleges any other party owes the party, together with any supporting documents required by the agency.

(2) If the parties to an arbitration have agreed in writing that the arbitration will bind all of them and if any other party to the proceeding asserts a counterclaim, the counterclaiming party must file with the agency on a form provided by the agency a statement of damages stating the amount that the counterclaiming party alleges any other party owes to the counterclaiming party, together with any supporting documents required by the agency.

(3) Notwithstanding section (2) of this rule, a party is not required to file a statement stating the amount the party alleges any other party owes the party, if the party alleges only an offset.

(4) A party may amend the amount the party alleges another party owes the party by filing an amended statement of damages. An amended statement of damages must be delivered to the arbitrator as required by OAR 812-010-0085. An amended statement of damages filed under this section must be received by the arbitrator no later than 14 days before the scheduled date of an arbitration on the matter.

(5) An amended statement of damages filed under section (4) of this rule must be on a form provided by the agency or on a form that substantially duplicates the form provided by the agency. The amended statement of damages must state the amount alleged to be owed to the party filing the amended statement by the other party. If the subject of the arbitration is a complaint, the amount alleged to be owed must be limited to items of complaint in the Breach of Contract Complaint and complaint items added up to and through the initial on-site meeting. The amended statement of damages must be signed by the party filing the amendment.

(6) An amended statement of damages making a significant change in the amount a party alleges that another party owes the party may be good cause to postpone the scheduled arbitration under OAR 812-010-0220 if the time left before the arbitration is insufficient to prepare for arbitration on the amended amount.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.148

Hist.: CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0120

Time and Place of Arbitration Hearing; Notice

The Office of Administrative Hearings must fix a time and place for the arbitration hearing. The Office of Administrative Hearings must mail notice of the time and place of the arbitration at least 21 days before the arbitration, unless otherwise agreed to by the parties.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.147 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2000(Temp), f. 7-21-00, cert. ef. 7-21-00 thru 1-15-01; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

812-010-0140

Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, must disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under ORS 36.705(1)(b) for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under ORS 36.705(1)(b) may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705(1)(b).

(7) Substantial compliance with the procedures in this division 10 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under ORS 36.705(1)(b).

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator must decide whether the arbitrator should be disqualified. Such decision is final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.705 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0200

Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend hearings. The arbitrator may require the exclusion of a witness who is not a party during the testimony of other witnesses. The arbitrator must decide whether any other person may attend the hearing.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0220

Postponement, Recess and Continuance

An arbitrator may postpone or recess and later continue an arbitration. A party requesting a postponement or continuance must show good cause. The arbitrator must decide whether to grant a postponement or continuance. That decision is final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0260

Recording of Hearing

(1) Unless otherwise agreed by the parties and the arbitrator, the arbitrator must make a recording of the hearing.

(2) The agency may dispose of recordings of hearings when 90 days have passed after the arbitrator issues an award in the matter. However, if a party timely files exceptions to the award with the court, the agency may

not dispose of the recording of the hearing until the court makes final determination of the matter.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145(9)

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0290

Summary Disposition

An arbitrator may decide a request for summary disposition of a complaint or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0300

Arbitration in the Absence of a Party

(1) Except as provided in section (2) of this rule, an arbitration may proceed in the absence of any party who, after due notice, does not appear. An award must not be made solely on the default of a party. The arbitrator may require the attending party to submit such evidence as the arbitrator may require for the making of an award.

(2) Notwithstanding section (1) of this rule, an arbitrator may dismiss a complaint without an evidentiary hearing if the party making the complaint does not appear after due notice and without good cause.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0320

Discovery

(1) Parties to an arbitration are encouraged to exchange information informally before the hearing. After making reasonable attempts to obtain any of the following, a party may make written request of the arbitrator for an order directing the other party to comply:

(a) Production of documents, objects, or other information relevant to the dispute;

(b) Permission to enter upon private property to inspect improvements relevant to the dispute; or

(c) Other forms of discovery.

(2) The arbitrator may, at the arbitrator's discretion, order compliance.

This rule does not require discovery. If the arbitrator does order discovery, the arbitrator may control the methods, timing and extent of discovery. Only the arbitrator may issue subpoenas in support of discovery.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0340

Subpoenas; Evidence

(1) The arbitrator or an attorney for a party to the arbitration may issue subpoenas for witnesses and documents for the arbitration hearing.

(2) The arbitrator is the sole judge of the relevance and materiality of the evidence offered. Conformity to legal rules of evidence is not necessary.

(3) The arbitrator may receive and consider any relevant evidence, including evidence in the form of an affidavit, but must give appropriate weight to any objections made. All documents to be considered by the arbitrator must be filed with the agency before or at the hearing.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0360

Close of Hearing

When satisfied that the parties have completed their presentations, the arbitrator must close the hearing.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

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812-010-0380

Waiver of Right to Object to Noncompliance with These Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who does not state objections before the close of the hearing is deemed to have waived the right to object.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0420

Time, Form, and Scope of Award; Limitation on Award

(1) An award must be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award must be in writing and must be signed or otherwise authenticated by the arbitrator.

(4) The award must fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award must contain sufficient rulings on issues and explanations of the reasoning of the arbitrator that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition to modify or correct the award would be appropriate.

(5) An arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent statement of damages or amended statement of damages filed by the party under OAR 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Breach of Contract Complaint filed by the party under OAR 812-004-0340, if no statement of damages was filed.

(6) When a complainant makes a complaint against a respondent's surety bond required under ORS 701.085 and the parties to the complaint have not agreed that the arbitration will bind the complainant, only the complainant may assert damages. The arbitrator may award damages to the complainant, but not to the respondent. The respondent may assert amounts owed to it as an offset under section (7) of this rule.

(7) An arbitrator must consider any amounts owed by a party alleging damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party alleging the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a statement of damages to the offset. If the party asserting the offset did not file a statement of damages, the amount of the offset may not exceed the amount of the award.

(8) After an award has been issued, a party to the arbitration may:

(a) File a request to modify or correct the award under ORS 36.690.

(b) File the award with the court with a petition to confirm the award under ORS 36.700.

(c) File a petition with the court to vacate, modify or correct the award under ORS 36.705 and 36.710.

(9)(a) Except as otherwise provided in this rule, the arbitrator may dismiss a complaint or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond required under ORS 701.085 and other amounts that are not payable from the bond under OAR 812-004-0250 or any other law, the award must segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract at issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(10) If a limitation on damages under section (4) is based on a statement of damages or Breach of Contract Complaint that includes an itemization of complaint items and the total of those items is different from the total damages the complainant alleges is due from the respondent, the limitation on damages must be based on the larger of the two totals.

(11) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORCP 70 A(2)(a) for money judgments.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 36.690, 36.700, 36.705, 36.710, 701.145 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0425

Petition to Modify or Correct an Award

(1) A party to arbitration or the agency may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator must mail copies of the petition to the other parties to the arbitration and to the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension. If the arbitrator waives or extends the time limitations in sections (3) and (5), the arbitrator must notify the agency of the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a complaint not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the complaints submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the complaints submitted;

(d) Because the arbitrator has not made a final and definite award upon a complaint submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator must consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator must issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) If the arbitrator who prepared the award is not available to consider a petition modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183, 701.147 & 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0430

Form of Petition to Vacate, Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 812-010-0425 must conform to the following requirements:

(a) The petition must be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition must be titled "Petition to Modify or Correct an Arbitration Award" and must show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a complaint, the first page shall show the file number.

(c) Each page of the petition must be numbered at the bottom of the page.

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(d) For each modification or correction sought by petitioner, the following information should be included in the petition:

(A) The page or pages that petitioner asks to be modified or corrected;

(B) The text that petitioner asks to be modified or corrected; and

(C) An explanation or argument supporting petitioner's request for the modification or correction.

(e) The party submitting the petition must sign and date the petition. The date must be the date the petition is served on the arbitrator and the other parties to the arbitration.

(2) The arbitrator may refuse to consider a petition that does not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 183 & 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0460

Petition to Court to Confirm Award or Vacate, Modify or Correct Award

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party must serve the agency with a copy of a petition filed under this section.

(2) A party may petition the court to vacate, modify or correct an award under ORS 36.705 or 36.710. The petitioning party must serve the agency with a copy of a petition filed under this section.

(3) Failure of a party to serve the agency under section (2) of this rule constitutes a waiver of any objection to transmittal of the award to the respondent's surety company for payment under OAR 812-004-0600.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.145 & 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0470

Payments from Licensee's Bond

(1) If an award or amended award requires payment by a licensee and the licensee does not pay the award within the time period provided in OAR 812-004-0600, the award is payable from the surety bond to the extent payment is authorized under ORS 701.150. Payment from the bond is subject to the laws in ORS chapter 701 and rules in division 4 of this chapter, including but not limited to OAR 812-004-0600.

(2) For purposes of OAR 812-004-0600, an award or amended award is ready for payment by a party ordered to pay damages if 21 days have elapsed after the award was issued, and:

(a) The arbitrator has not received a petition to modify or correct the award; and

(b) The agency has not received a copy of a petition to modify, correct or vacate the award filed with the circuit court.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.143 & 701.150

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04; CCB 4-2004, f. 5-28-04, cert. ef. 6-1-04; CCB 8-2004, f. & cert. ef. 10-1-04; CCB 2-2005, f. 6-29-05, cert. ef. 7-1-05, Renumbered from 812-010-0440; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

812-010-0480

Interpretation and Application of Rules

The arbitrator must interpret and apply these rules insofar as they relate to the arbitrator's powers. All other rules must be interpreted and applied by the agency administrator or a person designated by the agency administrator.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 701.235

Stats. Implemented: ORS 701.148

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 9-2004, f. & cert. ef. 12-10-04; CCB 15-2006, f. 12-12-06, cert. ef. 1-1-07

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Department of Administrative Services Chapter 125

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

Adm. Order No.: DAS 7-2006(Temp)

Filed with Sec. of State: 12-6-2006

Certified to be Effective: 12-6-06 thru 6-4-07

Notice Publication Date:

Rules Amended: 125-145-0020, 125-145-0040

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

Rules Coordinator: Cheryl Knottingham—(503) 378-2349, ext. 325

125-145-0020

Definitions

The following definitions apply to this division:

(1) Agency has the meaning provided by ORS 183.310.

(2) Claim means a written demand for compensation under ORS 197.352.

(3) Claimant means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.

(4) Department means the Department of Administrative Services.

(5) DLCD Regulation has the meaning provided by OAR 660-041-0010.

(6) Land Use Regulation has the meaning provided in ORS 197.352. An Existing State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date before December 2, 2004. A New State Land Use Regulation means a Land Use Regulation that was enacted by the State of Oregon or adopted by an Agency, with an effective date on or after December 2, 2004.

(7) Lot means a single unit of land that is created by a subdivision of land as defined in ORS 92.010.

(8) Measure 37 means ORS 197.352.

(9) Parcel means a single unit of land that is created by a partitioning of land as defined in ORS 92.010 and 215.010.

(10) Property means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.

(11) Reduction in Fair Market Value means the decrease (if any) in the fair market value of the Property resulting from enactment or enforcement of the Land Use Regulation(s) identified in the Claim as of the date the Claim is submitted to the Department.

(12) Registry means the database of information about Claims required by OAR 125-145-0060.

(13) Regulating Entity means an Agency that has enacted or enforced, or has authority to remove, modify or not to apply, the Land Use Regulation(s) identified in the Claim.

Stat. Auth.: ORS 197.352, 293, 125 - 145

Stats. Implemented: ORS 197.352, 306

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 7-2006(Temp), f. & cert. ef. 12-6-06 thru 6-4-06

125-145-0040

Contents of a Claim

A Claim must contain the information described in subsections (1)-(8) of this rule, along with the information described in subsection (9), (10), (11) or (12), whichever is applicable. A Claim should contain the information described in subsections (13) and (14) of this rule. A Claim that does not contain the required information may be denied as provided in OAR 125-145-0090.

(1) The name, mailing address, and telephone number of the Claimant, and the person submitting the Claim if different.

(2) The location of the Property by reference to:

(a) The township, range, section and tax lot number for each Lot or Parcel that makes up the Property;

(b) The street address of the Property if one has been assigned;

(c) The county the Property is located in; and

(d) If the Property is located within the boundary of a city, the city the Property is located in.

(3) Evidence that the Claimant owns an interest in the Property that includes the legal right to carry out the use of the Property that the Claimant alleges has been restricted, and a copy of the document or documents conveying that interest to the Claimant. In most cases, this will be the deed con-

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veying fee title to the Property to the Claimant, but it may also include a land sale contract or other conveyances.

(4) Evidence of the date the Claimant acquired the ownership interest in the Property and, if the Claim is based on the prior ownership of a family member of the Claimant, the date that the family member acquired an ownership interest in the Property along with evidence of the chain of title from the family member to the Claimant.

(5) Evidence or information describing any encroachments, easements, Covenants Conditions and Restrictions (CC&Rs), and any other recorded or unrecorded rights applicable to the use of the Property that may affect the Claimant's legal right to carry out the use of the Property that the Claimant alleges has been restricted. This may include a preliminary title report or comparable information from a title company.

(6) The comprehensive land use plan and zoning designation of the Property:

(a) Currently; and

(b) On the date the Claimant acquired the Property.

(7) A description of the Claimant's desired use of the Property that the Claimant alleges is restricted by one or more state Land Use Regulations. If the Claimant has filed a claim with a city or county, the Claim must include a copy of that claim, and a statement as to whether the Claimant's desired use is the same in both claims.

(8)(a) A statement acknowledged by signature of the Claimant, or the person submitting the claim if other than the Claimant, as follows: "The information contained in this Claim is true and correct to the best of my knowledge." It is a crime under ORS 162.085 to certify the truth of a statement when the person certifying knows the statement is not true. This offense is a Class B misdemeanor and is punishable by a jail sentence of up to six months, a fine of up to \$2,500, or both.

(b) If the Claim is submitted by a person other than the Claimant, a written statement by the claimant authorizing the person submitting the Claim to do so on the Claimant's behalf.

(9) A Claim received by the Department on or before December 4, 2006, must identify the state Land Use Regulation(s) that the Claim is based on, and include evidence or information that demonstrates the following:

(a) The manner in which the state Land Use Regulation(s) restricts the Claimant's desired use of the Property, compared with how the Claimant (or family member, if applicable) was permitted to use the Property under Land Use Regulations in effect at the time the Claimant (or family member, if applicable) acquired the Property; and

(b) The amount by which the enforcement or enactment of the state Land Use Regulation(s) has caused a Reduction in the Fair Market Value of the Property.

(10) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more Existing State Land Use Regulations must be received by the Department within two years of the date a city, county, Metro, or an Agency applied the Existing State Land Use Regulation as an approval criterion to an application submitted by the owner of the property. These Claims must include evidence or information that demonstrates the amount by which the enactment or enforcement of the state Land Use Regulation has caused a Reduction in the Fair Market Value of the Property, and one or more of the following:

(a) If the Claim is based on a DLCD Regulation, the Claim must include the material required by OAR 660-041-0020(1)(b);

(b) If the Claim is based on an Existing State Land Use Regulation other than a DLCD Regulation, the Claim must include a copy of the final written action by an Agency on a complete application to the Agency, in which Agency determined that the Existing State Land Use Regulation was an approval criterion for the application.

(11) A Claim received by the Department after December 4, 2006 that demands compensation based on one or more New State Land Use Regulations must be received by the Department within two years of the effective date of the New State Land Use Regulation, or within two years of the date the Claimant submitted a complete land use application to a city, a county or Metro in which the New State Land Use Regulation was an approval criterion for the land use application, whichever is later.

(12) If a Claim received by the Department after December 4, 2006 contains a demand for compensation based on both Existing and New State Land Use Regulations, the requirements of both subsections (10) and (11) of this section must be met.

(13) Written permission from the Claimant and all other owners with a right to restrict access to the Property, authorizing the Department, the Regulating Entity and their officers, employees, agents and contractors as

necessary to enter the Property to appraise it or to verify information necessary to act on the Claim.

(14) Evidence that may be submitted to address the requirements of this section include, but are not limited to, the following: current tax assessor's maps of the Property and the surrounding area; a title report for the Property; an appraisal report for the Property by a certified appraiser; the deed or other instrument conveying the Property to the Claimant; Covenants, Conditions & Restrictions (CC&Rs) relating to the Property; land use applications, staff reports and decisions concerning the Claimant's desired use of the Property; applications for permits, staff reports and decisions concerning the Claimant's desired use of the Property.

Stat. Auth.: ORS 197.352, 293, 125 - 145

Stats. Implemented: ORS 197.352, 306

Hist.: DAS 5-2004(Temp), f. 11-30-04, cert. ef. 12-1-04 thru 5-29-05; DAS 2-2005(Temp), f. & cert. ef. 2-24-05 thru 5-29-05; DAS 6-2005, f. & cert. ef. 5-27-05; Suspended by DAS 13-2005(Temp), f. & cert. ef. 11-4-05 thru 5-3-06; DAS 2-2006(Temp), f. 3-10-06, cert. ef. 3-13-06 thru 9-8-06; Administrative correction 9-21-06; DAS 7-2006(Temp), f. & cert. ef. 12-6-06 thru 6-4-06

Department of Administrative Services, Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Oregon Prescription Drug Program amends eligibility requirements, amends definition, and includes costs in program price.

Adm. Order No.: OHP 2-2006(Temp)

Filed with Sec. of State: 11-28-2006

Certified to be Effective: 11-28-06 thru 5-23-07

Notice Publication Date:

Rules Amended: 409-030-0000, 409-030-0005, 409-030-0020, 409-030-0050

Subject: Temporary rule to amend the eligibility requirements for enrollment in the OPDP. Temporary rule to amend the term "pharmacy benefit manager" to "pharmacy benefit administrator" and to include the program cost as part of the program price.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

409-030-0000

Definitions

(1) Administrator — The Administrator of the Oregon Prescription Drug Program.

(2) Department — The Department of Administrative Services acting by and through the Administrator of the Oregon Prescription Drug Program, the Office of Health Policy and Research, and any other office of the Department.

(3) Contractor(s) — One or more PBAs or TPAs authorized by the Oregon Prescription Drug Program (OPDP) to perform administrative duties of the program including but not limited to processing and paying claims, issuing I.D. cards and maintaining eligibility files.

(4) Enrollee — Any person who meets the eligibility requirements of the Oregon Prescription Drug Program, pays the applicable enrollment fee and is issued an enrollment card.

(5) OPDP — Oregon Prescription Drug Program

(6) Participating Groups — Agencies or institutions eligible to participate in the OPDP according to ORS 414.312(4)(a), (b), (d) or (e).

(7) PDL — Preferred Drug List

(8) Pharmacy Benefit Administrator (PBA) — An entity that, in addition to being a prescription drug claims processor, negotiates and executes contracts with pharmacies, manages preferred drug lists, negotiates rebates with prescription drug manufacturers and serves as an intermediary between the Administrator, prescription drug manufacturers and pharmacies.

(9) Pharmacy providers — Retail drug outlets that volunteer to participate in the Oregon Prescription Drug Program and that contract with the Department as a pharmacy provider.

(10) Prescription drugs — Drugs that must legally be prescribed by a practitioner authorized to prescribe drugs (legend drugs).

(11) Prescription drug claims processor — An entity that processes and pays prescription drug claims, transmits prescription drug prices and claims data between pharmacies and the OPDP and processes payments to pharmacies.

(12) Program Price — The reimbursement rates and prescription drug prices established by the Administrator of the Oregon Prescription Drug Program (OPDP), including program cost and the dispensing fee and all applicable manufacturers discounts and rebates.

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(13) Rebates — Promotional or volume related refunds pre-arranged with manufacturers on certain prescription drugs used to reduce the cost to purchaser.

(14) Small entity participating groups — Agencies or institutions eligible to participate in the OPDP according to ORS 414.312(4)(a), (b), (d) or (e) who do not meet the minimum requirements outlined in ORS 731.036(6).

(15) Third Party Administrator (TPA) — An entity that, in addition to being a prescription drug claim processor, facilitates program management including processing and paying prescription drug claims; transmitting prescription drug prices and claims and enrollment data between pharmacies and the OPDP and its groups; maintaining enrollment and issuing I.D. cards; and processing payments to pharmacies. The TPA could be contracted through the Department or a PBA.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07

409-030-0005

General Administration

(1) The purpose of these rules is to implement the Oregon Prescription Drug Program authorized in ORS 414.312 to 414.318.

(2) The Administrator will administer and implement the OPDP.

(3) The Administrator may enter into contracts with one or more PBAs or TPAs to assist in the administration of the OPDP.

(4) The Administrator, or designee, may:

(a) Negotiate price discounts and rebates on prescription drugs with prescription drug manufacturers;

(b) Purchase prescription drugs on behalf of Enrollees and Participating Groups;

(c) Contract with a prescription drug claims processor to adjudicate pharmacy claims and transmit program prices to pharmacies;

(d) Determine Program Prices and reimburse pharmacies for prescription drugs;

(e) Adopt and implement a Preferred Drug List for the program;

(f) Develop a system for allocating and distributing the operational costs of the program and any Rebates obtained to participants of the program; and

(g) Cooperate with any state or regional consortia in the bulk purchase of prescription drugs.

(3) The Administrator may adopt rules and develop forms to implement the OPDP.

(4) The Administrator is authorized to oversee the implementation of the OPDP, including review of Enrollee eligibility information, Participating Group information, and pharmacy provider compliance with the requirements of the program. The Administrator, or designee, may review such records or other information, including health information, necessary to perform such oversight responsibilities.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07

409-030-0020

Program Price

(1) The price for a prescription drug a pharmacy provider can charge an Enrollee under the Oregon Prescription Drug Program (OPDP), is the lesser of the following on the date of the transaction:

(a) The Program Price, or

(b) The pharmacy provider's usual and customary price, including program cost and dispensing fee.

(2) The Contractor will transmit the price of the prescription drugs to the pharmacy providers electronically.

(3) The OPDP is limited to prescription drugs prescribed in the name of and for the use by the Enrollee, except as otherwise provided in section (8) of this Rule.

(4) Prescription drug benefits will be outlined on Enrollee identification cards.

(5) The OPDP does not include prescriptions for over-the-counter drugs.

(6) Enrollees must use their Medicare benefits rather than their OPDP enrollment cards for any prescription drugs covered by Medicare. An example includes, but is not limited to immunosuppressive drug therapy for transplant patients if Medicare paid for the transplant.

(a) Prescription drug discount cards are not considered a benefit.

(b) If Enrollees have more than one discount charge it is their choice which to use.

(7) The Administrator may establish different reimbursement rates or prescription drug prices for pharmacies in rural areas to maintain statewide access to the OPDP.

(8) Certain Participating Groups may receive the Program Price based on other reimbursement arrangements with OPDP, where the prescription drug is not being dispensed by a pharmacy provider to an individual Enrollee. Such reimbursement arrangements shall be approved and arranged by the PBA or TPA, as appropriate.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07

409-030-0050

Enrollment

(1) Participating Groups will enroll for participation through the PBA or TPA chosen by the OPDP to administer the Participating Group's enrollment and claims processing.

(a) Eligibility for beneficiaries of a Participating Group will be maintained electronically between the group and PBA or TPA.

(b) I.D. cards will be issued for Enrollees through the Participating Group at initial enrollment and renewals, and to individuals within the group between those times.

(2) Oregon residents who do not have prescription drug coverage may be enrolled by the PBA or TPA after completing and signing an enrollment form.

(a) By signing the enrollment form, individuals will self-attest to all eligibility requirements including the fact that they do not have prescription drug coverage. I.D. cards will be issued to Enrollees by the PBA or TPA once their enrollment form has been completed and signed.

(b) Individual eligibility may be subject to periodic review and audit.

(c) Individuals who are eligible for Medicare Part D prescription drug coverage may participate in the program.

(3) Enrollees in the Senior Prescription Drug Assistance Program created under ORS 414.342 may be enrolled after completing and signing an enrollment form.

(4) The OPDP may charge a nominal fee to participate in the program.

Stat. Auth.: ORS 414.320

Stats. Implemented: ORS 414.312 - 414.320

Hist.: OHP 1-2004, f. & cert. ef. 9-24-04; OHP 2-2006(Temp), f. & cert. ef. 11-28-06 thru 5-23-07

Rule Caption: Establishing Administrative Rule Relating to Collection of Ambulatory Surgery Data.

Adm. Order No.: OHP 3-2006

Filed with Sec. of State: 12-14-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Adopted: 409-022-0010, 409-022-0020, 409-022-0030, 409-022-0040, 409-022-0050, 409-022-0060, 409-022-0070, 409-022-0080

Subject: Rule establishes an Ambulatory Surgery Data reporting program within the Office for Oregon Health Policy and Research. Outlines reporting source, reporting schedule, confidentiality and security guidelines and fee structure for reporting program. Establishes fees to be assessed on a per record (ambulatory surgeries) basis payable by all licensed hospitals and free standing ambulatory surgery facilities in the state.

Rules Coordinator: Cheryl Knottingham—(503) 378-2349, ext. 325

409-022-0010

Definitions

Pursuant to ORS 442.120, the Office for Oregon Health Policy and Research has established an ambulatory surgical data reporting program. These definitions apply to the rules adopted in this Division and to OAR 409-22-020 to 409-22-080.

(1) "Office" as defined in ORS 414.021

(2) "Ambulatory surgery data" means the consolidation of complete billing, medical, and personal information describing a patient, the services received, and charges billed for a surgical or diagnostic procedure treat-

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ment in a hospital outpatient setting or an ambulatory surgical facility setting into a data record.

(3) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment that is licensed under ORS 441.015.

(4) "Ambulatory surgical facility" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and that is licensed under ORS 441.015.

(5) "Electronic media" means a magnetic tape, CD or other electronic data storage medium.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0020

Reporting Source of Ambulatory Surgical Data

The reporting sources for ambulatory surgery data are Oregon licensed general acute care hospitals and ambulatory surgical facilities.

(1) A general acute care hospital shall file with the Office for Oregon Health Policy and Research (OHPR), or its designee, ambulatory surgery data records for each surgical outpatient discharged from its facility.

(2) An ambulatory surgical facility shall file with the Office for Oregon Health Policy and Research (OHPR), or its designee, ambulatory surgical data records for each patient discharged from its facility.

(3) Each hospital and ambulatory surgical facility is responsible for compliance with the rule. Use of a designated intermediary does not relieve the hospital or ambulatory surgical facility of its reporting responsibility. Failure to comply may, at the sole discretion of the Office, result in civil penalties according to the schedule published in OAR 409-015-035.

(4) Each hospital and ambulatory surgical facility shall designate a department and a person within the department who is responsible for submitting the discharge data records. This person shall also be responsible for communicating with the Office.

(5) Each hospital and ambulatory surgical facility shall submit a completed registration form to the Office. The registration form shall be included with each data submission. The registration form shall include facility name, mailing address, administrator name, email and phone number and contact name, email, and phone number (if different than the administrator). The registration form (AS-1) is available at the Office's web site at: http://www.oregon.gov/DAS/OHPPR/RSCH/research_data.shtml.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0030

Electronic File Transfer Schedule

Each hospital and ambulatory surgical facility shall submit to the Office a single outpatient surgical data record for each patient discharged in the preceding quarter. Such records shall be assembled in the format described in **Table A**. The reporting schedule for submission of such data shall be determined by July 1 of each year, or on a schedule mutually agreed upon by the Office and hospital or ambulatory surgical facility. **Table A** is available from OHPR and on its web site at http://www.oregon.gov/DAS/OHPPR/RSCH/research_data.shtml. [Table not included. See ED. NOTE.]

[ED. NOTE: Table referenced are available from the agency.]
Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0040

Confidentiality and Data Security

(1) Ambulatory surgery data required to be provided to OHPR or its designee under this rule must include a patient identifier that allows for the statistical matching of records over time to permit public studies of issues related to clinical practices, health service utilization and health outcomes, and other uses authorized to be made by OHPR by law. In addition, OHPR may obtain records for each patient that identifies specific services, classified by International Classification of Disease Code, for special studies on the incidence of specific health problems or diagnostic practices.

(2) This rule authorizes OHPR to require general acute care hospitals and ambulatory surgical facilities to provide a patient identifier consisting of the first 4 letters of the patient's last name, the first 3 letters of the patient's first name and the last 4 digits of the patient's Social Security Number.

(3) OHPR, including any designee, shall not use any patient identifying information for purposes other than those directly connected with the purposes stated in subsection (1). Nothing in these rules authorizes the disclosure or publication of specific data in a form that allows identification of individual patients or individual licensed health care professionals.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0050

Fees

(1) Pursuant to ORS 442.120(3), the Office for Oregon Health Policy and Research (OHPR) has established a fee schedule to cover the cost of abstracting and compiling ambulatory surgery data. Fees are assessed on a per record basis.

(2) Intent. The intent of the fee schedule is to recover reasonable costs necessary to abstract, compile and maintain the data. Total assessed fees shall not exceed the total costs necessary to abstract, compile, and maintain the data.

(3) Start Date. A per record fee shall be assessed beginning on the first business day of January 2007.

(4) Per Record Fee Calculation. The per record fee shall be calculated by summing the costs necessary to abstract, compile, and maintain the data for the most recent quarter and dividing these costs by the total number of ambulatory surgery discharges during the same quarter.

(5) Review. If the per record fee calculation equals or exceeds fifty cents (\$0.50), the process for establishing the fee schedule shall be reviewed with a stakeholder group representing both hospital-based and freestanding ambulatory surgery facilities.

(6) Assessment. The total assessed fees shall be calculated by multiplying the per record fee by the anticipated number of ambulatory surgery discharges during the calendar year for each ambulatory surgical facility.

(7) Collection of Fees. Fees shall be paid to the Oregon Department of Administrative Services, the Office for Oregon Health Policy and Research, on a quarterly basis. Fees for the quarter January 1 through March 31 shall be due no later than April 30; fees for the quarter April 1 through June 30 shall be due no later than July 30; fees for the quarter July 1 through September 30 shall be due no later than October 30 and fees for the quarter October 1 through December 31 shall be due no later than January 30. Payments must be delivered to OHPR at the following address: 255 Capitol Street NE, 5th floor, Salem, OR 97310. Payments are due no later than the close of business on the due date.

(8) Compliance. Late payments are subject to recovery in accordance with the laws of the State of Oregon.

(9) Revenue. Fees and revenue received by OHPR from assessments and permitted uses of the collected data shall be used to pay the calculated costs necessary to abstract, compile, and maintain the data.

(10) Other Funding. Grants, donations, or other funding (if any) obtained by OHPR specifically to abstract, compile, and maintain the data shall be first used to offset the calculated costs necessary to abstract, compile, and maintain the data.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0060

Access to Health Data

(1) An inspection or examination of a Limited Data Set derived from the health data that are filed at the Office for Oregon Health Policy and Research shall be allowed during the normal working days and business hours of the office.

(2) The inspection or examination shall take place at the Office for Oregon Health Policy and Research or other reasonable locations designated by the Administrator of the Office for Oregon Health Policy and Research.

(3) Health data reported to OHPR from hospitals and facilities may include information that is protected health information when it is maintained at the hospital or facility. OHPR obtains such information because it is required by law, and because OHPR acts in the capacity of a health oversight agency. OHPR is not a covered entity or a business associate of a covered entity. The terms used in this rule have the same meaning as those terms in the HIPAA Privacy Rules, 45 CFR Parts 160 and 164.

(4) Except under rules outlined in OAR 409-22-0070 for access to a Limited Data Set, access to health data reported to OHPR will be limited to health data that does not identify any individual patient, or permit the identification of any patient when used alone or in combination with other information, or individual licensed health care professionals.

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Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0070

Limited Data Sets with a Data Use Agreement.

(1) OHPR may authorize the disclosure of health data in accordance with a data use agreement entered into by both OHPR and a researcher, pursuant to which OHPR may disclose a limited data set to a researcher for research, public health, or health care operations. The intent of this rule is to generally apply the legal standard established in the HIPAA Privacy Rule applicable to limited data sets, 45 CFR 164.514(e).

(2) A limited data set excludes specified direct identifiers of the individual or of relatives, employers, or household members of the individual. The data use agreement must:

(a) Establish the permitted uses and disclosures of the limited data set by the recipient, consistent with the purposes of the research, and which may not include any use or disclosure that would violate the data use agreement;

(b) Limit who can use or receive the data; and

(c) Require the recipient to agree to the following:

(A) Not to use or disclose the information other than as permitted by the data use agreement or as otherwise required by law;

(B) Use appropriate safeguards to prevent the use or disclosure of the information other than as provided for in the data use agreement;

(C) Report to the covered entity any use or disclosure of the information not provided for by the data use agreement of which the recipient becomes aware;

(D) Ensure that any agents, including a subcontractor, to whom the recipient provides the limited data set agrees to the same restrictions and conditions that apply to the recipient with respect to the limited data set; and

(E) Not to identify the information or contact the individual.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

409-022-0080

Exemptions, Extensions and Waivers

(1) Hospitals and ambulatory surgical facilities may submit requests for exemptions or waivers to OHPR at least 60 calendar days prior to the due date as listed in the data submittal schedule as published by July 1. Exemptions or waivers to the requirements of this rule may be granted for a maximum of one calendar year. A hospital or ambulatory surgical facility wishing an exemption or waiver for more than one year must submit a request annually.

(2) Requests for extensions must be submitted to the Office at least ten working days prior to the due date as listed in the data submittal schedule. Extensions to the submittal schedule may be granted for a maximum of 30 calendar days. The hospital or ambulatory surgical facility must separately request each additional 30 calendar day extension.

(3) OHPR may grant extensions when the hospital or ambulatory surgical facility documents that technical or unforeseen difficulties prevent compliance. A petitioner requesting an exemption, extension, or waiver shall make the request in writing. A request for exemption, extension, or waiver must contain the following information:

(a) The petitioner's name, mailing address, telephone number, and contact person;

(b) The date the exemption, extension, or waiver is to start and end;

(c) A description of the relief sought, including reference to the specific sections of the rule;

(d) A statement of facts, or reasons in support of the request; and

(e) A proposed alternative to the requirement.

(4) A form for exemption, extension, or waiver can be found at the

OHPR website:
http://www.oregon.gov/DAS/OHPPR/RSCH/research_data.shtml.
Exemptions, extensions, or waivers may be granted for the following:

(a) Hospital or ambulatory surgical facility exemption: All hospitals and ambulatory surgical facilities are subject to the reporting requirements. Reasons justifying an exemption might be such as a circumstance where the hospital makes no effort to charge any patient for service.

(b) Reportable data element exemption: Each request for a data element exemption must be made separately.

(c) Submission media exemption: This exemption allows variation in the submission media.

(d) Submittal schedule extension: The request must specifically document the technical or unforeseen difficulties that prevent compliance.

(e) Submission format waiver: This waiver allows variation in the submission format. Each request must state an alternative transfer electronic media, its format, and the record layout for the discharge data records. Granting of this waiver is dependent on OHPR's ability to process the submittal media and format with available computer resource.

Stat. Auth.: ORS 420.120
Stats. Implemented: ORS 420.120
Hist.: OHP 3-2006, f. 12-14-06, cert. ef. 1-1-07

Department of Administrative Services, Public Employees' Benefit Board Chapter 101

Rule Caption: Rulemaking amends current rules governing the eligibility for benefits and procedures of PEBB.

Adm. Order No.: PEBB 1-2006

Filed with Sec. of State: 11-28-2006

Certified to be Effective: 11-28-06

Notice Publication Date: 10-1-06

Rules Amended: 101-020-0040, 101-040-0080

Subject: This rulemaking amends current rules governing the eligibility for benefits and procedures of the Public Employees' Benefit Board and are made a part of OAR chapter 101, generally. Experience in using the rules, changes and clarification of federal regulations governing Internal Revenue Service Code Section 125, and the ongoing development of the agency-specific PEBB administrative manual has identified the need for clarification of existing rules.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

101-020-0040

Late Enrollment

(1) Late enrollment occurs when an Eligible Employee fails to enroll:

(a) In benefit plans within 60 days following the date of hire or the eligibility date.

(b) A newly eligible individual within 60 days of gaining the eligibility.

(c) A new spouse who was most recently enrolled as a Domestic Partner within 60 days of the date of marriage.

(d) A biological newborn dependent child during the first 60 days of life.

(2) Late enrollees may select only PEBB available medical, dental and basic life insurance coverage. Optional benefits are not available for late enrollees.

(3) Excluding Subsection (4) of this rule, PEBB must review and approve all Eligible Employee late enrollment requests. The Eligible Employee must provide sufficient supporting documentation demonstrating that the inability to enroll was due to circumstances beyond the employee's control.

(a) If late enrollment is approved, benefit coverage is effective the first of the month following receipt of the completed forms.

(b) PEBB may deny late enrollment when the documentation does not demonstrate good and sufficient cause for late enrollment.

(4) Following receipt of the completed forms, agencies are responsible for approving the late enrollment of biological newborn children during the first twelve months of life. The enrollment is always retroactive to the first of the month following the date of birth.

Stat. Auth.: ORS 243.061 - 243.302
Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 1-2006, f. & cert. ef. 11-28-06

101-040-0080

Correcting Enrollment and Processing Errors

(1) **Employee Enrollment Errors.** Enrollment errors occur when an Eligible Employee provides incorrect information or fails to make correct selections when making benefit plan elections. Benefit plan elections are selected by a newly Eligible Employee, following a Qualified Status Change (QSC) event, or during the Open Enrollment Period as defined by PEBB. The Eligible Employee is responsible for identifying enrollment errors or omissions.

(a) **Newly Eligible Employee or QSC event.** PEBB authorizes the agency to correct enrollment errors reported to the benefits office by the employee within 60 days of the original eligibility date or QSC event date.

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Corrections are retroactive to the first of the month following agency receipt of the paper form or electronic equivalent.

(A) PEBB must review and approve all enrollment errors reported by the employee after 60 days of the original eligibility date or the QSC event date. If approved, corrections are effective the first of the month following receipt of the appeal request.

(B) Enrollment errors will not be considered beyond 90 days of the eligibility date or the QSC event date.

(b) **Open Enrollment Period.** The Eligible Employee has 30 days from receipt of the first paycheck or benefit statement, whichever is later, of the new Plan Year to appeal to PEBB for correction. If approved, corrections are effective the first of the new Plan Year.

(2) **Processing Errors.** Processing errors or omissions occur when benefit plan elections are processed incorrectly in the payroll and benefit systems or when a newly Eligible Employee does not receive correct enrollment information or materials within 30 days of the eligibility date.

(a) **Newly Eligible Employee or QSC event.** PEBB authorizes the agency to correct processing errors identified within 60 days of the eligibility date or the QSC event date. Corrections are retroactive to the first of the month following the date the paper form or electronic equivalent was first received by the agency. The agency must reconcile all premium discrepancies.

(A) PEBB must review all processing errors identified after 60 days of the eligibility date or the QSC event date. If approved, corrections are retroactive to the first of the month following the date the paper form or electronic equivalent was first received by the agency. The agency must reconcile all premium discrepancies.

(B) When the newly Eligible Employee fails to receive enrollment materials within 30 days of the eligibility date or receives incorrect information, benefit plan elections are effective retroactive to the first of the month following the eligibility date.

(b) **Open Enrollment Period.** PEBB authorizes the agency to correct processing errors identified within 45 days from the end of the Open Enrollment Period. PEBB must review all processing errors identified after 45 days. All processing error corrections are effective the first of the new Plan Year.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 1-2006, f. & cert. ef. 11-28-06

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Rule Caption: Temporary Rule amends OAR 101-010-0005 immediately to incorporate recent IRS dependent definition changes.

Adm. Order No.: PEBB 2-2006(Temp)

Filed with Sec. of State: 12-14-2006

Certified to be Effective: 12-14-06 thru 6-12-07

Notice Publication Date:

Rules Amended: 101-010-0005

Subject: This rulemaking amends the current rule governing the eligibility for benefits and procedures of the Public Employees' Benefit Board and is made a part of OAR chapter 101 generally. Experience in using the rule, changes and clarification of federal regulations governing Internal Revenue Service Code, and the ongoing development of the agency-specific PEBB Administrative Manual have identified the need for amendment of the existing rule.

Rules Coordinator: Zue Matchett—(503) 378-7423

101-010-0005

Definitions

Unless the context indicates otherwise, as used in OAR chapter 101, divisions 1 through 60, the following definitions will apply:

(1) "Actively at Work" means:

(a) For medical and dental insurance coverage, an Eligible Employee at work, in Paid Regular status, scheduled for work during the month for which insurance coverage is requested, or using accrued leave on the effective date of coverage. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191) enacted on August 21, 1996, an employee may not be denied eligibility for health insurance coverage based on health status or disability.

(b) For life, disability and accidental death and dismemberment insurance coverage, an Eligible Employee who is physically on the job and receiving pay for the first scheduled day of work and performing the material duties of the employee's own occupation at the employer's usual place of business. If an Eligible Employee is incapable of active work because of

sickness, injury or pregnancy on the day before the scheduled effective date of his or her insurance coverage or increase in insurance coverage, the insurance coverage or increase in insurance coverage will not become effective until the day after the Eligible Employee completes one full day of active work.

(2) "Administrator" means the individual who administers the benefit plans on behalf of the Board.

(3) "Affidavit of Dependency" means a written document in which an Eligible Employee attests that the dependent meets the criteria set forth in OAR 101-010-0005(7) on the date the document is signed by the Eligible Employee.

(4) "Affidavit of Domestic Partnership" means a written document in which an Eligible Employee and another individual attest that they meet the criteria set forth in OAR 101-010-0005(8) on the date the document is signed by the Eligible Employee and the individual.

(5) "Board" means the Public Employees' Benefit Board established under ORS 243.061.

(6) "Decline Benefits" means the Eligible Employee waives his or her right to the employer contribution and enrollment in any of the insurance plans available through PEBB, including flexible spending accounts and all voluntary insurance plans.

(7) "Dependent Child" means any child who meets the criteria in this section. In defining Dependent Child PEBB follows Internal Revenue Service (IRS) Code 152 as revised by the Working Families Tax Relief Act of 2004:

(a) The child is not married and does not have a Domestic Partner; and

(A) Is under the age of 19 at the end of the calendar year; or

(B) Meets the IRS definition of a dependent child between the ages of 19 and up to age 24 attending school full time, this excludes foreign students; or

(C) Is between the ages of 19 and up to age 24, living in the home of the Eligible Employee over six months of the calendar year, and the Eligible Employee provides over half the yearly support; or

(D) Is between the ages of 19 and up to age 24, and is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. The attending physician must submit documentation of the disability to the medical plan for approval. Once certified, the medical plan may review dependent certification annually to determine continued eligibility; or

(E) Is a child age 24 or older, and is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. Except in the case of a child who previously qualified under (a)(D) of this section, the attending physician must submit documentation of the disability to the medical plan for approval. The medical plan may review dependent certification annually to determine continued eligibility. If the child is terminated from PEBB insurance coverage after age 24 for any reason, the Eligible Employee cannot re-enroll the child. A disabled Dependent Child age 24 or older must also meet the following criteria:

(i) The disability must have existed prior to attaining age 24.

(ii) The child must have had continuous medical insurance coverage, group or individual, prior to attaining age 24 and until the time of the PEBB effective coverage date.

(b) The child must not qualify as any other person's IRS dependent child, except that a child of divorced or separated parents meeting conditions under IRS Code 152(e) can be treated as a dependent of both parents for purposes of obtaining tax-free health coverage.

(c) A Dependent Child must also meet one of the following criteria:

(A) Is biological, adopted, or a child placed for adoption with the Eligible Employee or the Eligible Employee's spouse or Domestic Partner;

(B) Is a legal ward by court decree, a dependent by Affidavit of Dependency, or is under legal guardianship of the Eligible Employee, or the Eligible Employee's spouse or Domestic Partner, and is living in the home of the Eligible Employee.

(d) A child of a Domestic Partner meeting the definition of a Dependent Child is eligible to receive benefit coverage subject to Imputed Value Tax.

(e) Not all individuals listed in Section 152 of the Internal Revenue Code are eligible for enrollment in PEBB benefit plans. Refer OAR 101-010-0005(13).

(8) "Domestic Partner" means an individual who, together with an Eligible Employee, meets all the criteria listed below. The individual and Eligible Employee:

(a) Are both at least 18 years of age;

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(b) Share a close personal relationship and are responsible for each other's welfare;

(c) Are each other's sole Domestic Partners;

(d) Are not married to anyone and have not had a spouse or another Domestic Partner within the prior six months;

(e) Are not related by blood closer than would bar marriage in the State of Oregon;

(f) Have jointly shared the same regular and permanent residence for at least six months.

(g) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household.

(h) If previously married, would commence the six-month period on the final date of divorce.

(9) "Eligible Employee" means an employee of a PEBB participating organization, including state officials, in exempt, unclassified, classified and management service positions who are expected to work at least 90 days; and who work at least Half Time or are in a position classified as job share.

(10) "Family Member" means:

(a) A legally married spouse of an Eligible Employee; or

(b) A Dependent Child.

(11) "Group Medical Plan" for purposes of Opting Out of medical coverage means:

(a) Any medical plan offered or contributed to by an employer or a former employer;

(b) Medical coverage provided by a federal government or other governmental entity as an insurance plan sponsor, employer or former employer such as Federal Employee Health Benefits or TriCare; and other group medical insurance coverage as approved by PEBB. Reference OAR 101-020-0015 regarding Opting Out of medical insurance coverage.

(12) "Half Time" means an employee who works less than fulltime but at least:

(a) Eighty (80) Paid Regular hours per month; or

(b) .5 FTE for OUS employees; or

(c) As defined by collective bargaining.

(13) "Ineligible Dependent" means a dependent who does not meet the definition of "Spouse" or "Dependent Child" as set forth in 101-010-0005.

(14) "Open Enrollment Period" means a period designated by the Board during which Eligible Employees are permitted to make changes to their insurance coverage and other benefit plan choices for the next Plan Year.

(15) "Opt Out" means to elect a form of benefit that may include a cash payment, to be determined by the Board, in lieu of receiving medical insurance coverage through PEBB.

(16) "Paid Regular" means paid work time that includes vacation, sick, personal leave and compensatory time.

(17) "PEBB" means the Public Employees' Benefit Board and the system of benefit plans administered under the PEBB program established under ORS 243.061.

(18) "Pebb.benefits" means the Web-based automated benefit management application sponsored by PEBB allowing the Eligible Employee to electronically convey and update demographic information, beneficiary, dependent and benefit plan selections.

(19) "PEBB Participating Organization" means participating state agency, officer, Board, commission, department or other entity of state government.

(20) "Plan Year" means a period of 12 consecutive months, currently designated by the Board as the calendar year of January through December.

(21) "Pre-existing Condition" means:

(a) For medical and dental insurance coverage, a physical or mental condition which was diagnosed or treated or for which medication was prescribed or taken in the six months before coverage begins. A condition is diagnosed whenever a physician tells a person that he or she has that condition or makes an entry to that effect in the person's medical records. This applies even if the physician is examining or treating the person for a different condition.

(b) For life and disability insurance coverage, a mental or physical condition for which an individual has consulted a physician, received medical treatment or services or taken prescribed drugs or medication six months prior to the effective date of insurance coverage.

(22) "Qualified Status Change" (QSC) means any of the following:

(a) Events that change the legal marital status of an Eligible Employee including marriage, death of spouse, divorce, legal separation, or annulment;

(b) Events that change the status of a Domestic Partner relationship, including a Domestic Partner initially meeting qualifying criteria, death of the Domestic Partner or termination of the Domestic Partnership;

(c) Events that change the number of an Eligible Employee's or Domestic Partner's Dependent Children including birth, adoption, placement for adoption or death of a Dependent Child;

(d) A termination or commencement of employment by the Eligible Employee, spouse, or Domestic Partner;

(e) A reduction or increase in hours of employment by the Eligible Employee, spouse, or Domestic Partner that affects eligibility, including a change between Half Time and full-time, or commencement or return from an unpaid leave of absence, or commencement or return from a federal Family and Medical Leave Act (FMLA) leave whether the FMLA leave is paid or unpaid or as otherwise permitted by the (FMLA) and the Oregon Family Leave Act (OFLA);

(f) An event that causes an Eligible Employee's or Domestic Partner's Dependent Child to satisfy or cease to satisfy the eligibility requirements for benefit plan coverage due to age, student status or any similar circumstance;

(g) An increase in Eligible Employee, spouse or Domestic Partner's out-of-pocket premium amount resulting from decisions of the employer or employee;

(h) An involuntary loss of other group medical or dental insurance coverage, HIPAA Special Enrollment because:

(A) An Eligible Employee's spouse or Domestic Partner exhausts COBRA through previous employer;

(B) An Eligible Employee's spouse, Domestic Partner or Dependent Child ceases to be eligible for other group medical or dental insurance coverage (i.e., coverage discontinued by employer); or

(C) Employer contributions toward other group medical or dental insurance coverage from the employer of an Eligible Employee's spouse or Domestic Partner cease.

(i) In compliance with a final judgment, decree or order resulting from a divorce, legal separation, annulment or change in custody proceedings including issuance of a National Medical Support Notice (NMSN) or Qualified Medical Child Support Order (QMCSO) requiring enrollment of a Dependent Child on the existing medical and dental insurance plan(s);

(j) An Eligible Employee or an Eligible Employee's spouse or Domestic Partner moves out of the insurance plan service area, and thus loses eligibility for that insurance plan;

(k) Gain or loss of Medicare or a Medicaid insurance plan;

(l) In the Dependent Care Flexible Spending Account (FSA), the dependent care contribution changes only if:

(A) A cost change is imposed by a dependent care provider who is not a relative of the employee as defined by IRC 152(a)(1)-(8); or

(B) A change of dependent care provider, relative or not, results in a change in the cost of day care; or

(C) A Dependent Child attains age 13; or

(D) There is a qualified change in employment; or

(E) There is a change in the number of Family Members.

(F) Other Qualified Status Changes are considered except no changes are allowed with HIPAA Special Enrollment Rights, a judgment, decree or order, a change in residence or gain or loss of Medicare or Medicaid.

(m) In the Healthcare Flexible Spending Account (FSA), the healthcare contribution changes only if:

(A) There is a qualified change in employment; or

(B) There is a change in the number of Family Members.

(C) Other Qualified Status Changes are considered except no changes are allowed with HIPAA Special Enrollment Rights, a change in residence or a change in care cost.

(n) A change or cessation of coverage, such as an overall reduction in coverage, addition or elimination of benefit plan options, or changes in the Dependent Child's, spouses' or Domestic Partner's insurance coverage through the employer.

(23) "Reinstatement" or "Reinstated" means to reactivate all previous medical, dental, life, and disability insurance policies, if available, on a guaranteed basis when returning from a leave or termination of employment.

(24) "State Contribution" means the amount of money paid by the State of Oregon on behalf of Eligible Employees for the purchase of the benefit plans provided through PEBB.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

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Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 3-2005, f. 8-31-05, cert. ef. 9-1-05; PEBB 2-2006(Temp), f. & cert. ef. 12-14-06 thru 6-12-07

Department of Agriculture
Chapter 603

Rule Caption: Voluntary stewardship agreement program for rural landowners, jointly administered by Departments of Forestry and Agriculture.

Adm. Order No.: DOA 20-2006

Filed with Sec. of State: 11-21-2006

Certified to be Effective: 11-21-06

Notice Publication Date: 5-1-06

Rules Adopted: 603-110-0100, 603-110-0200, 603-110-0300, 603-110-0400, 603-110-0500, 603-110-0600, 603-110-0700, 603-110-0800, 603-110-0900, 603-110-1000, 603-110-1100

Subject: The rules establish procedures and criteria for forest and agricultural landowners to enter into voluntary stewardship agreements with the state. The agreements could provide benefits to landowners including expedited permit processing, regulatory certainty, priority consideration for cost-share assistance or other financial incentives and technical assistance, and government certification that certain land management practices have been implemented.

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

603-110-0100

Purpose

(1) Improving fish and wildlife habitat and water quality can not succeed through laws and government actions alone. These rules implement ORS 541.423 which reflects and depends upon Oregonians characteristic spirit of volunteerism and stewardship. The rules provide the means for the Departments of Forestry and Agriculture to implement a voluntary and flexible conservation incentives program that recognizes and rewards agricultural, forest, and other landowners who choose to exceed regulatory criteria for conservation, restoration, and improvement of fish and wildlife habitat or water quality while managing land to meet their objectives. Stewardship agreements will be long-term and consider conservation from a property wide perspective, rather than at the scale of single localized projects.

(2) This program provides incentives for landowners who meet and exceed regulatory requirements to achieve conservation. Regulatory requirements are continually reviewed and revised in the face of new scientific information and changing social values. As such, the relevant habitat and water quality statutes provide the means to evaluate whether a landowner is meeting and exceeding regulatory criteria.

(3) For lands and activities falling under the Oregon Forest Practices Act, the purpose of the stewardship agreement program is also to more efficiently implement the provisions of the Act as a voluntary alternative to traditional mechanisms of forest operation planning, review, inspection, and enforcement.

(4) The stewardship agreement program will recognize other relevant landowner efforts, such as forest or agricultural certification and habitat conservation plans, which have been developed by landowners to meet their management objectives, as components that partially or fully qualify a landowner for a stewardship agreement.

(5) The stewardship agreement program may not meet the objectives of all landowners. Landowners who choose not to enter into stewardship agreements, although they may be qualified to do so, are not considered less protective of resources than those landowners who choose to enter into stewardship agreements.

(6) Voluntary conservation, restoration, and improvement of fish and wildlife habitat or water quality depends on effective partnerships with other parties. The stewardship agreement program seeks to develop and support cooperative and collaborative partnerships with federal, state, and local agencies and with private conservation and landowner organizations.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0200

Definitions

The following definitions apply to OAR 603-110-0100 through 603-110-1100.

(1) **“Landowner”** means the owner identified in the management plan and any agent or consultant authorized by the owner to implement the management plan.

(2) **“Stewardship agreement”** means a written agreement between the landowner and the Department(s) that ensures the implementation of a management plan meeting the intent of ORS 541.423.

(3) **“Management plan”** means a written, multi-resource strategy for a particular tract of farm, forest, or other land, describing how the landowner will manage the land under consideration for a stewardship agreement to meet the intent of ORS 541.423 as laid out in OAR 603-110-0100 to 1100).

(4) **“Department(s)”** refers to the Oregon Department of Forestry and/or the Oregon Department of Agriculture.

(5) **“Inventory”** means describing elements of land uses, such as pasture, crop land, timber land, habitat, and other natural features, but not information that is proprietary or sensitive to landowner financial interests.

(6) **“Pesticides”** include but are not limited to herbicides, insecticides, fungicides, and rodenticides. Pesticides are regulated under the Oregon Pesticide Control Law (ORS 634) and the Oregon Pesticide Regulations (OAR 603-057).

(7) **“Conservation”** means the management of land, water, and natural resources for the purpose of meeting human and ecological needs in a sustainable manner.

Stat. Auth.: ORS 541.423
Stats. Implemented: ORS 541.423
Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0300

Stewardship Agreement Application Process

(1) Landowner must submit a written application on a form provided by the Departments. Information required includes:

(a) Name, contact information, property location, total acres, county, etc.

(b) Name of watershed the property is located in.

(c) Map and description of property, land uses, habitats, and water features (this does not need to include detailed or sensitive information about economic uses of property; the purpose is to know property boundaries, what habitats are present, and the general land use context.

(d) Name(s) of plans and programs landowner is implementing or participating in (if any) and how they contribute to meeting the criteria in 603-110-0500, including a copy of current certification (if any) or other conservation agreements.

(e) Identification of state, regional, and local conservation goals that the stewardship agreement is implementing.

(f) Description of conservation efforts for fish, wildlife, and water quality that are being used or are proposed.

(g) Identify management plan subject to the application review and subsequent audits.

(2) A written management plan is required, which could be a combination of an existing plan and/or a plan developed specifically for this program. The management plan needs to be available to the Department(s) during the review process and for subsequent audits, but landowners are not required to provide a copy for retention by the Department(s).

(3) A management plan will include:

(a) Landowner’s name and contact information, total acreage, acreage in agriculture and forestry, legal description, watershed(s), date of plan, plan writer’s name and contact information.

(b) Landowner goals and objectives.

(c) Property description and inventory, including: vegetation, fish and wildlife habitats, soils,

(d) Protection and/or enhancement of resources that exceeds regulatory requirements through land management practices and activities that are designed to achieve conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(e) Maps, aerial photographs, and other visual aids to illustrate the property description and management activities.

(f) For land and activities falling under the Oregon Forest Practices Act, specific sites or resource sites that are inventoried and protected under ORS 527.710(3)(a) and OAR 629-665-0000 to 0300, or that are listed under OAR 629-605-0170(1). Examples of these sites include sensitive bird nesting, roosting and watering sites, resource sites used by threatened and endangered fish and wildlife species, or significant wetlands.

(4) It is the policy of the Department(s) to protect confidential information in its files. The Department(s) recognize that a written management plan marked as “confidential” on the face of the document is submitted to the Department(s) on the condition that the information will be kept confidential. Any information voluntarily submitted to the Department(s) in con-

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confidence and not otherwise required by law to be submitted should reasonably be considered confidential. Such information in the management plans that should reasonably be considered confidential includes information that qualifies as a trade secret under ORS 192.501(2), that is, non-patented information that is known only to certain people within the organization, has commercial value, and would give its users a business advantage over competitors. Other confidential information may include information submitted in confidence that qualifies under any other public record exemption set forth in ORS 192.501.

(5) The handling of confidential materials shall be as follows:

(a) The Department will make immediate distribution to the appropriate personnel.

(b) Confidential material is stored in and returned to files at end of day and protected from visual inspection by unauthorized persons at all times.

(c) Confidential areas are kept secured after working hours.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0400

Application Review

(1) Applications will be reviewed jointly by the Departments.

(2) Application review will include a review of the past record of compliance with applicable laws and regulations regarding land use and management.

(3) The Departments will accept applications at any time and will review applications in a reasonable time, normally within 90 days.

(4) For applications covering lands in both agriculture and forest use, the Departments will designate one of the Departments to be the primary contact for development of the agreement, with both Departments approving the agreement.

(5) The Department(s) will consult with appropriate state and federal agencies and other conservation partners regarding potential issues related to their responsibilities and expertise.

(6) The Department(s) and landowner will work jointly to develop a draft stewardship agreement. This will include a site visit with the landowner.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0500

Criteria To Evaluate Adequacy Of A Landowner Management Plan To Meet Purpose Of Rules

(1) The management plan will include provisions to protect or conserve fish and wildlife habitat, water resources, and soil resources appropriate to the property and consistent with landowner objectives.

(2) The management plan will be reviewed against the following criteria (a-c) to determine whether the landowner is implementing management actions that exceed regulatory requirements for the conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(a) Management actions to conserve, restore, and improve fish and wildlife habitat

(A) Specific conservation goals for fish and wildlife habitat are established.

(B) Alignment with Oregon's 'Comprehensive Wildlife Conservation Strategy', an adopted subbasin plan, and/or other watershed or landscape-scale conservation plan is demonstrated.

(C) Invasive species are identified, controlled, and where possible, eliminated.

(D) Threatened, endangered, and at-risk species and associated habitats are protected, enhanced, or restored.

(E) Food, water, and shelter components of habitat for fish and wildlife are provided (e.g. snags, nesting trees, downed wood, side-channels, bat/bird/bee boxes hedgerows, field edges, etc.).

(F) Crop selection and/or management accommodates fish and wildlife habitat needs.

(G) Native habitat is restored and enhanced, consistent with historic vegetative patterns. Restoration includes diverse native species, structure, and age of vegetation appropriate to the site and its regional context.

(H) Special consideration is given to native habitats known to be uncommon, rare or at risk (i.e. prairie, oak woodland, bottomland hardwood forest).

(I) Natural hydrology is restored to provide habitat for native fish and other aquatic species.

(J) Where feasible, natural disturbance processes like fire and flooding are allowed to function.

(K) Road disturbances to fish and wildlife habitat are minimized.

(L) Fish passage limitations are addressed.

(M) Water diversions are screened or otherwise managed to provide fish passage and prevent entrapment.

(N) Water withdrawals are managed to enhance the needs of fish and wildlife habitat.

(b) Management actions to conserve, restore and improve water resources

(A) Riparian vegetation is protected, managed, or restored to provide erosion control, sediment and nutrient filtering, and other functions of a properly functioning riparian area.

(B) Sediment runoff and animal wastes are controlled at the source to prevent ground and/or surface water contamination.

(C) Vegetation and soils are managed to conserve water by encouraging infiltration and storage of rainfall in the soil.

(D) Irrigation and drainage systems are managed to prevent waste of water and to protect water quality.

(E) Road systems are managed to reduce or eliminate sediment delivery to streams and to prevent catastrophic failure.

(F) Cultural and biological pest prevention strategies are used to reduce or eliminate the need for pesticide applications (e.g. Integrated Pest Management).

(G) Precautions are taken to prevent leaks or spills of pesticides or petroleum products, such as fuel, motor oil, and hydraulic fluid, from reaching waters of the state and sensitive native habitats.

(c) Management actions to conserve, restore, and improve soil resources

(A) Tillage practices minimize degradation of soil quality and conserve organic matter and soil aggregation.

(B) Soils are protected from erosion by optimizing plant cover or residue throughout the year. Practices include but are not limited to: permanent vegetative cover in orchards, nurseries, and vineyards, mulch in row crops, and by using pastures and appropriate intensity, duration, and frequency of livestock grazing.

(C) Crop rotations that include cover crops are used to build soil organic matter and productivity.

(D) Soil disturbance and compaction during timber harvest is minimized.

(E) A comprehensive nutrient management plan or other means are used to conserve and recycle nutrients by converting organic wastes into productive uses and by seeking ways to generate nutrients on farm. Practices that can be used include but are not limited to: cover cropping, on-farm composting, and integrating livestock into farm production.

(F) Land management on steep slopes and fragile soils is conducted in a manner to reduce or eliminate impacts to the site.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0600

Stewardship Agreement

(1) The agreement will include the landowner's commitment to:

(a) Implement the activities and monitoring identified in this agreement for enhancing conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(b) Comply with and manage beyond relevant habitat and water quality rules and statutes.

(c) Allow audits and assist with the process, as appropriate.

(2) The agreement will identify the activities and monitoring that will be done for conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(3) The agreement will include the Departments' commitment to:

(a) Accept the agreement as demonstrating compliance with state regulatory requirements if the agreement demonstrates such compliance.

(b) Provide specific assistance or incentives that may include: information about conservation programs, certification for marketing purposes, technical assistance, coordination with other agencies to resolve issues.

(c) Strive to match participants with resources suitable to meet landowner objectives.

(4) For lands subject to the Oregon Forest Practices Act, the stewardship agreement may include sufficient detail to meet the requirements for:

(a) Written plans under ORS 527.670(3), OAR 629-605-0170, and OAR 629-605-173;

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(b) Fifteen-day waiting periods under OAR 629-605-0150 (1), except as provided by ORS 527.670(9) for aerial chemical applications;

(c) Notification consistent with OAR 629-605-0140 and 629-605-0150; and

(d) Other administrative rules and statutes related to notification, such as for fire protection, taxation, safety, water withdrawals, or public subscriptions.

(5) Landowners may have active forest operations on lands that are part of a proposed stewardship agreement. If so, the stewardship agreement will immediately apply those operations when the stewardship agreement is finalized.

(6) Department access to stewardship agreement lands is limited to reviews and audits for which landowners have provided authority. Landowners may also choose to authorize additional limited access to lands under the stewardship agreement for purposes of biological effectiveness monitoring.

(7) The agreement will include the frequency of audits, which will be established based on the Departments' evaluation of the relative complexity of the management plan and the terms of the stewardship agreement.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0700

Decision Authority

(1) The State Forester is delegated full authority by the Board of Forestry to implement the provisions of ORS 541.423, including but not limited to review of management plans and preparation and approval of stewardship agreements.

(2) Prior to approving a stewardship agreement, the Departments will provide public notice and 21 days for comment on the proposed agreement.

(3) When the Departments determine that comments from the review process are adequately addressed, the stewardship agreement will be approved.

(4) The Departments will give notice of approval, termination, and revisions of a stewardship agreement to each other, to the Oregon Department of Fish and Wildlife, and to the Oregon Watershed Enhancement Board.

(5) If the management plan includes potential chemical application operations related to forest operations, the State Forester will give notice of approval of a stewardship agreement to:

(a) Any person with surface water rights pursuant to ORS Chapter 537 who, under the provisions of ORS 527.670(6), has previously requested in writing from the State Forester copies of notifications and written plans for chemical application operations within ten upstream miles of the water right location; and

(b) The community water system manager of any community water system where the surface water drainage area upstream of the intake is 100 square miles or less and the management plan includes potential aerial chemical application operations within 100 feet, or ground-based chemical application operations within 50 feet, of the Type D or domestic use portions of Type F streams that provide water used by the community water system.

(6) The Departments will notify persons who submitted timely comments of the approval of a stewardship agreement. Any person who submitted timely comments and who is adversely affected by the operations conducted under an approved or amended stewardship agreement may file a written request for a hearing to the appropriate Department.

(7) As provided for in ORS 568.912 and 527.700(1) and (2) a landowner may appeal an order denying approval of a stewardship agreement.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0800

Stewardship Agreement Audits

(1) The Department(s) will conduct periodic audits with the landowner on lands under a stewardship agreement.

(2) The landowner will provide authorization for the Department (or its designated agent) that is party to the stewardship agreement to conduct periodic audits on lands subject to the stewardship agreement to determine whether the management plan is being implemented and whether the stewardship agreement should be continued, revised, or discontinued.

(3) For the purpose of the stewardship agreement rules, an audit means a review of land management and resource sites identified in the

stewardship agreement to determine if the terms and conditions of the stewardship agreement are being met.

(4) The frequency and the number of audits may vary based on the Departments' evaluation of the relative complexity of the management plan, the terms of the stewardship agreement, or the performance observed during previous audits.

(5) Audits will be conducted at least once every three years. Landowners may request additional audits to help them assess their performance under the stewardship agreement or to provide an annual government certification of their operation.

(6) The Departments will provide an audit report to the landowner within a reasonable period, normally 45 days, with recommendations for needed revisions to the stewardship agreement.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-0900

Revising Stewardship Agreements

(1) The landowner and the Departments will cooperatively revise the stewardship agreement if:

(a) The landowner requests a revision;

(b) An audit report recommends revising the stewardship agreement;

(c) Any portion of the land changes ownership resulting in that land being removed from the stewardship agreement as per 603-110-1000(3).

(2) All revisions to the stewardship agreement are subject to the review process outlined in 603-110-0700(2) and (3).

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-1000

Terminating Stewardship Agreements

(1) The appropriate Department will issue a written notice to terminate a stewardship agreement when:

(a) The landowner is negligent in meeting the terms of the stewardship agreement;

(b) The landowner willfully disregards the terms of the stewardship agreement; or

(c) The State Forester or Department of Agriculture and landowner fail to reach agreement about revisions required under OAR 603-110-0900 within a reasonable period, normally 45 days.

(d) Failure to comply with Federal environmental laws could be criteria for terminating or suspending a stewardship agreement.

(2) The written notice to terminate the stewardship agreement will state the conditions under section 603-110-1000(1) of this rule that exist and what, if any, remedies are necessary to avoid the termination.

(3) Any parcel of land that is sold or transferred to another landowner will immediately cease to be included in the stewardship agreement.

(4) Upon receiving a written notice to terminate the stewardship agreement, the landowner will suspend all portions of operations requiring written plans under the Forest Practices Act until written plans have been submitted and reviewed.

(5) The landowner may terminate the agreement after providing written notice to the lead Department for the agreement.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

603-110-1100

Periodic Review of Program

(1) An interagency review of the Departments' implementation of the stewardship agreement program will be produced biennially, and presented to the Board of Forestry and Board of Agriculture. This report will include:

(a) A description of the agreements approved

(b) Areas of concern regarding implementation of the program

(c) A review of the coordination between the two Departments

(d) Recommendations to revise or modify the program

(e) A review of program effectiveness for enhancing fish and wildlife habitat and water quality.

(2) An advisory group, including the Oregon Department of Fish and Wildlife, and other interested/involved parties, will be utilized to assist the Departments in conducting the biennial review.

Stat. Auth.: ORS 541.423

Stats. Implemented: ORS 541.423

Hist.: DOA 20-2006, f. & cert. ef. 11-21-06

ADMINISTRATIVE RULES

Rule Caption: To align rule with federal law and clarify rule intent.
Adm. Order No.: DOA 21-2006
Filed with Sec. of State: 12-4-2006
Certified to be Effective: 12-4-06
Notice Publication Date: 11-1-06
Rules Amended: 603-011-0371
Subject: The current rule OAR 603-011-0371 is not aligned with the Federal Law 9 CFR Part 79. The minor changes will clarify the rule intent and be consistent with the Federal Law 9 CFT Part 79.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-011-0371

Identification of Sheep and Goats

All sexually intact sheep and goats of any age leaving the flock of origin which are not in slaughter channels and all sheep over 18 months of age in slaughter channels must have official identification in accordance with 9 CFR Part 79 prior to leaving the farm of origin for intrastate or interstate movement for any purpose. All sexually intact sheep and goats for exhibition must bear official individual identification in accordance with 9 CFR Part 79.

Stat. Auth.: ORS 561.190, 596.020, 596.392 & 596.412

Stats. Implemented: ORS 596.392

Hist.: DOA 25-2004, f. & cert. ef. 11-8-04; DOA 21-2006, f. & cert. ef. 12-4-06

Department of Agriculture, Oregon Sheep Commission Chapter 644

Rule Caption: To increase wool assessment rate by 1/2 cent.
Adm. Order No.: SHEEP 1-2006
Filed with Sec. of State: 12-12-2006
Certified to be Effective: 1-1-07
Notice Publication Date: 10-1-06
Rules Amended: 644-010-0010
Subject: The amended rule will increase the assessment rate on the sale of wool sold through commercial channels by one-half cent, making the assessment rate \$.025 per pound of wool, effective January 1, 2007.
Rules Coordinator: Richard Kosesan—(503) 364-5462

644-010-0010

Assessments

(1) Any first purchaser shall deduct and withhold an assessment of two and one-half cents (\$.025) per pound from the price paid to the producer thereof, after January 1, 2007, for all wool produced in Oregon.

(2) All casual sales of wool made by the producer direct to the consumer and in an amount less than 200 pounds in any calendar year shall be exempt from the assessment.

(3) Any person (including producers eligible for exemption from assessment as casual sales) may donate to the Commission. Such authorization may be made by so indicating and signing such donation on the payment slips prepared by the first handler (who will include such donations in the quarterly report).

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576.304(2) & 576.325

Hist.: SC 2, f. 12-20-77, ef. 1-1-78; SC 1-1985, f. & ef. 11-20-85; SHEEP 1-2004, f. & cert. ef. 1-8-04; SHEEP 1-2005, f. 12-15-05 cert. ef. 1-1-06; SHEEP 1-2006, f. 12-12-06, cert. ef. 1-1-07

Department of Community Colleges and Workforce Development Chapter 589

Rule Caption: Revises the calculation of weighted reimbursable Full-Time Equivalent student enrollment; updates allocation for Distributed Learning.
Adm. Order No.: DCCWD 8-2006
Filed with Sec. of State: 12-13-2006
Certified to be Effective: 12-15-06
Notice Publication Date: 8-1-06
Rules Amended: 589-002-0100
Subject: Authority for distribution of the Community College Support Fund is granted by OAR 589-002-0100. This rule amendment revises the calculation of weighted reimbursable Full-Time Equiv-

alent enrollment to promote growth and clarifies related language. This rule amendment revises the Distributed Learning allocation so that it is increased by a standard percentage each biennium.

The Agency requests public comment on the proposed changes in the procedures for calculating weighted reimbursable Full-Time Equivalent student enrollment and the Distributed Learning allocation. The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Rules Coordinator: Linda Hutchins—(503) 378-8649, ext. 474

589-002-0100

Distribution of Community College Support Fund

(1) Purpose Statement:

(a) It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Short- and long-term interests include the consideration of such things as comparable District funding capability, maintaining small districts as a means of educational access and stable, predictable funding. Oregon's Community College distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level;

(b) The State Board through the authority vested in it by ORS 341.626, uses this rule to state clearly and concisely what the statewide interests are for Oregon community colleges and students through the adoption of a policy-driven distribution formula. The overarching policy levers, chosen by the State Board, have been structured to support access and quality and to do so with equity for Oregon students;

(c) The State Board, the Department, and the seventeen Oregon Community Colleges plan to pursue equalization of resources regardless of funding levels. This goal is reflected in the following principles:

(A) An expectation that equalization will be achieved in six years;

(B) Significant additional funds in a biennium compared to the previous biennium will benefit every college. The State Board will determine what level is significant on a biennial basis;

(C) Historic share of total public resources will be based on the immediate previous year for every year, with the exception of 2005-06. For 2005-06, historic share of public resources will be based on the average of 2003-04 and 2004-05;

(D) Buffered FTE will be used in the formula. The buffering is accomplished by using a three-year weighted average as defined in Section (8)(b);

(E) If significant additional resources are available compared to the previous biennium, equalization can go faster. The State Board will determine what level is significant on a biennial basis;

(F) The resource level available compared to the previous biennium may impact the pace of progress toward equalization.

(2) For purposes of this rule, the following definitions apply:

(a) "Total Public Resources." The Community College Support Fund formula considers 100% of the next year's imposed property tax revenue and the General Fund appropriation from the legislature;

(b) "Property tax revenues" is defined as the amount determined by the Department of Revenue to be imposed on local property following the application of limits imposed by sections 11(b)(1) through 11(b)(3), Article XI, of the Oregon Constitution, and those limits imposed by legislation implementing Ballot Measure 50. This amount becomes the basis for operation of the funding formula without regard to uncollectible taxes, or taxes collected from previous years. Taxes levied or imposed by a community college district to provide a public library system established prior to January 1, 1995 shall be excluded from the definition of property taxes in this rule. Property tax revenues raised through voter approval of any local option or capital construction levy are not to be included as a resource to be distributed through the funding formula;

(c) "Community College Support Fund" is defined as those funds received through the State's General Fund appropriation and distributed to the community colleges for the purpose of funding educational programs;

(d) "Full-Time Equivalent (FTE) Enrollment" is defined as 510 clock hours for all coursework and for all terms including a fall 12 week term. For an 11 week fall term, the following calculation will be used; 11/12 of 510 hours or 467.5 hours;

(e) "Total Weighted Reimbursable FTE" is defined as the sum of 40% of first year prior to current FTE, 30% of second year prior to current FTE, and 30% of third year prior to current FTE;

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(f) "Historic Share of Public Resources" is defined as the percent of statewide non-base total public resources allocated to each Oregon community college in the prior period. With the exception of 2005–06, historic share of public resources is calculated by dividing each college's total public resources from the prior year, exclusive of the base, by Total Weighted Reimbursable FTE from the prior year. For 2005–06, historic share of public resources is calculated by dividing each college's average total public resources from the 2003–04 and 2004–05 fiscal years, exclusive of the base, by the amount of frozen reimbursable FTE used in both the 2003–04 and 2004–05 fiscal years;

(g) "Equalization" is defined as equal public resource support per Weighted Reimbursable FTE, regardless of institution, and exclusive of the base. Equalization is measured by dividing Total Public Resources, exclusive of the base, by Weighted Reimbursable FTE.

(3) The Community College Support Fund shall be distributed in equal payments as follows:

(a) For the first year of the biennium, August 15, October 15, January 15, and April 15;

(b) For the second year of the biennium, August 15, October 15, and January 15;

(c) The final payment of each biennium is deferred until July 15 of the following biennium as directed by Senate Bill 1022 of the Third Special Session of the 71st Oregon Legislative Assembly.

(d) Should any of the dates set forth above occur on a weekend, payment shall be made on the next business day;

(e) All payments made before actual property taxes imposed by each district are certified by the Oregon Department of Revenue shall be based on the Department's best estimate of quarterly entitlement using property tax revenue projections. Payments shall be recalculated each year as actual property tax revenues become available from the Oregon Department of Revenue and any adjustments will be made in the final payment(s) of the fiscal year.

(4) Districts shall be required to submit enrollment reports in the format specified by the Commissioner, including numbers of clock hours realized for all coursework, in a term-end enrollment report by the Friday of the sixth week following the close of each term. If reports are outstanding at the time of the quarterly payments, payment to the district(s) not reporting may be delayed at the discretion of the Commissioner. All payments made before actual Full-Time Equivalent enrollment data are available shall be based on the Department's best estimate of quarterly entitlement using enrollment data from previous years. Payments shall be recalculated each year as actual Full-Time Equivalent enrollment data become available and any adjustments will be made in the fiscal year.

(5) Reimbursement from the Community College Support Fund shall be made for professional technical, lower division collegiate, developmental education and other courses approved by the State Board in accordance with OAR 589-006-0100 through 589-006-0400. State reimbursement is not available for hobby and recreation courses as defined in OAR 589-006-0400.

(6) Residents of the state of Oregon and the states of Idaho, Washington, Nevada, and California shall be counted as part of each Community College's Total Reimbursable FTE base but only for those students who take part in coursework offered within Oregon's boundaries.

(7) State funding for community college district operations is appropriated by the legislature on a biennial basis to the Community College Support Fund. For each biennium the amount of state funds available for distribution through the funding formula shall be calculated based on the following:

(a) Funds to support contracted out-of-district (COD) programs and corrections programs shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these programs shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation. Each Community College having a COD contract shall receive a biennial appropriation equal to the same percentage share of funding it received in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation; funding for individual corrections programs will be determined in consultation with the Department of Corrections;

(b) The State Board may establish a Strategic Fund:

(A) There are two basic categories for these funds. Incentivized statewide initiatives and activities and requests from individual Districts for

assistance in meeting new requirements and expectations stemming from legislative change;

(B) The Commissioner will use a committee of stakeholders and Department staff to determine overall priorities for funding that consider the State Board work plan and initiatives;

(C) Strategic Funds provided to incentivize statewide activities or assist Community Colleges in meeting legislative expectations are provided only for the biennium in which funding is approved. Strategic Funds allocated for either purpose will not be considered in the distribution of funds through the formula described in Section 8 for the current biennium or future biennia;

(D) Any unused monies remaining in the current biennium's Strategic Fund will be allocated through the formula described in Section 8 at the end of the biennium;

(E) The Commissioner will review, rank, and approve proposals to incentivize statewide activities. After each proposal is approved, the Commissioner will provide the State Board with a report detailing the purpose of the activity, the amount of Strategic Fund monies approved, and the proposal's merit as assessed under the following parameters:

(i) Purpose of the proposal;

(ii) How does the activity support the initiatives and work plans of the Department and the State Board;

(iii) Does the activity relate to the Department's Key Performance Measures or other program-specific measures?

(iv) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(v) If future funding is needed, how will those resources be obtained?

Is the activity sustainable?

(vi) What is the activity's impact on the State three years from now? Five years from now?

(vii) What change is anticipated?

(viii) How will progress be measured?

(F) The Department will bring all requests for assistance in meeting new requirements or expectations stemming from legislative change to the State Board for discussion and consideration;

(G) The Department will assess the requests for assistance in meeting new requirements or expectations of the Legislature based on the following parameters:

(i) Purpose of the proposal;

(ii) How will the funds be used? To sustain or increase enrollment (not supplanting existing funds)?

(iii) Is the funding one time (for this biennium) or will additional funding be needed in the future?

(iv) If future funding is needed, how will those resources be obtained?

Is the activity sustainable?

(v) What is the proposal's impact on the Community College three years from now? Five years from now?

(vi) How will progress be measured?

(H) The Department will provide a recommendation and reasoning to the State Board on whether the request merits funding.

(c) Funds to support targeted investments such as distributed learning shall be subtracted from the amount allocated to the Community College Support Fund before the formula is calculated. The amount available for these investments shall be equal to the funding amount in the preceding biennium, except as adjusted to reflect the same percentage increase or decrease realized in the overall Community College Support Fund appropriation;

(d) Funds remaining in the Community College Support Fund shall be divided equally between the two years of the biennium, and will be distributed in equal payments as described in Section 3 and through a distribution formula as described in Section 8.

(8) Distribution of funds to Community College Districts from the Community College Support Fund shall be accomplished through a formula, based on the following factors:

(a) Base Payment. Each community college district shall receive a base payment of \$600 for each Weighted Reimbursable FTE up to 1,100 and \$300 per FTE for unrealized enrollments between actual Weighted Reimbursable FTE and 1,100 FTE. The base payment may be adjusted by the State Board each biennium. The base payment for each District will be adjusted according to the size of the District. District size for purposes of this adjustment will be determined each year by the FTE set forth in section (8)(b) of this rule. The base payment adjustments shall be:

(A) 0–750 FTE 1.3513;

(B) 751–1,250 FTE 1.2784;

(C) 1,251–1,750 FTE 1.2062;

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- (D) 1,751–2,250 FTE 1.1347;
- (E) 2,251–2,750 FTE 1.0641;
- (F) 2,751–3,250 FTE 1.0108;
- (G) 3,251–3,750 FTE 1.0081;
- (H) 3,751–4,250 FTE 1.0054;
- (I) 4,251–4,999 FTE 1.0027;
- (J) 5,000 or more FTE 1.000.

(b) Student-Centered Funding: The formula is designed to progress toward a distribution of funds based on Weighted Reimbursable FTE students. The equalized amount per Weighted Reimbursable FTE is determined by dividing total public resources — excluding base payments, contracted out-of-district payments, and any other payments directed by the State Board or the Legislature — by Total Weighted Reimbursable FTE. The Department shall make the calculation based on submission of FTE reports by the districts and in accordance with established FTE principles:

(A) A three-year weighted average of Total Reported Reimbursable FTE by the Community Colleges will be used;

(B) For 2005–06 through 2007–08: FTE will be “thawed” from its current level one year at a time, beginning in 2005–06 when actual 2003–04 FTE is included in the formula. Beginning in 2007–08, the weighted average of FTE will consider only actual FTE. The “frozen” 96,027 total reimbursable FTE statewide was set by the State Board in 2002–03:

(i) The calculation for 2005–2006 Total Reimbursable FTE is 2003–04 actual enrollments (weighted at 40%); 2002–03 enrollments set at 96,027 (weighted at 30%); 2001–02 enrollments set at 96,027 (weighted at 30%);

(ii) The calculation for 2006–07 Total Reimbursable FTE is 2004–05 actual enrollments (weighted at 40%); 2003–04 actual enrollments (weighted at 30%); 2002–03 enrollments set at 96,027 (weighted at 30%);

(iii) The calculation for 2007–08 Total Weighted Reimbursable FTE is 2006–07 actual enrollments (weighted at 40%); 2005–06 actual enrollments (weighted at 30%); 2004–05 actual enrollments (weighted at 30%).

(C) All future calculations will use a three-year weighted average with first year prior to current actual enrollment weighted at 40%, second year prior to current actual enrollment weighted at 30% and third year prior to current actual enrollment weighted at 30%.

(c) Equalization. The State Board of Education expects to achieve Equalization in funding for all community college students in six years:

(A) Progress to Equalization is defined as: On an individual Community College level, progress toward Equalization will close the gap between non-base total public resource support per Weighted Reimbursable FTE and fully equalized non-base total public resource support per Weighted Reimbursable FTE by some fraction per year;

(B) The proposed model calculates how far each Community College’s non-base allocation is from full equity every year, then moves incrementally toward Equalization each year. Each Community College makes the same percentage movement to Equalization each year unless the harm limit (described in Section (8)(d)) is invoked. Community Colleges at or near equity do not move much in real dollars under the equity adjustment. Community Colleges further from equity move more in real dollars under the equity adjustment;

(C) In early years, the focus is on stability as Community Colleges adjust to Equalization. A smaller proportion of funds is distributed through Equalization and a larger proportion is distributed based on historic share of public resources. As the timeframe progresses, this proportion reverses, and in later years more funds are distributed through Equalization.

(d) Harm Limit. The harm limit is designed to prevent individual Community Colleges from losing more than a certain percent of non-base total public resources from one year to the next due to Equalization. The harm limit does not limit losses in total public resources due to changes in FTE enrollment, changes in the General Fund appropriation, or changes in public resources. The harm limit is determined by combining the percent change in state appropriation funds from one year to the next with an adjustment percent determined by the State Board each year. In determining the adjustment, and therefore the total harm limit that results from combining the adjustment with the percent change in resources, the Board should consider the following issues:

(A) The total harm limit must not unnecessarily impede progress toward Equalization in the expected six-year period;

(B) The total harm limit should be adequate to ameliorate unreasonable negative effects of Equalization.

(e) Distribution of Significant Additional State Resources. In a biennium when significant additional state resources are available compared to the state appropriation in the previous biennium, in each year of the biennium:

(A) Fifty percent of additional state resources will be allocated through the Equalization methodology;

(B) The remaining fifty percent of additional state resources will be allocated based on the Community College’s historic share of public resources;

(C) The State Board will determine on a biennial basis what level of additional resources is considered significant;

(D) The State Board retains the authority to alter the percent of significant additional state resources allocated according to equity and historic share of public resources for each biennium, beginning in 2007–09.

(9) State general fund and local property taxes for territories annexed or formed effective June 1, 1996, or later shall not be included in the funding formula for the first three years of service. Additionally, the FTE generated in newly annexed territories shall not impact the funding formula during the first three years of service. Beginning in the fourth year, funding will be distributed through the formula as outlined in this rule.

Stat. Auth.: ORS 326.051 & 341.626

Stats. Implemented: ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

Hist.: 1EB 9-1979, f. & ef. 6-11-79; EB 12-1991, f. & cert. ef. 7-19-91; Renumbered from 581-043-0260; ODE 27-2000, f. & cert. ef. 10-30-00; DCCWD 1-2001, f. & cert. ef. 3-21-01, Renumbered from 581-041-0200; DCCWD 2-2001, f. & cert. ef. 5-7-01; DCCWD 3-2002, f. & cert. ef. 6-5-02; DCCWD 7-2002(Temp), f. & cert. ef. 12-16-02 thru 6-5-03; DCCWD 3-2003, f. & cert. ef. 5-14-03; DCCWD 1-2004, f. & cert. ef. 7-1-04; DCCWD 1-2005, f. & cert. ef. 7-13-05; DCCWD 2-2006(Temp), f. & cert. ef. 6-15-06 thru 11-30-06; DCCWD 6-2006, f. 10-3-06, cert. ef. 10-4-06; DCCWD 8-2006, f. 12-13-06, cert. ef. 12-15-06

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

Rule Caption: Adoption of Federal OSHA’s changes to Respiratory Protection in General Industry, Construction, Agriculture, and Maritime.

Adm. Order No.: OSHA 11-2006

Filed with Sec. of State: 11-30-2006

Certified to be Effective: 11-30-06

Notice Publication Date: 11-1-06

Rules Amended: 437-002-0120, 437-002-0360, 437-003-0001, 437-004-1041, 437-005-0001

Subject: Oregon OSHA adopts the Federal OSHA changes as they appear in the August 24, 2006 Federal Register. These changes revise the existing rules on respiratory protection, adding definitions and new language that establishes Assigned Protection Factors (APFs) and Maximum Use Concentrations (MUCs) for respirator use. The revisions also supersede the respirator selection provisions of existing substance-specific standards with these new APFs (except for the respirator selection provisions of the 1,3-Butadiene Standard).

Federal OSHA developed the final APFs after thoroughly reviewing the available literature, including chamber-stimulation studies and workplace protection factor studies, comments submitted to the record, and hearing testimony. The final APFs provide employers with critical information to use when selecting respirators for employees exposed to atmospheric contaminants found in general industry, construction, shipyards, longshoring, and marine terminal workplaces. Oregon OSHA also adopts these changes into Division 4, Agriculture. Proper respirator selection using APFs is an important component of an effective respiratory protection program. Accordingly, Federal OSHA concludes that the final APFs are necessary to protect employees who must use respirators to protect them from airborne contaminants.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0120

Adoption by Reference

In addition to and not in lieu of any other health and safety 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 1910**, revised as of 7/1/03, and any subsequent amendments published in the Federal Register and listed below:

(1) 29 CFR 1910.132 General requirements, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 6/30/93, FR vol. 58, no. 124, p. 35306; 4/6/94, FR vol. 59, no. 66, p. 16360; amended with AO 12-2001, Oregon note added, f. and ef. 10/26/01.

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(2) 29 CFR 1910.133 Eye and face protection, published 6/27/74, Federal Register, vol. 39, p. 23502; 4/6/94, FR vol. 59, no. 66, p. 16360; 3/7/96, FR vol. 61, no. 46, p. 9236; 5/2/96, FR vol. 61, p. 19547.

(3) 29 CFR 1910.134 Respiratory protection, published 1/8/98, Federal Register, vol. 63, no. 5, p. 1270; 4/23/98, FR vol. 63, no. 78, p. 20098; 8/4/04, FR vol. 69, p. 46986; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122.

(4) 29 CFR 1910.135 Occupational head protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547.

(5) 29 CFR 1910.136 Occupational foot protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362; 3/7/96, FR vol. 61, no. 46, p. 9238; 5/2/96, FR vol. 61, p. 19547; 5/9/96, FR vol. 61, p. 21228.

(6) 29 CFR 1910.137 Electrical protective equipment, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 1/31/94, FR vol. 59, no. 20, pp. 4435-7.

(7) 29 CFR 1910.138 Hand Protection, published 4/6/94, Federal Register, vol. 59, no. 66, p. 16362.

(8) 29 CFR 1910.139 Respiratory protection for M. tuberculosis, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49748; 2/10/84, FR vol. 49, p. 5322; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 1/8/98, FR vol. 63, no. 5, p. 1270. Removed, 12/3/03, FR vol. 68, p. 75776-75780 (OR-OSHA Admin. Order 1-2004, f. 3/26/04, ef. 7/1/04).

(9) Appendices. **Appendix A** — References for further information (nonmandatory). **Appendix B** — Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

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

[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 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 11-2006, f. & cert. ef. 11-30-06

437-002-0360

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 1910, revised as of 7/1/99, and any subsequent amendments published in the **Federal Register** as listed below:

(1) (Reserved) 29 CFR 1910.1000 Air contaminants, published 6/27/74, Federal Register, vol. 39, pp. 23540-23543; amended in the following FR publications: 5/28/75, vol. 40, pp. 23072-23073; 5/3/77, vol. 42, p. 22525; 1/17/78, vol. 43, p. 2600; 2/10/78, vol. 43, p. 5963; 3/29/78, vol. 43, p. 13563; 5/4/78, vol. 43, p. 19624; 6/23/78, vol. 43, p. 27394; 6/30/78, vol. 43, p. 28473; 10/3/78, vol. 43, p. 45809; 11/14/78, vol. 43, p. 53007; 12/8/78, vol. 43, pp. 57602-57603; 2/5/79, vol. 44, p. 7141; 6/18/80, vol. 45, pp. 12416-12417; 7/28/80, vol. 45, pp. 50328-50329; 6/19/81, vol. 46, p. 32022; 6/22/84, vol. 49, p. 25796; 1/02/85, vol. 50, p. 64; 12/13/85, vol. 50, p. 51173; 11/17/86, vol. 51, p. 41477; 9/11/87, vol. 52, p. 34562; 12/4/87, vol. 52, p. 46291; 1/19/89, vol. 54, pp. 2920-2983; 7/5/89, vol. 54, no. 127, pp. 28054-28061; 9/5/89, vol. 54, no. 170, pp. 36767-36768; 11/15/89, vol. 54, no. 219, p. 47513; 2/5/90, vol. 55, no. 24, pp. 3724; 5/9/90, vol. 55, no. 90, pp. 19258-19259; 11/8/90, vol. 55, no. 217, pp. 46948-46950; 7/1/92, vol. 57, no. 127, pp. 29204-29206.

NOTE: 29 CFR 1910.1000 was repealed on 11/15/93 by OR-OSHA. In Oregon, OAR 437-002-0382 applies.

(2) 29 CFR 1910.1001 Asbestos, published 6/20/86, Federal Register, vol. 51, no. 119, pp. 22612-22790; amended 10/17/86, FR vol. 51, pp. 37002-37007; amended 5/12/87, FR vol. 52, pp. 17754-17755; amended 9/14/88, FR vol. 53, no. 178, pp. 35610-35627; amended 9/23/88, FR vol. 53, no. 185, p. 37080; amended 7/21/89, FR vol. 54, no. 139, p. 30704-30705; amended 12/20/89, FR vol. 54, no. 243, p. 52028; amended 2/5/90, FR vol. 55, no. 24, pp. 3731-3732; amended 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; amended 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, p. 24330; 8/10/94, FR vol. 59, no. 153, p. 41065; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 8/23/96, FR vol. 61, no. 165, pp. 43434-43459; 1/8/98, FR vol. 63, no. 5, p. 1285; 4/23/98, FR vol. 63, no. 78, p. 20099; 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.

(3) 29 CFR 1910.1002 Coal tar pitch volatiles, interpretation of term, published 1/21/83, Federal Register, vol. 43, p. 2768.

(4) 29 CFR 1910.1003 13 Carcinogens, published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242; 1/8/98, FR vol. 63, no. 5, p. 1286; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669.

(5) 29 CFR 1910.1004 See §1910.1003, 13 Carcinogens.

(6) Reserved for 29 CFR 1910.1005.

(7) 29 CFR 1910.1006 See §1910.1003, 13 Carcinogens.

(8) 29 CFR 1910.1007 See §1910.1003, 13 Carcinogens.

(9) 29 CFR 1910.1008 See §1910.1003, 13 Carcinogens.

(10) 29 CFR 1910.1009 See §1910.1003, 13 Carcinogens.

(11) 29 CFR 1910.1010 See §1910.1003, 13 Carcinogens.

(12) 29 CFR 1910.1011 See §1910.1003, 13 Carcinogens.

(13) 29 CFR 1910.1012 See §1910.1003, 13 Carcinogens.

(14) 29 CFR 1910.1013 See §1910.1003, 13 Carcinogens.

(15) 29 CFR 1910.1014 See §1910.1003, 13 Carcinogens.

(16) 29 CFR 1910.1015 See §1910.1003, 13 Carcinogens.

(17) 29 CFR 1910.1016 See §1910.1003, 13 Carcinogens.

(18) 29 CFR 1910.1017 Vinyl chloride, published 10/4/74, Federal Register, vol. 39, p. 35896; amended by the following FR publications: 12/3/74, FR vol. 39, p. 41848; 3/25/75, FR vol. 40, p. 13211; 5/28/75, FR vol. 40, p. 23072; 10/24/78, FR vol. 43, p. 49751; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1286; 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.

(19) 29 CFR 1910.1018 Inorganic arsenic, published 5/25/78, Federal Register, vol. 43, p. 19624; amended by the following FR publications: 6/30/78, FR vol. 43, p. 28472; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 3/7/96, FR vol. 61, no. 46, p. 9245; 1/8/98, FR vol. 63, no. 5, p. 1286; 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.

(20) 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, published May 23, 1980, Federal Register, vol. 45, no. 102, pp. 35277-35281; amended September 29, 1988, Federal Register, vol. 53, no. 189, pp. 38163-38168; 3/7/96, FR vol. 61, no. 46, p. 9235; 6/20/96, FR vol. 61, p. 31427; 4/3/06, FR vol. 71, no. 63, p. 16669. **Appendix A** — Sample Authorization Letter. **Appendix B** — Availability of NIOSH RTECS.

(21) 29 CFR 1910.1025 Lead, published 11/14/78, Federal Register, vol. 44, p. 53007; amended by the following FR publications: 1/26/79, vol. 44, p. 5447; 3/13/79, vol. 44, p. 14554; 8/28/79, vol. 44, p. 50338; 10/23/79, vol. 44, p. 60981; 11/30/79, vol. 44, 68828; 5/23/80, vol. 45, p. 35283; 12/11/81, vol. 46, p. 60775; 11/12/82, vol. 47, p. 51117; 3/6/83, vol. 48, p. 9641; 4/30/84, vol. 49, p. 18295; 6/5/84, vol. 49, p. 23175; 6/5/84, vol. 49, p. 23175; and modified by OSHA Instruction CPL 2-2.47 published by the U. S. Department of Labor on 1/5/89. Amended 7/11/89, vol. 54, p. 29142; 1/30/90, vol. 55, no. 20, pp. 3166-3167; 2/13/90, vol. 55, no. 30, pp. 4998-4999; modification of OSHA Instruction CPL 2-2.47, published by Office of Health Compliance Assistance, OSHA, on 7/10/90. Amended 5/31/91, FR vol. 56, no. 105, p. 24686; amended 10/11/95, FR vol. 60, p. 52856; 1/8/98, FR vol. 63, no. 5, p. 1287; 4/23/98, FR vol. 63, no. 78, p. 20099; 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.

(22) 29 CFR 1910.1026 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39, p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008.

(23) 29 CFR 1910.1027 Cadmium, published 9/14/92, Federal Register, vol. 57, no. 178, pp. 42388-42453; corrections published 4/23/93, FR vol. 58, no. 77, pp. 21778-21787; 1/8/98, FR vol. 63, no. 5, p. 1288; 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.

(24) 29 CFR 1910.1028 Benzene, and Appendices A, B, C, D, and E, published 9/11/87, Federal Register, vol. 52, no. 176, pp. 34562-34578; 1/8/98, FR vol. 63, no. 5, p. 1289; 4/23/98, FR vol. 63, no. 78, p. 20099; 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.

(25) 29 CFR 1910.1029 Coke oven emissions, published 10/22/76, Federal Register, vol. 41, p. 46784; amended by the following FR publications: 1/18/77, FR vol. 42, p. 3304; 5/23/80, FR vol. 45, p. 35283; 9/13/85, FR vol. 50, p. 37353; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 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.

(26) 29 CFR 1910.1030 Bloodborne pathogens, published 12/6/91, Federal Register, vol. 56, no. 235, pp. 64175-64182; amended 7/1/92, vol.

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57, no. 127, p. 29206; 1/18/01, FR vol. 66, no. 12, p. 5318; 4/3/06, FR vol. 71, no. 63, p. 16669.

(27) 29 CFR 1910.1043 Cotton dust, published 6/23/78, Federal Register, vol. 43, p. 27394; amended by the following FR publications: 8/8/78, FR vol. 43, p. 35035; 10/10/80, FR vol. 45, p. 67340; 12/13/85, FR vol. 50, p. 51173; 7/3/86, FR vol. 51, p. 24325; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 12/7/00, FR vol. 65, no. 236, p. 76563; 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.

(28) 29 CFR 1910.1044 1,2-dibromo-3-chloropropane, published 3/17/78, Federal Register, vol. 43, p. 11527; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 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.

(29) 29 CFR 1910.1045 Acrylonitrile, published 10/3/78, Federal Register, vol. 43, p. 45809; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 4/23/98, FR vol. 63, no. 78, p. 20099; 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.

(30) 29 CFR 1910.1047 Ethylene oxide, published 6/22/84, Federal Register, vol. 49, p. 25796; amended 3/12/85, FR vol. 50, p. 9801; amended 10/11/85, FR vol. 50, p. 41494; amended 7/10/86, FR vol. 51, p. 25053; amended 4/6/88, FR vol. 53, p. 11437; amended 7/26/88, FR vol. 53, p. 27960; 1/8/98, FR vol. 63, no. 5, p. 1292; 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.

(31) 29 CFR 1910.1048 Formaldehyde, and **Appendices A, B, C, D and E**, published 12/4/87, Federal Register, vol. 52, no. 233, pp. 46291-46312; and amendments to 1910.1048 published 3/2/88, FR vol. 53, no. 41, pp. 6628-6629; 11/8/88, FR vol. 53, pp. 45080-45088; 11/22/88, FR vol. 53, p. 47188; 7/13/89, FR vol. 54, no. 133, pp. 29545-29546; 8/1/89, FR vol. 54, no. 146, p. 31765; 8/29/89, FR vol. 54, p. 35639; 9/11/89, FR vol. 54, p. 37531; 10/24/89, vol. 54, pp. 43344-43346; 6/13/90, FR vol. 55, no. 114, p. 24070; 8/10/90, FR vol. 55, no. 155, p. 32616; 12/17/90, FR vol. 55, no. 242, p. 51698; 3/12/91, FR vol. 56, no. 48, pp. 10377-8; 6/12/91, FR vol. 56, no. 113, p. 26909; 8/8/91, FR vol. 56, no. 153, p. 37650-1, 11/13/91, FR vol. 56, no. 219, p. 57593; 1/23/92, FR vol. 57, no. 15, p. 2681-2; 5/5/92, FR vol. 57, no. 87, p. 19262; 5/27/92, FR vol. 57, no. 102, pp. 22307-9; 6/10/92, FR vol. 57, no. 112, p. 24701; 6/18/92, FR vol. 57, no. 118, pp. 27160-1; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099; 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.

(32) 29 CFR 1910.1050 Methylene dianiline (MDA), published 8/10/92, Federal Register, vol. 57, no. 154, pp. 35666-35681; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122.

(33) 29 CFR 1910.1051 1,3-Butadiene, published 11/4/96, Federal Register, vol. 61, no. 214, p. 56831; 1/8/98, FR vol. 63, no. 5, p. 1294; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669.

(34) 29 CFR 1910.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1601; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275; 1/8/98, FR vol. 63, no. 5, p. 1295; 4/23/98, FR vol. 63, no. 78, p. 20099; 9/22/98, FR vol. 63, no. 183, p. 50729; amended by AO 12-2001, reference typo corrected, f. and ef. 10/26/01; 4/3/06, FR vol. 71, no. 63, p. 16669; 8/24/06, FR vol. 71, no. 164, p. 50122.

NOTE: 29 CFR 1910.1101 Asbestos, was repealed by Federal Register, vol. 57, no. 110, issued 6/8/92, p. 24330.

(35) 29 CFR 1910.1096 Ionizing radiation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 6/20/96, FR vol. 61, no. 46, p. 31427.

(36) 29 CFR 1910.1200 Hazard communication, published 8/24/87, Federal Register, vol. 52, p. 31877; amended by the following FR publications: 12/4/87, FR vol. 52, p. 46080; 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478; 12/22/94, FR vol. 59, no. 245, p. 65947; 3/7/96, FR vol. 61, no. 46, p. 9245.

(37) 29 CFR 1910.1201 Retention of DOT Markings, Placards and Labels, published 7/19/94, Federal Register, vol. 59, p. 36700.

(38) 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories, published 1/31/90, Federal Register, vol. 55 no. 21, pp. 3300-3335; corrected 3/6/90, FR vol. 55, no. 44, p. 7967; 7/1/92, vol. 57, no. 127, p. 29204; 4/3/06, FR vol. 71, no. 63, p. 16669.

(39) 29 CFR 1910.1499 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

(40) 29 CFR 1910.1500 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 13-1988, f. 8-2-88 & ef. 8-2-88; APD 14-1988, f. & ef. 9-12-88; APD 18-1988, f. & ef. 11-17-88; APD 4-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 6-1989(Temp), f. 4-20-89, ef. 5-1-89; APD 9-1989, f. & ef. 7-7-89; APD 11-1989, f. 7-14-89, ef. 8-14-89; APD 13-1989, f. & ef. 7-17-89; OSHA 1-1990(Temp), f. & ef. 1-11-90; OSHA 3-1990(Temp), f. & ef. 1-19-90; OSHA 6-1990, f. & ef. 3-2-90; OSHA 7-1990, f. & ef. 3-2-90; OSHA 9-1990, f. 5-8-90, ef. 8-8-90; OSHA 11-1990, f. 6-7-90, ef. 7-1-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 14-1990, f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & ef. 8-31-90; OSHA 20-1990, f. & ef. 9-18-90; OSHA 21-1990, f. & ef. 9-18-90; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 13-1991, f. & cert. ef. 10-10-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 1-1992, f. & cert. ef. 1-22-92; OSHA 4-1992, f. & cert. ef. 4-16-92; OSHA 5-1992, f. 4-24-92, cert. ef. 7-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 9-1992(Temp), f. & cert. ef. 9-24-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 12-1992, f. & cert. ef. 10-13-92; OSHA 14-1992, f. & cert. ef. 12-7-92; OSHA 15-1992, f. & cert. ef. 12-30-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 6-1993(Temp), f. & cert. ef. 5-17-93; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 17-1993, f. & cert. ef. 11-15-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; 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 4-1996, f. & cert. ef. 9-13-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 8-1997, f. & cert. ef. 11-14-97; OSHA 1-1998, f. & cert. ef. 2-13-98; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 1-1999, f. & cert. ef. 3-22-99; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-2001, f. & cert. ef. 5-15-01; OSHA 10-2001, f. 9-14-01, cert. ef. 10-18-01; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 11-2006, f. & cert. ef. 11-30-06

437-003-0001

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 1926**, revised as of 7/1/99, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A — GENERAL:

(a) 29 CFR 1926.1 Purpose and Scope, published 2/9/79, Federal Register (FR), vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections — right of entry, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(2) Subdivision B — GENERAL INTERPRETATIONS:

(a) 29 CFR 1926.10 Scope of subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C — GENERAL SAFETY AND HEALTH PROVISIONS:

(a) 29 CFR 1926.20 General safety and health provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.21 Safety training and education, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved).

(d) 29 CFR 1926.23 First aid and medical attention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

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(f) 29 CFR 1926.25 Housekeeping, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 Incorporation by reference, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249; 6/18/98, FR vol. 63, no. 117, p. 33468.

(m) 29 CFR 1926.32 Definitions, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D — OCCUPATIONAL HEALTH AND ENVIRONMENTAL CONTROLS:

(a) 29 CFR 1926.50 Medical services and first aid, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/17/86, FR vol. 51, p. 37007; 12/4/87, FR vol. 52, p. 46312; 11/4/96, FR vol. 61, no. 214, p. 56856; 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35099; 3/7/96, FR vol. 61, no. 46, p. 9250; 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 8/24/87, FR vol. 52, p. 31852; amended 12/4/87, FR vol. 52, 46075; 4/27/88, FR vol. 53, no. 81, pp. 15033-15035; stay lifted on 2/17/89, FR vol. 54, p. 6886; 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.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 8/10/92, FR vol. 57, no. 154, pp. 35681-35695; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1296; 12/6/04, FR vol. 69, p. 70373; 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.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 7/19/94, FR vol. 59, no. 137, pp. 36700; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 5/4/93, FR vol. 58, no. 84, pp. 26626-26649; 1/8/98, FR vol. 63, no. 5, p. 1296; 1/5/05, FR vol. 69, p. 1111; 4/3/06, FR vol. 71, no. 63, p. 16669.

NOTE: Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response.

NOTE: Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E — PERSONAL PROTECTIVE AND LIFE SAVING EQUIPMENT:

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 6/30/93, Federal Register, vol. 58, p. 35152.

(b) 29 CFR 1926.100 Head protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.101 Hearing protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 1/8/98, FR vol. 63, no. 5, p. 1297.

NOTE: 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F — FIRE PROTECTION AND PREVENTION:

(a) 29 CFR 1926.150 Fire protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469; 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G — SIGNS, SIGNALS, AND BARRICADES:

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H — MATERIALS HANDLING, STORAGE, USE AND DISPOSAL.

(a) 29 CFR 1926.250 General requirements for storage, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729; 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I — TOOLS — HAND AND POWER:

(a) 29 CFR 1926.300 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35076; 3/7/96, FR vol. 61, no. 46, p. 9250.

(b) 29 CFR 1926.301 Hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.302 Power operated hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(d) 29 CFR 1926.303 Abrasive wheels and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.

(e) 29 CFR 1926.304 Woodworking tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.

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(10) Subdivision J — WELDING AND CUTTING:

(a) 29 CFR 1926.350 Gas welding and cutting, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(b) 29 CFR 1926.351 Arc welding and cutting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.352 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.

(e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(11) Subdivision K — ELECTRICAL:

(a) 29 CFR 1926.400 Introduction, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(b) 29 CFR 1926.401 (Reserved).

(c) 29 CFR 1926.402 Applicability, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(d) 29 CFR 1926.403 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(e) 29 CFR 1926.404 Wiring design and protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.

(f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(g) 29 CFR 1926.406 Specific purpose equipment and installations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(h) 29 CFR 1926.407 Hazardous (classified) locations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(i) 29 CFR 1926.408 Special systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(j) 29 CFR 1926.409 (Reserved).

(k) 29 CFR 1926.415 (Reserved).

(l) 29 CFR 1926.416 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35179; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41738.

(m) 29 CFR 1926.417 Lockout and tagging of circuits, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35181; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41739.

(n) 29 CFR 1926.418 (Reserved).

(o) 29 CFR 1926.430 (Reserved).

(p) 29 CFR 1926.431 Maintenance of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(q) 29 CFR 1926.432 Environmental deterioration of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(r) 29 CFR 1926.433 — 29 CFR 1926.440 (Reserved).

(s) 29 CFR 1926.441 Battery locations and battery charging, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(t) 29 CFR 1926.442 — 29 CFR 1926.448 (Reserved).

(u) 29 CFR 1926.449 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.

(12) Subdivision L — SCAFFOLDING:

(a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/30/96, FR vol. 61, no. 170, p. 46104.

(b) 29 CFR 1926.451 General requirements, published 8/30/96, FR vol. 61, no. 170, p. 46107; 11/25/96, FR vol. 61, no. 228, p. 59831.

(c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.

(d) 29 CFR 1926.453 Aerial lifts, published 8/30/96, FR vol. 61, no. 170, p. 46116; 11/25/96, FR vol. 61, no. 228, p. 59832.

(e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.

(g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.

(h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.

(j) Appendix E to Subpart L Drawing and illustrations, published 8/30/96, FR vol. 61, no. 170, p. 46122; 11/25/96, FR vol. 61, no. 228, p. 59832.

(13) Subdivision M — FALL PROTECTION:

(a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart. Amended 8/9/94, FR vol. 59, no. 152, p. 40730-40731; 1/18/01, FR vol. 66, no. 12, p. 5265; 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02.

(b) 29 CFR 1926.501 Duty to have fall protection. Amended 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended 2/5/01 (Oregon Exceptions); amended with AO 6-2002, f. and ef. 7/19/02.

(c) 29 CFR 1926.502 Fall protection systems criteria and practices. Amended 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.

(d) 29 CFR 1926.503 Training requirements. Amended 8/9/94, FR vol. 59, no. 152, p. 40738; REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.

(e) Appendix A to Subpart M Determining Roof Widths, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended 8/9/94, FR vol. 59, no. 152, p. 40738-40742.

(f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.

(g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.

(h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.

(14) Subdivision N — CRANES, DERRICKS, HOISTS, ELEVATORS, AND CONVEYORS

(a) 29 CFR 1926.550 Cranes and derricks, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 4/6/82, FR vol. 47, p. 14706; 8/2/88, FR vol. 53, p. 29139; 4/18/89, FR vol. 54, no. 73, p. 15405; 8/9/94, FR vol. 59, no. 152, p. 40730; 6/30/93, FR vol. 58, no. 124, p. 35183.

(b) 29 CFR 1926.551 Helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.553 Base-mounted drum hoist, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.554 Overhead hoists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.555 Conveyors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(15) Subdivision O — MOTOR VEHICLES, MECHANIZED EQUIPMENT, AND MARINE OPERATIONS

(a) 29 CFR 1926.600 Equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183.

(b) 29 CFR 1926.601 Motor vehicles, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.602 Material handling equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183; 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 6/24/74, FR vol. 39, p. 22801; amended 7/22/77, FR vol. 42, p. 37674.

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(f) 29 CFR 1926.605 Marine operations and equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(16) Subdivision P — EXCAVATIONS

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45960-45961; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.652 Requirements for protective systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.

(d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.

(17) Subdivision Q — CONCRETE AND MASONRY CONSTRUCTION:

(a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 10/18/90, FR vol. 55, no. 202, p. 42326.

(b) 29 CFR 1926.701 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.702 Requirements for equipment and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612.

(d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.

(e) 29 CFR 1926.704 Requirements for precast concrete, published 6/16/88, FR vol. 53, p. 22612; amended 10/5/89, FR vol. 54, no. 192, p. 41088.

(f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 6/16/88, FR vol. 53, p. 22612; amended 10/18/90, FR vol. 55, no. 202, p. 42326.

(g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.

(18) Subdivision R — STEEL ERECTION:

(a) 29 CFR 1926.750 Scope, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(b) 29 CFR 1926.751 Definitions, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(d) 29 CFR 1926.753 Hoisting and rigging, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(e) 29 CFR 1926.754 Structural steel assembly, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04; amended 1/18/06, FR vol. 71, no. 11, p. 2879; 4/3/06, FR vol. 71, no. 63, p. 16669.

(f) 29 CFR 1926.755 Column anchorage, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(g) 29 CFR 1926.756 Beams and columns, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(h) 29 CFR 1926.757 Open web steel joists, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(i) 29 CFR 1926.758 Systems-engineered metal buildings, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(j) 29 CFR 1926.759 Falling object protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(k) 29 CFR 1926.760 Fall protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(l) 29 CFR 1926.761 Training, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Nonmandatory Guidelines for Complying with §1926.752(e), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(n) Appendix B to Subpart R Reserved.

(o) Appendix C to Subpart R Illustrations of bridging terminus points: Nonmandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Nonmandatory Guidelines for Complying with §1926.760(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(q) Appendix E to Subpart R Training: Nonmandatory Guidelines for Complying with §1926.761, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(r) Appendix F to Subpart R Perimeter columns: Nonmandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Nonmandatory Guidelines for Complying with §1926.760(d), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with §1926.756(c)(1), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(19) Subdivision S — UNDERGROUND CONSTRUCTION, CAISSONS, COFFERDAMS, AND COMPRESSED AIR:

(a) 29 CFR 1926.800 Tunnels and shafts, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940. Underground Construction, published 6/2/89, FR vol. 54, no. 105, p. 23824; 1/8/98, FR vol. 63, no. 5, p. 1297; 4/3/06, FR vol. 71, no. 63, p. 16669.

(b) 29 CFR 1926.801 Caissons, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.802 Cofferdams, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.803 Compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(e) 29 CFR 1926.804 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) Appendix A to Subpart S Decompression Tables, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(20) Subdivision T — DEMOLITION:

(a) 29 CFR 1926.850 Preparatory operations, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.852 Chutes, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.853 Removal of materials through floor openings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.855 Manual removal of floors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

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(g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.857 Storage, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.858 Removal of steel construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.859 Mechanical demolition, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.860 Selective demolition by explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(21) Subdivision U — BLASTING AND USE OF EXPLOSIVES:

(a) 29 CFR 1926.900 General provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.901 Blaster qualifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.902 Surface transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(d) 29 CFR 1926.903 Underground transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184.

(g) 29 CFR 1926.906 Initiation of explosive charges — electric blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(h) 29 CFR 1926.907 Use of safety fuse, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.908 Use of detonating cord, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.909 Firing the blast, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.910 Inspection after blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(l) 29 CFR 1926.911 Misfires, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(m) 29 CFR 1926.912 Underwater blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(o) 29 CFR 1926.914 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.

(22) Subdivision V — POWER TRANSMISSION AND DISTRIBUTION:

(a) 29 CFR 1926.950 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.951 Tools and protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.952 Mechanical equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.953 Material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.954 Grounding for protection of employees, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.955 Overhead lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.956 Underground lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.957 Construction in energized substations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.958 External load helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.960 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(23) Subdivision W — ROLLOVER PROTECTIVE STRUCTURES: OVERHEAD PROTECTION:

(a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251; 12/29/05, FR vol. 70, no. 249, p. 76979; 2/28/06, FR vol. 71, no. 39, p. 9909; 7/20/06, FR vol. 71, no. 139, p. 41127..

(d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251; 12/29/05, FR vol. 70, no. 249, p. 76979; 2/28/06, FR vol. 71, no. 39, p. 9909.

(24) Subdivision X — STAIRWAYS AND LADDERS:

(a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 11/14/90, Federal Register, vol. 55, no. 220, p. 47687; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 6/30/93, FR vol. 58, no. 124, p. 35184.

(b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.

(c) 29 CFR 1926.1052 Stairways, published 11/14/90, FR vol. 55, no. 220, p. 47688; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 2/7/91, FR vol. 56, no. 26, p. 5061; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(d) 29 CFR 1926.1053 Ladders, published 11/14/90, FR vol. 55, no. 220, p. 47689; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(e) 29 CFR 1926.1054 (Reserved)

(f) 29 CFR 1926.1055 (Reserved)

(g) 29 CFR 1926.1056 (Reserved)

(h) 29 CFR 1926.1057 (Reserved)

(i) 29 CFR 1926.1058 (Reserved)

(j) 29 CFR 1926.1059 (Reserved)

(k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.

(25) Subdivision Z — TOXIC AND HAZARDOUS SUBSTANCES:

(a) 29 CFR 1926.1101 Asbestos, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/20/86, FR vol. 51, p. 22612; 10/17/86, FR vol. 52, p. 17756; 7/20/88, FR vol. 53, no. 138, p. 27346; 9/14/88, FR vol. 53, p. 35627; 9/23/88, FR vol. 53, no. 185, p. 37080; 7/21/89, FR vol. 54, no. 139, p. 30705, 12/20/89, FR vol. 54, no. 243, pp. 52027-52028; 2/5/90, FR vol. 55, no. 24, p. 3792; 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, pp. 24330-1; 6/30/92, FR vol. 57, no. 126, p. 29119; 8/10/94, FR vol. 59, no. 153, pp. 41131-62; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, no. 165, p. 43454; 1/8/98, FR vol. 63, no. 5, p. 1298; 4/23/98, FR vol. 63, no. 78, p. 20099; 6/29/98, FR vol. 63, no. 124, p. 35137; 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.

(b) 29 CFR 1926.1126 Chromium (VI), published 2/28/06, Federal Register, vol. 71, no. 39, p. 10100; 6/23/06, FR vol. 71, no. 121, p. 36008.

(c) 29 CFR 1926.1127 Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42453-42463; amended 4/23/93, FR vol. 58, no. 77, p. 21778; 1/3/94, FR vol. 59, no. 1, p. 215; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1298; 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.

(d) 29 CFR 1926.1152 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

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

Stats. Implemented: ORS 654.001-654.295

Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f.

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& cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; 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 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02 cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03 cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03 cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05; OSHA 2-2006, f. & cert. ef. 4-28-06; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 5-2006, f. 8-7-06, cert. ef. 1-1-07; OSHA 6-2006, f. & cert. ef. 8-30-06; OSHA 11-2006, f. & cert. ef. 11-30-06

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Respiratory Protection.

(1) Permissible practice.

(a) To control occupational diseases caused by contaminated air, the best method is to prevent contamination with engineering controls. When this approach is not feasible, employers must comply with this standard.

(b) You must provide respirators to all employees when it is necessary to protect their health. Respirators must be appropriate for the hazard. You must also have an effective respirator program that includes at least the requirements of this standard. (See paragraph (3)).

(2) Definitions. The following definitions apply to this standard.

(a) Air-purifying respirator is a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(b) Assigned protection factor (APF) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by this section.

(c) Atmosphere-supplying respirator is a respirator that supplies the user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(d) Canister or cartridge is a container with a filter, sorbent, or catalyst, or combination of these items, that removes specific contaminants from the air passed through the container.

(e) Demand respirator is an atmosphere-supplying respirator that admits breathing air to the face piece only when inhalation creates a negative pressure inside the face piece.

(f) Elastomer (elastomeric) is an elastic substance like rubber or neoprene.

(g) Emergency situation is any event such as, but not limited to, equipment failure, rupture of containers, or failure of control equipment that may or does result in an uncontrolled significant release of an airborne contaminant.

(h) Employee exposure is exposure to a concentration of an airborne contaminant that would occur if the employee were not using respiratory protection.

(i) End-of-service-life indicator (ESLI) is a device, on the cartridge, that warns respirator users when their respirator is near the end of its ability to protect them. For example, an indicator on the cartridge will change to warn the user that the cartridge sorbent material is nearing saturation and is no longer effective.

(j) Engineering control measures are methods to eliminate or control employee exposure to the hazard; e.g., substitution of a less toxic material, general or local ventilation and enclosing the operation.

(k) Escape-only respirator is a respirator only for use during emergency exit.

(l) Filter or air purifying element is a respirator component (e.g., canister or cartridge) that removes solid or liquid aerosols from the inspired air.

(m) Filtering face piece (dust mask) is a tight fitting negative pressure particulate respirator with a filter as an integral part of the face piece or with the entire face piece made of the filtering medium.

(n) Fit factor is a quantitative estimate of the fit of a particular respirator to a specific person, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn. Instrumentation is used with ambient air as the "test agent" to quantify the respirator fit. See appendix A.

(o) Fit test is the use of procedures in **Appendix A** to qualitatively or quantitatively evaluate the fit of a respirator on a person. (See also Qualitative fit test QLFT and Quantitative fit test QNFT.)

(p) Helmet is a rigid respirator covering that also provides head protection against impact and penetration.

(q) High efficiency particulate air (HEPA) filter is a filter that is at least 99.97 percent efficient in removing monodisperse particles of 0.3 micrometers in diameter. The equivalent NIOSH 42 CFR 84 particulate filters are the N100, R100, and P100 filters.

(r) Hood is a respirator covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(s) Immediately dangerous to life or health (IDLH) is an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(t) Interior structural firefighting is the physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(u) Loose-fitting face piece is a respiratory covering that forms a partial seal with the face, e.g., hood.

(v) Maximum use concentration (MUC) means the maximum atmospheric concentration of a hazardous substance from which an employee can be expected to be protected when wearing a respirator, and is determined by the assigned protection factor of the respirator or class of respirators and the exposure limit of the hazardous substance. The MUC can be determined mathematically by multiplying the assigned protection factor specified for a respirator by the required OSHA permissible exposure limit, short-term exposure limit, or ceiling limit. When no OSHA exposure limit is available for a hazardous substance, an employer must determine an MUC on the basis of relevant available information and informed professional judgment.

(w) Negative pressure respirator (tight fitting) is a respirator in which the air pressure inside the face piece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(x) Oxygen deficient atmosphere is an atmosphere with an oxygen content less than 19.5 percent by volume.

(y) Physician or other licensed health care professional (PLHCP) is a person whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently provide, or be delegated to provide, some or all of the health care services required by this standard.

(z) Positive pressure respirator is a respirator in which the pressure inside the respiratory covering is higher than the air pressure outside the respirator.

(aa) Powered air-purifying respirator (PAPR) is an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(bb) Pressure demand respirator is a positive pressure atmosphere-supplying respirator that admits breathing air to the face piece when inhalation reduces the positive pressure inside the face piece.

(cc) Qualitative fit test (QLFT) is a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent. See Appendix A.

(dd) Quantitative fit test (QNFT) is an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator. See **Appendix A**.

(ee) Respirator covering is that part of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source, or both. It may be a face piece, helmet, hood, suit, or a mouthpiece respirator with nose clamp.

(ff) Self-contained breathing apparatus (SCBA) is an atmosphere-supplying respirator for which user carries the breathing air source.

(gg) Service life is the period of time that a respirator, filter or sorbent, or other respiratory equipment adequately protects the wearer.

(hh) Supplied-air respirator (SAR) or airline respirator is an atmosphere-supplying respirator for which the source of breathing air is not carried by the user.

(ii) Tight-fitting face piece is a respirator covering that forms a complete seal with the face, e.g., half mask or full-face piece.

(jj) User seal check is an action by the respirator user to determine if the respirator is properly seated to the face. See appendix B-1.

(3) Respiratory protection program.

(a) When respirators are necessary to protect the health of workers or when you require workers to wear them, you must have an effective, written respiratory protection program, managed by a knowledgeable person, with procedures specific to your work site. Keep the program updated to reflect changes in conditions that require the use of respirators. You must include at least these points:

(A) Procedures for selecting respirators for use in the workplace;

(B) Medical evaluations of employees require to use respirators;

(C) Fit testing procedures for tight-fitting respirators;

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(D) Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations;

(E) Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators;

(F) Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;

(G) Training of employees in the respiratory hazards to which they are potentially exposed during routine and emergency situations;

(H) Training of employees in the proper use of respirators, including putting on and removing them, any limitations on their use, and their maintenance; and

(I) Procedures for regularly evaluating the effectiveness of the program.

(b) The employer must provide respirators, training, and medical evaluations at no cost to the employee.

(c) Where respirator use is voluntary:

(A) You may provide respirators to employees who request them or they may use their own respirators. If you allow this voluntary use, you must determine that it will not create a hazard to the user. You must provide the voluntary user with the information in Appendix D, and;

(B) You must have a limited written respiratory program for voluntary users. It must include those parts of the standard necessary to ensure that:

(i) The user is medically able to use it without creating a hazard to themselves. Use of respirators other than dust masks require medical evaluations.

(ii) The program includes proper cleaning, storing and maintenance.

EXCEPTION: No program is necessary for voluntary users who only use dust masks (filtering face pieces).

(4) Selection of respirators. Identify and evaluate the respiratory hazard(s) including a reasonable estimate of employee exposures and an identification of the contaminant's chemical state and physical form. You must treat atmospheres with the potential for IDLH conditions as an IDLH hazard and provide appropriate respiratory protection.

(a) General requirements.

(A) You must evaluate respiratory hazards, conditions in the workplace and user factors, then select and provide the appropriate respirators.

(B) All respirators must have NIOSH certification and all use must conform to that certification.

(C) Respirators must correctly fit and be acceptable to the user.

(b) Respirators for IDLH atmospheres.

(A) Provide the following respirators for employee use in IDLH atmospheres:

(i) A full face piece pressure demand SCBA certified by NIOSH for a minimum service life of 30 minutes, or

(ii) A combination full-face piece pressure demand supplied-air respirator (SAR) with auxiliary self-contained air supply.

(B) Respirators only for escape from IDLH atmospheres must have NIOSH certification for escape from the atmosphere of use.

(C) Treat all oxygen-deficient atmospheres as IDLH. **EXCEPTION:** If you can demonstrate that, under all foreseeable conditions, the oxygen concentration will stay within the ranges in Table II (i.e., for the altitudes set out in the table), then use any atmosphere-supplying respirator.

(c) Respirators for atmospheres that are not IDLH.

(A) Provide respirators adequate to protect the health of workers and ensure compliance with all other OR-OSHA requirements, under routine and reasonably foreseeable emergency situations.

(i) Assigned Protection Factors (APFs). Employers must use the assigned protection factors listed in Table I to select a respirator that meets or exceeds the required level of employee protection. When using a combination respirator (e.g., airline respirators with an air-purifying filter), employers must ensure that the assigned protection factor is appropriate to the mode of operation in which the respirator is being used.

(ii) Maximum Use Concentration (MUC).

(I) The employer must select a respirator for employee use that maintains the employee's exposure to the hazardous substance, when measured outside the respirator, at or below the MUC.

(II) Employers must not apply MUCs to conditions that are immediately dangerous to life or health (IDLH); instead, they must use respirators listed for IDLH conditions in paragraph (4)(b) of this standard.

(III) When the calculated MUC exceeds the IDLH level for a hazardous substance, or the performance limits of the cartridge or canister, then employers must set the maximum MUC at that lower limit.

(B) The respirator must be appropriate for the chemical state and physical form of the contaminant.

(C) For protection against gases and vapors, provide:

(i) An atmosphere-supplying respirator, or

(ii) An air-purifying respirator, if:

(I) It has an end-of-service-life indicator (ESLI) certified by NIOSH for the contaminant; or

(II) If there is no ESLI appropriate for your conditions, implement a change schedule for canisters and cartridges that is based on objective information or data that will ensure that canisters and cartridges are changed before the end of their service life. Describe in the respirator program the information and data relied on and the basis for the canister and cartridge change schedule and the basis for reliance on the data.

(NOTE: The Worker Protection Standard contains criteria for specific change out schedules for respirator canisters and cartridges. See OAR 437-002-170.240.)

(D) For protection against particulates, provide:

(i) An atmosphere-supplying respirator; or

(ii) An air-purifying respirator with a filter certified by NIOSH under 30 CFR part 11 as a high efficiency particulate air (HEPA) filter, or an air-purifying respirator with a filter certified for particulates by NIOSH under 42 CFR part 84; or

(iii) For contaminants consisting primarily of particles with mass median aerodynamic diameters (MMAD) of at least 2 micrometers, an air-purifying respirator with any filter certified for particulates by NIOSH. [Table not included. See ED. NOTE.]

(5) Medical evaluation.

(a) General. You must provide medical evaluations to determine workers' ability to use a respirator safely. Do this before the worker's fit test and before any work requiring respirator use. The employer may discontinue an employee's medical evaluations when the employee no longer uses a respirator.

(b) Medical evaluation procedures.

(A) Use a physician or other licensed health care professional (PLHCP) to do the evaluations using either a medical questionnaire or an initial examination that produces the same information as in Appendix C.

(c) Follow-up medical examination.

(A) If the PLHCP reports that the employee needs a follow-up examination because of a positive response to any of questions 1 through 8 of the questionnaire in Appendix C or if their initial exam caused the need for a follow-up, you must ensure that they get the opportunity for the examination.

NOTE: If the employee refuses the examination, they may not work in jobs that require a respirator.

(d) Administration of the medical questionnaire and examinations.

(A) You must allow the employee to complete the questionnaire in a way that protects the confidentiality of the information. Employers are not to see the answers or review the completed form. You must allow employees to complete the form during normal working hours or at a time and place convenient to them. If employees need help, allow them to ask your PLHCP or anybody other than their employer or representatives of their employer.

(B) The employer must provide the employee with an opportunity to discuss the questionnaire and examination results with the PLHCP.

(e) Supplemental information for the PLHCP.

(A) You must give the PLHCP the following information before they make any recommendation about a worker's ability to use a respirator.

(i) The type and weight of the respirator the employee will use;

(ii) How long and how often the employee will use the respirator (including use for rescue and escape);

(iii) The expected physical work effort;

(iv) Additional protective clothing and equipment to be worn; and

(v) Temperature and humidity extremes that may exist during use.

(B) You need not provide information more than once if it is unchanged.

(C) You must provide a copy of your written respiratory program and this standard to the PLHCP. Note to Paragraph (5)(e)(C): When the employer replaces a PLHCP, the employer must ensure that the new PLHCP has this information, either by providing the documents directly to the PLHCP or having the documents transferred from the former PLHCP to the new PLHCP. However, OR-OSHA does not expect employers to have employees medically reevaluated solely because there is a new PLHCP.

(f) Medical determination. In determining the employee's ability to use a respirator, the employer must:

(A) Obtain a written recommendation about the employee's ability to use the respirator from the PLHCP. The recommendation must provide only the following information:

(i) Any limitations on respirator use relating to the medical condition of the employee, or relating to the workplace conditions, including whether or not the employee is medically able to use the respirator;

(ii) The need, if any, for follow-up medical evaluations; and

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(iii) A statement that the PLHCP gave a copy of the recommendation to the worker.

(B) If the respirator is a negative pressure respirator and the PLHCP finds that using it would increase the employee's health risk, the employer must provide a PAPR until a subsequent evaluation clears the employee for another type.

(g) Additional medical evaluations. At a minimum, the employer must provide additional medical evaluations that comply with this standard if:

(A) An employee reports medical signs or symptoms related to ability to use a respirator;

(B) A PLHCP, supervisor, or the knowledgeable person informs the employer that an employee needs a reevaluation; or

(C) Information from the respiratory protection program, including observations made during fit testing and program evaluation, indicates a need for employee reevaluation; or

(D) A change occurs in work conditions (e.g., physical work effort, protective clothing, temperature) that may result in a substantial increase in the physiological burden to the employee.

(6) Fit testing.

(a) You must be certain that employees using a tight-fitting face piece respirator pass a qualitative fit test (QLFT) or quantitative fit test (QNFT), using the same make, model, style and size respirator. The fit test must comply with this standard.

(b) Workers using a tight-fitting face piece respirator must renew their fit test annually, before initial use and when they change to another type, style, model or make.

(c) You must do a new fit test on any worker when they or a PLHCP report or you observe any change in the worker's physical condition that could affect the respirator fit.

(d) If after passing a QLFT or QNFT, the employee notifies the employer, supervisor, or PLHCP that the fit of the respirator is unacceptable, you must give them a reasonable opportunity to select a different respirator face piece and redo the fit test.

(e) All fit tests must comply with the Appendix A to this standard.

(f) Do not use qualitative fit tests (QLFT) for negative pressure air purifying respirators for use in atmospheres where the contaminant could be more than 10 times the permissible exposure limit (PEL).

(g) A QNFT fit factor of 100 or more for tight fitting half face piece or a fit factor of 500 for tight fitting full face piece respirators is necessary to pass a quantitative fit test.

(h) For both negative and positive pressure respirators that are tight-fitting, atmosphere-supplying types or powered air-purifying, use only negative pressure quantitative or qualitative fit tests, testing only in the negative pressure mode.

(A) Do qualitative fit testing of these respirators by temporarily converting the respirator user's actual face piece into a negative pressure respirator with appropriate filters, or by using an identical negative pressure air-purifying respirator face piece with the same sealing surfaces as a surrogate for the atmosphere-supplying or powered air-purifying respirator face piece.

(B) Do quantitative fit testing of these respirators by modifying the face piece to allow sampling inside the face piece in the breathing zone of the user, midway between the nose and mouth. Do this by installing a permanent sampling probe onto a surrogate face piece, or by using a sampling adapter designed to temporarily provide a way to sample air from inside the face piece.

(C) Before returning a face piece to normal use, completely remove any modifications done for fit testing, and restore the face piece to NIOSH-approved.

(7) Use of respirators.

(a) Face piece seal protection.

(A) Workers who must wear tight-fitting face pieces may not have either of the following:

(i) Facial hair between the sealing surface and face or anything that interferes with the valve function; or

(ii) Any other condition that interferes with the face-to-face piece seal or valve function.

(B) If an employee wears glasses or goggles or other personal protective equipment, the employer must ensure that it does not interfere with the seal of the face piece to the face of the user.

(C) Employers must train workers who wear respirators on the need for and technique of doing a user seal check before every use. This training must include the procedures in Appendix B-1 or the recommendations of the respirator manufacturer.

(b) Continuing respirator effectiveness.

(A) You must evaluate the effectiveness of a respirator when there is a change in work area conditions or degree of employee exposure or stress that may affect respirator effectiveness.

(B) You must ensure that employees leave the respirator use area:

(i) To wash their faces and respirator face pieces as necessary to prevent eye or skin irritation associated with respirator use; or

(ii) If they detect vapor or gas breakthrough, changes in breathing resistance, or leakage of the face piece; or

(iii) To replace the respirator or the filter, cartridge, or canister elements.

(C) If the employee detects vapor or gas breakthrough, changes in breathing resistance, or leakage of the face piece, the employer must replace or repair the respirator before allowing the employee to return to the work area.

(c) Procedures for IDLH atmospheres. For all IDLH atmospheres, the employer must ensure that:

(A) One employee or, when needed, more than one employee is outside the IDLH atmosphere;

(B) Visual, voice, or line communication is continuous between the employee(s) in the IDLH atmosphere and the employee(s) outside the IDLH atmosphere;

(C) The employee(s) outside the IDLH atmosphere have the training and equipment to provide effective emergency rescue;

(D) The employer or designee is notified before the employee(s) outside the IDLH atmosphere enter the IDLH atmosphere to provide emergency rescue;

(E) The employer or designee authorized to do so by the employer, once notified, provides necessary assistance appropriate to the situation;

(F) Employee(s) outside the IDLH atmospheres have:

(i) Pressure demand or other positive pressure SCBAs, or a pressure demand or other positive pressure supplied-air respirator with auxiliary SCBA; and either

(ii) Appropriate retrieval equipment for removing the employee(s) who enter(s) these hazardous atmospheres where retrieval equipment would contribute to the rescue of the employee(s) and would not increase the overall risk resulting from entry; or

(iii) Equivalent means for rescue when there is no requirement for retrieval equipment under paragraph (g)(3)(vi)(B).

(d) Procedures for interior structural firefighting. If you require your workers to fight interior structural fires, paragraph (7)(c) applies. You must do the following:

(A) At least two employees enter the IDLH atmosphere and remain in visual or voice contact with one another at all times; and

(B) At least two employees are located outside the IDLH atmosphere; and

(C) All employees engaged in interior structural firefighting use SCBA's. Note 1 to paragraph (7): One of the two individuals located outside the IDLH atmosphere may be assigned to an additional role, such as incident commander in charge of the emergency or safety officer, so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety of health of any firefighter working at the incident. Note 2 to paragraph (7): Nothing in this section is meant to preclude firefighters from performing emergency rescue activities before an entire team has assembled.

(8) Maintenance and care of respirators.

(a) Cleaning and disinfecting. You must provide each respirator user with a respirator that is clean, sanitary, and in good working order. You also must ensure that respirators are clean and disinfected using the procedures in Appendix B-2, or procedures recommended by the respirator manufacturer, if they are of equivalent effectiveness. Clean and disinfect the respirators at the following intervals:

(A) Clean and disinfect respirators for exclusive use of one worker as often as necessary to keep them sanitary;

(B) Clean and disinfect respirators for use by more than one worker after each use;

(C) Clean and disinfect emergency use respirators after each use; and

(D) Clean and disinfect fit test and training respirators after each use.

(b) Storage. Store all respirators as follows:

(A) Store all respirators to protect them from damage, contamination, dust, sunlight, extreme temperatures, excessive moisture, damaging chemicals, and to prevent deformation of the face piece and exhalation valve.

(B) In addition to the requirements of paragraph (h)(2)(i), keep emergency respirators:

(i) Accessible to the work area;

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(ii) In compartments or in covers clearly marked as containing emergency respirators; and

(iii) In accordance with any applicable manufacturer instructions.

(c) Inspection.

(A) The employer must require respirator inspections as follows:

(i) Inspect all routine use respirators before each use and during cleaning;

(ii) Inspect emergency use respirators at least monthly and according to the manufacturer's recommendations. Check for proper function before and after each use; and

(iii) Inspect escape respirators before taking them into the area for possible use.

(B) The employer must ensure that respirator inspections include the following:

(i) A check of respirator function, tightness of connections, and the condition of the various parts including, but not limited to, the face piece, head straps, valves, connecting tube, and cartridges, canisters or filters; and

(ii) A check of elastomeric parts for pliability and signs of deterioration.

(C) In addition to the requirements of paragraphs (h)(3)(i) and (ii), inspect self-contained breathing apparatus monthly. Keep air and oxygen fully charged and recharge them when the pressure falls to 90 percent of the manufacturer's recommended pressure level. Be certain the regulator and warning devices work properly.

(D) For emergency use respirators, the employer must:

(i) Certify the respirator by documenting the date of inspection, the name (or signature) of the inspector, the findings, required remedial action, and a serial number or other means of identifying the respirator; and

(ii) Provide this information on a tag or label attached to the respirator storage compartment, or keep it with the respirator, or include it in paper or electronic inspection reports. Keep this information until the next report replaces it.

(d) Repairs. Do not use respirators that fail an inspection or are otherwise defective. Discard or repair them according to these procedures:

(A) Only people with appropriate training may repair or adjust respirators. They must use only the manufacturer's NIOSH-approved parts for the particular respirator;

(B) Repairs must conform to the manufacturer's recommendations;

(C) Only the manufacturer or a technician trained by the manufacturer may repair or adjust the reducing and admission valves, regulators and alarms.

(9) Breathing air quality and use.

(a) The employer must ensure or have their supplier certify that compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration meets the following specifications:

(A) Compressed and liquid oxygen must meet the United States Pharmacopoeia requirements for medical or breathing oxygen; and

(B) Compressed breathing air must meet at least the requirements for Grade D breathing air described in ANSI/Compressed Gas Association Commodity Specification for Air, G-7.1-1989, to include:

(i) Oxygen content (v/v) of 19.5 – 23.5 percent;

(ii) Hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;

(iii) Carbon monoxide (CO) content of 10 ppm or less;

(iv) Carbon dioxide content of 1,000 ppm or less; and

(v) Lack of noticeable odor.

NOTE: Do not fill your own air vessels unless they and the contents meet all the requirements of this standard.

(b) Do not use compressed oxygen in respirators that previously held compressed air.

(c) The employer must ensure that the oxygen concentrations more than 23.5 percent are used only in equipment designed for oxygen service or distribution.

(d) The employer must ensure that cylinders to supply breathing air to respirators meet the following requirements:

(A) Cylinders must comply with the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 173 and part 178);

(B) Cylinders of purchased breathing air have a certificate of analysis from the supplier that the breathing air meets the requirements for Grade D breathing air; and

(C) The moisture content in the cylinder does not exceed a dew point of -50 degrees F. (-45.6 degrees C.) at 1 atmosphere pressure.

(e) The employer must ensure that compressors supplying breathing air to respirators:

(A) Prevent entry of contaminated air into the air-supply system;

(B) Minimize moisture content so that the dew point at 1 atmosphere pressure is 10 degrees F. (5.56 degrees C.) below the ambient temperature;

(C) Have suitable in-line air-purifying sorbent beds and filters to further ensure breathing air quality. Maintain and replace sorbent beds and filters according to the manufacturer's instructions.

(D) Have a tag at the compressor showing the most recent change date and the signature of the authorized person who did the change.

(f) For compressors that are not oil-lubricated, ensure that carbon monoxide levels in the breathing air do not exceed 10 ppm.

(g) For oil-lubricated compressors, use only a high-temperature or carbon monoxide alarm, or both, to monitor carbon monoxide levels. If you use only high-temperature alarms, monitor the air supply often enough to prevent carbon monoxide in the breathing air from exceeding 10 ppm.

(h) The employer must ensure that breathing air couplings are incompatible with outlets for nonrespirable worksite air or other gas systems. Do not allow any asphyxiating substance to get into breathing airlines.

(i) Use only breathing gas containers with marking that comply with the NIOSH respirator certification standard, 42 CFR part 84.

(10) Identification of filters, cartridges, and canisters. The employer must ensure that all filters, cartridges and canisters have labels and color codes that comply with the NIOSH standards and that the label remains in place and legible.

(11) Training and information.

(a) The employer must ensure that each employee can demonstrate knowledge of at least the following:

(A) Why the respirator is necessary and how improper fit, use, or maintenance can compromise the protective effect of the respirator;

(B) What the limitations and capabilities of the respirator are;

(C) How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions;

(D) How to inspect, put on and remove, use, and check the seals of the respirator;

(E) What the procedures are for maintenance and storage of the respirator;

(F) How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators; and

(G) The general requirements of this rule.

(b) Training must be in a language or form that workers understand.

(c) Training must be complete before workers use respirators.

(d) Retrain respirator users annually and when these situations happen:

(A) Changes in the work or the type of respirator make previous training obsolete;

(B) Inadequacies in the employee's knowledge or use of the respirator indicate that they no longer have the basic understanding or skill; or

(C) Any other situation arises in which retraining appears necessary to ensure safe respirator use.

(e) An employer who can demonstrate that a new employee has training within the last 12 months that addresses the elements in paragraph (k)(1)(i) through (vii) does not have to repeat that training if, the employee can demonstrate knowledge of those element(s). Previous training not repeated initially by the employer must be provided no later than 12 months from the date of the previous training.

(f) Provide every voluntary respirator user with the basic advisory information in **Appendix D**. Any written or oral format is acceptable.

(12) Program evaluation.

(a) Evaluate the workplace as necessary to ensure effective use of the current written program.

(b) Regularly consult your users to get their views on your program's effectiveness and to identify problems. Correct the problem. Things to assess include at least:

(A) Respirator fit (including the ability to use the respirator without interfering with effective workplace performance);

(B) Users have and use the correct respirator for their exposure hazards;

(C) Proper respirator use; and

(D) Proper respirator maintenance.

(13) Recordkeeping.

(a) Medical evaluation. Retain and make available, according to 437-002-1910.1020, all medical evaluations required by this standard.

(b) Fit testing.

(A) You must keep a record of qualitative and quantitative fit tests for each user including:

(i) The name or identification of the employee;

(ii) Type of fit test;

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- (iii) Specific make, model, style, and size of respirator tested;
- (iv) Date of test; and
- (v) The pass/fail results for QLFTs or the fit factor and strip chart recording or other recording of the test results for QNFTs.

(B) Keep fit test records until records of a new test replace them.

(c) You must keep a written copy of your current respirator program.

(d) On request, you must make written records required by this standard, available to the OR-OSHA Administrator or their designee for examination or copying.

(14) Appendices.

(a) Compliance with **Appendix A, Appendix B-1, Appendix B-2, and Appendix C** of this rule is mandatory.

(b) **Appendix D** of this rule is mandatory and does not create any additional obligations or detract from any existing obligations.

(15) Effective Date. OAR 437-004-1041, Respiratory Protection, is effective March 1, 2007.

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

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

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

Stats. Implemented: ORS 654.001 - 654.295.

Hist.: OSHA 3-2006, f. 6-7-06, cert. ef. 3-1-07; OSHA 11-2006, f. & cert. ef. 11-30-06

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.

(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.

(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.

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- (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 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.
- (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.
- (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, 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.
- (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.

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(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. & cert. ef. 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. ef. 8-30-06; OSHA 11-2006, f. & cert. ef. 11-30-06

Rule Caption: Amend rule to conform to statute governing eligibility of geothermal project greater than one megawatt.

Adm. Order No.: DOE 3-2006

Filed with Sec. of State: 11-27-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 10-1-06

Rules Amended: 330-090-0110

Subject: The 2001 Oregon Legislature amended the definition of “renewable energy resource in ORS 469.185(9) to remove the Business Energy Tax Credit restriction on geothermal energy to projects of one megawatt or less of installed capacity. Geothermal projects of all sizes are now eligible. The Oregon Department of Energy has not amended OAR 330-090-0110(5)(b)(A) to be consistent with ORS 469.185(9)(b). this rulemaking corrects that error.

Rules Coordinator: Kathy Stuttaford—(503) 378-4040

330-090-0110

Definitions

(1) **“Alternative Fuel”**: A motor vehicle fuel, other than gasoline or diesel, that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, ethanol, biodiesel, hydrogen, hythane, methane, methanol, natural gas, liquefied natural gas, liquefied petroleum gas (propane), and other fuels the Director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have a water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(2) **“Alternative Fuel Fueling Station”**: A fueling facility necessary to refuel alternative fuel vehicle fleets. This will include the facilities for mixing, storing, compressing, charging, and dispensing alternative fuels, and any other necessary and reasonable equipment. It can be a facility for either public or private use.

(3) **“Alternative Fuel Vehicle (AFV)”**: A vehicle designed to operate on an alternative fuel. This includes vehicles direct from the factory or vehicles modified to allow the use of alternative fuels. This does not include vehicles owned or leased by the State of Oregon. This does not include vehicles leased by an investor-owned utility (IOU) to others.

(4) **“Applicant”**: A person who applies for a business energy tax credit under this section.

(a) It includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies that file an Oregon income tax return.

(b) It includes any cooperative, non-profit corporation, or federal, state or local governments including school districts, water districts, or any other special districts. These entities are qualified applicants when they have a pass-through partner that files an Oregon income tax return, or commit to select such a partner prior to final certification.

(c) It includes a contractor installing an alternative fueled vehicle fueling station in a dwelling.

(d) It does not include any business or non-profit corporation or cooperative that restricts membership, sales, or services on the basis of race, color, creed, religion, national origin, sexual preference, or gender.

(5) **“Building Code”**: Applicable state and local building codes in effect the date ODOE receives the application for preliminary certification.

(6) **“Building Automation Controls Project”**: Systems that control energy consuming equipment in a building are eligible when energy saving features exceed standard practice (defined in BETC Technical Requirements) and applicable code requirements. Eligible cost does not include costs associated with operations, maintenance, or repair as described in section 17(b)(D) of this rule.

(7) **“Business Energy Tax Credits Technical Requirements (BETC Technical Requirements)”**: A manual produced by and available from ODOE describing specific technical requirements that must be met to comply with these rules, based on the version of the manual in effect the date the application for preliminary certification is received by ODOE.

(8) **“Carpool Program”**: A program in which riders share the same vehicle to commute between different communities or neighborhoods on a regular basis.

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(9) **“Car Sharing Program”**: A program in which drivers pay to become members in order to have joint access to a fleet of cars from a common parking area on an hourly basis. It does not include operations conducted by a car rental agency.

(10) **“Commercial New Construction”**: A new structure or one of the following:

(a) An addition to an existing structure, which provides additional square footage;

(b) An alteration to an existing structure, which changes the functional use of the entire structure;

(c) An alteration to an existing structure occurring within six months of a change in the facility’s ownership; or

(d) A major renovation to 50 percent or more of the square footage of an existing structure in which three or more building systems are changed. Systems include but are not limited to: envelope, space conditioning, lighting, water heating and process.

(11) **“Commissioning”**: The process to assure that Heating Ventilating and Air Conditioning (HVAC) systems (and associated hydronic systems), lighting system controls and automatic temperature control systems have been completely and properly installed and put into service in accordance with their design intent as defined by the contract documents. The process of commissioning also includes the systematic testing, verification, documentation, training of operations personnel and preparation of operations and maintenance documentation.

(12) **“Commercial Process”**: An energy-using system (e.g., lighting, HVAC, or water heating). Such a system can be studied and judged on its own.

(13) **“Commuter Parking Space”** means a parking space that is:

(a) Located in an area where parking spaces are regularly available for lease by the day or month to the public.

(b) Leased by the employer for an employee’s use:

(i) Separate from the lease for the business premises.

(ii) As an integral part of the lease for the business premises if the employer has the right to sublease the parking space to a commuter.

(c) Owned by the employer.

(d) Not located in a lot used primarily for business customers.

(e) Not provided to an employee for parking a vehicle the employee regularly uses to perform the employee’s job duties.

(14) **“Completed Application”**: Contains all of the information detailed in OAR 330-090-0130(4). All questions on the application form must be answered. An incomplete application will be returned to the applicant for completion. Only completed applications will be considered on a first-come-first-served basis.

(15) **“Completed Project”**: An energy or conservation project for which all costs have been paid or committed by a binding contract or agreement and that is installed and operating or which the Director decides the applicant has made all reasonable efforts to operate, including making changes suggested by ODOE.

(16) **“Cooperative Agreement Organization”**: ODOE may enter into cooperative agreements with qualified public purpose, governmental, or other organizations to assist in the development and qualification of BETC applications, with the scope of the agreement defined by ODOE based on the qualifications of the organization and subject to conditions specified in the agreement.

(17) **“Cost”**: The actual capital costs and expenses the Director finds are needed to acquire, erect, build, or install an energy or conservation project under these rules. Cost for necessary features are not eligible. Costs financed with federal funds, other than costs financed by grants or tax credits excluded by ORS 315.356(1), may be eligible expenses, including but not limited to costs incurred by federal agencies directly for capital, operating, or other expenses. Costs incurred by entities that are not taxpayers, including but not limited to, cooperatives, non-profit corporations, state or local governments including school districts, water districts, or any other special districts, may be eligible costs irrespective of their funding sources.

(a) Cost can include payments for:

(A) Fees to finance, design or engineer the project;

(B) Title searches, escrow fees, government fees, excluding fees required by OAR 330-090-0150(2), and shipping;

(C) All materials and supplies needed for the project; and

(D) Work performed by employees of the applicant based on the following conditions:

(i) Employees must be certified, accredited, licensed, or otherwise qualified to do the work; and

(ii) Costs for employee’s work must be detailed and documented as to specific tasks, hours worked, and compensation costs.

(E) Facilities or equipment required for vehicles to provide transportation services to serve riders (such as a wheelchair lift system).

(b) Cost may not include:

(A) Interest and warranty charges;

(B) Legal fees and court costs;

(C) Patent searches, application and filing payments;

(D) Costs to maintain, operate, or repair a project; or

(E) Other costs the Director excludes.

(c) If an energy or conservation project is built under a lease, lease-option or lease-purchase contract, the lessee’s cost to acquire the project is the value paid for the project. If that amount is not known, the cost is the sum of:

(A) Tax credits passed through by the lessor to the lessee;

(B) The amount paid when the project is transferred; and

(C) The lease payments not including taxes, insurance, interest, and operating costs.

(D) Payments to be made in the future must be discounted to present value.

(d) If an energy or conservation project serves more than one purpose, cost includes only items needed to save energy and/or use renewable energy resources. This includes new or replacement equipment that costs more because of its energy saving features. ODOE may do inspections to verify eligible costs.

(e) Incremental cost is the cost above a reasonable minimum expected to construct a similar project without energy efficient features.

(A) In commercial new construction, it is the difference between building to code and building to meet or exceed the standards for substantial energy savings.

(B) In other projects, it is the difference between prevailing practices for that business or industry and a more energy efficient method.

(f) Excluding Research, Development & Demonstration, Sustainable Building Projects, recycling market development, and transportation projects, eligible project costs are limited by the following:

(A) All other projects must have a 15-year simple payback period, except rental dwelling weatherization projects and solar photovoltaic projects that are limited to a 30-year simple payback. If the simple payback period exceeds those limits, eligible costs will be prorated down to the highest amount that would result in a qualifying payback; and

(B) All other projects must have a simple payback of more than one year and less than the service life of the project,

(g) Costs for a Research, Development & Demonstration project also include costs of instruments, controls, and other equipment needed to monitor or audit the project. This equipment does not need to save or produce energy.

(h) Costs for space conditioning or individual metering energy or conservation project(s) are limited to incremental costs, except when existing equipment is within its Service Life when costs will be the total eligible project costs. Incremental costs are limited to 40 percent of the cost to install a replacement space or hot water heating system in rental dwellings, except as defined in (i) below.

(i) Costs for space and water heating equipment as defined in OAR 330-090-0110(20)(d) include the total cost of individually metered systems that replace a central system in a rental dwelling.

(j) Eligible costs for Transportation Projects include, but are not limited to, telework, commuter pool vehicles, bicycles, Transportation Management Association fees, incentive programs, transit passes, car sharing, parking cash out, carpool/vanpool, individualized behavior change program, Research, Development and Demonstration (RD&D) rideshare matching service and transportation services. Except for RD&D projects, bicycle purchases, and commuter pool vehicles with special equipment, the maximum eligible cost for transportation projects is the result of the cost-per-vehicle mile calculated by a formula adopted by the Oregon Department of Energy multiplied by the estimated vehicle miles reduced (VMR) by the project.

(k) Costs for premium efficient appliances as defined in this rule are limited to incremental costs. When incremental cost values are not available the incremental cost will be deemed a portion of the project cost based on similar projects, but not exceeding 40 percent of the purchase cost.

(l) In implementing the utility pass-through in OAR 330-090-0140(2), utilities may set a minimum eligible cost to participate. The following requirements apply:

(A) The utility must submit exact specifications of the limit to and receive approval by ODOE prior to implementation of the limit.

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(B) The utility must provide notification to the customer that there is no minimum when applying directly to ODOE, however, payments in OAR 330-090-0150(2) do apply.

(m) Sustainable Building Projects are exempt from the previous requirements of this definition, as the eligible cost for these projects is calculated using the table in the Business Energy Tax Credit Technical Requirements for Sustainable Building projects OAR 330-090-0135.

(n) The sum of any rebates or cash payments under ORS 469.631 to 469.645, 469.649 to 469.659, 469.673 to 469.683, or 757.612(5)(a), or from a public purpose organization and the business energy tax credit may not exceed eligible costs.

(18) **"Cost-per-Vehicle Mile"**: The total cost of one vehicle mile driven by a single occupant. The components of calculating the total cost include, but are not limited to, vehicle operation cost, fuel cost, travel time, congestion and pollution. The calculation formula for the total costs is available on the Web site of the Oregon Department of Energy.

(19) **"Energy Department"**: The Department of Energy of the State of Oregon (ODOE).

(20) **"Energy or Conservation Project"**: A renewable resource, recycling, recycling market development, conservation, transportation, alternative fuel vehicle, alternative fuel fueling station, a sustainable building project, or Research, Development & Demonstration project that complies with these rules and any applicable BETC Technical Requirements. It must be located within the geographical confines of Oregon. The dollar value of the first year energy savings must be less than the cost of such project, except as allowed for a Research Development & Demonstration project, transportation or recycling market development or recycling project.

(a) An energy conservation measure (ECM), is an energy or conservation project if it results in substantial savings in the amount of purchased energy used at a site by a business or other eligible entity. Energy conservation measures include equipment installed for the purpose of reducing energy use.

(b) Each unit or group of units of an energy or conservation project is an energy project by itself if:

(A) Each unit or group of units can save or produce a substantial amount of energy by itself; and

(B) The application and all licenses and permits for the project show it will consist of smaller units or groups of units; and

(C) The entire project complies with these rules; and

(D) It is connected to a load or end use or it displaces a connected load.

(c) Costs for an energy project needed to obtain substantial energy savings for a new commercial, institutional, or industrial building. Savings will be compared to energy used by a building, unit, or industrial process that does not have the proposed conservation. But, such buildings must comply with the Building Code and have the same use, size, space heat fuel, and orientation as the applicant's building, unit, or industrial process.

(d) A space conditioning system(s) is an energy project if it provides substantial energy savings and complies with the BETC Technical Requirements, including reporting whether any replaced mercury-switch thermostats will be or have been recycled and, if so, how. Space conditioning systems installed in an existing dwelling unit must not involve changing the fuel source. An incremental upgrade, as defined in OAR 330-090-0110(17)(e), of a fuel switching project will be allowed if the upgrade complies with these rules.

(e) A new electric motor that complies with the BETC Technical Requirements.

(f) For buildings to be owned, leased, or otherwise operated and maintained by the state, including the State System of Higher Education, to qualify for the credit it must comply with the requirements of the State Energy-Efficient Design Program (SEED) as defined in OAR chapter 330, division 130 and associated guidelines, in addition to meeting requirements of these rules.

(g) Except as noted in (20)(d), an energy project does not include:

(A) Swimming pools and hot tubs used to store heat.

(B) Wood stoves.

(C) Space conditioning systems and back-up heating systems, including systems that do not meet code or minimum standards listed in the BETC Technical Requirements.

(D) Devices and substances whose use is common in the applicant's business, except hog fuel boilers that replace fossil fuel boilers.

(E) Pollution control facilities and alternate energy devices for which a tax credit or ad valorem tax relief is granted under ORS 307.405, 316.097 or 316.116.

(F) Devices or materials which are standard practice.

(G) Recycling automotive air conditioning chlorofluorocarbons (CFC).

(H) Conservation in rental dwellings, for applicants listed in ORS 469.205(1)(c)(A) and

(B), which were issued an occupancy permit on or after January 1, 1996.

(I) Other items the Director finds are not allowed under ORS 469.185 to 469.225, 317.104, and 316.140 to 316.142.

(21) **"Director"**: The Director of the Oregon Department of Energy or designees.

(22) **"Final Certification"**: Final certificate issued upon completion of an approved BETC project.

(23) **"Geothermal Energy"**: Natural heat in any form below the earth's surface. It also means minerals in solution, or other products of naturally heated substances below the earth's surface. It includes:

(a) Products of geothermal processes, such as steam, hot water, and hot brines; or

(b) Steam and gases, hot water and brine caused by injecting substances into the earth; or

(c) Heat or other related energy in the earth; or

(d) By-products of (a) through (c).

(24) **"Hybrid Electric Vehicle"**: A vehicle which draws propulsion energy from onboard sources of stored energy which include both an internal combustion engine and a rechargeable energy storage system. The charging system for the energy storage system must have an operating voltage of 100 Volts or higher. In addition to a hybrid drive train, a Hybrid Electric Vehicle (HEV) must also have a regenerative braking system. A list of vehicles known to meet these qualifications will be listed in the BETC Technical Requirements.

(25) **"Individualized Travel Behavior Change Program"**: A program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with participants in a specific geographical area or in a targeted group.

(26) **"Industrial Process Energy Project"**: Energy project that provides a direct improvement to a manufacturing process in a facility conducting activities categorized in two-digit 1987 Standard Industrial Classification (SIC) codes 01 through 49 or the corollary 2002 North American Industry Classification System (NAICS) codes including 11 through 31 and 48-49 regardless of ownership, and:

(a) Provides substantial energy savings from conservation, or;

(b) Provides substantial energy savings through the use of renewable resources; or

(c) Provides substantial energy savings by recovering waste heat from cogeneration systems; or

(d) Prepares or conditions alternative fuels for distribution or dispensing; or

(e) Increases industrial process efficiency through recycling market development; or

(f) Provides emergency replacement inventory of electric motors as defined in (20)(e) of this rule; but

(g) Does not include space conditioning for human comfort or general illumination.

(27) **"Lease Contract"**: A contract between a lessor and a lessee of an energy or conservation project.

(a) In a lease-purchase contract the lessee owns the project at the end of the lease and is eligible for the BETC.

(b) In a lease or lease-option contract the lessor owns the project through the life of the contract and is eligible for the BETC.

(28) **"Least Cost Plan"**: A least cost plan filed by an Investor Owned Utility (IOU) as defined in ORS 757.005 and acknowledged by the Oregon Public Utility Commission (OPUC) under Order Number 89-507.

(29) **"Lighting Project"**: Means a project that will reduce the affected lighting system energy use by at least 25 percent and complies with BETC Technical Requirements, including reporting for non-residential structures whether any lamps replaced in the project or that will be subsequently replaced will be recycled and, if so, how.

(30) **"Low Interest Loan"**:

(a) For an electric utility, a loan with interest that is not more than 6-1/2 percent per year for those measures identified as cost effective in the utility audit. All other measures identified in the utility audit will be financed by a rate established by the OPUC. The combined interest rate will not exceed 12 percent.

(b) For all utilities, the loan principal or interest rate will be reduced by the present value of the tax credit earned under these rules. If the principal or interest is reduced to zero by applying the present value of the cred-

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it without allotting all that value, the excess will accrue to the owner who receives the loan. The loan will be repaid in a reasonable time not more than 10 years after it is issued.

(c) Some utilities may offer cash payment incentives as an option to a loan. The present value of the tax credit may be added to this incentive as provided in OAR 330-090-0140(2) of this rule.

(31) **“Mass Transit District”**: A mass transit district included in ORS 184.675(7).

(32) **“Metropolitan Service District”**: A metropolitan service district included in ORS 184.675(7).

(33) **“Necessary Feature”**: A feature for which its primary purpose is:

(a) Complying with the Building Code, including remodeling or new construction that includes energy or conservation projects to comply with the Building Code;

(b) Complying with specific state or federal statutes or requirements for pollution control or recycling project equipment. Recycling projects are necessary features except as noted in OAR 330-090-0110(47); or

(c) Routine maintenance or repair, such as replacing water damaged insulation or a broken window.

(34) **“Net Present Value”**: A cash payment equivalent to the net present value of the BETC as determined under OAR 330-090-0140(1)(b).

(35) **“Organization”**: A corporation, association, firm, partnership, limited liability company, joint stock company, cooperative, non-profit corporation, or federal, state or local government including school district, water district, or any other special district.

(36) **“Parking Cash Out”** means a cash allowance or a transit pass to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle.

(37) **“Pass-through Option”**: An option that allows a project owner to transfer the project’s tax credit eligibility to persons or businesses with an Oregon income tax liability in return for a cash payment equivalent to the net present value.

(38) **“Pass-through Partner”**: A person or business or persons or businesses with an Oregon income tax liability accepting a tax credit certificate in return for a cash payment equivalent to the net present value of the BETC.

(39) **“Preliminary Certification”**: Preliminary certificate issued upon successful completion of the first stage in obtaining a BETC.

(40) **“Premium Efficient Appliance”**: An appliance that has been certified by ODOE to have premium energy efficiency characteristics. Residential appliances are listed in ODOE’s Alternative Energy Devices Systems Directory. Commercial appliances are listed in ODOE’s Premium Efficient Commercial Appliances Directory.

(41) **“Project Eligible Square Footage”**: For the purpose of calculating the tax credit amount for a Sustainable Building Project, project eligible square footage includes all temperature-conditioned floor areas, and the ground-level footprint area of parking structures or parking structure elements of the project. It does not include exterior square footage beneath overhangs, awnings, canopies, walkways or unconditioned plaza areas beneath conditioned portions of the building.

(42) **“Project Operator”**: The person or people to whom the applicant gives authority to manage a project. Such person or people will be the applicant’s agent for all reasons related to the project once its development begins.

(43) **“Project Owner”**: An applicant who purchases and owns a qualified project.

(44) **“Project Start”**: The date the applicant chooses to write on the preliminary certificate application that meets one or more of the following criteria:

(a) A non-refundable deposit is placed on the energy or conservation project equipment;

(b) A purchase order is placed for the energy or conservation project equipment;

(c) A contract is executed for the design of the energy or conservation project;

(d) A document is executed that obligates the applicant to proceed with an energy or conservation project; or

(e) The date energy or conservation project information for a preliminary certification application is received by a cooperative agreement organization.

(45) **“Public Purpose Organization”**: The entity administering the conservation and renewable public purpose funds described in ORS 757.612(3)(b)(A) and (B) or its agents.

(46) **“Qualified Transit Pass Contract”**: A purchase agreement entered into between a transportation provider and an organization, the

terms of which obligate the organization to purchase transit passes on behalf or for the benefit of riders over a specified period of time.

(47) **“Recycling”**: A process to change a waste product into a useable product or material. It includes refining used oil, chlorofluorocarbons, and halons. It does not include re-use in the same way the product or material first was used unless it changes the product or material. It does not include the combustion or incineration of a waste stream, although these waste remediation processes may be a part of an “Energy Project” where they include characteristics required to meet that definition.

(48) **“Recycling Project”**: Equipment used in a business for recycling in communities not subject to OAR 340-090-0030(2), or equipment used in recycling non-principal recyclable materials for specific wastesheds, as noted in OAR 330-090-0110(18)(h). It does not include any projects which are standard practice or for the purchase and installation of equipment that is specifically required by state or federal statute or rule. It includes:

(a) Equipment used for re-refining used oil, chlorofluorocarbons (CFC), and halons.

(b) Newly purchased vehicles with integrated recycling material sortation/collection features or changes to vehicles with integrated recycling material sortation/collection features used to transport recyclable products that cannot be used further as is. This includes but is not limited to trailers, racks, or bins that attach to such vehicles.

(c) Equipment used to process recyclable products. This includes but is not limited to balers, flatteners, crushers, separators, drop boxes, and scales.

(49) **“Recycling Market Development Project”**: Projects that stimulate demand for recycled materials. It includes projects that meet one of the following criteria:

(a) The project uses recycled materials as feedstock to produce new products; or

(b) Equipment that allows reuse of pre or post consumer waste in the production of new products; or

(c) Recycled material equipment which yields a feedstock with new and changed characteristics for the production of new products; or

(d) Equipment that enables a higher amount of recycled material feedstock to be used in the manufacture of a product.

(50) **“Renewable Energy Resource”**: A renewable energy resource:

(a) Does include, but is not limited to:

(A) Straw, forest slash, wood waste, or other wastes from forestland.

(B) Industrial waste, solar energy, wind power, water power, geothermal resources, or waste heat recovery.

(b) Does not include:

(A) A hydroelectric project with more than one megawatt of installed capacity unless it is a Research, Development, and Demonstration project as defined in OAR 330-090-0110(52) or definition 52 of this rule.

(B) Whole, living trees harvested for use as a fuel unless those trees have a growth cycle that will enable the trees to be replaced for use as a fuel during the service life of the project.

(51) **“Renewable Resource Project”**: Development that uses a renewable energy resource in a business or other eligible entity to make electricity, bio-gas, alcohol, or other fuel for sale; or, to replace a substantial amount of other fuels now used or that otherwise would be used.

(52) **“Research, Development, and Demonstration Project (RD&D)”**: A project that complies with (a) and (b):

(a) A project that is not standard practice, is likely to produce or produces products or technologies that are likely to qualify as an energy or conservation project in Oregon when commercialized, and complies with one or more of the following criteria:

(A) Research projects that include a test bench research, prototype or pilot scale construction of a theoretically proved or primary researched technology;

(B) Development projects that include the new manufacture or initiation of the capability to produce or deliver energy or conservation projects in Oregon, excluding development projects that increase established manufacturing or production capacity in Oregon;

(C) Demonstration projects that are likely to resolve questions on how to apply new technology or that inform the public about new or improved technology though pilot or production scale applications of technology;

(D) Innovative travel reduction projects that reduce vehicle miles traveled. The applicant must conduct pre and post surveys that measure travel reductions and submit the results with the application for final certification. A transportation district, mass transit district, or metropolitan service district within a community of 50,000 or more people may not qualify for more than \$2 million annually in eligible costs for innovative travel reduction programs.

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(E) Projects that improve energy efficiency in a focused geographic area through the replacement of outmoded energy equipment with energy-efficient equipment.

(F) Manufacturing facilities that produce renewable energy components such as wind, solar, geothermal, and other technologies.

(G) Projects in the Director's determination are likely to achieve Energy Office goals.

(b) A project that demonstrates a reasonable potential to result in energy or conservation benefits in Oregon for which the value is likely to exceed the value of the tax credit, based on information filed with the application for preliminary certification.

(53) "**Riders**": Employees, students, clients, customers, or other individuals using transportation facilities or transportation projects for travel.

(54) "**Rideshare Matching Services Program**": A program that provides matching services to registered members to find shared rides for commuting on a regular basis.

(55) "**Service Life**": Equipment service life is as established in the most recent edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) Heating, Ventilating and Air Conditioning (HVAC) Applications Handbook as of the date the application for preliminary certification is received by ODOE or as determined by the Director for equipment not rated by ASHRAE. If the baseline system has exceeded its service life, only an incremental project will be considered eligible for a tax credit.

(56) "**Simple Payback**": The total eligible cost of an energy or conservation project divided by the expected yearly energy cost savings, stated in years.

(57) "**Standard Practice**": Conventional equipment or material applied in a way that it may be observed as a common or necessary feature of new and existing businesses.

(a) In new commercial construction it may include but is not limited to: electronic fluorescent ballasts; T-8 fluorescent lamps, compact fluorescent lamps that are not hard wired; parabolic louvered fluorescent fixtures; R-19 insulated walls in wood frame construction; variable air volume space conditioning systems; the portion of energy management controls that monitor for life safety, maintenance, or control process for purposes other than saving energy.

(b) In other energy projects it may include but not be limited to propane powered lift trucks, electric golf carts or curbside recycling bins.

(c) Any other equipment, material, or applications of equipment or material as determined by the Director.

(58) "**Substantial Energy Savings**": Means that ODOE has determined that:

(a) An energy or conservation project, other than a lighting retrofit or sustainable building project and excluding Research Development & Demonstration, transportation, recycling market development, recycling project, will save at least 10 percent of the energy used in a given system or process;

(b) A lighting retrofit project will reduce the affected lighting system energy use by at least 25 percent;

(c) The project is a sustainable building project as defined in Definition 59 of this rule; or

(d) The project measures are defined in the BETC Technical Requirements as measures that would qualify under or are measures recommended in an energy audit completed under ORS 469.631 to 469.645, 469.649 to 469.659, and 469.673 to 469.683.

(59) "**Sustainable Building Project**": Means a building project as defined in section 8 of this rule that is rated and certified under the Leadership in Energy & Environmental Design (LEED™) Green Building Rating System managed by the U.S. Green Building Council. For a Sustainable Building Project to be eligible for a tax credit it must comply with the requirements set forth in OAR 330-090-0135 and any applicable BETC Technical Requirements.

(60) "**Transportation District**": A transportation district included in ORS 184.675(7).

(61) "**Transportation Facility**": A transportation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain medical or other services. This includes, for purposes of this rule, commuting to and from class. Transportation facility includes, but is not limited to, a qualified transit pass contract or a transportation services contract, a car sharing program, and a parking cash out project.

(62) "**Transportation Project**": An energy or conservation project that reduces energy used for traveling, including but not limited to traveling to and from work or school, work-related travel or travel to obtain med-

ical or other services. A transportation project must meet one or more of the following criteria:

(a) Telework defined as working from home or from an office near home instead of commuting a longer distance to the principal place of employment. It does not include home-based businesses or extension of the workday. Telework equipment must be installed to reduce employee vehicle miles traveled a minimum of 45 working days per calendar year. Eligible costs include purchase and installation of new or used equipment at the telework site. Computer, facsimile device, modem, phone, printer, software, copier, and other equipment necessary to facilitate telework as determined by the Director are eligible costs. Eligible cost for telework projects does not include replacement cost for equipment at the principal place of business when that equipment is relocated to the telework site; fees for maintenance and operation of any equipment; office furniture and office supplies or training costs.

(b) Telework for the purpose of reducing business vehicle miles traveled must reduce employee business related travel by 25 percent.

(c) Commuter pool vehicles transporting three or more riders dedicated to reducing vehicle miles traveled. The vehicle must be used a minimum of 150 working days per calendar year. Eligible cost includes purchase of vehicle(s). If vehicles with special equipment are being purchased, a copy of the sales quotation showing the additional cost for the equipment must be submitted. The vehicle must remain in service for five years. Where vehicles are used for business travel other than transporting riders, eligible cost shall be reduced based on the estimated percent of miles dedicated to reducing travel. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible.

(d) Transit passes used by an applicant's riders or in fareless zones to reduce vehicle miles traveled. Eligible cost includes the cost of the transit pass or the cost specified in the contract for providing the fareless zone. Transportation districts, mass transit districts, or metropolitan service districts within communities of 50,000 or more people are not eligible. Eligible cost also includes the cost of equipment used as a shelter for riders waiting for transit. To be eligible, the shelter must be part of a transit pass project.

(e) Bicycle used by an applicant's riders to reduce vehicle miles traveled a minimum of 45 days per calendar year. Eligible costs include purchase of bicycles and equipment used to store bicycles. Accessory items such as locks, panniers, rain gear helmets, etc. are not eligible, except for bicycle lights.

(f) Fees paid by an applicant to a Transportation Management Association (TMA) or non-profit organization that provides transportation services for the purpose of reducing vehicle miles traveled by a passenger. The fee must be part of a transportation project and cannot exceed the cost of the transportation project. To be eligible, the applicant must provide verification of an agreement with the transportation provider for specific services that reduce vehicle miles traveled.

(g) The cost of an incentive program paid by the applicant that provides a financial incentive to a passenger for reducing vehicle miles a minimum of 45 days per calendar year. To be eligible the applicant must provide a written incentive program plan for Energy Department approval.

(h) Car sharing is defined as a program in which drivers pay to become members in order to have joint access to a fleet of cars. Eligible cost for car sharing includes the cost of operating a car sharing program, including the fair market value of parking spaces used to store the cars available for the car sharing program, but does not include the cost of the fleet of cars. It does not include operations conducted by a car rental agency.

(i) Parking cash out is defined as a cash allowance or a transit pass given to an employee in lieu of offering or providing the employee a free or subsidized commuter parking space for a commuter vehicle. Eligible cost for parking cash out includes the cost of providing a commuter parking space. The employer may establish the value of the commuter parking space in either of the following ways:

(A) When the employer leases the commuter parking space for market value, separate from the lease for the business premises, the employer may establish the value by documenting the cost of leasing the commuter parking space.

(B) When the employer owns the commuter parking space or leases it as an integral part of the lease for the business premises, the employer may establish the value by documenting the cost of leasing a similar parking space within 250 yards of the employer's business premises.

(j) "Transportation Service": is defined as a project that provides transportation services to reduce vehicle miles driven by a single occupant

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vehicle. The eligible cost for a transportation service project is the cost for providing the transportation service, but does not include the cost of the vehicle. The transportation service project must provide service for a minimum of 150 days per year. Transportation districts, mass transit districts, and metropolitan service districts in communities with 50,000 or more people are not eligible.

(k) "Individualized Travel Behavior Change": is defined as a program approved by the Oregon Department of Energy that reduces vehicle miles traveled through one-on-one contact with the participants in a specific geographical area or in a targeted group. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula.

(l) "Rideshare Matching Service": is defined as a program that provides matching services to registered members to find shared rides for commuting on a regular basis. Pre and post-project surveys must be conducted. The applicant must submit a report with the results of these surveys to measure travel reduction. Eligible costs include capital expenditures, administrative and communication costs. Projects are subject to the VMR cost-effectiveness formula.

(m) "Carpool/Vanpool Program": is a program that provides transportation to registered members to commute on a regular basis. Eligible costs include vehicle operation costs, but does not include the cost of the vehicle. The applicant must conduct pre and post-project surveys and submit a report with the results of these surveys to measure reduction in vehicle miles. The program must provide service for a minimum of 150 calendar days per year. Projects are subject to the VMR cost-effectiveness formula.

(63) "Transportation Provider": means a public, private, or non-profit entity that provides transportation services to members of the public.

(64) "Transportation Services Contract": A written contract or agreement that is related to a transportation facility.

(65) "Utility": Gas or electric utilities as defined below.

(a) An Investor Owned Utility (IOU) as defined in ORS 757.005, or its subsidiaries and affiliated interests as defined in ORS 757.015; or

(b) A Publicly Owned Utility (POU) and people's utility district as defined in ORS 261.010, or a municipal or cooperative utility.

(66) "Vanpool Program": A program that provides opportunities for a designated group of riders to share the usage of a vehicle to commute between different communities/neighborhoods on a regular basis.

(67) "Vehicle Miles Reduced (VMR)": Reduction in miles achieved by a project when compared to single occupant vehicles.

(68) "Year": Calendar year.

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

Stat. Auth.: ORS 469.040 & 469.165

Stats. Implemented: ORS 469.185 - 469.225

Hist.: DOE 7-1985, f. 12-31-85, ef. 1-1-86; DOE 3-1986, f. & ef. 8-29-86; DOE 2-1988, f. & cert. ef. 3-17-88; DOE 3-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 3-1990, f. & cert. ef. 9-20-90; DOE 4-1991, f. & cert. ef. 12-31-91; DOE 2-1992(Temp), f. 12-14-92, cert. ef. 12-15-92; DOE 2-1993, f. & cert. ef. 1-28-93; DOE 5-1993, f. & cert. ef. 12-14-93; DOE 2-1995, f. 12-12-95, cert. ef. 12-15-95; DOE 3-1996, f. & cert. ef. 11-27-96; DOE 2-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 4-1998, f. 12-14-98, cert. ef. 12-15-98; DOE 2-1999, f. 12-22-99, cert. ef. 1-1-00; DOE 1-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 2-2004, f. & cert. ef. 1-21-04; DOE 3-2004, f. & cert. ef. 7-1-04; DOE 1-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 2-2006, f. 9-29-06, cert. ef. 10-1-06; DOE 3-2006, f. 11-27-06, cert. ef. 12-1-06

Department of Fish and Wildlife Chapter 635

Rule Caption: Amend rule to correct inaccuracies in unit boundary descriptions for the Sumpter and Starkey Units.

Adm. Order No.: DFW 122-2006(Temp)

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06 thru 5-15-07

Notice Publication Date:

Rules Amended: 635-080-0051, 635-080-0052

Subject: Amend rules to correct inaccuracies in the boundary description for the Sumpter Unit (51) and Starkey Unit (52). Current boundary descriptions do not have connecting roads.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-080-0051

Sumpter Unit

The Sumpter Unit, number 51, is that area beginning at Ironside; northwest on U.S. Highway 26 to Austin junction; northeast on State Highway 7 to summit of Blue Mountains; northeast along Blue Mountain

summit to Anthony Lakes Road; northeast on Anthony Lakes Road to Ellis Rd; north on Ellis Rd to North Powder Ln; east on North Powder Ln to I-84 at North Powder; southeast on Interstate Highway 84 to Durbin Creek Road overpass; west on Durbin Creek-Malheur Reservoir Road to Ironside, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 32-1980, f. & ef. 6-30-80; FWC 39-1982, f. & ef. 6-25-82; FWC 72-1989, f. & cert. ef. 8-15-89; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 122-2006(Temp), f. & cert. ef. 11-17-06 thru 5-15-07

635-080-0052

Starkey Unit

The Starkey Unit, number 52, is that area beginning on Interstate Highway 84 at the junction of State Highway 82 at La Grande; southeast on Interstate Highway 84 to North Powder; west on North Powder River Lane to Ellis Rd; south on Ellis Rd to Anthony Lks Rd; west on Anthony Lakes Road 73 to Anthony Lakes; west past Anthony Lakes to Granite-Ukiah Road 52; northwest on Granite-Ukiah Road 52 to Tower Mountain Road 5226; east and north on Tower Mountain Road 5226 past Tower Mountain and Frazier Forest Camp to State Highway 244 (Forest Road 59); east on State Highway 244 (Forest Road 59) to Forest Road 5900230 at Four Corners Forest Camp; north on road 5900230 to 2100040, north on 2100040 to Forest Road 21; north on Forest Road 21 to Forest Road 2135; northeast on Forest Road 2135 to Forest Road 2135400; northeast on Forest Road 2135400 to Kamela; east on Summit Road to Interstate Highway 84; southeast on Interstate Highway 84 to State Highway 82 at La Grande, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 32-1980, f. & ef. 6-30-80; FWC 39-1982, f. & ef. 6-25-82; FWC 35-1986, f. & ef. 8-7-86; FWC 46-1988, f. & cert. ef. 6-13-88; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 122-2006(Temp), f. & cert. ef. 11-17-06 thru 5-15-07

Rule Caption: Allow vessels participating in adjacent state's crab fishery to legally transit through Oregon waters.

Adm. Order No.: DFW 123-2006(Temp)

Filed with Sec. of State: 11-28-2006

Certified to be Effective: 12-1-06 thru 3-7-07

Notice Publication Date:

Rules Amended: 635-005-0055

Subject: Amend rule to allow vessels participating in the Dungeness crab fishery in adjacent states to transit through waters off Oregon in possession of crab pots that do not meet the Oregon gear requirements associated with the pot limit program. Legal transit will require written notification to ODFW 48 hours prior to transit.

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

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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;

(g) Additional buoy tags to replace lost tags will be issued by the Department as follows:

(A) After 45 days following the season opening in the area fished, up to ten percent of the tags initially issued for that season; or

(B) For a catastrophic loss, defined as direct loss of non-deployed gear in the event of a vessel being destroyed due to fire, capsizing, or sinking. Documentation of a catastrophic loss may include any information the Department considers appropriate, such as fire department or US Coast Guard reports;

(C) Permit holders must obtain, complete, and sign a declaration of loss under penalty of perjury in the presence of an authorized Department employee. The declaration shall state the number of buoy tags lost, the specific tag number of each lost tag, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(7) Remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the vessel's buoys and pots.

(8) Possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that vessel's, or buoys not bearing tags issued by the Department to that vessel, except:

(a) To set gear as allowed under OAR 635-006-1015; or

(b) Under a waiver granted by the Department to allow one time retrieval of permitted crab gear to shore by another crab permitted vessel provided that:

(A) Vessel is incapacitated due to major mechanical failure or destroyed due to fire, capsizing, or sinking;

(B) Circumstances beyond the control of the permit holder created undue hardship as defined by OAR 635-006-1095(7)(d);

(C) A Request must be in writing and a waiver approved and issued prior to retrieval;

(D) A copy of the waiver must be on board the vessel making the retrieval. (Contact Oregon Department of Fish and Wildlife License Services, Salem for guidelines.)

(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; DFW 96-2006(Temp), f. & cert. ef. 9-8-06 thru 3-6-07; DFW 97-2006(Temp), f. 9-8-06, cert. ef. 9-9-06 thru 3-7-07; DFW 123-2006(Temp), f. 11-28-06, cert. ef. 12-1-06 thru 3-7-06

Rule Caption: Establish 2007 regulations for Big Game Mammals.

Adm. Order No.: DFW 124-2006

Filed with Sec. of State: 12-7-2006

Certified to be Effective: 2-1-07

Notice Publication Date: 9-1-06

Rules Amended: 635-069-0000, 635-073-0000

Subject: Establish 2007 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2006 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. 12-21-04, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. 12-1-05, cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. 12-7-06, cert. ef. 2-1-07

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting and controlled deer and elk youth hunts; pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2006 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 073 by reference.

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game

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Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the 2006 Oregon Big Game Regulations are amended to change the open season dates for Hunt 644T2-Umatilla County Private on page 70. The corrected open season dates can be found under 635-073-0050.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 47-1999, f. & cert. ef. 6-16-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 21-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; FWC 30-2000, f. & cert. ef. 6-14-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 47-2001, f. & cert. ef. 6-13-01; FWC 121-2001, f. 12-24-01, cert. ef. 1-1-02; FWC 59-2002, f. & cert. ef. 6-11-02; FWC 3-2003, f. 1-17-03, cert. ef. 1-20-03; FWC 50-2003, f. & cert. ef. 6-13-03; FWC 122-2003, f. 12-4-03, cert. ef. 2-2-04; FWC 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; FWC 53-2004, f. & cert. ef. 6-16-04; FWC 123-2004, f. 12-21-04, cert. ef. 1-1-05; FWC 53-2005, f. & cert. ef. 6-14-05; FWC 130-2005, f. 12-1-05, cert. ef. 2-1-06; FWC 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; FWC 41-2006, f. & cert. ef. 6-14-06; FWC 124-2006, f. 12-7-06, cert. ef. 2-1-07

Rule Caption: Establish 2007 regulations for Big Game Mammals.

Adm. Order No.: DFW 125-2006

Filed with Sec. of State: 12-7-2006

Certified to be Effective: 3-1-07

Notice Publication Date: 9-1-06

Rules Amended: 635-068-0000

Subject: Establish 2007 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-068-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2006 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 47-1999, f. & cert. ef. 6-16-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 30-2000, f. & cert. ef. 6-14-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 47-2001, f. & cert. ef. 6-13-01; FWC 121-2001, f. 12-24-01, cert. ef. 1-1-02; FWC 59-2002, f. & cert. ef. 6-11-02; FWC 3-2003, f. 1-17-03, cert. ef. 1-20-03; FWC 50-2003, f. & cert. ef. 6-13-03; FWC 121-2003, f. 12-4-03, cert. ef. 1-19-04; FWC 53-2004, f. & cert. ef. 6-16-04; FWC 124-2004, f. 12-21-04, cert. ef. 3-1-05; FWC 53-2005, f. & cert. ef. 6-14-05; FWC 131-2005, f. 12-1-05, cert. ef. 3-1-06; FWC 41-2006, f. & cert. ef. 6-14-06; FWC 125-2006, f. 12-4-06, cert. ef. 3-1-07

Rule Caption: Establish 2007 regulations for Big Game Mammals.

Adm. Order No.: DFW 126-2006

Filed with Sec. of State: 12-7-2006

Certified to be Effective: 4-1-07

Notice Publication Date: 9-1-06

Rules Amended: 635-060-0055, 635-070-0000, 635-071-0000

Subject: Establish 2007 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-060-0055

Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag. Exception: Controlled hunts continuing or occurring after December 31, 2007 will have a 2007 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2007 shall have on his or her person a valid 2008 hunting license.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 47-1999, f. & cert. ef. 6-16-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 121-2001, f. 12-24-01, cert. ef. 1-1-02; FWC 4-2003, f. 1-17-03, cert. ef. 4-1-03; FWC 119-2003, f. 12-4-03, cert. ef. 4-1-04; FWC 131-2004, f. 12-21-04, cert. ef. 4-1-05; FWC 132-2005, f. 12-1-05, cert. ef. 4-1-06; FWC 126-2006, f. 12-7-06, cert. ef. 4-1-07

635-070-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2006 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 070 by reference.

(3) OAR chapter 635, division 070 incorporates, by reference, the requirements for hunting western Oregon elk set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; FWC 49-1998, f. & cert. ef. 6-22-98; FWC 1-1999, f. & cert. ef. 1-14-99; FWC 47-1999, f. & cert. ef. 6-16-99; FWC 92-1999, f. 12-8-99, cert. ef. 1-1-00; FWC 30-2000, f. & cert. ef. 6-14-00; FWC 82-2000, f. 12-21-00, cert. ef. 1-1-01; FWC 47-2001, f. & cert. ef. 6-13-01; FWC 121-2001, f. 12-24-01, cert. ef. 1-1-02; FWC 59-2002, f. & cert. ef. 6-11-02; FWC 2-2003, f. & cert. ef. 1-17-03; FWC 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; FWC 50-2003, f. & cert. ef. 6-13-03; FWC 119-2003, f. 12-4-03, cert. ef. 4-1-04; FWC 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; FWC 8-2004(Temp), f. & cert. ef. 2-2-04 thru 7-31-04; FWC 53-2004, f. & cert. ef. 6-16-04; FWC 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; FWC 131-2004, f. 12-21-04, cert. ef. 4-1-05; FWC 53-2005, f. & cert. ef. 6-14-05; FWC 132-2005, f. 12-1-05, cert. ef. 4-1-06; FWC 41-2006, f. & cert. ef. 6-14-06; FWC 126-2006, f. 12-7-06, cert. ef. 4-1-07

635-071-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2006 are listed in Tables 1 and 2 and are adopted and incorporated in OAR chapter 635, division 071 by reference.

(3) OAR chapter 635, division 071 incorporates, by reference, the requirements for hunting Rocky Mountain elk set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting Rocky Mountain elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife. Notwithstanding this, the 2006 Oregon Big Game Regulations are amended to change the boundary description for Hunt 249B-McKay Creek

ADMINISTRATIVE RULES

on page 88 and open season dates for Hunt 258A-Zumwalt on page 80. The corrected boundary description and open season dates can be found under 635-071-0010.

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

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 42-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 1-2004(Temp), f. & cert. ef. 1-13-04 thru 7-9-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04, Administrative correction 11-22-04; DFW 131-2004, f. 12-21-04, cert. ef. 4-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 132-2005, f. 12-1-05, cert. ef. 4-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 126-2006, f. 12-7-06, cert. ef. 4-1-07

Rule Caption: Establish 2007 regulations for Big Game Mammals.

Adm. Order No.: DFW 127-2006

Filed with Sec. of State: 12-7-2006

Certified to be Effective: 1-1-07

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Rules Amended: 635-045-0000, 635-045-0002, 635-060-0000, 635-060-0046, 635-065-0001, 635-065-0401, 635-065-0625, 635-065-0635, 635-065-0720, 635-065-0740, 635-066-0000, 635-067-0000, 635-067-0015, 635-072-0000

Subject: Establish 2007 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations. Specific rule changes include: changes to the cougar quotas; and set 2007 spring bear controlled tag numbers.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-045-0000

Purpose

(1) The purpose of these rules is to list definitions pursuant to hunting seasons for big game and game birds.

(2) The documents entitled “2006-2007 Oregon Game Bird Regulations”, and “2007 Oregon Big Game Regulations”, are incorporated by reference into these rules. These documents are available at hunting license vendors and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 36-1988, f. & cert. ef. 6-13-88; FWC 47-1989, f. & cert. ef. 7-25-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 91-1990, f. & cert. ef. 9-4-90; FWC 42-1996, f. & cert. ef. 8-12-96; FWC 53-1997, f. & cert. ef. 9-3-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 75-1998, f. & cert. ef. 9-4-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-045-0002

Definitions

(1) “Adult hunting license” is a resident or nonresident hunter’s license, resident combination angler’s and hunter’s license, disabled war veteran’s license, pioneer’s hunting license or senior citizen’s hunting and fishing license.

(2) “Agricultural lands” are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) “Antler Point” is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) “Antlerless deer” means doe or fawn deer.

(5) “Antlerless elk” means cow or calf elk.

(6) “Application” means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications

sent to the Department along with the proper remittance are used to generate the electronic form.

(7) “Baited Area” means an area where baiting has taken place.

(8) “Baiting” means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(9) “Brace” is defined as an orthosis that is prescribed by a physician and fabricated by an orthotist certified by the American Board for Certification in Orthotics and Prosthetics, Inc.

(10) “Brace Height” is the distance from the back of the bow’s riser at the handgrip to the string when the bow is at rest.

(11) “Buck Deer” means a male deer with at least one visible antler.

(12) “Buck Pronghorn” means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(13) “Bull elk” for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(14) “Calendar year” means from January 1 through December 31.

(15) “Carcass” is the skinned or unskinned body, with or without entrails, of a gamebird or game mammal.

(16) “Cascade elk” means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(17) “Cervid” means any member of the family cervidae (deer), including gametes or hybrids. Species included within the family, taxonomic nomenclature, and other matters pertaining to the identification of animals within the family shall be that of *Walker’s Mammals of the World, Sixth Edition*, Johns Hopkins University Press, Baltimore, Maryland, 1999, by Ronald M. Nowak.

(18) “Cervid Propagation License — Type 1” means a license required to hold any live cervid species other than fallow deer and reindeer except as provided in OAR 635-049-0010(1)–(3).

(19) “Cervid Propagation License — Type 2” means a license required to hold live fallow deer and reindeer except as provided in OAR 635-049-0010(1)–(3).

(20) “Closed season” is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(21) “Coast elk” means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(22) “Commission” means the Oregon Fish and Wildlife Commission.

(23) “Controlled hunt” is a season where the number or distribution of hunters is limited through a public drawing or other means.

(24) “Department” means the Oregon Department of Fish and Wildlife.

(25) “Director” means the Oregon Fish and Wildlife Director.

(26) “Doe or fawn pronghorn” means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawns (young of the year) of either sex.

(27) “Domestic partner” as used in this rule means a person in a relationship with another person, 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) Acknowledges and accepts financial obligations to the other person and to third parties equivalent to the financial obligation that arise within a marriage recognized under Oregon state law; and

(d) Is not married and has no similar commitment and responsibility to any other person;

(e) Has continuously lived for 6 months with the other person.

(28) “Eastern Oregon” means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(29) “Eastern Oregon deer” means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(30) “Eligible Hunter” means someone who will be 12 years of age by the time they hunt.

(31) “Entry permit” means a permit issued by the Department to be in an area where entry is restricted by regulation.

ADMINISTRATIVE RULES

(32) "Established airport" is one that the Aeronautics Division has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(33) "Evidence of lawful possession" means any license or permit allowing possession of the specified live cervid; or other documentation establishing lawful possession, including but not limited to a statement of no requirement for a license or permit for the specified live cervid granted by the country or state of origin.

(34) "Facility" means the location where animals are held, including the exterior perimeter fence and all pastures, paddocks, runways, buildings, and pens therein.

(35) "Feral Swine" means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(36) "Fiscal year" means from July 1 through June 30.

(37) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(38) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(39) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(40) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

(41) "Hold" means any form of possession or control of an animal, gamete, hybrid, or part thereof.

(42) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(43) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(44) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

- (a) Nutrition;
- (b) Breeding program;
- (c) Veterinary medical care;
- (d) Environmental cleanliness; and
- (e) Humane handling.

(45) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(46) "Inedible" means unfit for human consumption.

(47) "Landowner", as used in OAR chapter 635, division 075, means:

- (a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or
- (b) A corporation holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation shall be registered with the State of Oregon; and/or
- (c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or
- (d) Persons who hold title as part of a time share are not eligible for landowner preference.

(48) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(49) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(50) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(51) "Native cervid" means mule deer, black-tailed deer, white-tailed deer, Roosevelt elk, Rocky Mountain elk and moose, including gamete or hybrid.

(52) "Nonindigenous cervid" means any member of a cervid species, including gamete or hybrid, not classified as a native cervid species.

(53) "On or within" means a straight line distance measured on a map.

(54) "One deer" means a buck, doe, or fawn deer.

(55) "One elk" means a bull, cow, or calf elk.

(56) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is

not capable of being closed or covered by any permanent piece of the weapon.

(57) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for.

(58) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(59) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(60) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(61) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(62) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(39), "game birds" as defined in 635-045-0002(38), "furbearers" as defined in 635-045-0002(37), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

(63) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(64) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(65) "Red deer" means any species, subspecies, or race of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Oregon.

(66) "Release" is permitting any domestically-raised or imported wildlife currently or previously in possession to exist alive outside an approved holding or propagation facility. For the purposes of OAR chapter 635, division 049, release means permitting a cervid currently or previously in possession to exist alive outside an approved holding or propagating facility, except animals that are in transit pursuant to OAR 635-049-0075.

(67) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(68) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(69) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(70) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(71) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(72) "Sight bait" is exposed flesh bait within 15 feet of any leghold trap set for carnivores.

(73) "Spike deer" is a deer with spike (unbranched) antlers.

(74) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(75) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(47)(b).

(76) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(77) "Take" means to kill or obtain possession or control of any wildlife.

(78) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

ADMINISTRATIVE RULES

(79) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(80) "Unprotected Mammals and Birds" are European starling, house sparrow, rock dove and any mammal species for which there are no closed seasons or bag limits.

(81) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(82) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(83) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(84) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(85) "Waterfowl" means ducks, geese, mergansers and coots.

(86) "Weapon" is any device used to take or attempt to take wildlife.

(87) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(88) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(89) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(90) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.

(91) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(92) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

635-060-0000

Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS 496.162.

(2) The documents entitled "2006-2007 Oregon Game Bird Regulations," and "2007 Oregon Big Game Regulations," are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 25-1978, f. & cert. ef. 5-26-78; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. & cert. ef. 2-18-81, f. & cert. ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 34-1984, f. & cert. ef. 7-24-84; FWC 16-1985, f. & cert. ef. 4-11-85; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. & cert. ef. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 91-2005, f. & cert. ef. 8-19-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 81-2006, f. & cert. ef. 8-11-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

635-060-0046

Lost Tags and Tag Exchanges

(1) A fee of \$5.00 and a \$1.50 license agent fee is charged to replace or exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the department, and designated district offices. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the department if the department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-045-0002. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be requested by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or OAR 635-0065-0015(5)(a), (b), (c), (d), (e), (f), or (g).

(7) The Commission shall accommodate Oregon residents who have lost preference points because of being called to active military service after June 1, 2002:

(a) The Commission shall accommodate the following individuals called to service at any location: Oregon National Guard;

(b) The Commission shall accommodate the following Oregon residents with military operational commitments: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, Coast Guard), members of the United States military reserves, and members of the National Guard;

(c) The Commission authorizes the Director to make such accommodations by:

(A) Reinstating preference points existing for a series, plus an additional point for participating in the draw;

(B) Reinstating preference points lost after two consecutive years of not applying for a controlled hunt in that series.

(d) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Salem headquarters office. Each request must include a letter from a supervising officer on official unit letterhead verifying operational commitments.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 33-1980, f. & cert. ef. 6-30-80; FWC 7-1981, f. & cert. ef. 2-18-81, f. & cert. ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. & cert. ef. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. & cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 26-2005, f. & cert. ef. 4-20-05; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

635-065-0001

Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for game mammals. The annual Oregon Big Game Regulations are avail-

ADMINISTRATIVE RULES

able at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-065-0401

Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11 p.m., September 28, 2007.

(2) No deer bow tag shall be issued after 11 p.m., August 24, 2007.

(3) No bear tag shall be issued after 11 p.m. September 28, 2007.

(4) No cougar (mountain lion) tag shall be issued after 11 p.m. September 28, 2007.

(5) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11 p.m., October 23, 2007.

(6) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11 p.m., November 2, 2007.

(7) No Coast First Season Elk Tag shall be issued after 11 p.m., November 9, 2007.

(8) No Coast Second Season Elk Tag shall be issued after 11 p.m., November 6, 2007.

(9) No Cascade Elk Rifle Tag shall be issued after 11 p.m., October 19, 2007.

(10) No elk bow tag shall be issued after 11 p.m., August 24, 2007.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; Renumbered from 635-065-0010; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-065-0625

Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): The Bear Valley Refuge shall be closed to all entry from November 1 through March 31 annually.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry is by permit only December 1 through April 30.

(3) Cascade Head — Lincoln City Area: The Cascade Head — Lincoln City Area shall be closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting shall be restricted to archery and shotguns only during authorized seasons, except for Department approved emergency hunts. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head — Lincoln City Area boundaries shall be defined as follows: Beginning at the Pacific Ocean and Siletz River mouth, east along the north shoreline of the Siletz River to Drift Cr. Rd. (mile post 1 on Hwy 229); north on Drift Cr. Rd. to Anderson Cr. Rd.; north on Anderson Cr. Rd. to Schooner Cr. Rd.; west on Schooner Cr. Rd. to Forest Rd. 2200; north and east on FR 2200 to FR 1726; west on FR 1726 to FR 2100; northeast on FR 2100 to the power line crossing; north along the power line to State Hwy. 18; west on Hwy 18 to Old Scenic Hwy 101; north on Old Scenic Hwy 101 to Three Rocks Rd.; west on Three Rocks Rd. to U.S. Hwy 101; north on Hwy 101 to FR 1861; west on FR 1861 to Harts Cove trailhead; west on Harts Cove trail to the Pacific Ocean; south along the coastline to the Siletz River, point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): Approximately 1,800 acres in the Tioga Unit including all BLM property between Hakki Ridge Road and State Highway 38 are closed to all hunting.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35, 36; T26S, R5W, Sections 1, 2, 11, 12, 13, 14; T25S, R4W, Sections 31, 32, 33; T26S, R4W, Sections 4, 5, 6, 7, 8, 18. This area shall be closed to all big game hunting except for and during controlled deer hunts specific to the management area by hunters possessing a controlled hunt tag for the area.

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting is by permit only. Permits are available at area headquarters and shall be filled out and returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(11) Enterprise Wildlife Area (Wallowa County): Open to hunting seven days a week. No entry permit is required. Posted portions of the area lying south of the Union Pacific Railroad line and the entire Marr Tract are closed to all hunting.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons, except that East and West Coyote units are closed after October 31, and hunting in Fisher Butte Unit after October 31 is limited to Saturdays, Sundays, and Wednesdays, Thanksgiving Day, Christmas Day, New Year's Day, and Veteran's Day only. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, and Royal Amazon units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 25 through September 23, 2007 under the regulations for bowhunting seasons;

(b) Portions of the refuge shall be open to hunting for buck deer September 29 through October 31, 2006 under regulations for the general western Oregon deer buck season. Use of rifles is prohibited;

(c) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to county roads.

(15) Government Island State Recreation Area (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot, and bows is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns are prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season.

(18) Heppner Regulated Hunt Area: Open fires and camping prohibited in posted areas. Approximately 69 square miles in Townships 2, 3, and 4 South, Ranges 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc.,

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in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: All land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. The area shall be open to hunting of upland game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: Closed to deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road shall be closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, and S32 shall be closed to all hunting.

(26) Lower Deschutes Wildlife Area: Open to hunting of big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot, boat or bicycle only.

(27) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 shall be open during authorized rifle and bow deer seasons.

(28) McDonald Forest — Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(29) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(30) Metolius Wildlife Refuge (Jefferson County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). 36 CFR 261.58(v).

(31) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(32) Newberry Crater Wildlife Refuge (Deschutes County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(33) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(34) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting;

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(35) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(36) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 25 through September 23, 2007. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 23, 2007. Oak Island shall be closed to deer hunting. Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(37) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 30, or year-round; including BLM land within the exterior boundaries of the Wildlife Area.

(38) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(39) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(40) Starkey Experimental Forest Enclosure (Union County): That portion of The Starkey Experimental Forest within the eight foot elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The 12-foot right-of-way along each side of all 8-foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually.

(41) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from Mar. 15–Aug. 15 and 3 days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit.

(42) Umatilla Refuge (Morrow County): This refuge shall be closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(43) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

(44) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(45) Willamette River Greenway Corridor: Hunting is permitted with shotguns or bows and arrows only during authorized season on Willamette River Greenway parcels, except in those parcels where hunting is prohibited.

(46) White River Wildlife Area: Open to hunting during authorized seasons.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-065-0635

Winter Range Closure Areas

The following winter closures shall be effective during the specified periods each year:

(1) Tumalo Winter Range: December 1 through March 31, — That part of the Upper Deschutes Unit as follows: 125 square miles in Townships 15, 16, 17, 18, and 19 South, Ranges 10 and 11 East.

(2) Bear Valley: Closed to motor vehicle use year round — That part of the Keno Unit as follows: six square miles in Township 40 South, Ranges 7 and 8 East.

(3) Lost River: December 1 through April 15 — That part of the Klamath Falls Unit as follows: 6 square miles in Township 39 South, Ranges 11, 11-1/2, and 12 East.

(4) Lost River: December 1 through April 15 — That part of the Interstate Unit as follows: 6 square miles in Township 41 South, Range 14 East.

(5) Cabin Lake-Silver Lake: December 1 through March 31 - That part of the Paulina Unit as follows: 342 square miles in Townships 23, 24, 25, 26, 27, 28, and 29 South, Ranges 11, 12, 13, 14, 15, and 16 East.

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(6) Spring Creek Winter Range: December 15 through April 30 — That part of the Starkey Unit as follows: 14 square miles in Townships 2 and 3 South, Range 36 East.

(7) McCarty Winter Range: December 15 through March 31 — That part of the Starkey Unit as follows: 12 square miles in Townships 4 and 5 South, Ranges 34 and 35 East.

(8) Coombs Canyon Regulated Hunt Area: 19.5 square miles in the Columbia Basin Unit. Closed to entry August 15 through the day prior to the statewide pheasant season annually (Exception: entry is allowed for people possessing Coombs Canyon youth buck deer tags and their adult chaperone. People hunting antlerless deer must possess a permit which can be obtained at the Watershed District Office in Pendleton).

(9) Metolius Winter Range: December 1 through March 31 — That part of the Metolius Unit as follows: 40 square miles in Townships 11, 12, and 13 South and Ranges 11 and 12 East.

(10) Bryant Mountain: November 1 through April 15 — That part of the Klamath Falls Unit as follows: 50 square miles in Townships 39, 40, and 41 South and Ranges 12 and 13 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-065-0720

Bows and Arrows

Hunters shall use:

(1) Any long, recurve, or compound bow with 40-pound or heavier pull rating to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(2) Any long, recurve, or compound bow to hunt western gray squirrels.

(3) Any long, recurve, or compound bow with a 50-pound or heavier pull rating to hunt bighorn sheep, Rocky Mountain goat, or elk.

(4) Only unbarbed fixed position blade broadheads at least 7/8-inch wide to hunt game mammals other than western gray squirrel. See 635-045-0002(79). Possession of moveable blade broadheads is prohibited when hunting game mammals, except western gray squirrels may be hunted with moveable blade broadheads.

(5) A long, recurve, or compound bow and shall not possess any crossbow while hunting within an authorized bowhunting area or season.

(6) Only a long, recurve, or compound bow during any authorized pronghorn antelope, deer or elk bowhunting season to hunt pronghorn antelope, deer, or elk.

(7) For hunting seasons designated as bowhunting, hunters shall only use the bows legal for the species being hunted. Bows may be used during controlled antlerless deer seasons. Bows shall not be used during any designated rifle hunt.

(8) Hunters shall not use any electronic device(s) attached to bow or arrow.

(9) Hunters shall not use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw (Persons unable to comply because of a disability may be eligible for a temporary permit from the department).

(10) Hunters shall not use any device secured to or supported by a bow's riser which supports or guides an arrow from a point rearward of a bow's brace height (i.e. the position of the bows string when the bow is undrawn).

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-065-0740

Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (September 29–October 10, 2007 Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 17–Nov. 25, 2007) without a valid, unused tag for that species, time period and area on their person.

EXCEPTION: Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

EXCEPTION: Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, East Beulah, Whitehorse and Owyhee units and in the Wagonfire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 17–Nov. 25, 2007).

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (4) of this rule, controlled antlerless elk units are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the department.

(7) To hunt in protected wildlife except:

(a) by a permit or during an authorized season established by the commission;

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an unused cougar (mountain lion) tag which is valid for that area and time period.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-066-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting set out in the document entitled "2007 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2007 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn

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sheep, and Rocky Mountain goat set out in the document entitled “2007 Oregon Big Game Regulations,” into Oregon Administrative Rules. Therefore, persons must consult the “2007 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2006 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

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

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

635-067-0015

General Cougar Season Zone Harvest Quotas

- (1) Hunt Zone: A — Hunt Name: Coast/North Cascades:
 - (a) Harvest Quota: 120;
 - (b) Hunt Area: All of Wildlife Units: 10, 11, 12, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 39, 41, and 42.
- (2) Hunt Zone: B — Hunt Name: Southwest Cascades:
 - (a) Harvest Quota: 165;
 - (b) Hunt Area: All of Wildlife Units: 19, 21, 22, 23, 28, 29, 30, and 31.
- (3) Hunt Zone: C — Hunt Name: Southeast Cascades:
 - (a) Harvest Quota: 65;
 - (b) Hunt Area: All of Wildlife Units: 32, 33, 34, 35, 75, 76, and 77.
- (4) Hunt Zone: D — Hunt Name: Columbia Basin:
 - (a) Harvest Quota: 62;
 - (b) Hunt Area: All of Wildlife Units: 38, 40, 43, 44, and 45.
- (5) Hunt Zone: E — Hunt Name: Blue Mountains:
 - (a) Harvest Quota: 245;
 - (b) Hunt Area: All of Wildlife Units: 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64.
- (6) Hunt Zone: F — Hunt Name: Southeast Oregon:
 - (a) Harvest Quota: 120.
 - (b) Hunt Area: All of Wildlife Units: 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 12-1979, f. & cert. ef. 3-28-79; FWC 29-1979, f. & cert. ef. 8-2-79; FWC 14-1980, f. & cert. ef. 4-8-80; FWC 19-1980, f. & cert. ef. 4-18-80; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82, Renumbered from 635-060-0700; FWC 15-1983, f. & cert. ef. 4-19-83; FWC 16-1984, f. & cert. ef. 4-15-84; FWC 21-1985, f. & cert. ef. 5-7-85; FWC 29-1986, f. & cert. ef. 7-23-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 57-1990, f. & cert. ef. 6-21-90; FWC 60-1991, f. & cert. ef. 6-24-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 6-1995, f. & cert. ef. 1-23-95, cert. ef. 4-1-95; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

635-072-0000

Purpose and General Information

- (1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.
- (2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled “2007 Oregon Big Game Regulations,” into Oregon Administrative

Rules. Therefore, persons must consult the “2007 Oregon Big Game Regulations” in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. & cert. ef. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. & cert. ef. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. & cert. ef. 12-21-04, cert. ef. 1-1-05; DFW 128-2005, f. & cert. ef. 12-1-05, cert. ef. 1-1-06; DFW 127-2006, f. & cert. ef. 12-7-06, cert. ef. 1-1-07

Rule Caption: Establish 2007 regulations for Big Game Mammals.

Adm. Order No.: DFW 128-2006

Filed with Sec. of State: 12-7-2006

Certified to be Effective: 6-1-07

Notice Publication Date: 9-1-06

Rules Amended: 635-065-0760

Subject: Establish 2007 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including general hunting and controlled hunt regulations.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-065-0760

Other Restrictions

It is unlawful:

- (1) To take or hold in captivity the young of any game mammal.
- (2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.
- (3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.
- (4) To resist game law enforcement officers.
- (5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.
- (6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.
- (7) To disturb, damage, remove, alter or possess any official department signs.
- (8) To sell, lend, or borrow any big game tag.
- (9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. “Motor-propelled vehicle” includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2. round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:
 - (a) North Coast Access Area: Three days prior to opening of general archery season through December 1 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units;
 - (b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;
 - (c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;
 - (d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West;
 - (e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: posted and barrier closed roads (including bermed) in the Siuslaw National Forest lands south of US Hwy 20 and north of state Hwy 126;
 - (f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

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(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season — That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Hadsall: Permanent Closure — That part of the Siuslaw Unit as follows: 6 square miles in Township 18 South, Ranges 9 and 10 West;

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District;

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: Butte Falls and Prospect Ranger Districts, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 104 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River;

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East;

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 69 square miles in Townships 2, 3, 4, 6, and 7 South, Ranges 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 30 annually — That part of the Ukiah Unit as follows: 20 square miles in

Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: Three days prior to the opening of Rocky Mt bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 17 square miles in Townships 4 and 5 South, Range 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest;

(mm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(nn) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit;

(oo) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East;

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season— That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Melhorn: May 1 through December 1: That part of the Pine Creek Unit as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

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(vv) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(xx) Summit Point: May 1 to December 1: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East;

(yy) Eagle Creek: December 15 through March 31 annually — That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(zz) Conroy Cliff: September 26 through October 10, 2007 and October 21 through November 11, 2007 — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(aaa) Devine Ridge-Rattlesnake: September 26 through October 10, 2007 and 21 through November 11, 2007 — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(bbb) Dairy Creek: September 26 through October 10, 2007 and 21 through November 11, 2007 — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ccc) Burnt Cabin: September 26 through October 10, 2007 and 21 through November 11, 2007 — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ddd) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(eee) North Paunina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(fff) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(ggg) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(hhh) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(iii) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(jjj) Hells Canyon National Recreation Area — Permanent Closure. Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(kkk) PO Saddle Road- Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East;

(lll) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East;

(mmm) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f.

12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07

Rule Caption: Commercial ocean Dungeness crab permits valid off the Oregon coast.

Adm. Order No.: DFW 129-2006(Temp)

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

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 635-005-0042

Subject: Amend rule to restrict Oregon permitted vessels to fish for crab north of the Oregon/California border.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-005-0042

Areas

Oregon Dungeness crab permits are valid only in Oregon state waters and the Pacific Ocean in federal waters south of an east-west line extending 200 nautical miles westward at 46° 15' 00" N. Latitude (Oregon/Washington border) and north of an east-west line at 42° 00' 00" N. Latitude (Oregon/California border).

Stat. Auth.: ORS 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 117-2005, f. 10-7-05, cert. ef. 12-1-05; DFW 129-2006(Temp), f. 12-12-06, cert. ef. 1-1-07 thru 6-29-07

Rule Caption: Amendments to allow Big Game Raffle Hunt Tickets to be purchased from 12-15-06 to 5-7-07.

Adm. Order No.: DFW 130-2006(Temp)

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 12-15-06 thru 6-13-07

Notice Publication Date:

Rules Amended: 635-067-0029, 635-067-0034, 635-067-0041, 635-090-0140

Subject: Amend rules regarding the 2007 Big Game Raffle Tag sales to allow raffle hunt tickets to be purchased by the public through authorized POS licensed vendors or at Oregon Department of Fish and Wildlife Offices from December 15, 2006 to May 7, 2007.

Rules Coordinator: Casaria Tuttle—(503) 947-6033

635-067-0029

Controlled Pronghorn Antelope Raffle Tag

(1) One pronghorn antelope tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The pronghorn antelope raffle tag shall be limited as follows:

(a) Bag Limit: One buck pronghorn antelope.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on August 1 and shall end on September 30.

(d) Open Area: Any area where pronghorn antelope hunts and tags have been authorized for the current year.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game Regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportsmen's groups. Notwithstanding this, the 2007 Oregon Big Game Regulations are amended to allow raffle hunt tickets to be purchased by the public through authorized POS licensed vendors or at Oregon Department of Fish and Wildlife Offices from December 15, 2006 to May 7, 2007.

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(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., July 31, it will not be issued.

(i) License and Tag Requirements: A valid pronghorn antelope tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The pronghorn antelope tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats Implemented: ORS 496.012, 496.138 & 496.146

Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06

635-067-0034

Bighorn Sheep Raffle Tag

(1) One bighorn sheep tag will be raffled during the current year to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The bighorn sheep raffle tag shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on the opening day of the first regularly scheduled bighorn sheep season for the current year and shall end on the last day of the last regularly scheduled bighorn sheep season for the current year.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the current year. The remainder of the state is closed to bighorn sheep hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase. Raffle tickets shall be available for purchase in the following denominations:

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game Regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportmen's groups. Notwithstanding this, the 2007 Oregon Big Game Regulations are amended to raffle hunt tickets to be purchased by the public through authorized POS licensed vendors or at Oregon Department of Fish and Wildlife Offices from December 15, 2006 to May 7, 2007.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time speci-

fied in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 18, it will not be issued.

(i) License and Tag Requirements: A valid bighorn sheep tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The bighorn sheep tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(k) The winner of the bighorn sheep tag may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(l) If the holder of the raffle bighorn sheep tag is successful in taking a bighorn sheep ram, that person shall present the ram to the department for permanent marking within five days of taking of the ram.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Hist.: FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94; FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06

635-067-0041

Rocky Mountain Goat Raffle

(1) One Rocky Mountain goat tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The Rocky Mountain goat raffle tag shall be limited as follows:

(a) Bag Limit: One Rocky Mountain goat.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on September 1 and shall end on October 31.

(d) Open Area: Any area where Rocky Mountain goat hunts and tags have been authorized for the current year. The remainder of the state is closed to Rocky Mountain goat hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available during the dates specified in the current Big Game regulations to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportmen's groups. Notwithstanding this, the 2007 Oregon Big Game Regulations are amended to raffle hunt tickets to be purchased by the public through authorized POS licensed vendors or at Oregon Department of Fish and Wildlife Offices from December 15, 2006 to May 7, 2007.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5 p.m. at the Salem headquarters office no later than two days before the drawing event. Completed

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tickets delivered to the drawing event must be turning in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, and phone number.

(g) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(h) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 31, it will not be issued.

(i) License and Tag Requirements: A valid Rocky Mountain goat tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(j) The Rocky Mountain goat tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(k) The winner of the Rocky Mountain goat tag will be required to complete a Rocky Mountain goat hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(l) If the holder of the Rocky Mountain goat raffle tag is successful in taking a Rocky Mountain goat, that person shall present the animal to the department for permanent marking within five days of taking of the animal.

Stat. Auth.: ORS 496.012, 496.138 & 496.146
Stats Implemented: ORS 496.012, 496.138 & 496.146
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06

635-090-0140

Deer and Elk Tag Auction and Raffle

(1) Notwithstanding ORS 496.146(10), upon the recommendation of the Access and Habitat Board, the commission may issue each year up to ten elk and ten deer tags to hunt deer or elk. Recommendations from the board shall include:

(a) The land on which each tag shall be used;

(b) The percentage of funds (not to exceed 50 percent) received from the tags that may revert to the landowner if the tag is limited to private land; and

(c) A written agreement with the commission which provides public access and habitat improvements.

(2) The board may contract with a sportsman's group or other organization to conduct a raffle or an auction to issue the access and habitat deer and elk tags.

(3) The access and habitat raffle and/or auction deer and elk tags are in addition to all other tags and permits approved by the commission.

(a) In addition to the number of deer and elk tags legally available to an individual, an individual is allowed one additional elk and one additional deer tag annually, provided these tags are Access and Habitat auction or raffle tags.

(b) Hunting hours, open season, and open area will be determined by the board specific to the tag.

(c) Bag limit: one deer or one elk.

(4) Access and habitat deer/elk tag raffle requirements:

(a) There is no limit on the number of tickets a person may purchase.

Raffle tickets shall be available for purchase in the following denominations with the addition of a \$1.50 license agent fee:

(A) Deer Tags

(i) One ticket at a cost of \$2.50.

(ii) Six tickets at a cost of \$9.50.

(iii) Fifteen tickets at a cost of \$19.50.

(iv) Forty tickets at a cost of \$49.50.

(v) One hundred tickets at a cost of \$99.50.

(B) Elk tags

(i) One ticket at a cost of \$4.50.

(ii) Six tickets at a cost of \$19.50.

(iii) Fifteen tickets at a cost of \$39.50.

(iv) Forty tickets at a cost of \$99.50.

(C) Combination Elk and Deer Tags

(i) One ticket at a cost of \$9.50.

(ii) Six tickets at a cost of \$29.50.

(iii) Fifteen tickets at a cost of \$59.50.

(iv) Forty tickets at a cost of \$149.50.

(b) Raffle tickets in denominations of 1, 6, and 15 will be available to the public through authorized POS license vendors or through the department's Salem headquarters office during the dates specified in the current Big Game Regulations. Tickets in denominations of forty and one hundred will be available only through the department's Salem headquarters office. Tickets also may be sold by department representatives at various public events or meetings of sportsmen and landowners. Notwithstanding this, the 2007 Oregon Big Game Regulations are amended to allow raffle hunt tickets to be purchased by the public through authorized POS licensed vendors or at Oregon Department of Fish and Wildlife Offices from December 15, 2006 to May 7, 2007.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds for any raffle ticket purchases.

(e) Tickets purchased through license agents and submitted for the drawing by mail must be received at the department's Salem headquarters office by the date specified in the current Big Game Regulations. Hand delivered tickets submitted for the drawing must be received by 5pm at the Salem headquarters office no later than two days before the drawing event. Completed tickets delivered to the drawing event must be turned in by the time specified in the current Big Game Regulations. Additional tickets may be purchased at the raffle site prior to the drawing.

(f) All tickets submitted for the drawing must be complete with a name, address, phone number, and hunt number (if applicable).

(g) One winner and a minimum of two alternate winners shall be drawn at a public drawing; time and location to be determined by the board and department.

(h) If a person is drawn as the winner of more than one hunt for the same species, the Department will issue the first Access and Habitat raffle deer/elk tag drawn by the person who meets all criteria specified herein.

(i) The order in which the winner and alternate winners for the deer/elk raffle hunts shall be drawn at the public drawing is as follows:

(i) Statewide Combination Elk and Deer — #AH002

(ii) Statewide Deer Hunt — #AH001

(iii) Southeast Oregon Deer Hunt — #AH004

(iv) Central Oregon Deer Hunt — #AH005

(v) Northeast Oregon Deer Hunt — #AH003

(vi) Statewide Elk Hunt — #AH009

(vii) Northeast Oregon Elk Hunt — #AH006

(viii) Central/Southeast Elk Hunt — #AH007

(ix) Western Oregon Elk Hunt — #AH008

(j) The department will notify the winner and two alternates by mail. The winner must claim the tag during regular business hours within 30 days of the drawing or he/she shall be disqualified and the department will offer the tag to the first alternate. The first alternate must claim the tag within 10 business days of notification or he/she shall be disqualified and the department will notify the second alternate. The second alternate will be contacted in the same manner and with the same deadlines as the first alternate if the winner or first alternate have not claimed the tag as required. The tag will not be issued if not claimed during regular business hours within 90 days following the drawing.

(k) The access and habitat raffle deer/elk tag winners must have a valid hunting license.

(l) The department will issue an access and habitat raffle deer/elk tag to the person whose name appears on the winning ticket and who meets all criteria specified herein. The tag is not transferable.

(5) Access and habitat deer/elk tag auction requirements:

(a) Residents and nonresidents shall be eligible to bid.

(b) The minimum acceptable bid for an access and habitat auction tag shall be \$2,000.00 for deer and \$5,000.00 for elk. The bid price includes the tag fee.

(c) Individuals, agents, corporations, or others that submit the highest bid shall provide the name, address, phone number, and affiliation of the individual to whom the access and habitat auction deer/elk tag shall be issued to a department representative or a representative of the organization authorized to conduct the auction immediately upon the conclusion of the auction of such tag.

(d) Submittal of the winning bid shall be made to the department by cashiers check or certified check within 20 working days of the date of the auction (whether conducted by the department or by a sportsman's group or organization authorized to do so).

(e) If the full amount of the bid is not paid as required by OAR 635-090-140(5)(d), the department may, at its discretion, reject the bid and offer the access and habitat auction deer/elk tag to the next highest bidder. Such next highest bidder must make payment to the department by cashiers check or certified check within five working days of notification.

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(f) The access and habitat auction deer/elk tag winner must have a valid hunting license.

(g) The department will issue an access and habitat auction deer/elk tag to the winner who meets all criteria specified herein. The tag is not transferable.

(h) The department reserves the right to accept or reject any or all access and habitat auction deer/elk tag bids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.232 & 496.242
Hist.: FWC 17-1994, f. & cert. ef. 3-10-94; FWC 87-1994, f. & cert. ef. 11-22-94, FWC 52-1995, f. & cert. ef. 6-16-95; FWC 36-1996, f. & cert. ef. 6-7-96; DFW 48-1998, f. & cert. ef. 6-22-98; DFW 46-1999, f. & cert. ef. 6-15-99; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 thru 6-30-00; DFW 40-2000, f. & cert. ef. 7-25-00; DFW 62-2001, f. & cert. ef. 7-25-01; DFW 106-2003, f. & cert. ef. 10-16-03; DFW 68-2004, f. & cert. ef. 7-13-04; DFW 48-2006, f. & cert. ef. 6-21-06; DFW 130-2006(Temp), f. & cert. ef. 12-15-06 thru 6-13-06

Department of Forestry Chapter 629

Rule Caption: Voluntary stewardship agreement program for rural landowners, jointly administered by Departments of Agriculture and Forestry.

Adm. Order No.: DOF 11-2006

Filed with Sec. of State: 11-20-2006

Certified to be Effective: 11-21-06

Notice Publication Date: 5-1-06

Rules Adopted: 629-021-0100, 629-021-0200, 629-021-0300, 629-021-0400, 629-021-0500, 629-021-0600, 629-021-0700, 629-021-0800, 629-021-0900, 629-021-1000, 629-021-1100

Rules Repealed: 629-606-0000, 629-606-0010, 629-606-0100, 629-606-0200, 629-606-0300, 629-606-0400, 629-606-0500, 629-606-0600, 629-606-0700, 629-606-0800, 629-606-0900, 629-606-1000

Subject: The rules establish procedures and criteria for forest and agricultural landowners to enter into voluntary stewardship agreements with the state. The agreements could provide benefits to landowners including expedited permit processing, regulatory certainty, priority consideration for cost-share assistance or other financial incentives and technical assistance, and government certification that certain land management practices have been implemented.

Rules Coordinator: Gayle Birch—(503) 945-7210

629-021-0100

Purpose

(1) Improving fish and wildlife habitat and water quality cannot succeed through laws and government actions alone. These rules implement ORS 541.423 which reflects and depends upon Oregonians characteristic spirit of volunteerism and stewardship. The rules provide the means for the Departments of Forestry and Agriculture to implement a voluntary and flexible conservation incentives program that recognizes and rewards agricultural, forest, and other landowners who choose to exceed regulatory criteria for conservation, restoration, and improvement of fish and wildlife habitat or water quality while managing land to meet their objectives. Stewardship agreements will be long-term and consider conservation from a property wide perspective, rather than at the scale of single localized projects.

(2) This program provides incentives for landowners who meet and exceed regulatory requirements to achieve conservation. Regulatory requirements are continually reviewed and revised in the face of new scientific information and changing social values. As such, the relevant habitat and water quality statutes provide the means to evaluate whether a landowner is meeting and exceeding regulatory criteria.

(3) For lands and activities falling under the Oregon Forest Practices Act, the purpose of the stewardship agreement program is also to more efficiently implement the provisions of the Act as a voluntary alternative to traditional mechanisms of forest operation planning, review, inspection, and enforcement.

(4) The stewardship agreement program will recognize other relevant landowner efforts, such as forest or agricultural certification and habitat conservation plans, which have been developed by landowners to meet their management objectives, as components that partially or fully qualify a landowner for a stewardship agreement.

(5) The stewardship agreement program may not meet the objectives of all landowners. Landowners who choose not to enter into stewardship agreements, although they may be qualified to do so, are not considered

less protective of resources than those landowners who choose to enter into stewardship agreements.

(6) Voluntary conservation, restoration, and improvement of fish and wildlife habitat or water quality depends on effective partnerships with other parties. The stewardship agreement program seeks to develop and support cooperative and collaborative partnerships with federal, state, and local agencies and with private conservation and landowner organizations.

Stat. Auth.: ORS 541.423, 526
Stats. Implemented: ORS 541.423
Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0200

Definitions

The following definitions apply to OAR 629-021-0100 through 629-021-1100.

(1) "Landowner" means the owner identified in the management plan and any agent or consultant authorized by the owner to implement the management plan.

(2) "Stewardship agreement" means a written agreement between the landowner and the Department(s) that ensures the implementation of a management plan meeting the intent of ORS 541.423.

(3) "Management plan" means a written, multi-resource strategy for a particular tract of farm, forest, or other land, describing how the landowner will manage the land under consideration for a stewardship agreement to meet the intent of ORS 541.423 as laid out in OAR 629-021-0100 to 1100).

(4) "Department(s)" refers to the Oregon Department of Forestry and/or the Oregon Department of Agriculture.

(5) "Inventory" means describing elements of land uses, such as pasture, crop land, timber land, habitat, and other natural features, but not information that is proprietary or sensitive to landowner financial interests.

(6) "Pesticides" include but are not limited to herbicides, insecticides, fungicides, and rodenticides. Pesticides are regulated under the Oregon Pesticide Control Law (ORS 634) and the Oregon Pesticide Regulations (OAR 603-057).

(7) "Conservation" means the management of land, water, and natural resources for the purpose of meeting human and ecological needs in a sustainable manner.

Stat. Auth.: ORS 541.423, 526
Stats. Implemented: ORS 541.423
Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0300

Stewardship Agreement Application Process

(1) Landowner must submit a written application on a form provided by the Departments. Information required includes:

(a) Name, contact information, property location, total acres, county, etc.

(b) Name of watershed the property is located in.

(c) Map and description of property, land uses, habitats, and water features (this does not need to include detailed or sensitive information about economic uses of property; the purpose is to know property boundaries, what habitats are present, and the general land use context.

(d) Name(s) of plans and programs landowner is implementing or participating in (if any) and how they contribute to meeting the criteria in 629-021-0500, including a copy of current certification (if any) or other conservation agreements.

(e) Identification of state, regional, and local conservation goals that the stewardship agreement is implementing.

(f) Description of conservation efforts for fish, wildlife, and water quality that are being used or are proposed.

(g) Identify management plan subject to the application review and subsequent audits.

(2) A written management plan is required, which could be a combination of an existing plan and/or a plan developed specifically for this program. The management plan needs to be available to the Department(s) during the review process and for subsequent audits, but landowners are not required to provide a copy for retention by the Department(s).

(3) A management plan will include:

(a) Landowner's name and contact information, total acreage, acreage in agriculture and forestry, legal description, watershed(s), date of plan, plan writer's name and contact information.

(b) Landowner goals and objectives.

(c) Property description and inventory, including: vegetation, fish and wildlife habitats, soils,

(d) Protection and/or enhancement of resources that exceeds regulatory requirements through land management practices and activities that are

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designed to achieve conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(e) Maps, aerial photographs, and other visual aids to illustrate the property description and management activities.

(f) For land and activities falling under the Oregon Forest Practices Act, specific sites or resource sites that are inventoried and protected under ORS 527.710(3)(a) and OAR 629-665-0000 to 0300, or that are listed under OAR 629-605-0170(1). Examples of these sites include sensitive bird nesting, roosting and watering sites, resource sites used by threatened and endangered fish and wildlife species, or significant wetlands.

(4) It is the policy of the Department(s) to protect confidential information in its files. The Department(s) recognize that a written management plan marked as "confidential" on the face of the document is submitted to the Department(s) on the condition that the information will be kept confidential. Any information voluntarily submitted to the Department(s) in confidence and not otherwise required by law to be submitted should reasonably be considered confidential. Such information in the management plans that should reasonably be considered confidential includes information that qualifies as a trade secret under ORS 192.501(2), that is, non-patented information that is known only to certain people within the organization, has commercial value, and would give its users a business advantage over competitors. Other confidential information may include information submitted in confidence that qualifies under any other public record exemption set forth in ORS 192.501.

(5) The handling of confidential materials shall be as follows:

(a) The Department will make immediate distribution to the appropriate personnel.

(b) Confidential material is stored in and returned to files at end of day and protected from visual inspection by unauthorized persons at all times.

(c) Confidential areas are kept secured after working hours.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0400

Application Review

(1) Applications will be reviewed jointly by the Departments.

(2) Application review will include a review of the past record of compliance with applicable laws and regulations regarding land use and management.

(3) The Departments will accept applications at any time and will review applications in a reasonable time, normally within 90 days.

(4) For applications covering lands in both agriculture and forest use, the Departments will designate one of the Departments to be the primary contact for development of the agreement, with both Departments approving the agreement.

(5) The Department(s) will consult with appropriate state and federal agencies and other conservation partners regarding potential issues related to their responsibilities and expertise.

(6) The Department(s) and landowner will work jointly to develop a draft stewardship agreement. This will include a site visit with the landowner.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0500

Criteria to Evaluate Adequacy of a Landowner Management Plan To Meet Purpose of Rules

(1) The management plan will include provisions to protect or conserve fish and wildlife habitat, water resources, and soil resources appropriate to the property and consistent with landowner objectives.

(2) The management plan will be reviewed against the following criteria (a-c) to determine whether the landowner is implementing management actions that exceed regulatory requirements for the conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(a) Management actions to conserve, restore, and improve fish and wildlife habitat:

(A) Specific conservation goals for fish and wildlife habitat are established.

(B) Alignment with Oregon's 'Comprehensive Wildlife Conservation Strategy', an adopted subbasin plan, and/or other watershed or landscape-scale conservation plan is demonstrated.

(C) Invasive species are identified, controlled, and where possible, eliminated.

(D) Threatened, endangered, and at-risk species and associated habitats are protected, enhanced, or restored.

(E) Food, water, and shelter components of habitat for fish and wildlife are provided (e.g. snags, nesting trees, downed wood, side-channels, bat/bird/bee boxes hedgerows, field edges, etc.).

(F) Crop selection and/or management accommodates fish and wildlife habitat needs.

(G) Native habitat is restored and enhanced, consistent with historic vegetative patterns. Restoration includes diverse native species, structure, and age of vegetation appropriate to the site and its regional context.

(H) Special consideration is given to native habitats known to be uncommon, rare or at risk (i.e. prairie, oak woodland, bottomland hardwood forest).

(I) Natural hydrology is restored to provide habitat for native fish and other aquatic species.

(J) Where feasible, natural disturbance processes like fire and flooding are allowed to function.

(K) Road disturbances to fish and wildlife habitat are minimized.

(L) Fish passage limitations are addressed.

(M) Water diversions are screened or otherwise managed to provide fish passage and prevent entrapment.

(N) Water withdrawals are managed to enhance the needs of fish and wildlife habitat.

(b) Management actions to conserve, restore and improve water resources:

(A) Riparian vegetation is protected, managed, or restored to provide erosion control, sediment and nutrient filtering, and other functions of a properly functioning riparian area.

(B) Sediment runoff and animal wastes are controlled at the source to prevent ground and/or surface water contamination.

(C) Vegetation and soils are managed to conserve water by encouraging infiltration and storage of rainfall in the soil.

(D) Irrigation and drainage systems are managed to prevent waste of water and to protect water quality.

(E) Road systems are managed to reduce or eliminate sediment delivery to streams and to prevent catastrophic failure.

(F) Cultural and biological pest prevention strategies are used to reduce or eliminate the need for pesticide applications (e.g. Integrated Pest Management).

(G) Precautions are taken to prevent leaks or spills of pesticides or petroleum products, such as fuel, motor oil, and hydraulic fluid, from reaching waters of the state and sensitive native habitats.

(c) Management actions to conserve, restore, and improve soil resources:

(A) Tillage practices minimize degradation of soil quality and conserve organic matter and soil aggregation.

(B) Soils are protected from erosion by optimizing plant cover or residue throughout the year. Practices include but are not limited to: permanent vegetative cover in orchards, nurseries, and vineyards, mulch in row crops, and by using pastures and appropriate intensity, duration, and frequency of livestock grazing.

(C) Crop rotations that include cover crops are used to build soil organic matter and productivity.

(D) Soil disturbance and compaction during timber harvest is minimized.

(E) A comprehensive nutrient management plan or other means are used to conserve and recycle nutrients by converting organic wastes into productive uses and by seeking ways to generate nutrients on farm. Practices that can be used include but are not limited to: cover cropping, on-farm composting, and integrating livestock into farm production.

(F) Land management on steep slopes and fragile soils is conducted in a manner to reduce or eliminate impacts to the site.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0600

Stewardship Agreement

(1) The agreement will include the landowner's commitment to:

(a) Implement the activities and monitoring identified in this agreement for enhancing conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(b) Comply with and manage beyond relevant habitat and water quality rules and statutes.

(c) Allow audits and assist with the process, as appropriate.

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(2) The agreement will identify the activities and monitoring that will be done for conservation, restoration, and improvement of fish and wildlife habitat or water quality.

(3) The agreement will include the Departments' commitment to:

(a) Accept the agreement as demonstrating compliance with state regulatory requirements if the agreement demonstrates such compliance.

(b) Provide specific assistance or incentives that may include: information about conservation programs, certification for marketing purposes, technical assistance, coordination with other agencies to resolve issues.

(c) Strive to match participants with resources suitable to meet landowner objectives.

(4) For lands subject to the Oregon Forest Practices Act, the stewardship agreement may include sufficient detail to meet the requirements for:

(a) Written plans under ORS 527.670(3), OAR 629-605-0170, and 629-605-173;

(b) Fifteen-day waiting periods under OAR 629-605-0150 (1), except as provided by ORS 527.670(9) for aerial chemical applications;

(c) Notification consistent with OAR 629-605-0140 and 629-605-0150; and

(d) Other administrative rules and statutes related to notification, such as for fire protection, taxation, safety, water withdrawals, or public subscriptions.

(5) Landowners may have active forest operations on lands that are part of a proposed stewardship agreement. If so, the stewardship agreement will immediately apply those operations when the stewardship agreement is finalized.

(6) Department access to stewardship agreement lands is limited to reviews and audits for which landowners have provided authority. Landowners may also choose to authorize additional limited access to lands under the stewardship agreement for purposes of biological effectiveness monitoring.

(7) The agreement will include the frequency of audits, which will be established based on the Departments' evaluation of the relative complexity of the management plan and the terms of the stewardship agreement.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0700

Decision Authority

(1) The State Forester is delegated full authority by the Board of Forestry to implement the provisions of ORS 541.423, including but not limited to review of management plans and preparation and approval of stewardship agreements.

(2) Prior to approving a stewardship agreement, the Departments will provide public notice and 21 days for comment on the proposed agreement.

(3) When the Departments determine that comments from the review process are adequately addressed, the stewardship agreement will be approved.

(4) The Departments will give notice of approval, termination, and revisions of a stewardship agreement to each other, to the Oregon Department of Fish and Wildlife, and to the Oregon Watershed Enhancement Board.

(5) If the management plan includes potential chemical application operations related to forest operations, the State Forester will give notice of approval of a stewardship agreement to:

(a) Any person with surface water rights pursuant to ORS Chapter 537 who, under the provisions of ORS 527.670(6), has previously requested in writing from the State Forester copies of notifications and written plans for chemical application operations within ten upstream miles of the water right location; and

(b) The community water system manager of any community water system where the surface water drainage area upstream of the intake is 100 square miles or less and the management plan includes potential aerial chemical application operations within 100 feet, or ground-based chemical application operations within 50 feet, of the Type D or domestic use portions of Type F streams that provide water used by the community water system.

(6) The Departments will notify persons who submitted timely comments of the approval of a stewardship agreement. Any person who submitted timely comments and who is adversely affected by the operations conducted under an approved or amended stewardship agreement may file a written request for a hearing to the appropriate Department.

(7) As provided for in ORS 568.912 and 527.700(1) and (2) a landowner may appeal an order denying approval of a stewardship agreement.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0800

Stewardship Agreement Audits

(1) The Department(s) will conduct periodic audits with the landowner on lands under a stewardship agreement.

(2) The landowner will provide authorization for the Department (or its designated agent) that is party to the stewardship agreement to conduct periodic audits on lands subject to the stewardship agreement to determine whether the management plan is being implemented and whether the stewardship agreement should be continued, revised, or discontinued.

(3) For the purpose of the stewardship agreement rules, an audit means a review of land management and resource sites identified in the stewardship agreement to determine if the terms and conditions of the stewardship agreement are being met.

(4) The frequency and the number of audits may vary based on the Departments' evaluation of the relative complexity of the management plan, the terms of the stewardship agreement, or the performance observed during previous audits.

(5) Audits will be conducted at least once every three years. Landowners may request additional audits to help them assess their performance under the stewardship agreement or to provide an annual government certification of their operation.

(6) The Departments will provide an audit report to the landowner within a reasonable period, normally 45 days, with recommendations for needed revisions to the stewardship agreement.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-0900

Revising Stewardship Agreements

(1) The landowner and the Departments will cooperatively revise the stewardship agreement if:

(a) The landowner requests a revision;

(b) An audit report recommends revising the stewardship agreement;

(c) Any portion of the land changes ownership resulting in that land being removed from the stewardship agreement as per 629-021-1000(3).

(2) All revisions to the stewardship agreement are subject to the review process outlined in 629-021-0700(2) and (3).

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-1000

Terminating Stewardship Agreements

(1) The appropriate Department will issue a written notice to terminate a stewardship agreement when:

(a) The landowner is negligent in meeting the terms of the stewardship agreement;

(b) The landowner willfully disregards the terms of the stewardship agreement; or

(c) The State Forester or Department of Agriculture and landowner fail to reach agreement about revisions required under OAR 629-021-0900 within a reasonable period, normally 45 days.

(d) Failure to comply with Federal environmental laws could be criteria for terminating or suspending a stewardship agreement.

(2) The written notice to terminate the stewardship agreement will state the conditions under section 629-021-1000(1) of this rule that exist and what, if any, remedies are necessary to avoid the termination.

(3) Any parcel of land that is sold or transferred to another landowner will immediately cease to be included in the stewardship agreement.

(4) Upon receiving a written notice to terminate the stewardship agreement, the landowner will suspend all portions of operations requiring written plans under the Forest Practices Act until written plans have been submitted and reviewed.

(5) The landowner may terminate the agreement after providing written notice to the lead Department for the agreement.

Stat. Auth.: ORS 541.423, 526

Stats. Implemented: ORS 541.423

Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

629-021-1100

Periodic Review of Program

(1) An interagency review of the Departments' implementation of the stewardship agreement program will be produced biennially, and presented to the Board of Forestry and Board of Agriculture. This report will include:

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- (a) A description of the agreements approved
 - (b) Areas of concern regarding implementation of the program
 - (c) A review of the coordination between the two Departments
 - (d) Recommendations to revise or modify the program
 - (e) A review of program effectiveness for enhancing fish and wildlife habitat and water quality.
- (2) An advisory group, including the Oregon Department of Fish and Wildlife, and other interested/involved parties, will be utilized to assist the Departments in conducting the biennial review.

Stat. Auth.: ORS 541.423, 526
Stats. Implemented: ORS 541.423
Hist.: DOF 11-2006, f. 11-20-06, cert. ef. 11-21-06

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**Department of Human Services,
Departmental Administration and
Medical Assistance Programs
Chapter 410**

Rule Caption: January 2007 rule update for the Hospice Services program.

Adm. Order No.: OMAP 37-2006
Filed with Sec. of State: 12-15-2006
Certified to be Effective: 1-1-07
Notice Publication Date: 11-1-06
Rules Adopted: 410-142-0225

Subject: The Hospice Services Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP adopted 410-142-0225 to specify signature requirements for hospice services ordered.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-142-0225

Signature Requirements

- (1) The Division of Medical Assistance Programs (DMAP) requires practitioners to sign for services they order. This signature may be handwritten, electronic, or stamped, and it must be in the client's medical record.
- (2) The ordering practitioner is responsible for the authenticity of the signature. If a practitioner allows a signature stamp, the provider performing the service must retain a signed statement in their records that this practitioner is the only person who has and uses the stamp.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 37-2006, f. 12-15-06, cert. ef. 1-1-07

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Rule Caption: January 2007 rule update for the Home Health program.

Adm. Order No.: OMAP 38-2006
Filed with Sec. of State: 12-15-2006
Certified to be Effective: 1-1-07
Notice Publication Date: 11-1-06
Rules Adopted: 410-127-0065

Subject: The Home Health Services program Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP adopted 410-127-0065 to specify signature requirements for home health services ordered.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-127-0065

Signature Requirements

- (1) The Division of Medical Assistance Programs (DMAP) requires practitioners to sign for services they order. This signature may be handwritten, electronic, or stamped, and it must be in the client's medical record.
- (2) The ordering practitioner is responsible for the authenticity of the signature. If a practitioner allows a signature stamp, the provider performing the service must retain a signed statement in their records that this practitioner is the only person who has and uses the stamp.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: OMAP 38-2006, f. 12-15-06, cert. ef. 1-1-07

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Rule Caption: A therapy plan of care is required when requesting payment authorization for physical and occupational therapy.

Adm. Order No.: OMAP 39-2006
Filed with Sec. of State: 12-15-2006
Certified to be Effective: 1-1-07
Notice Publication Date: 11-1-06
Rules Amended: 410-131-0080

Subject: The Physical and Occupational Therapy Services program administrative rules govern payment for the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP revised 410-131-0080 to clarify that a therapy care of plan is required when requesting payment authorization for physical and occupational therapy services from DMAP.

Name change from "Office of Medical Assistance Programs (OMAP) to "Division of Medical Assistance Programs (DMAP)"
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-131-0080

Therapy Plan of Care

- (1) A therapy plan of care is required for payment authorization (PA).
- (2) The therapy plan of care must include:
 - (a) Client's name, diagnosis, type, amount, frequency and duration of the proposed therapy;
 - (b) Individualized, measurably objective short-term and/or long-term functional goals;
 - (c) Documented need for extended service, considering 60 minutes as the maximum length of a treatment session;
 - (d) Plan to address implementation of a home management program as appropriate, from the initiation of therapy forward;
 - (e) Dated signature of the therapist or the prescribing practitioner establishing the therapy plan of care; and
 - (f) Evidence of certification of the therapy plan of care by the prescribing practitioner.
- (3) Recertification of the therapy plan of care:
 - (a) Is required every 30 days from the initiation of treatment;
 - (b) The need for continuing therapy should be clearly stated;
 - (c) The therapy plan of care, duration and frequency of intervention, and any changes to previous therapy plan of care must be documented, signed and dated by the prescribing practitioner.
- (4) Therapy Expected Outcome:
 - (a) Therapy is based on a prescribing practitioner's written order and a therapy treatment plan with goals and objectives developed from an evaluation or re-evaluation.
 - (b) When possible, the therapy regimen will be taught to the client, family, foster parents, and/or caregiver, who will carry out the therapy regimen to assist in the achievement of the goals and objectives.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2006, f. 12-15-06, cert. ef. 1-1-07

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Rule Caption: Payment authorization request form required when requesting payment authorization.

Adm. Order No.: OMAP 40-2006
Filed with Sec. of State: 12-15-2006
Certified to be Effective: 1-1-07
Notice Publication Date: 11-1-06
Rules Amended: 410-129-0080

Subject: The Speech-Language Pathology, Audiology and Hearing Aid Services program administrative rules govern payment for the Division of Medical Assistance Program's (DMAP) payments for services provided to certain clients. DMAP amended 410-129-0080 to clarify that payment authorization request forms, DMAP 3071H or DMAP 3071S, or reasonable facsimiles, are required when requesting payment authorization form DMAP. All rules are amended to take care of necessary housekeeping corrections.

Name change from "Office of Medical Assistance Programs (OMAP) to "Division of Medical Assistance Programs (DMAP)"
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-129-0080

Prior Authorization of Payment

- (1) Payment authorization (PA) is approval by Division of Medical Assistance Programs (DMAP), the Medically Fragile Children's Unit

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(MFCU), the Fee-For-Service (FFS) Medical Case Management (MCM) Contractor or the Managed Care Organizations (MCOs) for services that are medically appropriate.

(2) Payment authorization is required for speech-language pathology, audiology and hearing aid services as indicated in the Procedure Codes section of the DMAP Speech-Language Pathology, Audiology and Hearing Aid Services rules. For services requiring authorization from DMAP or MFCU, providers must contact DMAP or MFCU for authorization within five working days following initiation of services. Requests for payment authorization for speech-language pathology services and audiology and hearing aid services must be submitted on the appropriate DMAP 3071 form or reasonable facsimile. Authorization will be given based on medical appropriateness and appropriateness of the therapy given. Hearing aids and other devices must be authorized prior to delivery of any services. For services requiring payment authorization from the FFS Medical Case Management (MCM) Contractor, authorization must be obtained prior to the initiation of services. For FFS MCM clients, DMAP will not reimburse for a service that requires payment authorization if provided prior to receiving authorization from the Medical Case Management Contractor. It is the provider's responsibility to obtain a payment authorization.

(3) Services for clients identified on the DMAP Medical Care Identification as having a "DMAP Contracted Plan" will be authorized by the plan. Contact the Managed Care Organization to determine their procedures.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1982, f. 2-16-82, ef. 3-1-82; AFS 49-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 14-1984(Temp), f. & ef. 4-2-84; AFS 22-1984(Temp), f. & ef. 5-1-84; AFS 40-1984, f. 9-18-84, ef. 10-1-84; AFS 67-1985, f. 11-19-85, ef. 12-1-85; AFS 7-1988, f. & cert. ef. 2-1-88; HR 5-1991, f. 1-18-91, cert. ef. 2-1-91, Renumbered from 461-021-0310; HR 11-1992, f. & cert. ef. 4-1-92; HR 27-1993, f. & cert. ef. 10-1-93; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 85-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 57-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 40-2006, f. 12-15-06, cert. ef. 1-1-07

Rule Caption: January 1, 2007 — prior authorization criteria for Hepatitis C drug therapies; housekeeping — DHS name change.

Adm. Order No.: OMAP 41-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-121-0040, 410-121-0149

Subject: The Pharmaceutical Services Program administrative rules govern Division of Medical Assistance Programs' payment for pharmaceutical products and services provided to certain clients. DMAP amended 410-121-0040 to add prior authorization criteria for Hepatitis C drug therapies, based on recommendations and review by the Drug Utilization Review Board (DUR Board) and to take care of necessary housekeeping corrections. DMAP amended 410-121-0149 to take care of necessary housekeeping corrections.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining Prior Authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by OHP in a manner consistent with the Prioritized List of Health Services and its corresponding treatment guidelines, included within the client's benefit package of covered services, and not otherwise excluded or limited.

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these Pharmacy Provider rules, including PA requirements imposed in this rule.

(3) The Department of Human Services (DHS) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs for

which DHS requires PA for this purpose are listed in **Table 410-121-0040-1**, with their approval criteria.

(4) DHS may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Drug Use Review (DUR) Board and adopted by the Department in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which DHS requires PA for this purpose are included in **Table 410-121-0040-2**, with their approval criteria.

(5) PA is required for brand name drugs that have two or more generically equivalent products available. Criteria for approval are:

(a) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria.

(b) If (5)(a) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(6) PA will not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by DHS; or,

(b) For over-the-counter (OTC) covered rugs when prescribed for conditions covered under OHP.

(7) Psychotropic prescriptions for children under the age of six cannot be processed when a default 999999 provider number has been entered. If such a default provider number is used, the drug may not be dispensed until PA has been obtained. The PA process will include providing the correct provider number.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07

410-121-0149

Medicaid Temporary Prescription Drug Assistance for Fully Dual Eligible Medicare Part D Clients

(1) This rule is a temporary solution implemented because many pharmacies are not able to verify that the fully dual eligible client is enrolled in one of the federal Medicare Prescription Drug Plans or that the client is eligible for low-income subsidy assistance. DMAP will continue to work with the federal Medicare program to resolve these implementation issues with Part D coverage.

(2) Effective January 14, 2006, for the purposes described in Subsection (1), enrolled pharmacies may send the Division of Medical Assistance Programs (DMAP) claims for Part D drugs and cost-sharing obligations of clients who have both Medicare and Medicaid coverage (fully dual eligible clients) if:

(a) The drug(s) was covered by DMAP for fully dual eligible clients prior to January 1, 2006; and

(b) The pharmacy has attempted to bill Medicare's Part D system but cannot resolve the claim by:

(A) Continuing to bill the Medicare Part D plan as the primary payer identified through an E-1 query;

(B) Trying to resolve the issue with the Medicare Part D plan directly;

(C) Billing Wellpoint/Anthem, Medicare's Point of Sale Solution.

(3) If all the criteria in Subsection (2) are met, then DMAP will consider paying the claim or a portion of the claim, as follows:

(a) The pharmacy must contact the DHS Medicare hotline at 1-877-585-0007 to obtain authorization for claim submission;

(b) The fully dual eligible client is responsible for paying the appropriate Medicare copayment;

(c) DMAP payment authorization will be limited to not greater than a one-month supply; and

(d) DMAP's reimbursement amount will be limited to the amount the Part D drug plan would have paid, had the Part D drug plan adjudicated the

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claim first, or the amount DMAP would pay for Medicaid clients who are not also Medicare beneficiaries.

(4) This rule supersedes all other rules relating to the limitations and exclusions of drug coverage for clients with Medicare Part D.

Stat. Auth. ORS 409.010, 409.050, 2005 OL, Ch. 754 (SB 1088)

Statutes Implemented: ORS 414.065

Hist.: OMAP 1-2006(Temp), f. & cert. ef. 1-18-06 thru 6-29-06; MOMAP 29-2006, f. 6-22-06, cert. ef. 6-29-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07

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

Adm. Order No.: OMAP 42-2006(Temp)

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07 thru 6-29-07

Notice Publication Date:

Rules Amended: 410-120-1295

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payment for services provided to clients. DMAP temporarily amended OAR 410-120-1295 to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered January 1, 2007 through December 31, 2007. These documents are necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and are referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formulas to claims for reimbursement for services rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and DMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents. DMAP intends to permanently amend this rule on or before June 29, 2007.

The revised document filed with this temporary rule is posted on the Departments website at <http://www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html>

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a Provider enrolled with the Division of Medical Assistance Programs (DMAP) that does not have a contract with an DMAP-contracted Prepaid Health Plan (PHP) is referred to as a Non-Participating Provider.

(2) For covered services that are subject to reimbursement from the PHP, a Non-Participating Provider, other than a hospital governed by (3)(b) below, must accept from the DMAP-contracted PHP, as payment in full, the amount that the provider would be paid from DMAP if the client was fee-for-service (FFS).

(3) The DMAP-contracted Fully Capitated Health Plan (FCHP) that does not have a contract with a Hospital, is required to reimburse, and Hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727);

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B Hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(i) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925;

(ii) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(b)(i) and for outpatient service rates for subsection (3)(b)(ii), are calculated by the Department's contracted actuarial firm. The FCHP Non-Contracted DRG Hospital Reimbursement Rates are on the Department's Web site at:

www.dhs.state.or.us/policy/healthplan/guides/hospital/main.html. Each document shows rates for a specific date range. The document dated:

(a) October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004;

(b) October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005;

(c) October 1, 2005, is effective for dates of service October 1, 2005 through December 31, 2005; (corrected December 23, 2005);

(d) January 1, 2006, is effective for dates of service January 1, 2006 through December 31, 2006 (corrected December 23, 2005);

(e) January 1, 2007, is effective for dates of service January 1, 2007 through December 31, 2007.

(5) A non-participating hospital must notify the FCHP within 2 business days of an FCHP patient admission when the FCHP is the primary payer. Failure to notify does not, in and of itself, result in denial for payment. The FCHP is required to review the hospital claim for:

(a) Medical appropriateness;

(b) Compliance with emergency admission or prior authorization policies;

(c) Member's benefit package;

(d) The FCHP contract and DMAP Administrative Rules.

(6) After notification from the non-participating hospital, the FCHP may:

(a) Arrange for a transfer to a contracted facility, if the patient is medically stable and the FCHP has secured another facility to accept the patient;

(b) Perform concurrent review; and/or

(c) Perform case management activities.

(7) In the event of a disagreement between the FCHP and Hospital, the provider may appeal the decision by asking for an administrative review as specified in OAR 410-120-1580.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05; OMAP 33-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 35 2005, f. 7-21-05, cert. ef. 7-22-05; OMAP 49-2005(Temp), f. 9-15-05, cert. ef. 10-1-05 thru 3-15-06; OMAP 63-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 66-2005(Temp), f. 12-13-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 72-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-28-06; OMAP 28-2006, f. 6-22-06, cert. ef. 6-23-06; OMAP 42-2006(Temp), f. 12-15-06, cert. ef. 1-1-07 thru 6-29-07

Rule Caption: Outpatient Services — In-State DRG Hospitals, Outpatient Hospital Services In a Hospital Emergency Department, and Supplemental Reimbursement for Public Academic Teaching University Medical Practitioners.

Adm. Order No.: OMAP 43-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-125-0146, 410-125-0195

Subject: The Hospital Services program governs payments and services for the Division of Medical Assistance Programs' (DMAP) provided to certain clients.

DMAP amended OAR 410-125-0195 to make rules consistent with other policy rules.

DMAP amended OAR 410-125-0146 to clarify the dates of service covered by rule and to make the rule consistent with other policy rules.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-125-0146

Supplemental Reimbursement for Public Academic Teaching University Medical Practitioners

(1) Effective for dates of service on or after November 17, 2005, physician and other practitioner services provided by practitioners affiliated with a public academic medical center that meets the following eligibility standards shall be eligible for a supplemental teaching practitioner's payment for these services provided to eligible Medicaid recipients and paid for directly on a fee-for-service basis, subject to subsections (3) and (4) of this rule. This supplemental payment shall be equal to the difference between the Medicare allowable and Medicaid reimbursement received.

(2) Eligible academic medical centers must be:

(a) The hospital must be located within the State of Oregon (border hospitals are excluded); and

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(b) The hospital provides a major medical teaching program, defined as a hospital with more than 200 residents or interns.

(3) Payments under this rule shall be made only to the eligible academic medical centers in accordance with the terms of an Intergovernmental Agreement between the eligible academic medical center and Division of Medical Assistance Programs (DMAP). Such payments may be made quarterly, but shall be at least paid annually, at the end of each federal fiscal year. Calculation of the payment amount will be based on the annual difference between the practitioners' Medicare allowable and the Medicaid allowable payments to eligible practitioners for the Medicaid claims paid during the most recently completed state fiscal year. Services included are physician and other practitioners' services with RVU weights and physician-administered drugs. The RVU rates used for the payment calculation are the DMAP fee established in rule for the date of service payment period.

(4) Allowable Medicaid payments including this supplemental payment remain subject to OAR 410-125-0220(12) and 410-130-0225. For purposes of this rule, the allowable Medicaid payments used to calculate the supplemental payment shall be limited to the services that are billed fee-for-service to DMAP on the electronic 837P or the paper CMS-1500, and as to which the physician or practitioner is receiving no reimbursement from the eligible academic medical center and the cost of their service is not reported as a direct medical education cost on the Medicare and DMAP cost report.

Stat. Auth.: ORS 409
Stats. Implemented: 414.065
Hist.: OMAP 33-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 43-2006, f. 12-15-06, cert. ef. 1-1-07

410-125-0195

Outpatient Services In-State DRG Hospitals

In-State DRG Hospitals DRG hospital outpatient and emergency services are reimbursed under a cost-based methodology.

(1) Interim reimbursement:

(a) The interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges;

(b) The interim payment is the estimated percentage needed to achieve 80% of hospital cost in aggregate.

(c) This interim percentage is applied to all outpatient charges except for clinical laboratory services. The Division of Medical Assistance Programs (DMAP) fee schedule is used as interim reimbursement for clinical laboratory.

(2) Settlement reimbursement:

(a) For Title XIX/Title XXI clients; an adjustment to 80 percent of outpatient costs is made during the cost settlement process;

(b) For GA clients, outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89, Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90, Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91, Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 73-2005, f. 12-29-05, cert. ef. 1-1-06; OMAP 17-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 43-2006, f. 12-15-06, cert. ef. 1-1-07

Rule Caption: Clarification of current FQHC and RHC policies, including enrollment, covered services and encounter rate determination.

Adm. Order No.: OMAP 44-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-147-0120, 410-147-0320, 410-147-0365, 410-147-0460, 410-147-0480, 410-147-0620

Subject: The Federally Qualified Health Centers and Rural Health Clinics (FQHC/RHC) Services program rules govern the Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients. DMAP amended 410-147-0120, 410-147-0320, 410-147-0365, 410-147-0460, 410-147-0480, and 410-147-0620 to take care of necessary housekeeping corrections, clarify language, remove reference to 'independent' Rural Health Clinics (RHCs) and ensure OARs pertaining to laboratory and radiology costs and services are consistent with Federal law and regulations.

Name change from "Office of Medical Assistance Programs (OMAP)" to "Division of Medical Assistance Programs (DMAP)"
Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0120

Encounter

(1) Federally Qualified Health Center (FQHC) and Rural Health Clinic (RHC) encounters billed to the Division of Medical Assistance Programs (DMAP) must meet the definition in Sections (2) and (3) of this rule and are limited to DMAP Medicaid-covered services according to a client's Oregon Health Plan (OHP) benefit package. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

(2) For the provision of services defined in Titles XIX and XXI and provided through an FQHC or RHC, an "encounter" is defined as a face-to-face or telephone contact between a health care professional and an eligible OHP client within a 24-hour period ending at midnight, as documented in the client's medical record. An encounter includes all services, items and supplies provided to a client during the course of an office visit except as excluded in Section (11) of this rule. Section (3) of this rule outlines limitations for telephone contacts that qualify as encounters.

(3) Telephone encounters only qualify as a valid encounter for services provided in accordance with OAR 410-130-0595, Maternity Case Management (MCM) and OAR 410-130-0190, Tobacco Cessation. See also OAR 410-120-1200(2)(y). Telephone encounters must include all the same components of the service when provided face-to-face. Providers must not make telephone contacts at the exclusion of face-to-face visits.

(4) Encounters with more than one health professional for the same diagnosis or multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit. For exceptions to this rule, refer to OAR 410-147-0140 for reporting multiple encounters.

(5) Refer to **Table 147-0120-1** for a list of procedure codes used to report encounters when billing DMAP directly for non-PHP-enrolled, or open card, clients. DMAP will reimburse a clinic at their all-inclusive Prospective Payment System (PPS) encounter rate for the following services when billed as an encounter and include any related medical supplies provided during the course of the encounter. (Refer to individual program administrative rules for service limitations.):

(a) Medical (OAR 410 Division 130);

(b) Diagnostic: DMAP covers reasonable services for diagnosing conditions, including the initial diagnosis of a condition that is below the funding line on the Prioritized List of Health Services. Once a diagnosis is established for a service, treatment or item that falls below the funding line, DMAP will not cover any other services related to the diagnosis;

(c) Tobacco Cessation (OAR 410-147-0220);

(d) Dental — Refer to OAR 410-147-0125, Table 147-0120-1, and OAR 410 Division 123;

(e) Vision (OAR 410 Division 140);

(f) Physical Therapy (OAR 410 Division 131);

(g) Occupational Therapy (OAR 410 Division 131);

(h) Podiatry (OAR 410 Division 130);

(i) Mental Health (OAR 309 Division 16);

(j) Alcohol, Chemical Dependency, and Addiction services (OAR 415 Divisions 50 and 51). Requires a letter or licensure of approval by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320(3)(j) and (5)(i);

(k) Maternity Case Management (OAR 410-147-0200);

(l) Speech (OAR 410 Division 129);

(m) Hearing (OAR 410 Division 129);

(n) DMAP considers a home visit for assessment, diagnosis, treatment or Maternity Case Management (MCM) as an encounter. DMAP does not consider home visits for MCM as Home Health Services;

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(g) Professional services provided in a hospital setting;
(p) Other Title XIX or XXI services as allowed under Oregon's Medicaid State Plan Amendment and DMAP Administrative Rules.

(6) The following practitioners are recognized by DMAP:

(a) Doctors of medicine, osteopathy and naturopathy;

(b) Licensed Physician Assistants;

(c) Dentists;

(d) Dental Hygienists who hold a Limited Access Permit (LAP) — may provide dental hygiene services without the supervision of a dentist in certain settings. See the section on Limited Access Permits, ORS 680.200 and OAR 818-035-0065 through 818-035-0100 for more information;

(e) Pharmacists;

(f) Nurse Practitioners;

(g) Nurse Midwives;

(h) Other specialized nurse practitioners;

(i) Registered nurses — may accept and implement orders within the scope of their license for client care and treatment under the supervision of a licensed health care professional recognized by DMAP in this section and who is authorized to independently diagnose and treat according to OAR 851 Division 45);

(j) Psychiatrists;

(k) Licensed Clinical Social Workers;

(l) Clinical psychologists;

(m) Acupuncturists (refer to OAR 410 Division 130 for service coverage and limitations); and

(n) Other health care professionals providing services within their scope of practice and working under the supervision requirements of:

(i) Their individual provider's certification or license; or

(ii) A clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320(3) and (5).

(7) The clinic must not bill for drugs or medication treatments provided during a clinic visit since they are part of the encounter rate. For example, a hypertensive drug or drug sample dispensed by a clinic to treat a client with high blood pressure during an office visit is included in the all-inclusive encounter rate.

(8) DMAP considers medical supplies, equipment, or other disposable products (e.g. gauze, band-aids, wrist brace) used during an office visit to be part of the cost of an encounter. Clinics cannot bill these items separately as fee-for-service charges;

(9) Clinics cannot bill Primary Care Manager (PCM) case management services for coordinating medical care for a client separately as fee-for-service since such services are included in the cost of an encounter. See also OAR 410-147-0020(4), Professional Services.

(10) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound clients (limited to areas in which the Secretary has determined that there is a shortage of home health agencies — Code of Federal Regulations 42 § 405.2417), and any other ambulatory services covered by DMAP are also reimbursable as permitted within the clinic's scope of services (see OAR 410-147-0020).

(11) DMAP excludes the following from the definition of an FQHC or RHC encounter:

(a) Laboratory and/or radiology services as stand alone services are not considered a valid clinic encounter. These services are secondary or resulting from the office visit encounter and are therefore included in the originating encounter and cannot be billed separately;

(b) Clinics cannot bill separately for venipuncture for lab tests since it is part of the encounter. DMAP does not deem a visit for lab test only to be a clinic encounter;

(c) Durable medical equipment or medical supplies (e.g. diabetic supplies) not generally provided during the course of a clinic visit.

(d) Pharmaceutical or biologicals not generally provided during the clinic visit. For example, sample medications are part of the encounter but dispensing a prescription is billed separately under the fee-for-service pharmacy program. Clinics cannot bill DMAP or the PHP for samples provided at no cost to the clinic. Prescriptions are not included in the encounter rate and qualified enrolled pharmacy providers must bill DMAP through the pharmacy. Refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information;

(e) Administrative medical examinations and report services (See OAR 410 Division 150);

(f) Death with Dignity services (See OAR 410-130-0670);

(g) Services provided to Citizen/Alien-Waived Emergency Medical (CAWEM) clients. (See OAR 410-120-1210, 461-135-1070 and 410-130-0240);

(h) Services provided to Qualified Medicare Beneficiary (QMB) only clients. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information is located in the FQHC and RHC Supplemental Information billing guide;

(i) Targeted Case Management (TCM) services (See OAR 410 Division 138); and

(j) Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act.

(12) OAR 410-120-1210 describes the OHP benefit packages and delivery system. Most OHP clients have prepaid health services, contracted for by the Department of Human Services (DHS) through enrollment in a Prepaid Health Plan (PHP). Non-PHP-enrolled clients, receive services on an "open card" or "fee-for-service" (FFS) basis. The current month's Medical Care Identification specifies the client's status.

(a) DMAP is responsible for making payment for services provided to open card clients. The provider will bill DMAP the clinic's encounter rate for Medicaid-covered services provided to these clients according to their OHP benefit package. Refer to 410-147-0360, Encounter Rate Determination.

(b) A PHP is responsible to provide, arrange and make reimbursement arrangements for covered services for their DMAP members. Refer to OAR 410-120-0250, and OAR 410 Division 141, OHP Administrative Rules governing PHPs. The provider must bill the PHP directly for services provided to an enrolled client. See also OAR 410-147-0080, Prepaid Health Plans, and 410-147-0460, PHP Supplemental Payment. Clinics must not bill DMAP an encounter for PHP-covered services provided to eligible OHP clients enrolled in PHPs. Exceptions include:

(i) Family planning services provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060); and

(ii) HIV/AIDS prevention provided to a PHP-enrolled client when the clinic does not have a contract with the PHP, and if the PHP denies payment (see OAR 410-147-0060).

(13) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before billing DMAP. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(a) Asking the client if they have coverage from Medicare, private insurance or another resource;

(b) Using an insurance database such as Electronic Eligibility Verification Services (EEVS) available to the Provider; or

(c) Verifying the client's insurance coverage through the Automated Information System (AIS) or the Medical Care Identification on each date of service and at the time of billing.

(14) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See OARs 410-120-1280 Billing and 410-120-1340 Payment.

(15) Codes for encounters: Due to the unique billing and payment methodology, and the implementation of the Health Insurance Portability and Accountability Act (HIPAA), DMAP selected specific CPT and HCPCS codes for clinics to report encounters. Providers must bill DMAP with the procedure codes indicated in **Table 147-0120-1** for FQHC and RHC services eligible for reimbursement per a clinic's encounter rate. For services that are not included in the all-inclusive encounter rate, refer to the appropriate DMAP provider rules for billing instructions.

(16) It is the Health Services Commission's (HSC) intent to cover reasonable diagnostic services to determine diagnoses on the HSC Prioritized List of Health Services (List), regardless of their placement on the HSC List. See also Section (5)(b) of this rule.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1993, f. & cert. ef. 7-1-93; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 19-1999, f. & cert. ef. 4-1-99; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 21-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0390; OMAP 63-2002, f. & cert. ef. 10-1-02, Renumbered from 410-135-0150; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

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410-147-0320

Federally Qualified Health Center (FQHC)/Rural Health Clinics (RHC) Enrollment

(1) This rule outlines the Division of Medical Assistance Programs (DMAP) enrollment requirements for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC). Refer also to OAR 410-120-1260 Provider Enrollment.

(a) For outpatient health programs or facilities operated by an American Indian tribe under the Indian Self-Determination Act and for certain facilities serving urban American Indians, providers should refer to the program rules for American Indian/Alaska Native (AI/AN) Services, OAR 410 Division 146, for enrollment details;

(b) An FQHC or RHC that operates a retail pharmacy, provides durable medical equipment, prosthetics, orthotics, and supplies (DME-POS), or provides targeted case management (TCM) services, must enroll separately as a pharmacy, DMEPOS and/or TCM provider. Refer to OAR 410 Division 121, Pharmaceutical; OAR 410 Division 122, DMEPOS; and OAR 410 Division 138, TCM for specific information.

(2) To enroll with DMAP as an FQHC, a health center must comply with one of the following:

(a) Receive Public Health Service (PHS) grant funds under the authority of Section 330;

(b) Have received FQHC Look-Alike designation from the Centers for Medicare and Medicaid Services (CMS), based on the recommendation of the Health Resources and Services Administration (HRSA)/Bureau of Primary Health Care (BPHC).

(3) Eligible FQHCs who want to enroll with DMAP as an FQHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DMAP Provider Application Form 3117 for an Agency;

(b) Completed Cost Statement(s) (DMAP 3027);

(i) One each for medical, dental and mental health (including addiction, alcohol and chemical dependency). See also OAR 410-147-0360;

(ii) Complete a cost statement for each FQHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See OAR 410-147-0340 regarding multiple provider numbers;

(c) Completed copy of the grant proposal submitted to HRSA/BPHC detailing the clinic's service and geographic scope;

(d) Copy of the HRSA Notice of Grant Award Authorization for Public Health Services Funds under Section 330, or a copy of the letter from CMS designating the facility as a "Look Alike" FQHC;

(e) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports;

(f) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations";

(g) Depreciation schedules;

(h) Overhead cost allocation schedule;

(i) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker or psychiatric nurse practitioner is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and OAR 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(j) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(k) A list of all Prepaid Health Plan (PHP) contracts;

(l) A list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the FQHC; and

(m) A list of all clinics affiliated or owned by the FQHC including any clinics that do not have FQHC status along with all DMAP provider numbers assigned to these clinics.

(4) For enrollment with DMAP as an RHC, a clinic must:

(a) Be designated by CMS as an RHC.

(b) Maintain Medicare certification and be in compliance with all Medicare requirements for certification.

(5) Eligible RHCs who want to enroll with DMAP as an RHC, and be eligible for payment under the Prospective Payment System (PPS) encounter rate methodology, must submit the following information:

(a) Completed DMAP Provider Application Form 3117 for an Agency;

(b) Copy of Medicare's letter certifying the clinic as an RHC;

(c) Medicare Cost Report for RHC or completed Cost Statement(s) (DMAP 3027). See also OAR 410-147-0360. Complete a cost statement for each RHC-designated site, unless specifically exempted in writing by DMAP to file a consolidated cost report. See OAR 410-147-0340 regarding multiple provider numbers.

(d) A copy of the clinic's trial balance. See OAR 410-147-0500, Total Encounters for Cost Reports (only if completing Cost Statement DMAP 3027);

(e) Audited financial statements. Refer to OAR 410-120-1380 Compliance with Federal and State Statutes, and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" (only if completing Cost Statement DMAP 3027);

(f) Depreciation schedules (only if completing Cost Statement DMAP 3027);

(g) Overhead cost allocation schedules (only if completing Cost Statement DMAP 3027);

(h) A copy of the clinic's Addictions and Mental Health Division (AMH) certification for a program of mental health services if someone other than a licensed psychiatrist, licensed clinical psychologist, licensed clinical social worker or psychiatric nurse practitioner is providing mental health services. Refer to OAR 309-012-0130 through 309-012-0220, Certificates of Approval for Mental Health Services; 309-032-0525 through 309-032-0605, Standards for Adult Mental Health Services; 309-032-0950 through 309-032-1080, Standards for Community Treatment Services for Children; and OAR 309-039-0500 through 309-039-0580, Standards for the Approval of Providers of Non-Inpatient Mental Health Treatment Services;

(i) A copy of the clinic's AMH letter or licensure of approval if providing Addiction, Alcohol and Chemical Dependency services. Refer to OAR 415 Division 12, Standards for Approval/Licensure of Alcohol and other Abuse Programs;

(j) A list of all Prepaid Health Plan (PHP) contracts;

(k) A list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the RHC; and

(l) A list of all clinics affiliated or owned by the RHC including any clinics that do not have RHC status along with all DMAP provider numbers assigned to these clinics.

(6) The FQHC/RHC Program Manager, upon receipt of the required items as listed in Section (3) of this rule for FQHCs and Section (5) of this rule for RHCs, will review all documents for compliance with program rules, completeness and accuracy.

(7) DMAP prohibits an established, enrolled FQHC or RHC that adds or opens a new clinic site from submitting claims for services rendered at the new site under their FQHC or RHC DMAP provider number, and according to the PPS encounter rate, prior to DMAP's acknowledgment. An FQHC or RHC is required to immediately submit to the attention of the FQHC/RHC Program Manager, DMAP:

(a) For FQHCs only, a copy of the recent HRSA Notice of Grant Award including the new site under the main FQHC's scope;

(b) For RHCs only, a copy of Medicare's letter certifying the new clinic as an RHC;

(c) A recent list of all Prepaid Health Plan (PHP) contracts; and

(d) A recent list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the new FQHC or RHC site.

(8) If an established and enrolled RHC or FQHC changes ownership, the new owner must submit:

(a) Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated; or in writing, a letter advising adoption of the PPS encounter rate calculated under the former ownership;

(b) Failure to submit a cost statement (DMAP 3027) or Medicare Cost Report within 30 days of the change of ownership, will forfeit all rights to calculation of a PPS encounter rate(s) at a later date. The PPS encounter rate(s) calculated under the former ownership will in effect be reassigned to the new ownership;

(c) Notice of a change in tax identification number;

(d) A recent list of all Prepaid Health Plan (PHP) contracts;

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(e) A recent list of names and individual DMAP provider numbers for all practitioners contracted with or employed by the FQHC or RHC; and

(f) A recent list of all clinics affiliated or owned by the FQHC or RHC including any clinics that do not have FQHC or RHC status along with all DMAP provider numbers assigned to these clinics.

(9) FQHCs that are involved with a Sub-recipient must provide documentation. Sub-recipient contracts with an FQHC must enroll as an FQHC and submit the same required documentation as outlined under the enrollment sections of this rule.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02. Renumbered from 410-128-0010; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 63-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

410-147-0365

Rural Health Clinic (RHC) Alternate Payment Methodology (APM) for Obstetrics (OB) Care Delivery Procedures

(1) A Medicare certified RHC, as defined below, may be eligible for an obstetrics (OB) alternate payment methodology (APM) encounter rate for delivery procedures. The OB APM delivery encounter rate includes additional OB delivery-related costs incurred by a clinic as a cost-based payment in addition to the Prospective Payment System (PPS) medical encounter rate. The OB APM is contingent, and becomes effective, upon federal approval of the State Plan Amendment. The intent of the OB APM is to maintain access to OB care, including delivery services, in frontier and remote rural areas and to compensate eligible clinics for professional costs uniquely associated with OB care, not to exceed 100% of reasonable cost.

(2) To be eligible for the OB APM delivery encounter rate, a Medicare certified RHC must meet all Division of Medical Assistance Programs (DMAP) requirements applicable to an RHC, qualify as either "frontier" or "remote rural" as defined in section (2)(a) and (b) of this rule, be located in a service area with unmet medical need defined in section (2)(c), and must request to participate in writing pursuant to participation requirements specified in sections (3) and (5).

(a) Frontier RHC is defined as located in a frontier county as designated by the Oregon Office of Rural Health;

(b) Remote rural RHC is defined as located in a remote rural service area as designated by the Oregon Office of Rural Health;

(c) A frontier or remote rural RHC must be located in a service area of unmet medical need as determined by the Oregon Office of Rural Health for the year in which the written request for OB APM was made.

(3) If the frontier or remote rural RHC qualifies under section (2) of this rule and other requirements outlined by DMAP, the clinic must provide DMAP all required documentation necessary to qualify for the OB APM delivery encounter rate.

(a) An eligible RHC must submit a written request to DMAP for the OB APM delivery encounter rate. The RHC is responsible for providing all documentation necessary for DMAP to conduct the calculations described in this rule. Failure to provide necessary documentation with the request to participate may result in a delay of the calculation and effective date of the OB APM delivery encounter rate.

(b) RHCs that meet the requirements in section (2) of this rule prior to Federal approval of the State Plan Amendment (SPA) may bill, using the OB APM delivery encounter rate, effective the date of Federal approval of the SPA provided DMAP has determined the clinic's OB APM delivery encounter rate.

(c) RHCs that meet the requirements in section (2) of this rule after the Federal approval date of the SPA may bill, using the OB APM delivery encounter rate, effective the date DMAP determines the clinic's OB APM delivery encounter rate.

(4) Care status changes:

(a) DMAP reserves the right to request periodic review of utilization, cost reporting and to re-evaluate OB care access including delivery services in a community to determine the continued need to pay an OB APM delivery encounter rate for frontier and remote rural RHCs;

(b) Prior to making any changes in the RHC's status and rates, DMAP will re-evaluate the following:

(A) If OB care access including delivery services in a community has changed;

(B) If the RHC no longer meets the requirements for the OB APM:

(i) An RHC's agreement with the Secretary of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) is terminated, or

(ii) The location of an RHC does not qualify as an unmet medical need service area as determined by the Oregon Office of Rural Health for five consecutive years;

(C) The stability of new providers supplying additional OB care access including delivery services;

(c) DMAP will give the RHC 90 days notice of change in status and rate;

(d) If DMAP determines that an RHC no longer meets the OB APM requirements, the RHC may request, within 30 days from notification, that DMAP review any additional supporting documentation regarding the determination.

(5) Determining OB APM Delivery Encounter Rate: The frontier or remote rural RHC requesting an OB APM delivery encounter rate, and meeting the DMAP requirements, will have an OB APM delivery encounter rate which is the sum of a clinic's PPS medical encounter rate and an OB cost-based payment. The OB payment is calculated from costs uniquely associated with OB delivery services and which were not used in the calculation of a clinic's PPS medical encounter rate as outlined in the State Plan, Attachment 4.19B:

(a) Qualification of the OB APM delivery encounter rate is not considered a change of scope;

(b) The Medicare Economic Index (MEI) adjustment, as required by the PPS, will apply to the OB APM delivery encounter rate once established;

(c) DMAP will use the information listed below to determine the eligible RHC's initial OB payment. With the written request for an OB APM delivery encounter rate, both an existing and new clinic must provide:

(A) Total number of delivery encounters;

(B) Malpractice premiums for all physicians and certified nurses performing OB deliveries for the current and next year; and

(C) On-call time coverage;

(d) Delivery encounters include vaginal and cesarean delivery professional services provided by the RHC:

(A) Clinics performing deliveries prior to written request for an OB APM delivery encounter rate must provide the most recent full year of claims data for deliveries; and

(B) Clinics that have not previously provided delivery services must provide a reasonable projection of delivery encounters for the forecasted year;

(C) Clinics with actual or projected delivery encounters less than 100, will have their OB payment calculated using a base number of 100 OB delivery encounters;

(e) DMAP will calculate an additional projected cost of malpractice (liability) premiums to be included in the OB cost-based payment, outside of costs included and which have already been accounted for in the PPS medical encounter rate, as follows:

(A) For both an existing and new clinic, DMAP will calculate malpractice premiums that are based on the average costs for the current and next year based on the date the clinic applies for the OB APM delivery encounter rate, as projected by the RHC's malpractice carrier. Costs are the premiums the clinic or individual actually pays, accounting for any reductions or credits;

(B) For existing clinics, DMAP will determine the malpractice premiums reported for physicians and certified nurses performing OB deliveries when the RHC initially enrolled with DMAP and the PPS medical encounter rate was calculated. Premium amounts used in the initial PPS medical encounter rate calculation will be adjusted by the MEI for each subsequent year of enrollment, up to the year of written request for an OB APM delivery encounter rate. The premium(s) adjusted by MEI is an amount included in the current PPS medical encounter rate;

(C) For new clinics, DMAP will determine the actual malpractice premiums for OB physicians and certified nurses performing OB deliveries for the current year;

(D) DMAP will subtract the premiums calculated in section (5)(e)(B) or (C) of this rule, and accounted for in the calculation of the clinic's PPS medical encounter rate, from the average cost of OB malpractice premiums in section (5)(e)(A), to calculate the projected portion of OB malpractice premiums to be included in calculating the OB payment;

(f) DMAP will calculate the cost of physician on-call time for OB care by multiplying a clinic's adjusted OB on-call hours of coverage by the fixed rate of \$20.00 per hour. A clinic's adjusted OB on-call coverage hours will be calculated as follows:

(A) Reducing total clinic coverage hours per year by the clinic's daily office hours, and;

(B) Reduced by physician vacation hours, and;

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(C) Calculated at 60 percent of adjusted on-call time;

(g) The OB payment will be the sum of the difference of averaged malpractice premiums and current actual premiums in section (5)(e) of this rule, and the cost of on-call coverage in section (5)(f), divided by the total number of OB care delivery encounters in section (5)(d);

(h) The OB APM delivery encounter rate is the sum of the OB payment in section (5)(g) of this rule and the PPS medical encounter rate.

(6) After DMAP has calculated the initial OB APM delivery encounter rate DMAP will inform the RHC.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05; OMAP 48-2005(Temp), f. & cert. ef. 9-15-05 thru 2-15-06; OMAP 64-2005, f. 11-29-05, cert. ef. 1-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

410-147-0460

Prepaid Health Plan Supplemental Payments

(1) Effective January 1, 2001, the Division of Medical Assistance Programs (DMAP) is required by 42 USC 1396a(bb), to make supplemental payments to eligible Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) that contract with Prepaid Health Plans (PHP).

(2) The PHP Supplemental Payment represents the difference, if any, between the payment received by the FQHC/RHC from the PHP(s) for treating the PHP enrollee and the payment to which the FQHC/RHC would be entitled if they had billed DMAP directly for these encounters according to the clinic's Medicaid Prospective Payment System (PPS) encounter rate. Refer to OAR 410-147-0360.

(3) In accordance with federal regulations the Provider must take all reasonable measures to ensure that in most instances Medicaid will be the payer of last resort. Providers must make reasonable efforts to obtain payment first from other resources before submitting claims to the PHP. Refer to OAR 410-147-0120(13).

(4) When any other coverage is known to the provider, the provider must bill the other resource(s) prior to billing the PHP. When a Provider receives a payment from any source prior to the submission of a claim to the PHP, the amount of the payment must be shown as a credit on the claim in the appropriate field. See also OAR 410-120-1280 Billing and 410-120-1340 Payment.

(5) Supplemental payment by DMAP for encounters submitted by FQHC/RHCs for purposes of this rule is reduced by any and all payments received by the FQHC/RHC from outside resources, including Medicare, private insurance or any other coverage. Therefore, FQHC/RHCs are required to report all payments received on the Managed Care Data Submission Worksheet, including:

- (a) Medicaid PHPs;
- (b) Medicare Advantage Managed Care Organizations (MCO);
- (c) Medicare, including Medicare MCO supplemental payments; and
- (d) Any Third Party Resource(s) (TPR).

(6) DMAP will calculate the PHP Supplemental Payment in the aggregate of the difference between total payments received by the FQHC/RHC, to include payments as listed in Section (5) of this rule and the payment to which the FQHC/RHC would have been eligible to claim as an encounter if they had billed DMAP directly per their PPS encounter rate.

(7) Effective July 1, 2006, FQHC/RHCs must submit their clinic's data beginning with dates of service January 1, 2006 and after, using the Managed Care Data Submission Template developed by DMAP to report all PHP encounter and payment activity.

(8) To facilitate DMAP processing PHP supplemental payments, the FQHC or RHC must submit the following:

(a) To PHPs:

(A) Claims within the required timelines outlined in the contract with the PHP and in OAR 410-141-0420, Oregon Health Plan Prepaid Health Plan Billing Payment Under the Oregon Health Plan;

(B) The FQHC or RHC clinic number must be used when submitting all claims to the PHPs;

(b) To DMAP:

(A) Report total payments for all services submitted to the PHP:

(i) Including laboratory, radiology, nuclear medicine, and diagnostic ultrasound; and

(ii) Excluding any bonus or incentive payments;

(B) Report total payments for each category listed in the "Amounts Received During the Settlement Period" section of the Managed Care Data Submission Template Coversheet;

(C) Payments are to be reported at the detail line level on the Managed Care Data Submission Template Worksheet, except for capitated payments, or per member per month and risk pool payments received from the PHP;

(D) The total number of actual encounters. An encounter represents all services for a like service element (Medical, Dental, Mental Health, or Alcohol and Chemical Dependency) provided to an individual client on a single date of service. The total number of encounters is not the total number of clients assigned to the FQHC or RHC or the total detail lines submitted on the Managed Care Data Submission Template Worksheet;

(E) All individual DMAP performing provider numbers assigned to practitioners associated with the FQHC or RHC. "Associated" refers to a practitioner who is either subcontracted or employed by the FQHC or RHC. A practitioner associated with an FQHC or RHC can only retain their individual performing provider number under one of the two situations:

(i) The practitioner maintains a private practice; or

(ii) The practitioner is also employed by a non-FQHC or RHC site.

(F) A current list of all PHP contracts. An updated list of all PHP contracts must be submitted annually to DMAP no later than October 31 of each year.

(9) PHP Supplemental Payment process:

(a) DMAP will process PHP Supplemental Payments on a quarterly basis:

(A) Quarterly processing of PHP Supplemental Payments includes a final reconciliation for the reported time period;

(B) For an FQHC or RHC approved by DMAP to participate in a pilot project, PHP Supplemental Payments will be processed at the discretion of DMAP in collaboration with health centers;

(b) Upon processing a clinic's data and the PHP Supplemental Payment, DMAP will:

(A) Send a check to the clinic for PHP Supplemental Payment calculated from clinic data DMAP was able to process;

(B) Provide a cover letter and summary of the payment calculation; and

(C) Return data that is incomplete, unmatched, or cannot otherwise be processed by DMAP;

(c) The FQHC or RHC is responsible for reviewing the data DMAP was unable to process for accuracy and completeness. The clinic has 30 days, from the date of DMAP's cover letter under Section (9)(b) of this rule, to make any corrections to the data and resubmit to DMAP for processing. Documentation supporting any and all changes must accompany the resubmitted data. A request for extension must be received by DMAP prior to expiration of the 30 days, and must:

(A) Be requested in writing;

(B) Accompanied by a cover letter fully explaining the reason for the late submission; and

(C) Provide an anticipated date for providing DMAP the clinic's resubmitted data and supporting documentation;

(d) Within 30 days of DMAP's receipt of the re-submitted data, DMAP will:

(A) Review the data and issue a check for all encounters DMAP verifies to be valid; and

(B) For quarterly data submissions, send a letter outlining the final quarterly settlement including any other pertinent information to accompany the check;

(e) The FQHC or RHC should submit data to DMAP within the timelines provided by DMAP.

(10) Clinics must carefully review in a timely fashion the data that DMAP was unable to process and returns to the FQHC or RHC. If clinics do not bring any incomplete, inaccurate or missing data to DMAP's attention within the time frames outlined, DMAP will not process an adjustment.

(11) DMAP encourages FQHCs and RHCs to request PHP Supplemental Payment in a timely manner.

(12) Clinics must exclude from a clinic's data submission for PHP supplemental payment, clinic services provided to a PHP-enrolled client when the clinic does not have a contract or agreement with the PHP. This may not apply to family planning services, or HIV/AIDS prevention services. Family Planning and HIV/AIDS prevention services provided to a PHP-enrolled client when a clinic does not have a contract or agreement with the PHP:

(a) Must be reported in the clinic's data submission for PHP Supplemental Payment if the clinic receives payment from the PHP;

(b) Cannot be reported in the clinic's data submission for PHP Supplemental Payment if the clinic is denied payment by the PHP. If the PHP denies payment to the clinic, the clinic can bill these services directly to DMAP. (See also OAR 410-147-0060).

(13) If a PHP denies payment to an FQHC or RHC for all services, items and supplies provided to a client on a single date of service and meeting the definition of an "encounter" as defined in OAR 410-147-0120, for

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the reason that all services, items and supplies are non-covered by the plan, DMAP is not required to make a supplemental payment to the clinic. The following examples are excluded from the provision of this rule:

(a) Encounters that will later be billed to the PHP as a covered global procedure (e.g. Obstetrics Global Encounter);

(b) Had payment received by Medicare, and any other third party resource not have exceeded the payment the PHP would have made, the PHP would have made payment;

(c) At least one of the detail lines reported for all services, items and supplies provided to a client on a single date of service and represents an "encounter," has a reported payment amount by the PHP.

(14) If an FQHC or RHC has been denied payment by a PHP because the clinic does not have a contract or agreement with the PHP, DMAP is not required to make a supplemental payment to the clinic. DMAP is only required to make a PHP supplement payment when the FQHC or RHC has a contract with a PHP.

(15) DMAP will not reimburse some Medicaid covered services that are only reimbursed by PHPs, and are not reimbursed by DMAP. DMAP will not make PHP supplemental payment for these services, as DMAP does not reimburse these services when billed directly to DMAP.

(16) It is the responsibility of the FQHC or RHC to refer PHP-enrolled clients back to their PHP if the FQHC or RHC does not have a contract with the PHP, and the service to be provided is not family planning or HIV/AIDS prevention. The Provider assumes full financial risk in serving a person not confirmed by DMAP as eligible on the date(s) of service. See OAR 410-120-1140. It is the responsibility of the Provider to verify:

(a) That the individual receiving medical services is eligible on the date of service for the service provided; and

(b) Whether a client is enrolled with a PHP or receives services on an "open card" or "fee-for-service" basis.

Stat. Auth.: ORS 409

Stat. Implemented: ORS 414.065

Hist.: OMAP 63-2002, f. & cert. ef. 10-1-02; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

410-147-0480

Cost Statement (DMAP 3027) Instructions

(1) The Division of Medical Assistance Programs (DMAP) requires Federally Qualified Health Centers (FQHC) to submit Cost Statements (DMAP 3027).

(2) Rural Health Clinics (RHC) can choose to submit either their Medicare Cost Report or the Cost Statement (DMAP 3027). If the RHC files a Medicare Cost Report, DMAP may request additional information.

(3) DMAP reimburses some services, items and supplies fee-for-service, outside of a FQHC or RHC's Prospective Payment System (PPS) encounter rate. For this reason, clinics must exclude the costs for the following items from the cost statement:

(a) Contraceptive supplies and contraceptive medications. Refer to OAR 410-147-0280;

(b) Pharmacy. Requires separate enrollment, refer to OAR 410 Division 121, Pharmaceutical Services Program Rulebook for specific information;

(c) Durable Medical Equipment and Supplies. Requires separate enrollment, refer to OAR 410 Division 122, Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS); and

(d) Targeted Case Management (TCM) services. Requires separate enrollment, refer to OAR 410-147-0610, and 410 Division 138, Targeted Case Management for specific information.

(4) Payment for services provided by FQHCs and RHCs is in accordance with 42 USC 1396a(bb). In general, a Prospective Payment System (PPS) encounter rate is calculated on a per visit basis that is equal to the average of reasonable and allowable costs incurred by a clinic for furnishing services included in the State Plan under Title XIX and XXI of the Social Security Act. The rate is calculated by dividing the total costs incurred by an FQHC or RHC for furnishing services by the total number of clinic encounters as defined in OAR 410-147-0500. A clinic must submit Cost Statement (DMAP 3027) to DMAP:

(a) For established clinics during an adjustment to the clinic's rate based on a change in scope of clinic services. Refer to OAR 410-147-0360;

(b) For new clinics. Refer also to OAR 410-147-0360; or

(c) If there is a change of ownership, the new owner can submit the Cost Statement (DMAP 3027) or Medicare Cost Report within 30 days from the date of change of ownership to have a new PPS encounter rate calculated. See also OAR 410-147-0320(8).

(5) The Cost Statement (DMAP 3027) must include all documents required by OAR 410-147-0320.

(6) Each section must be completed if applicable.

(7) Page 1 — Statistical Information:

(a) Enter the full name of the FQHC or RHC, the address and telephone number, the fiscal reporting period, the DMAP provider number, the name of the persons or organizations having legal ownership of the FQHC or RHC; and all provider and health care practitioners as defined on the DMAP 3027 Cost Statement.

(b) The Cost Statement (DMAP 3027) must be prepared, signed and dated by both the FQHC or RHC accountant and an authorized responsible officer.

(8) Page 2 — Part A — FQHC or RHC Practitioner Staff and Visits:

(a) FTE Personnel: List the total number of staff by position;

(b) Encounters: List the number of on-site and off-site encounters by staff. Refer also to OAR 410-147-0500, Total Encounters for Cost Reports. Exclude the following types of encounters from your total encounters:

(A) Outstationed Outreach Workers;

(B) Administration; and

(C) Support staff, or any staff members who do not meet the criteria of OAR 410-147-0120(6) or the qualification or certification requirements under a clinic's mental health certification or alcohol and other drug program approval or licensure by the Addictions and Mental Health Division (AMH). Refer to OAR 410-147-0320.

(9) Pages 3-4 — Reclassification and Adjustment of Trial Balance of Expenses:

(a) Record the expenses for covered health care costs, non-reimbursable program costs, allowable overhead costs, and non-reimbursable overhead costs:

(A) Covered health care (program) costs include all necessary and proper costs that are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. Whether DMAP allows the costs is subject to the regulations prescribing the treatment of specific items under the Medicaid program. Refer also to OAR 410-147-0020 Professional Services. Covered health care (program) and direct health care costs include but are not limited to:

(i) Personnel costs, including Medical record and medical receptionist costs;

(ii) Administrative costs;

(iii) Employee pension plan costs;

(iv) Normal standby costs;

(v) Medical practitioner salaries; and

(vi) Malpractice insurance costs;

(B) Non-reimbursable program costs are costs that are not related to patient care and which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Costs that are not necessary include costs that usually are not common or accepted occurrences in the field of the provider's activity. Non-reimbursable program costs include, but are not limited to:

(i) Women, Infants and Children (WIC);

(ii) Community Services/Housing Projects. Refer to OAR 410-120-1200;

(iii) Environmental external maintenance costs (e.g. landscaping, pesticide application);

(iv) Research;

(v) Public Education; and

(vi) Outside services;

(C) Allowable overhead costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Below are examples of overhead costs:

(i) Administrative costs;

(ii) Billing department expenses;

(iii) Audit costs;

(iv) Reasonable data processing expenses (not including computers, software or databases not used solely for patient care or clinic administration purposes);

(v) Space costs (rent and utilities); and

(vi) Liability insurance costs;

(D) Non-reimbursable overhead costs:

(i) Entertainment;

(ii) Fines and penalties;

(iii) Fundraising;

(iv) Goodwill;

(v) Gifts and contributions;

(vi) Political contributions;

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- (vii) Bad debts;
- (viii) Other interest expense;
- (ix) Advertising;
- (x) Membership dues for public relations purposes, including country or fraternal club memberships;
- (xi) Cost of personal use of motor vehicles;
- (xii) Cost of travel incurred in connection with non-patient care related purposes; and

(xiii) Costs applicable to services, facilities, and supplies furnished by a related organization (Related Party Transactions) in excess of the lower of cost to the related organization, or the price of comparable service as rendered by a non-related entity. Refer to OAR 410-147-0540;

(b) Attach expense documentation from financial accounting records and an explanation for allocations, and allocation method used;

(c) Enter any reclassified expenses, adjustments (increase/decrease) of actual expenses in accordance with the FQHC and RHC Administrative rules on allowable costs. A schedule of any reported reclassification of trial balance expense, whether an increase or decrease, must include:

- (A) A reference to the line number on either page 3 or 4;
- (B) A description of the reclassification or adjustment;
- (C) The amount of the debit or credit; and
- (D) The total for each debit and credit;

(d) Net expenses must equal the combined reclassified trial balance taking into account the adjustment amount on each detail line;

(e) Enter the totals from each column in the "Total" fields.

(10) Page 5 — Determinations — Determination of Overhead Applicable to FQHC and RHC Services:

(a) Parts A and B: Enter all totals from the previous pages of the Cost Statement (DMAP 3027) as requested under overhead applicable to FQHC or RHC services and FQHC or RHC rate;

(b) Part C: If applicable, complete by entering the wages for Outstationed Outreach Workers on line C1, divide the wages by the number of billable DMAP encounters to determine the rate per encounter. See also OAR 410-147-0400.

Stat. Auth.: ORS 184.750, 184.770, 409.010 & 409.110

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 13-1993, f. & cert. ef. 7-1-93; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0400; OMAP 71-2003, f. 9-15-03, cert. ef. 10-1-03; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

410-147-0620

Medicare/Medical Assistance Program Claims

(1) If a client has both Medicare and Medicaid coverage under the Oregon Health Plan (OHP), coordinated by the Division of Medical Assistance Program (DMAP), providers must bill Medicare first.

(2) All claims submitted by Federally Qualified Health Centers (FQHC) or Rural Health Clinics (RHC) to DMAP for clients who have both Medicare and DMAP coverage must be billed on a CMS-1500 claim form or by 837P transmission. See also Billing for Medicare/Medicaid Clients in the FQHC and RHC Supplemental Information.

(3) If an out-of-state Medicare carrier or intermediary was billed, you must bill DMAP using a CMS-1500 claim form or 837P transmission, but only after that carrier has made payment determination.

(4) When billing on a CMS-1500 claim form or 837P transmission for a client with both Medicare and DMAP coverage:

(a) Bill all services provided to an OHP beneficiary using a procedure code listed in Table 147-0120-1, FQHC/RHC Encounter Codes;

(b) Bill the clinic's encounter rate; and

(c) Enter the total Medicare payment received in the "Amount Paid" field or use the appropriate Third Party Resources (TPR) explanation. Refer to CMS-1500 or 837P detailed billing instructions.

(5) Claims for Qualified Medicare Beneficiary (QMB)-only clients must be billed on CMS-1500 claim form or 837P transmission. Refer to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System. Specific billing information and instructions are located in the FQHC and RHC Supplemental Information billing guide:

(a) The total charged amount must equal the total Medicare allowed/covered charges, minus any reductions or contract adjustments. FQHCs and RHCs are not to bill their encounter rate for services provided to Qualified Medicare Beneficiary (QMB)-only clients;

(b) FQHC and RHCs must bill each service, treatment or item provided to a QMB-only beneficiary on the CMS-1500 claim form or 837P transmission identical to how Medicare was billed.

(c) For claims to process payment correctly, FQHCs and RHCs billing multiple services need to apply the total charge calculated, according to

section (a) above, to the first detail line and zero charge all subsequent lines.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 4-1991, f. 1-15-91, cert. ef. 2-1-91; HR 7-1995, f. 3-31-95, cert. ef. 4-1-95; OMAP 35-1999, f. & cert. ef. 10-1-99; OMAP 20-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 37-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 62-2002, f. & cert. ef. 10-1-02, Renumbered from 410-128-0040; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 44-2006, f. 12-15-06, cert. ef. 1-1-07

Rule Caption: January 2007 rule corrections and additional detail for policy clarification.

Adm. Order No.: OMAP 45-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-120-0000, 410-120-1280, 410-120-1340, 410-120-1380, 410-120-1390, 410-120-1960

Subject: The General Rules Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to clients. DMAP amended above rules for house-keeping and clarification purposes: 410-120-0000 to clarify and coordinate the definition of Ancillary Services with the OHP Managed Care Rules and the Prioritized List, as well as deleting OMPRO and instead generally defining Peer Review Organization (PRO) and Quality Improvement Organization (QIO); 410-120-1280 to adopt by reference the annual publication of the national code sets (Health-care Common Procedure Code Set — HCPCS and Current Procedural Terminology — CPT) for 2007; 410-120-1340 to adopt the federal publication of the Relative Value Unit weights for 2006. DMAP revised by providing additional detail for policy clarification: 410-120-1390 to clarify that certification annually is required but will be requested no more frequently than quarterly; 410-120-1960 to specify effective dates. DMAP amended 410-120-1380 to include the federal mandate under the Deficit Reduction Act (DRA) requiring providers claiming more than \$5 million annually to provider employee education on the State False Claims Act.

Name change from "Office of Medical Assistance Programs (OMAP)" to "Division of Medical Assistance Programs (DMAP)"

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-0000

Acronyms and Definitions

(1) AAA — Area Agency on Aging.

(2) Abuse — Provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Division of Medical Assistance Programs (DMAP), or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes Recipient practices that result in unnecessary cost to DMAP.

(3) Acupuncturist — A person licensed to practice acupuncture by the relevant State Licensing Board.

(4) Acupuncture Services — Services provided by a licensed Acupuncturist within the scope of practice as defined under state law.

(5) Acute — A condition, diagnosis or illness with a sudden onset and which is of short duration.

(6) Acquisition Cost — Unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply or equipment, plus any shipping and/or postage for the item.

(7) Addiction and Mental Health Division (AMH) — An Office within DHS administering mental health and addiction programs and services.

(8) Adequate Record Keeping — Documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual Provider rules.

(9) Administrative Medical Examinations and Reports — Examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department of Human Services (DHS) branch office or requested or approved by DMAP to establish Client eligibility for a medical assistance program or for case-work planning.

(10) All Inclusive Rate — The Nursing Facility rate established for a facility. This rate includes all services, supplies, drugs and equipment as described in OAR 411-070-0085, and in the Pharmaceutical Services and

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the Home Enteral/Parenteral Nutrition and IV Services Provider rules, except as specified in OAR 410-120-1340, Payment.

(11) Allied Agency — Local and regional governmental agencies and regional authorities that contract with DHS to provide the delivery of services to covered individual. (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(12) Ambulance — A specially equipped and licensed vehicle for transporting sick or injured persons which meets the licensing standards of DHS or the licensing standards of the state in which the Provider is located.

(13) Ambulatory Surgical Center (ASC) — A facility licensed as an ASC by DHS.

(14) American Indian/Alaska Native (AI/AN) — A member of a federally recognized Indian tribe, band or group, an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(15) American Indian/Alaska Native (AI/AN) clinic — Clinics recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(16) Ancillary Services — Services supportive of or necessary to the provision of a primary service (e.g., anesthesiology is an ancillary service necessary for a surgical procedure); Typically, such medical services are not identified in the definition of a Condition/Treatment Pair, but are Medically Appropriate to support a service covered under the OHP Benefit Package; Ancillary Services and limitations are specified in the OHP Managed Care Rules related to the Prioritized List of Health Services (410-141-0480 through 410-141-0520), the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(17) Anesthesia Services — Administration of anesthetic agents to cause loss of sensation to the body or body part.

(18) Atypical Provider — Entity able to enroll as a Billing Provider (BP) or performing Provider for medical assistance programs related non-health care services but which does not meet the definition of health care Provider for National Provider Identification (NPI) purposes.

(19) Audiologist — A person licensed to practice Audiology by the State Board of Examiners for Speech Pathology and Audiology.

(20) Audiology — The application of principles, methods and procedures of measurement, testing, appraisal, prediction, consultation, counseling and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(21) Automated Information System (AIS) — A computer system that provides information on Clients' current eligibility status from DMAP by computerized phone or Web-based response.

(22) Benefit Package — The package of covered health care services for which the Client is eligible.

(23) Billing Agent or Billing Service — Third party or organization that contracts with a Provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the Provider.

(24) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to and/or receives payment from DMAP on behalf of a performing Provider and has been delegated the authority to obligate or act on behalf of the performing Provider.

(25) Buying Up — The practice of obtaining Client payment in addition to the DMAP or managed care plan payment to obtain a Non-Covered Service or item. (See 410-120-1350 Buying Up)

(26) By Report (BR) — Services designated, as BR require operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature, and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(27) Children, Adults and Families Division (CAF) — An office within DHS, responsible for administering self-sufficiency and child-protective programs.

(28) Children's Health Insurance Program (CHIP) — A federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by DMAP.

(29) Chiropractor — A person licensed to practice chiropractic by the relevant State Licensing Board.

(30) Chiropractic Services — Services provided by a licensed Chiropractor within the scope of practice, as defined under State law and Federal regulation.

(31) Citizen/Alien-Waived Emergency Medical (CAWEM) — Aliens granted lawful temporary resident status, or lawful permanent resident status under the Immigration and Nationality Act, are eligible only for emergency services and limited service for pregnant women. Emergency Services for CAWEM are defined in OAR 410-120-1210(3)(f).

(32) Claimant — a person who has requested a hearing.

(33) Client — A person who is currently receiving medical assistance (also known as a Recipient).

(34) Clinical Social Worker — A person licensed to practice clinical social work pursuant to State law.

(35) Contiguous Area — The area up to 75 miles outside the border of the State of Oregon.

(36) Contiguous Area Provider — A Provider practicing in a Contiguous Area.

(37) Copayments — The portion of a claim or medical, dental or pharmaceutical expense that a Client must pay out of their own pocket to a Provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment)

(38) Cost Effective — The lowest cost health care service or item that, in the judgment of DMAP staff or its contracted agencies, meets the medical needs of the Client.

(39) Current Dental Terminology (CDT) — A listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(40) Current Procedural Terminology (CPT) — The Physicians' CPT is a listing of descriptive terms and identifying codes for reporting Medical Services and procedures performed by Physicians and other health care Providers.

(41) Date of Receipt of a Claim — The date on which DMAP receives a claim, as indicated by the Internal Control Number (ICN) assigned to a claim. Date of Receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(42) Date of Service — The date on which the Client receives Medical Services or items, unless otherwise specified in the appropriate Provider rules. For items that are mailed or shipped by the Provider, the Date of Service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(43) Dental Emergency Services — Dental Services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(44) Dental Services — Services provided within the scope of practice as defined under State law by or under the supervision of a Dentist.

(45) Dentist — A person licensed to practice dentistry pursuant to State law of the state in which he/she practices dentistry, or a person licensed to practice dentistry pursuant to Federal law for the purpose of practicing dentistry as an employee of the Federal government.

(46) Denturist — A person licensed to practice denture technology pursuant to State law.

(47) Denturist Services — Services provided, within the scope of practice as defined under State law, by or under the personal supervision of a Denturist.

(48) Dental Hygienist — A person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to State law.

(49) Dental Hygienist with Limited Access Certification (LAC) — A person licensed to practice dental hygiene with LAC pursuant to State law.

(50) Department — DHS or its Division of Medical Assistance Programs (DMAP).

(51) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs or OMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMHD). Wherever the former

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Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(52) Department Representative — A person who represents the Department in a hearing and presents the Department's position.

(53) Diagnosis Code — As identified in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM), the primary Diagnosis Code is shown in all billing claims, unless specifically excluded in individual Provider rule(s). Where they exist, Diagnosis Codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(54) Diagnosis Related Group (DRG) — A system of classification of diagnoses and procedures based on the ICD-9-CM.

(55) Division of Medical Assistance Programs (DMAP) — An Office within DHS; DMAP is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP—Title XXI), and several other programs.

(56) Durable Medical Equipment (DME) and Medical Supplies — Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages and tubing.

(57) Electronic Data Interchange (EDI) — The exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, such other format as Oregon DHS will designate. (See OARs in Chapter 410, Division 001)

(58) EDI Submitter — The entity that establishes an electronic connection with Oregon DHS to submit or receive an electronic data transaction on behalf of a Provider.

(59) Electronic Eligibility Verification Service (EEVS) — Vendors of medical assistance eligibility information that have met the legal and technical specifications of DMAP in order to offer eligibility information to enrolled Providers of DMAP.

(60) Emergency Department — The part of a licensed Hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(61) Emergency Medical Services — (This definition does not apply to Clients with CAWEM Benefit Package. CAWEM emergency services are governed by OAR 410-120-1210 (3)(f)(B)). If an emergency medical condition is found to exist based on a medical triage screening examination, Emergency Medical Services necessary to stabilize the condition must be provided. This includes all treatment that may be necessary to assure, with reasonable medical probability, that no material deterioration of the patient's condition is likely to result from, or occur during, discharge of the Client or transfer of the Client to another facility.

(62) Emergency Transportation — Transportation necessary when a sudden, unexpected Emergency Medical Service creates a medical crisis requiring a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a Hospital, where appropriate emergency medical service is available.

(63) Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (also Medichex) — The Title XIX program of EPSDT Services for eligible Clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required Medically Appropriate health care services and to help DMAP Clients and their parents or guardians effectively use them.

(64) False Claim — A claim that a Provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and such inaccurate or misleading information would result, or has resulted, in an Overpayment.

(65) Family Planning — Services for Clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(66) Federally Qualified Health Center (FQHC) — A federal designation for a medical entity which receives grants under Section 329, 330, or 340 of the Public Health Service Act; or a facility designated as a FQHC by CMS upon recommendation of the U.S. Public Health Service.

(67) Fee-for-Service Provider — A medical Provider who is not reimbursed under the terms of an DMAP contract with a Prepaid Health Plan

(PHP), also referred to as a Managed Care Organization (MCO). A medical Provider participating in a PHP may be considered a Fee-for-Service Provider when treating Clients who are not enrolled in a PHP.

(68) Fraud — An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes Fraud under applicable federal or state law.

(69) Fully Dual Eligible — For the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare Clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage.

(70) General Assistance (GA) — Medical Assistance administered and funded 100% with State of Oregon funds through OHP.

(71) Healthcare Common Procedure Coding System (HCPCS)- A method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level I — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. DMAP uses HCPCS codes; however, DMAP uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(72) Health Maintenance Organization (HMO) — A public or private health care organization which is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(73) Hearing Aid Dealer — A person licensed by the Board of Hearing Aid Dealers to sell, lease or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(74) Home Enteral Nutrition — Services provided in the Client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract, as described in the Home Enteral/Parenteral Nutrition and IV Services Provider rules.

(75) Home Health Agency — A public or private agency or organization which has been certified by Medicare as a Medicare Home Health Agency and which is licensed by DHS as a Home Health Agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(76) Home Health Services — Part-time or intermittent skilled Nursing Services, other therapeutic services (Physical Therapy, Occupational Therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the Client's home.

(77) Home Intravenous (IV) Services — Services provided in the Client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydration fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(78) Home Parenteral Nutrition — Services provided in the Client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services rules.

(79) Hospice — a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare, accredited by the Oregon Hospice Association, and is listed in the Hospice Program Registry.

(80) Hospital — A facility licensed by the Office of Public Health Systems as a general Hospital which meets requirements for participation in the OHP under Title XVIII of the Social Security Act. Facilities licensed as Special Inpatient Care Facilities under the Office of Public Health System's definition of Hospital are not considered Hospitals by DMAP for reimbursement purposes; however, effective April 1, 2000, DMAP will reimburse a Special Inpatient Care Facility if CMS has certified the facility for participation in the Medicare Program as a Hospital. Out-of-state Hospitals will be considered Hospitals for reimbursement purposes if they are licensed as an Acute care or general Hospital by the appropriate licensing authority within that state, and if they are enrolled as a Provider of Hospital services with the Medicaid agency within that state.

(81) Hospital-Based Professional Services — Professional services provided by licensed Practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (DMAP 42) report for DMAP.

(82) Hospital Laboratory — A Laboratory providing professional technical Laboratory Services as outlined under Laboratory Services, in a

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Hospital setting, as either an Inpatient or Outpatient Hospital service whose costs are reported on the Hospital's cost report to Medicare and to DMAP.

(83) Indian Health Program — Any Indian Health Service facility, any Federally recognized Tribe or Tribal organization, or any FQHC with a 638 designation.

(84) Individual Adjustment Request (DMAP 1036) Form used to resolve an incorrect payment on a previously paid claim, including underpayments or Overpayments.

(85) Inpatient — a Hospital patient who is not an Outpatient.

(86) Inpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an Inpatient. (See Hospital Services rules for Inpatient covered services.)

(87) Institutional Level of Income Standards (ILIS) — Three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a Nursing Facility, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and individuals on ICF/MR waivers or eligibility for services under Seniors and People with Disabilities' (SPD) Home and Community Based Waiver.

(88) Institutionalized — A patient admitted to a Nursing Facility or Hospital for the purpose of receiving nursing and/or Hospital care for a period of 30 days or more.

(89) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) — Diagnosis Codes including volumes 1, 2, and 3, as revised annually.

(90) Laboratory — A facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare, to provide Laboratory Services within or a part from a Hospital. An entity is considered a Laboratory if materials are derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings. If an entity performs even one Laboratory test, including waived tests for these purposes, it is considered under the Clinical Laboratory Improvement Act (CLIA), to be a Laboratory.

(91) Laboratory Services — Those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a Physician or other licensed Practitioner of the healing arts within his/her scope of practice as defined under State law and provided to a patient by or under the direction of a Physician or appropriate licensed Practitioner in an office or similar facility, Hospital, or independent Laboratory.

(92) Licensed Direct Entry Midwife — A practitioner licensed by DHS' Public Health Division as a Licensed Direct Entry Midwife.

(93) Liability Insurance — Insurance that provides payment based on legal liability for injuries or illness. It includes, but is not limited to, automobile Liability Insurance, uninsured and underinsured motorist insurance, homeowner's Liability Insurance, malpractice insurance, product Liability Insurance, Worker's Compensation, and general casualty insurance. It also includes payments under state wrongful death statutes that provide payment for medical damages.

(94) Managed Care Organization (MCO) — Contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(95) Maternity Case Management — A program available to pregnant Clients. The purpose of Maternity Case Management is to extend prenatal services to include non-Medical Services, which address social, economic and nutritional factors. For more information refer to the Medical-Surgical Services rules.

(96) Medicaid — A federal and state funded portion of the medical assistance programs established by Title XIX of the Social Security Act, as amended, administered in Oregon by DHS.

(97) Medical Assistance Eligibility Confirmation — Verification through the AIS, an authorized DHS representative, an EEVS vendor or through presentation of a valid Medical Care Identification that a Client has an open assistance case, which includes medical benefits.

(98) Medical Services — Care and treatment provided by a licensed medical Provider directed at preventing, diagnosing, treating or correcting a medical problem.

(99) Medical Transportation — Transportation to or from covered Medical Services.

(100) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of an OHP Client or a Provider of the service or medical supplies; and

(d) The most Cost Effective of the alternative levels of Medical Services or medical supplies which can be safely provided to an DMAP Client or Primary Care Manager (PCM) Member in the PHP's or PCM's judgment.

(101) Medicare — A federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for Inpatient services in a Hospital or skilled Nursing Facility, home health care, and Hospice care; and

(b) Medical Insurance (Part B) for Physicians' services, Outpatient Hospital services, home health care, end-stage renal dialysis, and other Medical Services and supplies;

(c) Prescription drug coverage (Part D) — Covered Part D drugs include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act; also includes medical supplies associated with the injection of insulin; Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). (See OAR 410, Division 121 for limitations).

(102) Medichex for Children and Teens — See EPSDT.

(103) National Provider Identification (NPI) — Federally directed Provider number mandated for use on HIPAA covered transactions; individuals, Provider Organizations and Subparts of Provider Organizations that meet the definition of health care Provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI; Medicare covered entities are required to apply for an NPI.

(104) Naturopath — A person licensed to practice naturopathy pursuant to State law.

(105) Naturopathic Services — Services provided within the scope of practice as defined under State law.

(106) Non Covered Services — Services or items for which DMAP is not responsible for payment. Non-Covered Services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and,

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) The individual DMAP Provider rules.

(107) Nurse Anesthetist, C.R.N.A. — A registered nurse licensed in the State of Oregon who is currently certified by the American Association of Nurse Anesthetists Council on Certification.

(108) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a Nurse Practitioner pursuant to State law.

(109) Nurse Practitioner Services — Services provided within the scope of practice of a Nurse Practitioner as defined under State law and by rules of the Board of Nursing.

(110) Nursing Facility — A facility licensed and certified by the DHS' SPD defined in 411-070-0005.

(111) Nursing Services — Health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by State law.

(112) Nutritional Counseling — Counseling which takes place as part of the treatment of a person with a specific condition, deficiency or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(113) Occupational Therapist — A person licensed by the State Board of Examiners for Occupational Therapy.

(114) Occupational Therapy — The functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, aging process, or psychological disability; the treatment utilizes

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task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(115) Optometric Services — Services provided, within the scope of practice of optometrists as defined under State law.

(116) Optometrist — A person licensed to practice optometry pursuant to State law.

(117) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(118) Out-of-State Providers — Any Provider located outside the borders of Oregon:

(a) Contiguous area Providers are those located no more than 75 miles from the border of Oregon;

(b) Non-Contiguous Area Providers are those located more than 75 miles from the borders of Oregon.

(119) Outpatient — a Hospital patient who:

(a) Is treated and released the same day or is admitted to the Hospital and discharged before midnight and is not listed on the following day's census, excluding a patient who:

(A) Is admitted and transferred to another Acute care Hospital on the same day;

(B) Expires on the day of admission; or

(C) Is born in the Hospital.

(b) Is admitted for ambulatory surgery, to a birthing center, a treatment or observation room, or a short-term stay bed;

(c) Receives observation services provided by a Hospital, including the use of a bed and periodic monitoring by Hospital nursing or other staff for the purpose of evaluation of a patient's medical condition for a maximum of 48 hours; or

(d) Receives routine preparation services and recovery for diagnostic services provided in a Hospital Outpatient department.

(120) Outpatient Hospital Services — Services that are furnished in a Hospital for the care and treatment of an Outpatient. (See Hospital rules for Outpatient covered services).

(121) Overdue Claim — A Valid Claim that is not paid within 45 days of the date it was received.

(122) Overpayment — Payment(s) made by DMAP to a Provider in excess of the correct DMAP payment amount for a service. Overpayments are subject to repayment to DMAP.

(123) Overuse — Use of medical goods or services at levels determined by DMAP medical staff and/or medical consultants to be medically unnecessary or potentially harmful.

(124) Panel — The Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(125) Payment Authorization — Authorization granted by the responsible DHS agency, office or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(126) Peer Review Organization (PRO) — An entity of health care practitioners of services contracted by the State to review services ordered or furnished by other practitioners in the same professional field.

(127) Pharmaceutical Services — Services provided by a Pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his/her scope of practice.

(128) Pharmacist — A person licensed to practice pharmacy pursuant to state law.

(129) Physical Capacity Evaluation — An objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(130) Physical Therapist — A person licensed by the relevant State licensing authority to practice Physical Therapy.

(131) Physical Therapy — Treatment comprising exercise, massage, heat or cold, air, light, water, electricity or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis or treatment of a human being. Physical Therapy shall not include radiology or electrosurgery.

(132) Physician — A person licensed to practice medicine pursuant to state law of the state in which he/she practices medicine, or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government.

(133) Physician Assistant — A person licensed as a Physician Assistant in accordance with ORS 677. Physician Assistants provide

Medical Services under the direction and supervision of an Oregon licensed Physician according to a practice description approved by the Board of Medical Examiners.

(134) Physician Services — Services provided, within the scope of practice as defined under state law, by or under the personal supervision of a Physician.

(135) Podiatric Services — Services provided within the scope of practice of Podiatrists as defined under state law.

(136) Podiatrist — A person licensed to practice podiatric medicine pursuant to state law.

(137) Post-Payment Review — Review of billings and/or other medical information for accuracy, medical appropriateness, level of service or for other reasons subsequent to payment of the claim.

(138) Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the Practitioner's license and/or certification.

(139) Premium Sponsorship — Premium donations made for the benefit of one or more specified DMAP Clients (See 410-120-1390).

(140) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, or mental health organization that contracts with DMAP and/or AMH on a case managed, prepaid, capitated basis under OHP. PHP's may be a Chemical Dependency Organization (CDO), Dental Care Organization (DCO), Fully Capitated Health Plan (FCHP), Mental Health Organization (MHO), or Physician Care Organization (PCO)

(141) Primary Care Physician — A Physician who has responsibility for supervising, coordinating and providing initial and primary care to patients, initiating Referrals for consultations and specialist care, and maintaining the continuity of patient care.

(142) Primary Care Provider (PCP) — Any enrolled medical assistance Provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified Clients. PCPs initiate Referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of Medically Appropriate Client care.

(143) Prior Authorization (PA) — Payment Authorization for specified Medical Services or items given by DMAP staff, or its contracted agencies prior to provision of the service. A Physician Referral is not a PA.

(144) Prioritized List of Health Services — Also referred to as the Prioritized List, the Oregon Health Services Commission's (HSC) listing of health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The Prioritized List governs medical assistance programs' health services and Benefit Packages pursuant to these General Rules (OAR 410-120-0000 et seq.) and OAR 410-141-0480 through 410-141-0520.

(145) Private Duty Nursing Services — Nursing Services provided within the scope of license by a registered nurse or a licensed practical nurse, under the general direction of the patient's Physician to an individual who is not in a health care facility.

(146) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items, also termed a performing Provider, or bills, obligates and receives reimbursement on behalf of a performing Provider of services, also termed a Billing Provider (BP). The term Provider refers to both Performing Providers and BPs unless otherwise specified.

(147) Provider Organization — a group practice, facility, or organization that is:

(a) An employer of a Provider, if the Provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the Provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the Provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with DHS, and payments are made to the group practice, facility or organization.

(e) If such entity solely submits billings on behalf of Providers and payments are made to each Provider, then the entity is an agent.

(See Subparts of Provider Organization)

(148) Public Health Clinic — A clinic operated by county government.

(149) Public Rates — The charge for services and items that Providers, including Hospitals and Nursing Facilities, made to the general

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public for the same service on the same date as that provided to DMAP Clients.

(150) Qualified Medicare Beneficiary (QMB) — A Medicare beneficiary, as defined by the Social Security Act and its amendments.

(151) Qualified Medicare and Medicaid Beneficiary (QMM) — A Medicare Beneficiary who is also eligible for DMAP coverage.

(152) Quality Improvement Organization (QIO) — An entity that has a contract with CMS under Part B of Title XI to perform utilization and quality control review of the health care furnished, or to be furnished, to Medicare and Medicaid Clients; formerly known as a Peer Review Organization.

(153) Radiological Services — Those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a Physician or other licensed Practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a Physician or appropriate licensed Practitioner in an office or similar facility, Hospital, or independent radiological facility.

(154) Recipient — A person who is currently eligible for medical assistance (also known as a Client).

(155) Recoupment — An accounts receivable system that collects money owed by the Provider to DMAP by withholding all or a portion of a Provider's future payments.

(156) Referral — The transfer of total or specified care of a Client from one Provider to another. As used by DMAP, the term Referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of Clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a Referral is required before non-emergency care is covered by the PHP or DMAP.

(157) Remittance Advice (RA) — The automated notice a Provider receives explaining payments or other claim actions. It is the only notice sent to Providers regarding claim actions.

(158) Request for Hearing — A clear expression, in writing, by an individual or representative that the person wishes to appeal a Department decision or action and wishes to have the decision considered by a higher authority.

(159) Retroactive Medical Eligibility — Eligibility for medical assistance granted to a Client retroactive to a date prior to the Client's application for medical assistance.

(160) Sanction — An action against Providers taken by DMAP in cases of Fraud, misuse or Abuse of DMAP requirements.

(161) School Based Health Service — A health service required by an Individualized Education Plan (IEP) during a child's education program which addresses physical or mental disabilities as recommended by a Physician or other licensed Practitioner.

(162) Seniors and People with Disabilities Division (SPD) — An Office of DHS responsible for the administration of programs for seniors and people with disabilities.

(163) Service Agreement — An agreement between DMAP and a specified Provider to provide identified services for a specified rate. Service Agreements may be limited to services required for the special needs of an identified Client. Service Agreements do not preclude the requirement for a Provider to enroll as a Provider.

(164) Sliding Fee Schedule — A fee schedule with varying rates established by a Provider of health care to make services available to indigent and low-income individuals. The Sliding Fee Schedule is based on ability to pay.

(165) Social Worker — A person licensed by the Board of Clinical Social Workers to practice clinical social work.

(166) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology.

(167) Speech-Language Pathology Services — The application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(168) Spend-Down — The amount the Client must pay for medical expenses each month before becoming eligible for medical assistance under the Medically Needy Program. The spend-down is equal to the difference between the Client's total countable income and Medically Needy program income limits.

(169) State Facility — A Hospital or training center operated by the State of Oregon, which provides long-term medical or psychiatric care.

(170) Subparts (of a Provider Organization) — For NPI application, Subparts of a health care Provider Organization would meet the definition of health care Provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically, or has an entity do so on its behalf, could be components of an organization or separate physical locations of an organization.

(171) Subrogation — Right of the State to stand in place of the Client in the collection of Third Party Resources (TPR).

(172) Supplemental Security Income (SSI) — A program available to certain aged and disabled persons which is administered by the Social Security Administration through the Social Security office.

(173) Surgical Assistant — A person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(174) Suspension — A Sanction prohibiting a Provider's participation in DHS medical assistance programs by deactivation of the Provider's DMAP assigned billing number for a specified period of time. No payments, Title XIX or State Funds, will be made for services provided during the Suspension. The number will be reactivated automatically after the Suspension period has elapsed.

(175) Targeted Case Management (TCM) — Activities that will assist the Client in a target group in gaining access to needed medical, social, educational and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services often provided by Allied Agency Providers.

(176) Termination — A Sanction prohibiting a Provider's participation in DMAP's programs by canceling the Provider's DMAP assigned billing number and agreement. No payments, Title XIX or State Funds, will be made for services provided after the date of Termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by DMAP at the time of Termination.

(177) Third Party Resource (TPR) — A medical or financial resource which, under law, is available and applicable to pay for Medical Services and items for an DMAP Client.

(178) Transportation — See Medical Transportation.

(179) Type A Hospital — A Hospital identified by the Office of Rural Health as a Type A Hospital.

(180) Type B AAA Unit — A Type B Area Agency on Aging (AAA) funded by Oregon Project Independence (OPI), Title III — Older Americans Act, and Title XIX of the Social Security Act.

(181) Type B Hospital — A Hospital identified by the Office of Rural Health as a Type B Hospital.

(182) Usual Charge (UC) — The lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The Provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The Provider's lowest charge per unit of service on the same date that is advertised, quoted or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the Provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200% of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to Third Party Resources (TPR) are to be considered.

(183) Utilization Review (UR) — The process of reviewing, evaluating, and assuring appropriate use of medical resources and services. The review encompasses quality, quantity, and appropriateness of medical care to achieve the most effective and economic use of health care services.

(184) Valid Claim — An invoice received by DMAP or the appropriate Department office for payment of covered health care services rendered to an eligible Client which:

(a) Can be processed without obtaining additional information from the Provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(185) Vision Services — Provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS

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37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

410-120-1280

Billing

(1) A Provider enrolled with the Division of Medical Assistance Programs (DMAP) must bill using the DMAP assigned provider number, in addition to the National Provider Identification (NPI) number, if the NPI is available.

(2) For Medicaid covered services the Provider must not bill DMAP more than the Provider's Usual Charge (see definitions) or the reimbursement specified in the applicable Provider rules:

(a) A Provider enrolled with DMAP or providing services to a Client in a managed care plan under the Oregon Health Plan (OHP) must not seek payment for any services covered by Medicaid fee-for-service or through contracted managed care plans, except any coinsurance, co-payments, and deductibles expressly authorized by the General Rules, OHP Rules or individual Provider rules:

(A) An DMAP Client for covered benefits; or

(B) A financially responsible relative or representative of that individual.

(b) Exceptions under which an enrolled Provider may seek payment from an eligible Client or Client representative are described below:

(A) The Provider may seek any applicable coinsurance, Copayments and deductibles expressly authorized by DMAP rules in OAR 410 division 120, OAR 410 division 141, or any other individual Provider rules;

(B) The Client did not inform the Provider of OHP eligibility, of OHP managed health plan enrollment, or of other third party insurance coverage, either at the time the service was provided or subsequent to the provision of the service or item, and as a result the Provider could not bill DMAP, the managed health care plan, or third party payer for any reason, including timeliness of claims, lack of Prior Authorization, etc. The Provider must document attempts to obtain information on eligibility or enrollment;

(C) The Client became eligible for DMAP benefits retroactively but did not meet other established criteria described in these General Rules and the appropriate Provider rules (i.e., retroactive authorization);

(D) A Third Party Resource made payments directly to the Client for services provided;

(E) The Client did not have full DMAP benefits. Clients receiving a limited Medicaid coverage, such as the Citizen Alien Waived Emergency Medical Program, may be billed for services that are not benefits of those programs. The Provider must document pursuant to section (3) of this rule that the Client was informed that the service or item would not be covered by DMAP;

(F) The Client has requested continuation of benefits during the Administrative Hearing process and final decision was not in favor of the Client. The Client will be responsible for any charges since the effective date of the initial notice of denial;

(G) A Client cannot be billed for services or treatment that has been denied due to Provider error (e.g., required documentation not submitted, Prior Authorization not obtained, etc.);

(H) The charge is for a Copayment when a Client is required to make a Copayment as outlined in DMAP General Rules (410-120-1230) and individual Provider rules;

(I) In exceptional circumstances, a Client may request continuation of a covered service while asserting the right to privately pay for that service. Under this exceptional circumstance, a Client can be billed for a covered service if the Client is informed in advance of receiving the specific service of all of the following:

(i) That the requested service is a covered service and that the Provider would be paid in full for the covered service if the claim is submitted to DMAP or the Client's managed care plan, if the Client is a member of a managed care plan; and

(ii) The estimated cost of the covered service, including all related charges, the amount that DMAP, and that the Client cannot be billed for an amount greater than the maximum DMAP reimbursable rate or managed care plan rate, if the Client is a member of a managed care plan; and

(iii) That the Provider cannot require the Client to enter into a voluntary payment agreement for any amount for the covered service; and

(iv) That, if the Client knowingly and voluntarily agrees to pay for the covered service, the Provider must not submit a claim for payment to DMAP or the Client's managed care plan; and

(v) The Provider must be able to document in writing, signed by the Client or the Client's representative, that the Client was provided the information described above; that the Client was provided an opportunity to ask questions, obtain additional information and consult with the Client's case-worker or Client representative; and the Client agreed to be responsible for payment by signing an agreement incorporating all of the information described above. The Client must be given a copy of the signed agreement. A Provider must not submit a claim for payment for covered services to DMAP or to the Client's managed care plan that is subject to such agreement.

(3) Non-Covered Medicaid Services:

(a) A Provider may bill a Client for services that are not covered by DMAP or the managed care plan. However, the Client must be informed in advance of receiving the specific service that it is not covered, the estimated cost of the service, and that the Client or Client's representative is financially responsible for payment for the specific service. Providers must be able to document in writing signed by the Client or Client's representative, that the Client was provided this information and the Client knowingly and voluntarily agreed to be responsible for payment;

(b) Services which are considered non-covered are listed in the following rules (in rule precedence order):

(A) OAR 410-141-0480, Benefit Package of Covered Services; and

(B) OAR 410-141-0520, Prioritized List of Health Services; and

(C) OAR 410-120-1200, Medical Assistance Benefits: Excluded services and limitations; and

(D) Applicable Provider rules.

(c) A Client cannot be billed for missed appointments. A missed appointment is not considered to be a distinct Medicaid service by the federal government and as such is not billable to the Client or DMAP.

(4) All claims must be billed on the appropriate form as described in the individual Provider rules or submitted electronically in a manner authorized by the Department of Human Services (DHS) Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et. seq.

(5) Upon submission of a claim to DMAP for payment, the Provider agrees that it has complied with all DMAP Provider rules. Submission of a claim, however, does not relieve the Provider from the requirement of a signed Provider agreement.

(6) All billings must be for services provided within the Provider's licensure or certification.

(7) It is the responsibility of the Provider to submit true and accurate information when billing DMAP. Use of a Billing Provider does not abrogate the Performing Provider's responsibility for the truth and accuracy of submitted information.

(8) A claim must not be submitted prior to delivery of service. A claim must not be submitted prior to dispensing, shipment or mailing of the item unless specified otherwise in DMAP's individual Provider rules.

(9) A claim is considered a Valid Claim only if all required data is entered on or attached to the claim form. See the appropriate Provider rules and supplemental information for specific instructions and requirements. Also, see Valid Claim in the Definitions section of these rules.

(10) The HIPAA Codes rules, 45 CFR 162, apply to all Medicaid Code Set requirements, including the use of diagnostic or procedure codes for Prior Authorization, claims submissions and payments. Code Set has the meaning established in 45 CFR 162.100, and it includes the codes and the descriptors of the codes. These federal Code Set requirements are mandatory and DMAP lacks any authority to delay or alter their application or effective dates as established by the U.S. Department of Health and Human Services.

(a) DMAP will adhere to the national Code Set requirements in 45 CFR 162.1000 – 162.1011, regardless of whether a request is made verbally, or a claim is submitted on paper or electronically;

(b) Periodically, DMAP will update its Provider rules and tables to conform to national codes. In the event of an alleged variation between an DMAP-listed code and a national code, DMAP will apply the national code in effect on the date of request or date of service and the Provider, and the DMAP-listed code may be used for the limited purpose of describing DMAP's intent in identifying the applicable national code;

(c) Only codes with limitations or requiring Prior Authorization are noted in rules. National Code Set issuance alone should not be construed as DMAP coverage, or a covered service.

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(d) DMAP adopts by reference the National Code Set revisions, deletions, and additions issued and published by the American Medical Association (Current Procedural Terminology – CPT) and on the CMS website (Healthcare Common Procedural Coding System – HCPCS) to be effective January 1, 2007. This code adoption should not be construed as DMAP coverage, or a covered service.

(11) Diagnosis Code Requirement:

(a) A primary diagnosis code is required on all claims, using the HIPAA nationally required diagnosis Code Set, unless specifically excluded in individual DMAP Provider rules;

(b) When billing using ICD-9-CM codes, all diagnosis codes are required to the highest degree of specificity;

(c) Hospitals are always required to bill using the 5th digit, in accordance with methodology used in the Medicare Diagnosis Related Groups.

(12) For claims requiring a procedure code the Provider must bill as instructed in the appropriate DMAP Provider rules and must use the appropriate HIPAA procedure Code Set such as CPT, HCPCS, ICD-9-CM, ADA CDT, NDC, established according to 45 CFR 162.1000 to 162.1011, which best describes the specific service or item provided. For claims that require the listing of a diagnosis or procedure code as a condition of payment, the code listed on the claim form must be the code that most accurately describes the Client's condition and the service(s) provided. Providers must use the ICD-9-CM diagnosis coding system when a diagnosis is required unless otherwise specified in the appropriate individual Provider rules. Hospitals must follow national coding guidelines:

(a) When there is no appropriate descriptive procedure code to bill DMAP, the Provider must use the code for Unlisted Services. Instructions on the specific use of unlisted services are contained in the individual Provider rules. A complete and accurate description of the specific care, item, or service must be documented on the claim;

(b) Where there is one CPT, CDT or HCPCS code that according to CPT, CDT and HCPCS coding guidelines or standards, describes an array of services the Provider must bill DMAP using that code rather than itemizing the services under multiple codes. Providers must not "unbundled" services in order to increase DMAP payment.

(13) No Provider or its contracted agency (including Billing Providers) shall submit or cause to be submitted to DMAP:

(a) Any false claim for payment;

(b) Any claim altered in such a way as to result in a payment for a service that has already been paid;

(c) Any claim upon which payment has been made or is expected to be made by another source unless the amount paid or to be paid by the other party is clearly entered on the claim form;

(d) Any claim for furnishing specific care, item(s), or service(s) that have not been provided.

(14) The Provider is required to submit an Individual Adjustment Request, or to refund the amount of the overpayment, on any claim where the Provider identifies an overpayment made by DMAP.

(15) A Provider who, after having been previously warned in writing by DMAP or the Department of Justice about improper billing practices, is found to have continued such improper billing practices and has had an opportunity for a contested case hearing, shall be liable to DMAP for up to triple the amount of the DMAP established overpayment received as a result of such violation.

(16) Third Party Resources (TPR):

(a) Federal law requires that state Medicaid agencies take all reasonable measures to ensure that in most instances DMAP will be the payer of last resort;

(b) Providers must make reasonable efforts to obtain payment first from other resources. For the purposes of this rule "reasonable efforts" include, but are not limited to:

(A) Determining the existence of insurance or other resource by asking the recipient;

(B) Using an insurance database such as Electronic Eligibility Verification Services (EEVS) available to the Provider;

(C) Verifying the Client's insurance coverage through the Automated Information System (AIS) or the Medical Care Identification on each date of service and at the time of billing.

(c) Except as noted in (16)(d)(A through E), when third party coverage is known to the Provider, as indicated on the Medical Care Identification or through AIS, or any other means available, prior to billing DMAP the Provider must:

(A) Bill the TPR; and

(B) Except for pharmacy claims billed through DMAP's point-of-sale system the Provider must have waited 30 days from submission date of a clean claim and have not received payment from the third party; and

(C) Comply with the insurer's billing and authorization requirements; and

(D) Appeal a denied claim when the service is payable in whole or in part by an insurer.

(d) In accordance with federal regulations the Provider must bill the TPR prior to billing DMAP, except under the following circumstances:

(A) The covered health service is provided by an Intermediate Care Facility Services for the Mentally Retarded (ICF/MR);

(B) The covered health service is provided by institutional services for the mentally and emotionally disturbed;

(C) The covered health services are prenatal and preventive pediatric services;

(D) Services are covered by a third party insurer through an absent parent where the medical coverage is administratively or court ordered;

(E) When another party may be liable for an injury or illness (see definition of Liability Insurance), the Provider may bill the insurer or liable party or place a lien against a settlement or the Provider may bill DMAP. The Provider may not both place a lien against a settlement and bill DMAP. The Provider may withdraw the lien and bill DMAP within 12 months of the date of service. If the Provider bills DMAP the Provider must accept payment made by DMAP as payment in full.

(F) The Provider must not return the payment made by DMAP in order to accept payment from a liability settlement or liability insurer or place a lien against that settlement:

(i) In the circumstances outlined in (16)(d)(A through E) above, the Provider may choose to bill the primary insurance prior to billing DMAP. Otherwise, DMAP will process the claim and, if applicable, will pay the DMAP allowable rate for these services and seek reimbursement from the liable third party insurance plan;

(ii) In making the decision to bill DMAP the Provider should be cognizant of the possibility that the third party payer may reimburse the service at a higher rate than DMAP, and that, once DMAP makes payment no additional billing to the third party is permitted by the Provider.

(e) The Provider may bill DMAP directly for services that are never covered by Medicare or another insurer on the appropriate form identified in the relevant Provider rules. Documentation must be on file in the Provider's records indicating this is a non-covered service for purposes of Third Party Resources. See the individual Provider rules for further information on services that must be billed to Medicare first;

(f) Providers are required to submit an Individual Adjustment Request showing the amount of the third party payment or to refund the amount received from another source within 30 days of the date the payment is received. Failure to submit the Individual Adjustment Request within 30 days of receipt of the third party payment or to refund the appropriate amount within this time frame is considered concealment of material facts and grounds for recovery and/or sanction;

(A) When a Provider receives a payment from any source prior to the submission of a claim to DMAP, the amount of the payment must be shown as a credit on the claim in the appropriate field;

(B) Except as described in (15), any Provider who accepts third party payment for furnishing a service or item to a DMAP Client shall:

(i) Submit an Individual Adjustment Request after submitting a claim to DMAP following instructions in the individual Provider rules and supplemental billing information, indicating the amount of the third party payment; or

(ii) When the Provider has already accepted payment from DMAP for the specific service or item, the Provider shall make direct payment of the amount of the third party payment to DMAP. When the Provider chooses to directly repay the amount of the third party payment to DMAP, the Provider must indicate the reason the payment is being made and must submit with the check:

(I) An Individual Adjustment Request which identifies the original claim, name and number of the Client, date of service and item(s) or service(s) for which the repayment is made; or

(II) A copy of the Remittance Advice showing the original DMAP payment.

(g) DMAP reserves the right to make a claim against any third party payer after making payment to the Provider of service. DMAP may pursue alternate resources following payment if it deems this a more efficient approach. Pursue alternate resources includes, but is not limited to, requesting the Provider to bill the third party and to refund DMAP in accordance with (15) of this rule;

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(h) For services rendered to a Medicare and Medicaid dual eligible Client, DMAP may request the Provider to submit a claim for Medicare payment and the Provider must honor that request. Under federal regulation, a Provider agrees not to charge a beneficiary (or the state as the beneficiary's subrogee) for services for which a Provider failed to file a timely claim (42 CFR 424) with Medicare despite being requested to do so.

(i) If Medicare is the primary payer and Medicare denies payment, Medicare appeals must be timely pursued and Medicare denial must be obtained prior to submitting the claim for payment to DMAP. Medicare denial on the basis of failure to submit a timely appeal may result in DMAP reducing from the amount of the claim any amount DMAP determines could have been paid by Medicare.

(17) Full Use of Alternate Resources:

(a) DMAP will generally make payment only when other resources are not available for the Client's medical needs. Full use must be made of reasonable alternate resources in the local community;

(b) Except as provided in subsection (18) of this rule, alternate resources may be available:

(A) Under a federal or state worker's compensation law or plan;

(B) For items or services furnished by reason of membership in a prepayment plan;

(C) For items or services provided or paid for directly or indirectly by a health insurance plan or as health benefits of a governmental entity, such as:

(i) Armed Forces Retirees and Dependents Act (CHAMPVA);

(ii) Armed Forces Active Duty and Dependents Military Medical Benefits Act (CHAMPUS); and

(iii) Medicare Parts A and B.

(D) To residents of another state under that state's Title XIX or state funded medical assistance programs; or

(E) Through other reasonably available resources.

(18) Exceptions:

(a) Indian Health Services or Tribal Health Facilities. Pursuant to 42 CFR 35.61 subpart G and the Memorandum of Agreement in OAR 310-146-0000, Indian Health Services facilities and tribal facilities operating under a section 638 agreement are payors of last resort, and are not considered an alternate resource or TPR;

(b) Veterans Administration. Veterans who are also eligible for Medicaid benefits are encouraged to utilize Veterans' Administration facilities whenever possible. Veterans' benefits are prioritized for service related conditions and as such are not considered an alternate or TPR.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-74; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81, Renumbered from 461-013-0050, 461-013-0060, 461-013-0090 & 461-013-0020; AFS 47-1982, f. 4-30-82, & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 42-1983, f. 9-2-83, ef. 10-1-83; AFS 45-1983, f. 9-19-83, ef. 10-1-83; AFS 6-1984(Temp), f. 2-28-84, ef. 3-1-84; AFS 36-1984, f. & ef. 8-20-84; AFS 24-1985, f. 4-24-85, cert. ef. 6-1-85; AFS 33-1986, f. 4-11-86, ef. 6-1-86; AFS 43-1986, f. 6-13-86, ef. 7-1-86; AFS 57-1986, f. 7-25-86, ef. 8-1-86; AFS 14-1987, f. 5-31-87, ef. 4-1-87; AFS 38-1988, f. 5-17-88, cert. ef. 6-1-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0140, 461-013-0150, 461-013-0175 & 461-013-0180; HR 19-1990, f. & cert. ef. 7-9-90; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0260, 410-120-0280, 410-120-0300 & 410-120-0320; HR 31-1994, f. & cert. ef. 11-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-10-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 30-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2002, f. 6-14-02 cert. ef. 8-1-02; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 73-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 67-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

410-120-1340 Payment

(1) The Division of Medical Assistance Programs (DMAP) will make payment only to the enrolled Provider who actually performs the service or to the Provider's enrolled Billing Provider for covered services rendered to eligible Clients. Any contracted Billing Agent or Billing Service submitting claims on behalf of a Provider but not receiving payment in the name of or on behalf of the Provider does not meet the requirements for Billing Provider enrollment. If electronic transactions will be submitted, Billing Agents and Billing Services must register and comply with Department of Human Services (DHS) Electronic Data Interchange (EDI) rules, OAR 410-001-0100 et.seq. DMAP may require that payment for services be made only after review by DMAP.

(2) DMAP or the Department of Human Services (DHS) office administering the program under which the billed services or items are provided sets Fee-for-Service (FFS) payment rates.

(3) All FFS payment rates are the rates in effect on the date of service that are the lesser of the amount billed, the DMAP maximum allowable amount or the reimbursement specified in the individual program Provider rules:

(a) Amount billed may not exceed the Provider's Usual Charge (see definitions);

(b) DMAP's maximum allowable rate setting process uses the following methodology. The rates are posted on the DMAP web site at http://www.oregon.gov/DHS/healthplan/data_pubs/feeschedule/main.shtml, and updated periodically:

(A) For all CPT/HCPCS codes assigned a Relative Value Unit (RVU) weight DMAP converted to the 2006 Fully Implemented Non-Facility Total RVU weights published in the Federal Register November 21, 2005 to be effective January 1, 2006:

(i) The base rate for labor and delivery (59400-59622) is \$38.80;

(ii) CPT codes 92340-92342 and 92352-92353 remain at a flat rate of \$25.00;

(iii) All remaining RVU weight based CPT/HCPCS codes have a base rate of \$25.95;

(B) Surgical assist reimburses at 20% of the surgical rate;

(C) The base rate for anesthesia services 00100-01996 is \$23.35 and is based on per unit of service;

(D) Non-RVU weight based Lab are paid at 97% of 62% or Medicare's rates or as minimally required by Medicare. Other non-RVU Lab services are priced based on the Centers for Medicare and Medicaid Service (CMS) mandates;

(E) All approved Ambulatory Surgical Center (ASC) procedures are priced using Medicare's Group assignment for each surgical procedure;

(F) Physician administered drugs billed under a HCPCS code are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed the rate will be based upon Average Wholesale Price (AWP). Pricing information for AWP is provided by First Data Bank. These rates may change periodically based on drug costs;

(G) All procedures used for vision materials and supplies are based on contracted rates which include acquisition cost plus shipping and handling;

(c) Individual Provider rules may specify reimbursement rates for particular services or items.

(4) DMAP reimburses Inpatient Hospital service under the DRG methodology, unless specified otherwise in the Hospital services rules. Reimbursement for services, including claims paid at DRG rates, will not exceed any Upper Limits established by federal regulation.

(5) DMAP reimburses all out-of-state Hospital services at Oregon DRG or fee-for-service rates as published in the Hospital Services rules (OAR 410 division 125) unless the Hospital has a contract or Service Agreement with DMAP to provide highly specialized services.

(6) Payment rates for in-home services provided through DHS Seniors and People with Disabilities Division (SPD) will not be greater than the current DMAP rate for Nursing Facility payment.

(7) DHS sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities, psychiatric and rehabilitative care facilities at a rate:

(a) That is consistent with similar services provided in the State of Oregon; and

(b) Is the lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) Is the rate established by SPD for out-of-state Nursing Facilities.

(8) DMAP will not make payment on claims that have been assigned, sold, or otherwise transferred or on which the Billing Provider, Billing Agent or Billing Service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a Provider for accounts receivable.

(9) DMAP will not make a separate payment or copayment to a Nursing Facility or other Provider for services included in the Nursing Facility's All-Inclusive Rate. The following services are not included in the All-Inclusive Rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services (OAR 410 division 121) and Home Enteral/Parenteral Nutrition and IV Services Provider rules, (OAR 410 division 148);

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(b) Physical Therapy, Speech Therapy, and Occupational Therapy provided by a non-employee of the Nursing Facility within the appropriate program Provider rules, (OAR 410 division 131 and 129);

(c) Continuous oxygen which exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment and Medical Supplies Provider rules, (OAR 410 division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services Provider rules, (OAR 410 division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services Provider rules, (OAR 410 division 130);

(f) Medical services provided by Physician or other Provider of medical services, such as radiology and Laboratory, as outlined in the Medical-Surgical Services Provider rules, (OAR 410 division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment and Medical Supplies Provider rules, (OAR 410 division 122).

(10) DMAP reimburses Hospice services on a per diem basis dependent upon the level of care being provided. A separate payment will not be made for services included in the core package of services as outlined in OAR 410 division 142.

(11) Payment for DMAP Clients with Medicare and Medicaid:

(a) DMAP limits payment to the Medicaid allowed amount less the Medicare payment up to the DMAP allowable rate. DMAP payment cannot exceed the co-insurance and deductible amounts due;

(b) DMAP pays the DMAP allowable rate for DMAP covered services that are not covered by Medicare.

(12) For Clients with Third-Party Resources (TPR), DMAP pays the DMAP allowed rate less the TPR payment but not to exceed the billed amount.

(13) DMAP payments, including contracted Prepaid Health Plan (PHP) payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For DMAP such payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding DMAP's allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain Payment Authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual Provider rules.

(14) Payment by DMAP does not limit DHS or any state or federal oversight entity from reviewing or auditing a claim before or after the payment. Payment may be denied or subject to recovery if medical review, audit or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care, or medical appropriateness of the care or payment.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-78; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

410-120-1380

Compliance with Federal and State Statutes

(1) When a Provider submits a claim for medical services or supplies provided to an Division of Medical Assistance Programs (DMAP) Client, DMAP will deem the submission as a representation by the medical Provider to the Medical Assistance Program of the medical Provider's compliance with the applicable sections of the federal and state statutes referenced in this rule:

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;

(b) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).

(c) Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, the Provider must comply and, as indicated, cause all

sub-contractors to comply with the following federal requirements to the extent that they are applicable to the goods and services governed by these rules. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time:

(A) The Provider must comply and cause all subcontractors to comply with all federal laws, regulations, executive orders applicable to the goods and services provided under these rules. Without limiting the generality of the foregoing, the Provider expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the goods and services provided under these rules:

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

(iii) The Americans with Disabilities Act of 1990, as amended;

(iv) Executive Order 11246, as amended;

(v) The Health Insurance Portability and Accountability Act of 1996;

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (viii) all regulations and administrative rules established pursuant to the foregoing laws;

(viii) All other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations;

(ix) All federal law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the goods and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402.

(B) Any Provider entity that receives or makes annual payments under the Title XIX State Plan of at least \$5,000,000, as a condition of receiving such payments, shall:

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse; and

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in (i), the rights of the employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(B) If the goods and services governed under these rules exceed \$10,000, the Provider must comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in DHS of Labor regulations (41 CFR Part 60);

(C) If the goods and services governed under these rules exceed \$100,000, the Provider must comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act — 33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Department of Human Services (DHS), the federal Department of Health and Human Services (DHHS) and the appropriate Regional Office of the Environmental Protection Agency. The Provider must include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section;

(D) The Provider must comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy

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efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);

(E) The Provider certifies, to the best of the Provider's knowledge and belief, that:

(i) No federal appropriated funds have been paid or will be paid, by or on behalf of the Provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;

(ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;

(iii) The Provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;

(iv) This certification is a material representation of fact upon which reliance was placed when this Provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Provider agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(F) If the goods and services funded in whole or in part with financial assistance provided under these rules are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), the Provider agrees to deliver the goods and services in compliance with HIPAA. Without limiting the generality of the foregoing, goods and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA. The Provider must comply and cause all subcontractors to comply with the following:

(i) Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between the Provider and DHS for purposes directly related to the provision to Clients of services that are funded in whole or in part under these rules. However, the Provider must not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS Privacy Rules, OAR 410-014-0000 et. seq., or DHS Notice of Privacy Practices, if done by DHS. A copy of the most recent DHS Notice of Privacy Practices is posted on the DHS Web site or may be obtained from DHS;

(ii) If the Provider intends to engage in Electronic Data Interchange (EDI) transactions with DHS in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, the Provider must execute an EDI Trading Partner Agreement with DHS and must comply with the DHS EDI rules;

(iii) If a Provider reasonably believes that the Provider's or the DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the Provider must promptly consult the DHS Privacy Officer. The Provider or DHS may initiate a request to test HIPAA transactions, subject to available resources and the DHS testing schedule.

(G) The Provider must comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;

(H) The Provider must comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations;"

(I) The Provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;

(J) The Provider must comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace:

(i) The Provider certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the Provider's workplace or while providing services to DHS Clients. The Provider's notice must specify the actions that will be taken by the Provider against its employees for violation of such prohibitions;

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the Provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement mentioned in paragraph (J)(i) above;

(iv) Notify each employee in the statement required by paragraph (J)(i) that, as a condition of employment to provide services under these rules, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(v) Notify DHS within ten (10) days after receiving notice under subparagraph (J)(iv) from an employee or otherwise receiving actual notice of such conviction;

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi);

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii);

(ix) Neither the Provider, nor any of the Provider's employees, officers, agents or subcontractors may provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Provider or Provider's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Provider or Provider's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS Clients or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities;

(x) Violation of any provision of this subsection may result in termination of the Provider agreement under these rules.

(K) The Provider must comply and cause all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);

(L) The Provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. Seq., including without limitation:

(i) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2);

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(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B);

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;

(iv) Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. The Provider must acknowledge Provider's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(2) Hospitals, Nursing Facilities, Home Health Agencies (including those providing personal care), Hospices and Health Maintenance Organizations will comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named Providers and organizations will give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-State Providers of these services should comply with Medicare and Medicaid regulations in their state. Submittal to DMAP of the appropriate billing form requesting payment for medical services provided to a Medicaid eligible Client shall be deemed representation to DMAP of the medical Provider's compliance with the above-listed laws.

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local DHS Children, Adults and Families office or police, in the manner described in ORS 419.

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA to be a laboratory.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0160 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040 & 410-120-0400; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

410-120-1390

Premium Sponsorships

(1) Premium donations made for the benefit of one or more specified Division of Medical Assistance Programs (DMAP) Clients will be referred to as a Premium Sponsorship and the donor shall be referred to as a sponsor.

(2) The Department of Human Services (DHS) may accept Premium Sponsorships consistent with the requirements of this rule. DHS may adopt such forms and reporting requirements, and change the forms and reporting requirements, as necessary to carry out its functions under this rule. DHS may identify one or more designees to perform one or more of the functions of DHS under this rule.

(3) This rule does not create or establish any Premium Sponsorship program. DHS does not operate or administer a Premium Sponsorship program. DHS does not find sponsors for Clients or take requests or applications from Clients to be sponsored.

(4) This rule does not create a right for any DMAP Client to be sponsored. Premium Sponsorship is based solely on the decisions of sponsors. DHS only applies the Premium Sponsorship funds that are accepted by DHS as instructed by the sponsor. DHS does not determine who may be sponsored. Any operations of a Premium Sponsorship program are solely the responsibility of the sponsoring entity.

(5) A Premium Sponsorship amount that is not actually received by the DMAP Client will not be deemed to be cash or other resource attributed to the DMAP Client, except to the extent otherwise required by federal law. An DMAP Client's own payment of his or her obligation, or payment made by an authorized representative of the DMAP Client, is not a sponsorship except to the extent that the authorized representative is otherwise subject to subsection (8) of this rule.

(6) Nothing in this rule alters the DMAP Client's personal responsibility for assuring that his or her own payments (including current or past due premium payments) are made on time as required under any DHS rule

(7) If DHS accepts a Premium Sponsorship payment for the benefit of a specified Client, DHS or its designee will credit the amount of the sponsorship payment toward any outstanding amount owed by the specified Client. DHS or its designee is not responsible for notifying the Client that a Premium Sponsorship payment is made or that a sponsorship payment has stopped being made.

(8) If a sponsor is a health care Provider, or an entity related to a health care Provider, or an organization making a donation on behalf of such Provider or entity, the following requirements apply:

(a) DHS will decline to accept Premium Sponsorships that are not "bona fide donations" within the meaning of 42 CFR 433.54. A Premium Sponsorship is a "bona fide donation" if the sponsorship has no direct or indirect relationship to Medicaid payments made to a health care Provider, a related entity providing health care items or services, or other Providers furnishing the same class of items or services as the Provider or entity;

(b) For purposes of this rule, terms "health care Provider," "entity related to a health care Provider" and "Provider-related donation" will have the same meaning as those terms are defined in 42 CFR 433.52. A health care Provider includes but is not limited to any Provider enrolled with DMAP or contracting with a Prepaid Health Plan for services to Oregon Health Plan Clients.

(c) Premium Sponsorships made to DHS by a health care Provider or an entity related to a health care Provider do not qualify as a "bona fide donation" within the meaning of subsection (a) of this section, and DHS will decline to accept such sponsorships;

(d) If a health care Provider or an entity related to a health care Provider donates money to an organization, which in turn donates money in the form of a Premium Sponsorship to DHS, the organization will be referred to as an organizational sponsor. DHS may accept Premium Sponsorship from an organizational sponsor if the organizational sponsor has completed the initial DHS certification process and complies with this rule. An organizational sponsor may not itself be a health care Provider, Provider-related entity, or a unit of local government;

(e) All organizational sponsors that make Premium Sponsorships to DHS may be required to complete at least annual certifications, but no more frequently than quarterly. Reports submitted to DHS will include information about the percentage of its revenues that are from donations by Providers and Provider-related entities. The organization's chief executive officer or chief financial officer must certify the report. In its certification, the organizational sponsor must agree that its records may be reviewed to confirm the accuracy, completeness and full disclosure of the donations, donation amounts and sources of donations. DHS will decline to accept donations or gifts from an organization that refuses or fails to execute necessary certifications or to provide access to documentation upon request;

(f) DHS will decline to accept Premium Sponsorships from an organizational sponsor if the organization receives more than 25 percent of its revenue from donations from Providers or Provider-related entities during the State's fiscal year;

(g) Any health care Provider or entity related to a health care Provider making a donation to an organizational sponsor, or causing another to make a Premium Sponsorship on its behalf, and any organizational sponsor, is solely responsible for compliance with laws and regulations applicable to any donation, including but not limited to 42 CFR 1001.951 and 1001.952.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 38-2004(Temp), f. 5-28-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 72-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

410-120-1960

Payment of Private Insurance Premiums

(1) Payment of insurance policy premiums for Medicaid Clients or eligible applicants will allow for the purchase of, or continuation of a Client or eligible applicant's coverage by another third party.

(2) For purposes of this rule, an eligible applicant may be a non-Medicaid individual, for whom the Division of Medical Assistance Programs (DMAP) would pay the premium if it is necessary in order to enroll the DMAP Client in the health plan in accordance with this rule. DMAP may pay health insurance policy premiums or otherwise enter into agreements with other health insurance plans that comply with ORS 414.115 to 414.145 on behalf of eligible individuals when:

(a) The policy is a major medical insurance policy; and

(b) The payment of premiums and/or co-insurance and deductibles is likely to be Cost Effective, as determined under section (4) of this rule, i.e.,

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that the estimated net cost to DMAP will be less than the estimated cost of paying Providers on a Fee-for-Service (FFS) or other basis.

(c) An eligible applicant may be a non-Medicaid individual in the household if payment of the premium including that individual is cost effective, and if it is necessary to include that individual in order to enroll the DMAP Client in the health plan.

(3) DMAP will not pay private health insurance premiums for:

(a) Non-SSI institutionalized and waived Clients whose income deduction is used for payment of health insurance premiums;

(b) Clients eligible for reimbursement of Cost-Effective, employer-sponsored health insurance (OAR 461-135-0990).

(4) DMAP will assure that all Medicaid covered services continue to be made available to Medicaid-eligible individuals for whom DMAP elects to purchase insurance.

(5) Assessment of Cost Effectiveness will include:

(a) The past utilization experience of the Client or eligible applicant as determined by past DMAP and third party insurance utilization and claims data; and

(b) The current and probable future health status of the Client or eligible applicant based upon existing medical conditions, previous medical history, age, number of dependents, and other relevant health status indicators; and

(c) The coverage of benefits, premium costs, copayments and coinsurance provisions, restrictions and other policies of the health insurance plans being considered.

(6) DMAP may purchase documents or records necessary to establish or maintain the Client's eligibility for other insurance coverage.

(7) DMAP will not make payments for any benefits covered under the private health insurance plan, except as follows:

(a) DMAP will calculate DMAP's allowable payment for a service. The amount paid by the other insurer will be deducted from the DMAP allowable. If the DMAP allowable exceeds the third party payment, DMAP will pay the Provider of service the difference;

(b) The payment made by DMAP will not exceed any co-insurance, Copayment or deductible due;

(c) DMAP will make payment of co-insurance, Copayments or deductibles due only for covered services provided to Medicaid-eligible Clients.

(8) DMAP payment under this rule requires the Client to promptly inform the DHS worker, within 10 days, of any change of insurance coverage to minimize overpayment; the DHS worker, in turn, must promptly notify the PHI coordinator.

(9) As a condition of eligibility, Clients are required to pursue assets (OAR 461-120-0330), and required to obtain medical coverage (OAR 461-120-0345). Failure to notify the DHS worker of insurance coverage or changes in such coverage, and failure to provide periodic required documentation for PHI may impact continued eligibility.

(10) The effective date for starting reimbursement of cost-effective Private Health Insurance (PHI) premiums is one of the following:

(a) For new cases, the later of the following:

(A) The date of request; or

(B) If no member of the filing group is eligible for medical on the date of request, the date of initial medical eligibility.

(b) For ongoing cases, the later of the following:

(A) The first of the month in which the insurance becomes effective;

or

(B) The first of the month in which the benefit group requests reimbursement.

(11) The Client or eligible applicant's receipt of payment under this rule is intended for the express purpose of insurance premium payment, or reimbursement of Client paid insurance premium.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.115

Hist.: AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1984, f. 8-30-84, ef. 9-1-84; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0170; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0500 & 410-120-0520; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07

Rule Caption: Oregon Health Plan Managed Care miscellaneous rule revisions for January 2007

Adm. Order No.: OMAP 46-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

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Rules Amended: 410-141-0000, 410-141-0060, 410-141-0070, 410-141-0080, 410-141-0220, 410-141-0480, 410-141-0520

Subject: The Oregon Health Plan (OHP-Division 141) Administrative rules govern the Division of Medical Assistance Programs' (DMAP) payments for products and services provided to clients. DMAP amended all rules to take care of necessary housekeeping corrections, including DHS Division name changes and made other revisions as follows:

410-141-0060: to define detrimental to health for established relationship disenrollments;

410-141-0080: to clarify the policy for Prepaid Health Plan (PHP) disenrollment requests for threats or acts of violence;

410-141-0480: to delete the reference to the Ancillary Services list that is no longer in existence; and

410-141-0520: to update the references to the Prioritized List.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0000

Definitions

(1) Action — In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested Covered Service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (DMAP);

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a DMAP Member in a single Fully Capitated Health Plan (FCHP) or Mental Health Organization (MHO) Service Area, the denial of a request to obtain Covered Services outside of the FCHP or MHO's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Addictions and Mental Health Division (AMH) — The DHS office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(3) Administrative Hearing — A Department of Human Services (DHS) hearing related to an Action, including a denial, reduction, or termination of benefits that is held when requested by the Oregon Health Plan (OHP) Client or DMAP Member. A hearing may also be held when requested by an OHP Client or DMAP Member who believes a claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(4) Advance Directive — A form that allows a person to have another person make health care decisions when he/she cannot make decisions and tells a doctor if the person does not want any life sustaining help if he/she is near death.

(5) Aged — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities Division (SPD) for receipt of medical assistance because of age.

(6) Americans with Disabilities Act (ADA) — Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(7) Alternative Care Settings — Sites or groups of Practitioners that provide care to DMAP Members under contract with the DMAP Member's PHP. Alternative Care Settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, and outpatient surgicenters.

(8) Ancillary Services — Those medical services under the OHP not identified in the definition of a Condition/Treatment Pair, but Medically Appropriate to support a service covered under the OHP Benefit Package. Ancillary Services and limitations are referenced in the General Rules Benefit Packages (410-120-1210), Exclusions (410-120-1200) and applicable individual program rules.

(9) Appeal — A request for review of an Action as defined in this rule.

(10) Automated Information System (AIS) — A computer system that provides information on the current eligibility status for clients under the Medical Assistance Program by phone or by Web access.

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(11) Blind — Individuals who meet eligibility criteria established by DHS' SPD for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

(12) Capitated Services — Those Covered Services that a PHP or Primary Care Manager (PCM) agrees to provide for a Capitation Payment under a DMAP OHP Contract or agreement.

(13) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all Capitated Services needed by OHP Clients who are enrolled with the PHP;

(b) Monthly prepayment to a PCM to provide Primary Care Management Services for an OHP Client who is enrolled with the PCM. Payment is made on a per OHP Client, per month basis.

(14) Centers for Medicare and Medicaid Services (CMS) — The federal agency under the Department of Health and Human Services (DHHS), responsible for approving the waiver request to operate the OHP Medicaid Demonstration Project.

(15) CFR— Code of Federal Regulations.

(16) Chemical Dependency Organization (CDO) — a PHP that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as Capitated Services under the OHP. All Chemical Dependency Services covered under the OHP are covered as Capitated Services by the CDO.

(17) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent Clients and their family members or significant others, consistent with Level I and/or Level II of the "Chemical Dependency Placement, Continued Stay, and Discharge Criteria."

(18) Children's Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by DHS' DMAP (see Medical Assistance).

(19) Children Receiving Children, Adults and Families (CAF) Child Welfare or Oregon Youth Authority (OYA) Services — Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of CAF, DHS, or OYA who are in placement outside of their homes.

(20) Claim — (1) A bill for services, (2) a line item of a service, or (3) all services for one Client within a bill.

(21) Clinical Record — The Clinical Record includes the medical, dental, or mental health records of an OHP Client or DMAP Member. These records include the PCP's record, the inpatient and outpatient hospital records and the Exceptional Needs Care Coordinator (ENCC), Complaint and Disenrollment for cause records which may reside in the PHP's administrative offices.

(22) Cold Call Marketing — Any unsolicited personal contact by a PHP with a Potential Member for the purpose of Marketing as defined in this rule.

(23) Comfort Care — The provision of medical services or items that give comfort and/or pain relief to an individual who has a Terminal Illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with Terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort Care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort Care includes nutrition, hydration and medication for disabled infants whose life-threatening conditions are not covered under Condition/Treatment Pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable Comfort Care is provided consistent with Section 4751 OBRA 1990 — Patient Self Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort Care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness with the intent to prolong life.

(24) Community Mental Health Program (CMHP) — The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the DHS Addictions and Mental Health Division (AMH).

(25) Co-morbid Condition — A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(26) Complaint — A DMAP Member's or DMAP Member's Representative's expression of dissatisfaction to a PHP or Participating Provider about any matter other than an Action, as "Action" is defined in this rule.

(27) Community Standard — Typical expectations for access to the health care delivery system in the DMAP Member's or PCM Member's community of residence. Except where the Community Standard is less than sufficient to ensure quality of care, DMAP requires that the health care delivery system available to DMAP Members in PHPs and to PCM Members take into consideration the Community Standard and be adequate to meet the needs of DMAP and PCM Members.

(28) Condition/Treatment Pair — Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9-CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the DHS AMH Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/Treatment Pairs may contain many diagnoses and treatments. The Condition/Treatment Pairs are referred to in OAR 410-141-0520.

(29) Continuing Treatment Benefit — A benefit for OHP Clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to an OHP Benefit Package that doesn't cover the treatment.

(30) Co-payment — The portion of a Covered Service that a DMAP Member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract — The Contract between the State of Oregon, acting by and through its DHS, DMAP and an FCHP, Dental Care Organization (DCO), Physician Care Organization (PCO), or a CDO, or between AMH and an MHO for the provision of Covered Services to eligible DMAP Members for a Capitation Payment. Also referred to as a Service Agreement.

(32) Covered Services — Are Medically Appropriate health services that are funded by the Legislature and described in ORS 414.705 to 414.750; OAR 410-120-1210; 410-141-0120; 410-141-0520; and 410-141-0480; except as excluded or limited under OAR 410-141-0500 and rules in chapter 410, division 120.

(33) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the OHP Member or a Provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a DMAP Member.

(34) Dental Care Organization (DCO) — A PHP that provides and coordinates capitated dental services. All dental services covered under the OHP are covered as Capitated Services by the DCO; no dental services are paid by DMAP on a Fee-for-Service (FFS) basis for OHP Clients enrolled with a DCO Provider.

(35) Dental Case Management Services — Services provided to ensure that eligible DMAP Members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the DMAP Member plus the development and implementation of a plan to ensure that eligible DMAP Members obtain Capitated Services.

(36) Dental Emergency Services — Dental services that may include but are not limited to severe tooth pain, unusual swelling of the face or gums, and an avulsed tooth.

(37) Dental Practitioner — A Practitioner who provides dental services to DMAP Members under an agreement with a DCO, or is a FFS Practitioner. Dental Practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

(38) Department of Human Services (DHS) — The Department or DHS or any of its programs or offices means the Department of Human

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Services established in ORS Chapter 409, including such divisions, programs and offices as may be established therein. Wherever the former Office of Medical Assistance Programs or OMAP is used in contract or in administrative rule, it shall mean the Division of Medical Assistance Programs (DMAP). Wherever the former Office of Mental Health and Addiction Services or OMHAS is used in contract or in rule, it shall mean the Addictions and Mental Health Division (AMH). Wherever the former Seniors and People with Disabilities or SPD is used in contract or in rule, it shall mean the Seniors and People with Disabilities Division (SPD). Wherever the former Children Adults and Families or CAF is used in contract or rule, it shall mean the Children, Adults and Families Division (CAF). Wherever the former Health Division is used in Contract or in rule, it shall mean the Public Health Division (PHD).

(39) Diagnostic Services — Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(40) Disabled — Individuals who meet eligibility criteria established by the DHS' SPD for receipt of Medical Assistance because of a disability.

(41) Disenrollment — The act of discharging an OHP Client from a PHP's or PCM's responsibility. After the effective date of Disenrollment an OHP Client is no longer required to obtain Capitated Services from the PHP or PCM, nor be referred by the PHP for Medical Case Managed Services or by the PCM for PCM Case Managed Services.

(42) Division of Medical Assistance Programs (DMAP) — The Office of DHS responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and CHIP. DMAP writes and administers the state Medicaid rules for medical services, contracts with Providers, maintains records of client eligibility and processes and pays DMAP providers.

(43) Emergency Medical Condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "Emergency Medical Condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a Health Care Professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence.

(44) Emergency Services — Covered Services furnished by a Provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition.

(45) Enrollment — OHP Clients, subject to OAR 410-141-0060, become DMAP Members of a PHP or PCM Members of a PCM that contracts with DMAP to provide Capitated Services. An OHP Client's Enrollment with a PHP indicates that the DMAP Member must obtain or be referred by the PHP for all Capitated Services and referred by the PHP for all Medical Case Managed Services subsequent to the effective date of Enrollment. An OHP Client's Enrollment with a PCM indicates that the PCM Member must obtain or be referred by the PCM for preventive and primary care and referred by the PCM for all PCM Case Managed Services subsequent to the effective date of Enrollment.

(46) Enrollment Area — Client Enrollment is based on the Client's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the DHS worker that PHPs are in the area.

(47) Enrollment Year — A twelve-month period beginning the first day of the month of Enrollment of the OHP Client in a PHP and, for any subsequent year(s) of continuous Enrollment, beginning that same day in each such year(s). The Enrollment Year of OHP Clients who re-enroll within a calendar month of Disenrollment shall be counted as if there were no break in Enrollment.

(48) End Stage Renal Disease (ESRD) — End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(49) Exceptional Needs Care Coordination (ENCC) — A specialized case management service provided by FCHPs to DMAP Members who are

Aged, Blind or Disabled, consistent with OAR 410-141-0405. ENCC includes:

(a) Early identification of those DMAP Members who are Aged, Blind or Disabled who have disabilities or complex medical needs;

(b) Assistance to ensure timely access to providers and Capitated Services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of Capitated Services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(50) Family Health Insurance Assistance Program (FHIAP) — A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the Federal Poverty Level (FPL). FHIAP is funded with federal and states funds through Title XIX, XXI or both.

(51) Family Planning Services — Services for clients of childbearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(52) Fee-for-Service (FFS) Health Care Providers — Health care providers who bill for each service provided and are paid by DMAP for services as described in DMAP provider rules. Certain services are covered but are not provided by PHPs or by PCMs. The client may seek such services from an appropriate FFS Provider. PCMs provide primary care services on a FFS basis and might also refer PCM Members to specialists and other Providers for FFS care. In some parts of the state, the State may not enter into contracts with any managed care Providers. OHP Clients in these areas will receive all services from FFS Providers.

(53) FPL — Federal Poverty Level.

(54) Free-Standing Mental Health Organization (MHO) — The single MHO in each county that provides only mental health services and is not affiliated with an FCHP for that service area. In most cases this "carve-out" MHO is a county CMHP or a consortium of CMHPs, but may be a private behavioral health care company.

(55) Fully Capitated Health Plan (FCHP) — PHPs that contract with DMAP to provide Capitated Services under the OHP. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(56) Fully Dual Eligible — For the purposes of Medicare Part D coverage, Medicare Clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by DHS for full medical assistance coverage, including those not enrolled in a Medicare Part D plan.

(57) Grievance System — The overall system that includes Complaints and Appeals handled at the PHP level and access to the state fair hearing process. Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a Provider or employee, or failure to respect the DMAP Member's rights.

(58) Health Care Professionals — Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: Medical Doctors (including Psychiatrists), Dentists, Osteopathic Physicians, Psychologists, Registered Nurses, Nurse Practitioners, Licensed Practical Nurses, Certified Medical Assistants, Licensed Physicians Assistants, Qualified Mental Health Professionals (QMHPs), and Qualified Mental Health Associates (QMHA's), Dental Hygienists, Denturists, and Certified Dental Assistants. These professionals may conduct health, mental health or dental assessments of DMAP Members and provide Screening Services to OHP Clients within their scope of practice, licensure or certification.

(59) Health Insurance Portability and Accountability Act (HIPAA) of 1996 — HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(60) Health Maintenance Unit (HMU) — The DMAP unit responsible for adjustments to enrollments, retroactive Disenrollment and Enrollment of newborns.

(61) Health Plan New/Noncategorical Client (HPN) — A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an OHP Client.

(62) Health Services Commission — An eleven member commission that is charged with reporting to the Governor the ranking of health bene-

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fits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(63) Hospice Services — A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(64) Hospital Hold — A Hospital Hold is a process that allows a hospital to assist an individual who is admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the OHP due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP if clients become eligible through a Hospital Hold process and are placed in the adults/couples category.

(65) Line Items — Condition/Treatment Pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the OHP Medicaid Demonstration Project.

(66) Local and Regional Allied Agencies include the following: local Mental Health Authority; CMHPs; local DHS offices; Commission on Children and Families; OYA; Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(67) Marketing — Any communication from a PHP to an OHP Client who is not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the OHP Client:

- (a) To enroll in that particular PHP;
- (b) To either disenroll or not to enroll with another PHP.

(68) Marketing Materials — Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for Marketing as defined in this rule.

(69) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by DHS.

(70) Medical Assistance Program — A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and CHIP. The Medical Assistance Program is administered by DMAP, of DHS. Coordination of the Medical Assistance Program is the responsibility of DMAP.

(71) Medical Care Identification — The preferred term for what is commonly called the "medical card." It is a letter-sized document issued monthly to Medical Assistance Program Clients to verify their eligibility for services and enrollment in PHPs.

(72) Medical Case Management Services — Services provided to ensure that DMAP Members obtain health care services necessary to maintain physical and emotional development and health. Medical Case Management Services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a plan to obtain needed medical or dental services that are Capitated Services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(73) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
- (c) Not solely for the convenience of an OHP Client or a Provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a DMAP Member or PCM Member in the PHP's or PCM's judgment.

(74) Medicare — The federal health insurance program for the Aged and Disabled administered by CMS under Title XVIII of the Social Security Act.

(75) Medicare Advantage — A capitated health plan that meets specific referral lines and contracts with CMS to provide Medicare benefits to Medicare enrollees.

(76) Mental Health Assessment — The determination of a DMAP Member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a Member's mental status, psychosocial history and current problems through interview, observation and testing.

(77) Mental Health Case Management — Services provided to DMAP Members who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the DMAP Member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring DMAP Members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(78) Mental Health Organization (MHO) — A PHP under contract with AMH that provides mental health services as Capitated Services under the OHP. MHOs can be FCHPs, CMHPs or private behavioral organizations or combinations thereof.

(79) Non-Capitated Services — Those OHP-covered services that are paid for on a FFS basis and for which a capitation payment has not been made to a PHP.

(80) Non-Covered Services — Services or items for which the Medical Assistance Program is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the OHP. Non-Covered Services for the OHP are identified in:

- (a) OAR 410-141-0500;
- (b) Exclusions and limitations described in OAR 410-120-1200; and
- (c) The individual Provider administrative rules.

(81) Non-Participating Provider — A provider who does not have a contractual relationship with the PHP, i.e. is not on their panel of Providers.

(82) DMAP Member — An OHP Client enrolled with a PHP.

(83) Ombudsman Services — Services provided by DHS to Aged, Blind and Disabled OHP Clients by DHS Ombudsman Staff who may serve as the OHP Client's advocate whenever the OHP Client, Representative, a physician or other medical personnel, or other personal advocate serving the OHP Client, is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the OHP. Ombudsman Services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about OHP systems.

(84) Oregon Health Plan (OHP) — The Medicaid demonstration project that expands Medicaid eligibility to eligible OHP Clients. The OHP relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(85) Oregon Health Plan (OHP) Plus Benefit Package — A benefit package available to eligible OHP Clients as described in OAR 410-120-1210.

(86) Oregon Health Plan (OHP) Standard Benefit Package — A benefit package available to eligible OHP Clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210.

(87) Oregon Health Plan (OHP) Client — An individual found eligible by DHS to receive services under the OHP. The OHP categories eligible for enrollment are defined as follows:

- (a) Temporary Assistance to Needy Families (TANF) are categorically eligible with income under current eligibility rules;
- (b) CHIP — children under one year of age who have income under 185% FPL and do not meet one of the other eligibility classifications;
- (c) Poverty Level Medical (PLM) Adults under 100% of the FPL are OHP Clients who are pregnant women with income under 100% of FPL;
- (d) PLM Adults over 100% of the FPL are OHP Clients who are pregnant women with income between 100% and 185% of the FPL;
- (e) PLM children under one year of age have family income under 133% of the FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;
- (f) PLM or CHIP children one through five years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;
- (g) PLM or CHIP children six through eighteen years of age who have family income under 185% of the FPL and do not meet one of the other eligibility classifications;
- (h) OHP Adults and Couples are OHP Clients aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet

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one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP Families are OHP Clients, aged 19 or over and not Medicare eligible, with income below 100% of the FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) Recipients are OHP Clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare Eligibles are OHP Clients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare Eligibles are OHP Clients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare Eligibles are OHP Clients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare Eligibles are OHP Clients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP Clients who are children with medical eligibility determined by CAF or OYA receiving OHP under ORS 414.025(2)(f), (I), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of CAF or OYA who are in placement outside of their homes.

(88) Oregon Youth Authority (OYA) — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(89) Participating Provider — An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to DMAP Members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(90) PCM Case Managed Services include the following: Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, Rural Health Clinics (RHC), Migrant and Community Health Clinics, Federally Qualified Health Centers (FQHC), County Health Departments, Indian Health Service Clinics and Tribal Health Clinics, CMHPs, MHOs; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(91) PCM Member — An OHP Client enrolled with a PCM.

(92) PHP Coordinator — the DHS DMAP employee designated by DMAP as the liaison between DMAP and the PHP.

(93) Physician Care Organization (PCO) — PHP that contracts with DMAP to provide partially capitated health services under the OHP. The distinguishing characteristic of a PCO is the exclusion of inpatient hospital services.

(94) Post Hospital Extended Care Benefit — A 20-day benefit for non-Medicare DMAP Members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(95) Post Stabilization Services — Covered Services, related to an Emergency Medical Condition that are provided after an DMAP Member is stabilized in order to maintain the stabilized condition or to improve or resolve the DMAP Member's condition.

(96) Potential DMAP Member — An OHP Client who is subject to mandatory Enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(97) Practitioner — A person licensed pursuant to State law to engage in the provision of health care services within the scope of the Practitioner's license and/or certification.

(98) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with DMAP and/or AMH on a case managed, prepaid, capitated basis under the OHP. PHPs may be DCOs, FCHPs, MHOs, PCOs or CDOs.

(99) Preventive Services — Those services as defined under Expanded Definition of Preventive Services for OHP Clients in OAR 410-141-0480, and OAR 410-141-0520.

(100) Primary Care Management Services — Primary Care Management Services are services provided to ensure PCM Members

obtain health care services necessary to maintain physical and emotional development and health. Primary Care Management Services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that are preventive or primary care services or PCM Case Managed Services and follow-up, as appropriate, to assess the impact of care.

(101) Primary Care Manager (PCM) — A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician back-ups, who agrees to provide Primary Care Management Services as defined in rule to PCM Members. PCMs may also be hospital primary care clinics, RHCs, Migrant and Community Health Clinics, FQHCs, County Health Departments, Indian Health Service Clinics or Tribal Health Clinics. The PCM provides Primary Care Management Services to PCM Members for a Capitation Payment. The PCM provides preventive and primary care services on a FFS basis.

(102) Primary Care Dentist (PCD) — A Dental Practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for DMAP Members. PCDs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(103) Primary Care Provider (PCP) — A Practitioner who has responsibility for supervising and coordinating initial and primary care within their scope of practice for DMAP Members. PCPs initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(104) Prioritized List of Health Services — The listing of Condition and Treatment Pairs developed by the Health Services Commission for the purpose of implementing the OHP Demonstration Project. See OAR 410-141-0520, for the listing of Condition and Treatment Pairs.

(105) Proof of Indian Heritage — Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an "Indian" in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service — services provided by Indian Health Service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

(106) Provider — An individual, facility, institution, corporate entity, or other organization which supplies medical, dental or mental health services or medical and dental items.

(107) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where "quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge."

(108) Representative — A person who can make OHP related decisions for OHP Clients who are not able to make such decisions themselves. A Representative may be, in the following order of priority, a person who is designated as the OHP Client's health care representative, a court-appointed guardian, a spouse, or other family member as designated by the OHP Client, the Individual Service Plan Team (for developmentally disabled clients), a DHS case manager or other DHS designee.

(109) Rural — A geographic area 10 or more map miles from a population center of 30,000 people or less.

(110) Seniors and People with Disabilities Division (SPD) — The division within DHS responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through GA and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

(111) Service Area — The geographic area in which the PHP has identified in their Contract or Agreement with DHS to provide services under the OHP.

(112) Stabilize — No material deterioration of the Emergency Medical Condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

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(113) Terminal Illness — An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(114) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the DMAP Member to the most appropriate setting for Medically Appropriate care.

(115) Urban — A geographic area less than 10 map miles from a population center of 30,000 people or more.

(116) Urgent Care Services — Covered Services that are Medically Appropriate and immediately required in order to prevent a serious deterioration of an DMAP Member's health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(117) Valid Claim:

(a) An invoice received by the PHP for payment of covered health care services rendered to an eligible Client that:

(A) Can be processed without obtaining additional information from the Provider of the service or from a third party; and

(B) Has been received within the time limitations prescribed in these Rules.

(b) A Valid Claim does not include a Claim from a Provider who is under investigation for fraud or abuse, or a Claim under review for Medical Appropriateness. A Valid Claim is synonymous with the federal definition of a Clean Claim as defined in 42 CFR 447.45(b).

(118) Valid Pre-Authorization — A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules.

[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; 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 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0060

Oregon Health Plan Managed Care Enrollment Requirements

(1) Enrollment of an Oregon Health Plan (OHP) Client, excluding the Health Plan New/Noncategorical Client (HPN) and Children's Health Insurance Program (CHIP) clients in Prepaid Health Plans (PHPs) shall be mandatory unless exempted from Enrollment by the Department of Human Services (DHS), or unless the OHP Client resides in a Service Area where there is inadequate capacity to provide access to Capitated Services for all OHP Clients through PHPs or Primary Care Managers (PCMs).

(2) Enrollment of the HPN and CHIP Clients in PHPs shall be mandatory unless exempted from Enrollment by DHS under the terms in section (4) of this rule. Selection of PHPs in accordance with this rule is a condition of eligibility for HPN and CHIP Clients. If, upon reapplication, HPN or CHIP Clients do not select PHPs in accordance with this rule, PHPs will be selected by DHS. This selection will be based on which PHPs the HPN or CHIP Clients were previously enrolled in.

(3) OHP Clients, except HPN and CHIP Clients shall be enrolled with PHPs or PCMs according to the following criteria:

(a) Areas with sufficient physical health service capacity through a combination of Fully Capitated Health Plans (FCHP), Physician Care Organizations (PCO), and PCMs shall be called mandatory FCHP/PCO/PCM Service Areas. In mandatory FCHP/PCO/PCM Service Areas, an OHP Client shall select:

(A) An FCHP or PCO; or

(B) A PCM if exempt from FCHP or PCO Enrollment.

(b) Service areas with sufficient physical health service capacity through PCMs alone shall be called mandatory PCM Service Areas. An OHP Client shall select a PCM in a mandatory PCM Service Area;

(c) Service Areas without sufficient physical health service capacity through FCHPs, PCOs and PCMs shall be called voluntary FCHP/PCO/PCM Service Areas. In voluntary FCHP/PCO/PCM Service Areas, an OHP Client may choose to:

(A) Select any FCHP, PCO or PCM that is open for Enrollment; or

(B) Remain in the Medicaid Fee-for-Service (FFS) physical health care delivery system.

(d) Service Areas with sufficient dental care service capacity through DCOs shall be called mandatory DCO Service Areas. An OHP Client shall select a DCO in a mandatory DCO Service Area;

(e) Service Areas without sufficient dental care service capacity through DCOs shall be called voluntary DCO Service Areas. In voluntary DCO Service Areas, an OHP Client may choose to:

(A) Select any DCO open for Enrollment; or

(B) Remain in the Medicaid FFS dental care delivery system;

(f) Service Areas with sufficient mental health service capacity through MHOs shall be called mandatory MHO Service Areas. OHP Clients will be enrolled in an MHO in a mandatory MHO Service Area;

(g) Service Areas without sufficient mental health service capacity through MHOs shall be called voluntary MHO Service Areas. An OHP Client may choose to select an MHO in voluntary MHO Service Areas if the MHO is open for Enrollment, or may choose to remain in the Medicaid FFS mental health care delivery system;

(h) When a Service Area changes from mandatory to voluntary, the DMAP Member will remain with their PHP for the remainder of their eligibility period, unless the DMAP Member meets the criteria stated in section (4) of this rule, or as provided by OAR 410-141-0080.

(4) The following are exemptions to mandatory Enrollment in PHPs that allow OHP Clients, including HPN and CHIP Clients, to enroll with a PCM or remain in the Medicaid FFS delivery systems for physical, dental and/or mental health care:

(a) The OHP Client is covered under a major medical insurance policy, such as a Medicare supplemental policy, Medicare employer group policy or other third party resource (TPR) which covers the cost of services to be provided by a PHP, (excluding dental insurance. An OHP Client shall be enrolled with a DCO even if they have a dental TPR). The OHP Client shall enroll with a PCM if the insurance policy is not a private HMO;

(b) Clients who meet all of the criteria listed in section (4)(b)(A) through (C) are exempt from mandatory Enrollment;

(A) The OHP Client has an established relationship with a DMAP enrolled Practitioner from whom the Client receives ongoing treatment for a covered medical or dental condition, and;

(B) Subject to OAR 410-141-0080(1)(b)(B)(vi)(III), the DMAP enrolled Practitioner is not a member of the PHP's Participating Provider panel the OHP Client would be enrolled in, and;

(C) Loss of continuity of care for the covered medical or dental condition would have a significant negative effect on the health status of the OHP Client, as determined by DHS through medical review, to change Practitioners and receive treatment from the PHP's Participating Provider Panel;

(D) When the Practitioner is a Primary Care Practitioner (PCP) enrolled with DMAP as a PCM, the OHP Client shall enroll with this Practitioner as a PCM Member;

(E) Exemptions from mandatory Enrollment in PHPs for this reason may be granted for a period of four months. Extensions may be granted by DHS upon request, subject to review of unique circumstances. A 12-month exemption may be granted if the reason for the exemption is not likely to change or is due to a chronic or permanent condition or disability;

(c) OHP Clients shall be exempted from mandatory Enrollment with an FCHP or PCO, if the OHP Client became eligible through a hospital hold process and are placed in the Adults/Couples category. The OHP Client shall remain FFS for the first six (6) months of eligibility unless a change occurs with their eligibility or the category. At that time, the exemption shall be removed and the OHP Client shall be enrolled into an open FCHP or PCO. The exemption shall not affect the mandatory Enrollment requirement into a DCO or MHO.

(d) The OHP Client is a Native American or Alaska Native with Proof of Indian Heritage and chooses to receive services from an Indian Health Service facility or tribal health clinic;

(e) The OHP Client is a child in the legal custody of either the Oregon Youth Authority (OYA) or Children, Adults and Families (CAF) (Child Welfare Services), and the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) There is no FFS access; or

(B) There are continuity of care issues.

(f) The OHP Client is in the third trimester of her pregnancy when first determined eligible for OHP, or at redetermination, and she wishes to continue obtaining maternity services from a Practitioner who is not a Participating Provider with an FCHP or PCO in the Service Area:

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(A) In order to qualify for such exemption at the time of redetermination, the OHP Client must not have been enrolled with an FCHP or PCO during the three months preceding redetermination;

(B) If the DMAP Member moves out of her PHP's Service Area during the third trimester, the DMAP Member may be exempted from Enrollment in the new Service Area for continuity of care if the DMAP Member wants to continue obstetric-care with her previous physician, and that physician is within the travel time or distance indicated in 410-141-0220;

(C) If the Practitioner is a PCM, the DMAP Member shall enroll with that Practitioner as a PCM Member;

(D) If the Practitioner is not enrolled with DMAP as a PCM, then the DMAP Member may remain in the Medicaid FFS delivery system until 60 days after the birth of her child. After the 60-day period, the OHP Client must enroll in a FCHP or PCO.

(g) The OHP Client has End Stage Renal Disease (ESRD). The OHP Client shall not enroll in an FCHP or PCO but shall enroll with a PCM unless exempt for some other reason listed in section (4) of this rule;

(h) The OHP Client has been accepted by the Medically Fragile Children's Unit of the Addictions and Mental Health Division (AMH);

(i) An OHP Client who is also a Medicare beneficiary and is in a hospice program shall not enroll in an FCHP or PCO that is also a Medicare Advantage plan. The OHP Client may enroll in either an FCHP or PCO that does not have a Medicare Advantage plan or with a PCM unless exempt for some other reason listed in section (4) of this rule;

(j) The OHP Client is enrolled in Medicare and the only FCHP or PCO in the Service Area is a Medicare Advantage plan. The OHP Client may choose not to enroll in an FCHP or PCO;

(k) Other just causes as determined by DHS through medical review, which include the following factors:

(A) The cause is beyond the control of the OHP Client;

(B) The cause is in existence at the time that the OHP Client first becomes eligible for OHP;

(C) Enrollment would pose a serious health risk; and

(D) The lack of reasonable alternatives.

(l) A woman eligible for the Breast and Cervical Cancer Medical (BCCM) Program, (refer to BCCM rules established by CAF), shall not enroll in an FCHP, PCO, DCO or MHO. A woman in the BCCM Program shall remain in the Medicaid FFS delivery system.

(5) The primary person in the household group and benefit group as defined in OAR 461-110-0110, 461-110-0210, and 461-110-0720, respectively, shall select PHPs or PCMs on behalf of all OHP Clients in the benefit group. PHP or PCM selection shall occur at the time of application for OHP in accordance with section (1) of this rule:

(a) All OHP Clients in the benefit group shall enroll in the same PHP for each benefit type (physical, dental or mental health care) unless exempted under the conditions stated in section (4) of this rule. If PCM selection is an option, OHP Clients in the benefit group may select different PCMs;

(b) If the OHP Client is not able to choose PHPs or PCMs on his or her own, the Representative of the OHP Client shall make the selection. The hierarchy used for making Enrollment decisions shall be in descending order as defined under Representative:

(A) If the Medicare Advantage Plan Election form (OHP 7208M), described in subsection (5)(d) of this rule, is signed by someone other than the OHP Client, the OHP Client's Representative must complete and sign the Signature by Mark or State Approved Signature sections of the OHP 7208M.

(B) If the OHP Client is a Medicare beneficiary who is capable of making Enrollment decisions, the Client's Representative shall not have authority to select FCHPs or PCOs that have corresponding Medicare Advantage components.

(c) CAF or OYA shall select PHPs or a PCM for a child receiving CAF (Child Welfare Services) or OYA Services, with the exception of children in subsidized adoptions;

(d) Enrollment in a FCHP or PCO of an OHP Client who is receiving Medicare and who resides in a Service Area served by PHPs or PCMs shall be as follows:

(A) If the OHP Client, who is Medicare Advantage eligible, selects a FCHP or PCO that has a corresponding Medicare Advantage plan, the OHP Client shall complete the 7208M, or other CMS approved Medicare plan election form:

(i) If the FCHP or PCO has not received the form within 10 calendar days after the date of Enrollment, the FCHP or PCO shall send a letter to the DMAP Member with a copy sent to SPD branch manager. The letter shall:

(I) Explain the need for the completion of the form;

(II) Inform the DMAP Member that if the form is not received within 30 days, the FCHP or PCO may request Disenrollment; and

(III) Instruct the DMAP Member to contact their caseworker for other coverage alternatives.

(ii) The FCHP or PCO shall choose whether to disenroll or maintain Enrollment for all the OHP Clients from whom they do not receive a form at the end of 30 days, except as otherwise provided in this rule. The FCHP or PCO must notify the PHP Coordinator of the PHP's annual decision to disenroll or maintain Enrollment for the OHP Clients in writing. This notification must be submitted by January 31 of each year, or another date specified by DMAP. If the FCHP or PCO has decided to:

(I) Disenroll the OHP Clients and has not received a DMAP Client's form at the end of 30 days, the FCHP or PCO shall request Disenrollment. HMU will disenroll the DMAP Member effective the end of the month following the notification.

(II) Maintain Enrollment, the FCHP or PCO shall not request Disenrollment at the end of 30 days.

(B) If the OHP Client is enrolled as a private member of a Medicare Advantage plan, the OHP Client may choose to remain enrolled as a private member or to enroll in the FCHP or PCO that corresponds to the Medicare Advantage plan:

(i) If the OHP Client chooses to remain as a private member in the Medicare Advantage plan, the OHP Client shall remain in the Medicaid FFS delivery system for physical health care services but shall select a DCO and MHO where available;

(ii) If the OHP Client chooses to discontinue the Medicare Advantage Enrollment and then, within 60 calendar days of Disenrollment from the Medicare Advantage plan, chooses the FCHP or PCO that corresponds to the Medicare Advantage plan that was discontinued, the OHP Client shall be allowed to enroll in the FCHP or PCO even if the FCHP or PCO is not open for Enrollment to other OHP Clients;

(iii) A Fully Dual Eligible (FDE) OHP Client who has been exempted from Enrollment in an MHO shall not be enrolled in a FCHP or PCO that has a corresponding Medicare Advantage plan unless the exemption was done for a Provider who is on the FCHP's or PCO's panel.

(e) MHO Enrollment options shall be based on the OHP Client's county of residence, the FCHP or PCO selected by the OHP Client, and whether the FCHP or PCO selected serves as a MHO:

(A) If the OHP Client selects a FCHP or PCO that is not a MHO, then the OHP Client shall enroll in the MHO designated as the freestanding MHO for that county;

(B) If the OHP Client selects a FCHP or PCO that is a MHO, then the OHP Client shall receive OHP mental health benefits through that FCHP or PCO.

(6) If the OHP Client resides in a mandatory Service Area and fails to select a DCO, MHO, PCO and/or FCHP or a PCM at the time of application for the OHP, DMAP may enroll the OHP Client with a DCO, MHO, PCO and/or FCHP or a PCM as follows:

(a) The OHP Client shall be assigned to and enrolled with a DCO, MHO, and FCHP, PCO or PCM which meet the following requirements:

(A) Is open for Enrollment;

(B) Serves the county in which the OHP Client resides;

(C) Has Practitioners located within the Community Standard distance for average travel time for the OHP Client.

(b) Assignment shall be made first to a FCHP or PCO and second to a PCM;

(c) DHS shall send a notice to the OHP Client informing the OHP Client of the assignments and the right to change assignments within 30 calendar days of Enrollment. A change in assignment shall be honored if there is another DCO, MHO, and FCHP, PCO or PCM open for Enrollment in the county in which the OHP Client resides;

(d) Enrollments resulting from assignments shall be effective the first of the month or week after DHS enrolls the OHP Client and notifies the OHP Client of Enrollment and the name of the PHP or PCM: If Enrollment is initiated by a DHS worker on or before Wednesday, the date of Enrollment shall be the following Monday. If Enrollment is initiated by a DHS worker after Wednesday, the date of Enrollment shall be one week from the following Monday. Monthly Enrollment in a mandatory Service Area where there is only one FCHP, PCO, MHO or DCO shall be initiated by an auto-Enrollment program of DHS effective the first of the month following the month-end cutoff. Monthly Enrollment in Service Areas where there is a choice of PHPs, shall be auto-Enrolled by computer algorithm.

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(7) The provision of Capitated Services to a DMAP Member enrolled with a PHP or a PCM shall begin on the first day of Enrollment with the PHP or a PCM except for:

(a) A newborn whose mother was enrolled at the time of birth. The date of Enrollment shall be the newborn's date of birth;

(b) Persons, other than newborns, who are hospitalized on the date enrolled. The date of Enrollment with a FCHP, PCO or MHO shall be the first possible Enrollment date after the date the OHP Client is discharged from inpatient hospital services and the date of Enrollment with a PCM shall be the first of the month for which Capitation Payment is made;

(c) For DMAP Members who are re-enrolled within 30 calendar days of Disenrollment. The date of Enrollment shall be the date specified by DHS that may be retroactive to the date of Disenrollment;

(d) Adopted children or children placed in an adoptive placement. The date of Enrollment shall be the date specified by DHS.

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 8-1994(Temp), f. & cert. ef. 2-1-94; DEQ 24-1994, f. 5-31-94, cert. ef. 6-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 29-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 12-2002, f. & cert. ef. 4-1-02; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 10-2006(Temp), f. & cert. ef. 5-4-06 thru 10-27-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0070

Oregon Health Plan Fully Capitated Health Plan (FCHP) and Physician Care Organization (PCO) Pharmaceutical Drug List Requirements

(1) Prescription drugs are a Covered Service based on the funded Condition/Treatment Pairs. FCHPs and PCOs shall pay for prescription drugs, except:

(a) As otherwise provided, such as Class 7 & 11 medications (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Division of Medical Assistance Programs (DMAP) specifically carved out from capitation according to sections (8) through (11) of this rule;

(c) Any applicable Co-payments;

(d) For drugs covered under Medicare Part D when the Client is Fully Dual Eligible.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization (PA). The drug list must:

(a) Include Federal Drug Administration (FDA)-approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the Provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their Participating Providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates made to their drug list within 30 days of a change that may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 24-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide for the dispensing of at least a 72-hour supply of a drug that requires prior authorization

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referring Provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the DMAP Member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less-Than-Effective drugs which have reached the FDA Notice-of-Opportunity-for Hearing stage. The DESI Less-Than-Effective list is available at DMAP's Web site at <http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/misc_files/desi1.pdf>.

(8) DMAP may exclude (commonly called "carve out") drugs from FCHP and PCO capitation that are FDA approved to treat a serious mental health disorder, such as major depressive, bi-polar and schizophrenic disorders.

(9) In order for a drug to be considered for carve out from FCHP and PCO capitation for the January contract period, DMAP must receive the request for carve out from the FCHP or PCO no later than March 1 of the previous calendar year to be considered for carve out for the following January contract cycle. The request must include:

(a) The drug name;

(b) The FDA approved indications that include an FDA approved use to treat a severe mental health condition; and

(c) The reason that DMAP should consider this drug for carve out.

(10) DMAP determines whether or not to carve out a drug.

(11) DMAP will pay for a drug that is subject to carve out pursuant to the Pharmaceutical Services Rules (chapter 410, division 121). An FCHP or PCO may not reimburse Providers for carved out drugs.

Stat. Auth.: ORS 409

Stats. Implemented: 414.065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 57-2005, f. 10-25-05, cert. ef. 11-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0080

Oregon Health Plan (OHP) Disenrollment from Prepaid Health Plans (PHPs)

(1) DMAP Member Requests for Disenrollment:

(a) All Oregon Health Plan (OHP) DMAP Member-initiated requests for Disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For DMAP Members who are not able to request Disenrollment on their own, the request may be initiated by the DMAP Member's Representative;

(b) Primary person or Representative requests for Disenrollment shall be honored:

(A) Without cause:

(i) After six months of DMAP Member's Enrollment. The effective date of Disenrollment shall be the first of the month following the Department's approval of Disenrollment;

(ii) Whenever a DMAP Member's eligibility is redetermined by the Department of Human Services (DHS) and the primary person requests Disenrollment without cause. The effective date of Disenrollment shall be the first of the month following the date that the DMAP Member's eligibility is redetermined by the Department;

(B) With cause:

(i) At any time;

(ii) DMAP Members who disenroll from a Medicare Advantage plan shall also be Disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of Disenrollment shall be the first of the month that the DMAP Member's Medicare Advantage plan Disenrollment is effective;

(iii) DMAP Members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare Advantage component may disenroll from the FCHP or PCO at any time if they also request Disenrollment from the Medicare Advantage plan. The effective date of Disenrollment from the FCHP or PCO shall be the first of the month following the date of request for Disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the DMAP Member seeks;

(v) The DMAP Member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the DMAP Members' Primary Care Provider or another Provider determines that receiving the services separately would subject the DMAP Member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the Contract, or lack of access to

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Participating Providers experienced in dealing with the DMAP Member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The DMAP Member moves out of the PHP's Service Area;
(II) The DMAP Member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(III) Continuity of care that is not in conflict with any section of 410-141-0060 or this rule. Participation in the Oregon Health Plan, including managed care, does not guarantee that any Oregon Health Plan client has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care will be denied if the basis for this request is primarily for the convenience of an Oregon Health Plan client or a provider of a treatment, service or supply, including but not limited to a decision of a provider to participate or decline to participate in a PHP.

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP Client has just been re-determined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the DMAP Member is enrolled with does not contract with the DMAP Member's current OB Provider and the DMAP Member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the Disenrollment constraints listed in (b), above, DMAP Member Disenrollment requests are subject to the following requirements:

(A) The DMAP Member shall join another PHP, unless the DMAP Member resides in a Service Area where Enrollment is voluntary, or the DMAP Member meets the exemptions to Enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the DMAP Member wishes to disenroll, the DMAP Member may not disenroll without cause;

(C) The effective date of Disenrollment shall be the end of the month in which Disenrollment was requested unless retroactive Disenrollment is approved by DMAP;

(D) If the Department fails to make a Disenrollment determination by the first day of the second month following the month in which the DMAP Member files a request for Disenrollment, the Disenrollment is considered approved.

(2) Prepaid Health Plan requests for Disenrollment:

(a) Causes for Disenrollment:

(A) DMAP may Disenroll DMAP Members for cause when requested by the PHP, subject to American with Disabilities Act requirements. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the DMAP Member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare Advantage plan;

(ii) DMAP Member's behavior is disruptive, unruly, or abusive to the point that his/her continued Enrollment in the PHP seriously impairs the PHP's ability to furnish services to either the DMAP Member or other members, subject to the requirements in (2)(a)(B)(vii);

(iii) DMAP Member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff to the point that his/her continued Enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular DMAP Member or other DMAP Members, subject to the requirements in (2)(a)(B)(vii);

(iv) DMAP Member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts (other than those addressed in (2)(a)(A)(ii) or (iii)) committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP Clients who have been exempted from mandatory Enrollment with a FCHP or PCO, due to the OHP Client's eligibility

through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(F);

(vi) DMAP Member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230.

(B) DMAP Members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the DMAP Member's health;

(iii) Because of the DMAP Member's utilization of services, either excessive or lack thereof;

(iv) Because the DMAP Member requests a hearing;

(v) Because the DMAP Member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the DMAP Member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior, including but not limited to threats or acts of physical violence, resulting from the DMAP Member's special needs (except when continued Enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this DMAP Member or other members).

(C) Requests by the PHP for Disenrollment of specific DMAP Members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting Disenrollment of a DMAP Member:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the DMAP Member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the DMAP Member either verbally or in writing, depending on the severity of the problem, to inform the DMAP Member of the problem that has been identified, and attempt to develop an agreement with the DMAP Member regarding the issue(s). If contact is verbal, it shall be documented in the DMAP Member's record. The PHP shall inform the DMAP Member that his/her continued behavior may result in Disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions with the DMAP Member in a serious effort to resolve the problem;

(iv) The PHP shall contact the DMAP Member's DHS caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution, within the laws governing confidentiality;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of the Provider, caseworker, DMAP Member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the DMAP Member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the DMAP Member's record;

(vi) Any additional information or assessments requested by the DMAP PHP Coordinator;

(vii) If the DMAP Member's behavior is uncooperative or disruptive, including but not limited to threats or acts of physical violence, as the result of his/her special needs or disability, the PHP must also document each of the following:

(I) A written assessment of the relationship of the behavior to the special needs or disability of the individual and whether the individual's behavior poses a direct threat to the health or safety of others. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures. In determining whether a DMAP Member poses a direct threat to the health or safety of others, the PHP must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) A PHP-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist or other health care profes-

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sionals who have the appropriate clinical expertise in treating the DMAP Member's condition to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment of whether the behavior will respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Documentation of the PHP's rationale for concluding that the DMAP Member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular DMAP Member or other members.

(viii) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the DMAP Member as their patient. If needed, the PHP shall obtain an authorization for release of information from the DMAP Member in order to share the information necessary for a new Provider to evaluate if they can treat the DMAP Member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by the PHP's Coordinator or a team of PHP Coordinators who may request additional information from Ombudsman Services, AMH or other agencies as needed; If the request involves the DMAP Member's mental health condition or behaviors related to substance abuse, the PHP Coordinator should also confer with the OHP Coordinator in AMH;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP within 2 business days of what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt of sufficient documentation from the PHP. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the PHP.

(E) If the request is approved the PHP Coordinator must send the DMAP Member a letter within 14 days after the request was approved, with a copy to the PHP, the DMAP Member's DHS caseworker and DMAP's Health Management Unit (HMU). The letter must give the Disenrollment date, the reason for Disenrollment, and the notice of DMAP Member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing. If the DMAP Member requests a hearing, the DMAP Member will continue to be disenrolled until a hearing decision reversing that Disenrollment has been sent to the DMAP Member and the PHP:

(i) In cases where the DMAP Member is also enrolled in the FCHP's or PCO's Medicare Advantage plan and the plan has received permission to disenroll the client, the FCHP or PCO will provide proof of the CMS approval to Disenroll the client and the date of Disenrollment shall be the date approved by CMS;

(ii) The Disenrollment date is 30 days after the date of approval, except as provided in subsections (iii) and (iv) of this section:

(I) The PHP Coordinator will determine when Enrollment in another PHP or with a PCM is appropriate. If appropriate, the PHP Coordinator will contact the DMAP Member's DHS caseworker to arrange Enrollment. DMAP may require the DMAP Member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(II) When the Disenrollment date has been determined, HMU will send a letter to the DMAP Member with a copy to the DMAP Member's DHS caseworker and the PHP. The letter shall inform the DMAP Member of the requirement to be enrolled in another PHP, if applicable.

(iii) If the PHP Coordinator approves a PHP's request for Disenrollment because of the DMAP Member's uncooperative or disruptive behavior, including threats or acts of physical violence directed at a medical Provider, the Provider's staff, or other patients, or because the DMAP Member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following additional procedures shall apply:

(I) The DMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(II) All DMAP Members in the DMAP Member's benefit group, as defined in OAR 461-110-0720, may be Disenrolled if the PHP requests;

(III) At the time of Enrollment into another PHP, DMAP shall notify the new PHP that the DMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request.

(iv) If a DMAP Member who has been Disenrolled for cause is re-enrolled in the PHP, the PHP may request a Disenrollment review by the PHP's PHP Coordinator. A DMAP Member may not be Disenrolled from the same PHP for a period of more than 12 months. If the DMAP Member is re-enrolled after the 12-month period and is again Disenrolled for cause, the Disenrollment will be reviewed by DHS for further action.

(b) Other reasons for the PHP's requests for Disenrollment include the following:

(A) If the DMAP Member is enrolled in the FCHP or MHO on the same day the DMAP Member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the DMAP Member is enrolled after the first day of the inpatient stay, the DMAP Member shall be Disenrolled, and the date of Enrollment shall be the next available Enrollment date following discharge from inpatient hospital services;

(B) The DMAP Member has surgery scheduled at the time their Enrollment is effective with the PHP, the Provider is not on the PHP's Provider panel, and the DMAP Member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Advantage plan and was receiving Hospice Services at the time of Enrollment in the PHP;

(D) The DMAP Member had End Stage Renal Disease at the time of Enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the DMAP Member has a third party insurer. If after contacting The Health Insurance Group, the Disenrollment is not effective the following month, the PHP may contact HMU to request Disenrollment;

(F) If a PHP has knowledge of a DMAP Member's change of address, the bPHP shall notify DHS. DHS will verify the address information and Disenroll the DMAP Member from the PHP, if the DMAP Member no longer resides in the PHP's Service Area. DMAP Members shall be Disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of Disenrollment shall be the date specified by DMAP and DMAP will recoup the balance of that month's Capitation Payment from the PHP;

(G) The DMAP Member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include DMAP Members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the DMAP Members and providing sufficient proof of incarceration to HMU for review of the Disenrollment request. DMAP will approve requests for Disenrollment from PHPs for DMAP Members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time a DMAP Member was an inmate;

(H) The DMAP Member is in a state psychiatric institution.

(3) DMAP Initiated Disenrollments:

(a) DMAP may initiate and Disenroll DMAP Members as follows:

(A) If DMAP determines that the DMAP Member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, DMAP may Disenroll the DMAP Member. The effective date of Disenrollment shall be the end of the month in which DMAP makes such a determination. DMAP may specify a retroactive effective date of Disenrollment if the DMAP Member's third party coverage is through the PHP, or in other situations agreed to by the PHP and DMAP;

(B) If the DMAP Member moves out of the PHP's Service Area(s), the effective date of Disenrollment shall be the date specified by DMAP and DMAP will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the DMAP Member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of Disenrollment shall be the date specified by DMAP;

(D) If the DMAP Member dies, the effective date of Disenrollment shall be the end of the month following the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare Advantage plan, DMAP Members with Medicare shall be Disenrolled from the existing PHP. The effective date of Disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If DMAP determines that the PHP's DMAP Member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effec-

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tive date of the Disenrollment shall be the DMAP Member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the DMAP notification of Disenrollment to the PHP, all Disenrollments are effective the end of the month after the request for Disenrollment is approved by DMAP;

(c) DMAP shall inform the DMAP Members of the Disenrollment decision in writing, including the right to request an Administrative Hearing. Oregon Health Plan Clients may request a DMAP hearing if they dispute a Disenrollment decision by DMAP;

(d) If the OHP Client requests a hearing, the OHP Client will continue to be Disenrolled until a hearing decision reversing that Disenrollment is sent the OHP Client.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.065
Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0220

Oregon Health Plan Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all DMAP Members. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Participating Provider compliance. PHPs shall document all monitoring and corrective action activities. PHPs shall not discriminate between DMAP Members and non-DMAP members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures which ensure that for 90% of their DMAP Members in each Service Area, routine travel time or distance to the location of the PCP does not exceed the Community Standard for accessing health care Participating Providers. The travel time or distance to PCPs shall not exceed the following, unless otherwise approved by DMAP:

(A) In urban areas — 30 miles, 30 minutes or the Community Standard, whichever is greater;

(B) In rural areas — 60 miles, 60 minutes or the Community Standard, whichever is greater.

(b) PHPs shall maintain and monitor a network of appropriate Participating Providers sufficient to ensure adequate service capacity to provide availability of, and timely access to, Medically Appropriate covered services for DMAP Members:

(A) PHPs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced Participating Provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act;

(B) PHPs shall make the services it provides including: specialists, pharmacy, hospital, vision and ancillary services, as accessible to DMAP Members in terms of timeliness, amount, duration and scope as those services are to non-DMAP persons within the same Service Area. If the PHP is unable to provide those services locally, it must so demonstrate to DMAP and shall provide reasonable alternatives for DMAP Members to access care that must be approved by DMAP. PHPs shall have a monitoring system that will demonstrate to DMAP or AMH, as applicable, that the PHP has surveyed and monitored for equal access of DMAP Members to referral Providers pharmacy, hospital, vision and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that DMAP Members who are Aged, Blind, or Disabled or who are children receiving CAF (SOSCF services) or OYA services have access to primary care, dental care, mental health Providers and referral, as applicable. These Providers shall have the expertise to treat, take into account and accommodate the full range of medical, dental or mental health conditions experienced by these DMAP Members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs and Primary Care Managers (PCMs) Enrollment Standards:

(a) PHPs and PCMs shall remain open for Enrollment unless DHS has closed Enrollment because the PHP or PCM has exceeded their Enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by DMAP or AMH, as appropriate, and the PHP or PCM;

(b) PHPs Enrollment may also be closed by DMAP or AMH, as appropriate due to sanction provisions;

(c) PHPs and PCMs shall accept all OHP Clients, regardless of health status at the time of Enrollment, subject to the stipulations in Contracts/agreements with DHS to provide covered services or Primary Care management services;

(d) PHPs and PCMs may confirm the Enrollment status of an OHP Client by one of the following:

(A) The individual's name appears on the monthly or weekly Enrollment list produced by DMAP;

(B) The individual presents a valid Medical Care Identification that shows he or she is enrolled with the PHP or PCM;

(C) The Automated Information System (AIS) verifies that the individual is currently eligible and enrolled with the PHP or PCM;

(D) An appropriately authorized staff member of DHS states that the individual is currently eligible and enrolled with the PHP or PCM.

(e) PHPs shall have open Enrollment for 30 continuous calendar days during each twelve-month period of January through December, regardless of the PHPs Enrollment limit. The open Enrollment periods for consecutive years may not be more than 14 months apart.

(3) If a PHP is assumed by another PHP, DMAP Members shall be automatically enrolled in the succeeding PHP. The DMAP Member will have 30 calendar days to request Disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare Advantage plan, those DMAP Members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered Enrollment in the succeeding PHP.

(4) If a PHP engages in an activity, such as the termination of a Participating Provider or Participating Provider group which has significant impact on access in that Service Area and necessitates either transferring DMAP Members to other Providers or the PHP withdrawing from part or all of a Service Area, the PHP shall provide DHS at least 90 calendar days written notice prior to the planned effective date of such activity:

(a) A PHP may provide less than the required 90 calendar days notice to DHS upon approval by DHS when the PHP must terminate a Participating Provider or Participating Provider group due to problems that could compromise DMAP Member care, or when such a Participating Provider or Participating Provider group terminates its contract with the PHP and refuses to provide the required 90 calendar days notice;

(b) If DHS must notify DMAP Members of a change in Participating Providers or PHPs, the PHP shall provide DHS with the name, prime number, and address label of the DMAP Members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide DMAP Members with at least 30 calendar-days notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of DMAP Member appointments are appropriate to the reasons for, and urgency of, the visit:

(a) PHPs shall have written policies and procedures and a monitoring system to assure that DMAP Members have access to appointments according to the following standards:

(A) FCHPs and PCOs:

(i) Emergency Care — The DMAP Member shall be seen immediately or referred to an emergency department depending on the DMAP Member's condition;

(ii) Urgent Care — The DMAP Member shall be seen within 48 hours; and

(iii) Well Care — The DMAP Member shall be seen within 4 weeks or within the Community Standard.

(B) DCOs:

(i) Emergency Care — The DMAP Member shall be seen or treated within 24-hours;

(ii) Urgent Care — The DMAP Member shall be seen within one to two weeks depending on DMAP Member's condition; and

(iii) Routine Care — The DMAP Member shall be seen for routine care within an average of eight (8) weeks and within twelve (12) weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate.

(C) MHOs and CDO's:

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(i) Emergency Care — DMAP Member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care — DMAP Member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care — DMAP Member shall be seen for an intake assessment within 2 weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of DMAP Members through the office such that DMAP Members are not kept waiting longer than non-DMAP Member patients, under normal circumstances. If DMAP Members are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, DMAP Members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through Complaint and Appeal reviews, DMAP termination reports, and DMAP Member surveys to determine if waiting times for clients in all settings are appropriate;

(c) PHPs shall have written procedures and a monitoring system for timely follow-up with DMAP Member(s) when Participating Providers have notified the PHP that the DMAP Member(s) have failed to keep scheduled appointments. The procedures shall address determining why appointments are not kept, the timely rescheduling of missed appointments, as deemed Medically or Dentally Appropriate, documentation in the Clinical Record or non-clinical record of missed appointments, recall or notification efforts, and outreach services. If failure to keep a scheduled appointment is a symptom of the DMAP Member's diagnosis or disability or is due to lack of transportation to the PHP's Participating Provider office or clinic, PHPs shall provide outreach services as Medically Appropriate;

(d) PHPs shall have policies and procedures that ensure Participating Providers will attempt to contact DMAP Members if there is a need to cancel or reschedule the DMAP Member's appointment and there is sufficient time and a telephone number available;

(e) PHPs shall have written policies and procedures to Triage the service needs of DMAP Members who walk into the PCP's office or clinic with medical, mental health or dental care needs. Such Triage services must be provided in accordance with OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(f) DMAP Members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the DMAP Member's needs or be evaluated for treatment within two hours by a medical, mental health or dental Provider.

(g) PHPs shall have written policies and procedures that ensure the maintenance of 24-hour telephone coverage (not a recording) either on site or through call sharing or an answering service, unless this requirement is waived in writing by DMAP and/or AMH because the PHP submits an alternative plan that will provide equal or improved telephone access:

(a) Such policies and procedures shall ensure that telephone coverage provides access to 24-hour care and shall address the standards for PCPs or clinics callback for emergency, urgent, and routine issues and the provision of interpretive services after office hours;

(b) FCHPs and PCOs shall have an adequate on-call PCP or clinic backup system covering internal medicine, family practice, OB/Gyn, and pediatrics, as an operative element of FCHP's and PCO's after-hours care;

(c) Such policies and procedures shall ensure that relevant information is entered into the appropriate Clinical Record of the DMAP Member regardless of who responds to the call or the time of day the call is received. PHPs shall monitor for compliance with this requirement;

(d) Such policies and procedures shall include a written protocol specifying when a medical, mental health or dental Provider must be consulted. When Medically Appropriate, all such calls shall be forwarded to the on-call PCP who shall respond immediately to calls which may be emergent in nature. Urgent calls shall be returned appropriate to the DMAP Member's condition, but in no event more than 30 minutes after receipt. If information is inadequate to determine if the call is urgent, the call shall be returned within 60 minutes;

(e) Such policies and procedures shall ensure that all persons answering the telephone (both for the PHP and the PHP's Participating Providers) have sufficient communication skills and training to reassure DMAP Members and encourage them to wait for a return call in appropriate situations. PHPs shall have written procedures and trained staff to communicate with hearing impaired DMAP Members via TDD/TTY;

(f) PHPs shall monitor compliance with the policies and procedures governing 24-hour telephone coverage and on-call PCP coverage, take corrective action as needed, and report findings to the PHP's Quality Improvement committee;

(g) PHPs shall monitor such arrangements to ensure that the arrangements provide access to 24-hour care. PHPs shall, in addition, have telephone coverage at PHP's administrative offices that will permit access to PHPs' administrative staff during normal office hours, including lunch hours.

(7) PHPs shall develop written policies and procedures for communicating with, and providing care to DMAP Members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone:

(a) Such policies and procedures shall address the provision of qualified interpreter services by phone, in person, in PHP administrative offices, especially those of DMAP Member services and Complaint and Grievance representatives and in emergency rooms of contracted hospitals;

(b) PHPs shall provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits, to interpret for DMAP Members with hearing impairment or in the primary language of non-English speaking DMAP Members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the DMAP Member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the Provider to be able to understand the DMAP Member's complaint; to make a diagnosis; respond to DMAP Member's questions and concerns; and to communicate instructions to the DMAP Member;

(c) PHPs shall ensure the provision of care and interpreter services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the DMAP Member;

(d) PHPs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered services for all DMAP Members and shall arrange for services to be provided by Non-Participating referral Providers when necessary:

(A) PHPs shall have a written plan for ensuring compliance with these requirements and shall monitor for compliance;

(B) Such a plan shall include procedures to determine whether DMAP Members are receiving accommodations for access and to determine what will be done to remove existing barriers and/or to accommodate the needs of DMAP Members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all DMAP Members including, but not limited to, the following:

(i) Street level access or accessible ramp into facility;

(ii) Wheelchair access to lavatory;

(iii) Wheelchair access to examination room; and

(iv) Doors with levered hardware or other special adaptations for wheelchair access.

(e) PHPs shall ensure that Participating Providers, their facilities and personnel are prepared to meet the special needs of DMAP Members who require accommodations because of a disability:

(A) PHPs shall have a written plan for meeting the needs of DMAP Members;

(B) PHPs shall monitor Participating Providers for compliance with the access plan and take corrective action, when necessary.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, 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 38-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; 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 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0480

Oregon Health Plan Benefit Package of Covered Services

(1) DMAP Members are eligible to receive, subject to Section (11) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 section (4) for funded line coverage information.

(2) Medical Assistance Benefit Packages follow practice guidelines adopted by the Health Services Commission (HSC) in conjunction with the Prioritized List of Health Services unless otherwise specified in rule.

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(3) Diagnostic Services that are necessary and reasonable to diagnose the presenting condition of the DMAP Member are Covered Services, regardless of the placement of the condition on the Prioritized List of Health Services.

(4) Comfort care is a Covered Service for a DMAP Member with a Terminal Illness.

(5) Preventive Services promoting health and/or reducing the risk of disease or illness are Covered Services for DMAP Members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors. (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(6) Ancillary Services are covered, subject to the service limitations of the OHP Program rules, when the services are Medically or Dentally Appropriate for the treatment of a covered Condition/Treatment Pair, or the provision of Ancillary Services will enable the DMAP Member to retain or attain the capability for independence or self-care.

(7) The provision of Chemical Dependency Services must be in compliance with the Addictions and Mental Health Division (AMH) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the requirements in the Chemical Dependency subsection of the Statement of Work in the Fully Capitated Health Plan and Physician Care Organization contracts.

(8) In addition to the coverage available under section (1) of this rule, a DMAP Member may be eligible to receive, subject to section (11), services for treatments that are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP Client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded Co-Morbid Conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by DMAP for fee-for-service OHP Clients or a finding by the Prepaid Health Plan (PHP) for DMAP Members that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

- (i) Treating physician opinion;
- (ii) Medical research;
- (iii) Community standards; and
- (iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any DMAP Member, especially an DMAP Member with a disability or with a Co-Morbid Condition, Providers must determine whether the DMAP Member has a funded Condition/Treatment Pair that would entitle the DMAP Member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD-9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(9) DMAP shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of Covered Services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, DMAP shall make a retrospective determination under this subsection, provided DMAP is notified of the emergency situation during the next business day. If DMAP denies a requested service, DMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(10) If a Condition/Treatment Pair is not on the Health Services Commission's Prioritized List of Health Services and DMAP determines the Condition/Treatment Pair has not been identified by the Commission for inclusion on the list, DMAP shall make a coverage decision in consultation with the Health Services Commission.

(11) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients.

(12) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those DMAP Members with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure as outlined below:

(a) Children under three years old with dental needs determined by the dentist or oral surgeon as requiring general anesthesia;

(b) Children over three years old requiring substantial dental care determined by the dentist or oral surgeon as requiring general anesthesia that may protect the child from unnecessary trauma;

(c) DMAP Members with physical, mental or medically compromising conditions;

(d) DMAP Members with dental needs for who local anesthesia is ineffective because of acute infection, anatomic variations, or allergy;

(e) Acute situational anxiety, fearfulness, extremely uncooperative or uncommunicative client with dental needs, determined by the dentist or oral surgeon, sufficiently important that dental care cannot be deferred;

(f) DMAP Members who have sustained extensive orofacial and dental trauma; or

(g) DMAP Members with dental needs who otherwise would not obtain necessary dental care when, in the decision of the dentist or oral surgeon, the need for dental treatment outweighs the risks of general anesthesia. The DMAP Member's dental record must clearly document the justification for the level of anesthesia and why, in the estimation of the dentist or oral surgeon, the treatment in an office setting is not possible.

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 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website: www.oregon.gov/DHS/health-plan/priorlist/main, or, for a hardcopy contact the Office of Oregon Health Policy and Research. This rule incorporates by reference the January 1, 2006 Prioritized List, with technical revisions effective April 1, 2006 and January 1, 2007, including expanded definitions and practice guidelines that are available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The January 1, 2006 Prioritized List, with technical revisions effective April 1, 2006 and January 1, 2007, is in effect and condition/treatment pairs through line 530 are funded.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03

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cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07

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Rule Caption: January 2007 rule updates for the DMEPOS program.

Adm. Order No.: OMAP 47-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Amended: 410-122-0020, 410-122-0055, 410-122-0080, 410-122-0182, 410-122-0184, 410-122-0186, 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0205, 410-122-0207, 410-122-0208, 410-122-0209, 410-122-0210, 410-122-0240, 410-122-0280, 410-122-0320, 410-122-0325, 410-122-0340, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0380, 410-122-0400, 410-122-0420, 410-122-0500, 410-122-0510, 410-122-0580, 410-122-0600, 410-122-0620, 410-122-0660, 410-122-0678, 410-122-0700, 410-122-0720

Rules Repealed: 410-122-0085, 410-122-0190, 410-122-0530

Subject: The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Program administrative rules govern Division of Medical Assistance Programs' (DMAP) payments for services provided to certain clients.

DMAP repealed: **410-122-0085 Dispensing:** Information moved to 410-122-0184.

410-122-0190 Miscellaneous Durable Medical Equipment and Supplies: Information in this rule is already found in other rules.

410-122-0530 Proof of Delivery: Information moved to 410-122-0184.

DMAP amended rules for housekeeping and clarification regarding conditions of coverage as follows: **410-122-0020 Orders:** Adds that signature and date stamps are only acceptable for use on certificates of medical necessity (CMNs) when allowed by Medicare.

410-122-0055 Standard Benefit Package Limitations: Adds code A4604 (tubing with integrated heating element for use with positive airway pressure device).

410-122-0080 Conditions of Coverage, Limitations, Restrictions and Exclusions: Removes reimbursement information (moved to 410-122-0186).

410-122-0182 Legend: Clarifies some abbreviations used in the tables.

410-122-0184 Repairs, Maintenance, Replacement and Delivery: Changes name to *Repairs, Maintenance, Replacement, Delivery and Dispensing*, adds dispensing (from 410-122-0085), proof of delivery (from 410-122-0530) and documentation requirements.

410-122-0186 Reimbursement and Prior Authorization Requirements for Codes E1399 and K0108: Changes name to Payment Methodology and specifies payment methodology for DMEPOS.

410-122-0202 CPAP: Adds code A4604 (tubing with integrated heating element for use with positive airway pressure device) and clarifies payment authorization requirements.

410-122-0203 Oxygen and Oxygen Equipment: Rewrites rule to clarify conditions of coverage, reformats the rule and adds prior authorization requirements. Currently DMAP makes continuous monthly payments for oxygen equipment as long as medically appropriate. In keeping with the Deficit Reduction Act (DRA), beginning with items newly rented on or after January 1, 2006, the rental period changes to not more than 36 months for oxygen equipment. Once the rental period ends, title to the equipment transfers to the client. DMAP will continue to pay for reasonable and necessary service and maintenance after the end of the rental period for covered equipment.

410-122-0207 Respiratory Supplies: Moves A4608 (transtracheal oxygen catheter), A4615 (cannula, nasal), A4616 (tubing, oxygen), A4617 (mouthpiece) and A4620 (variable concentration mask) to 410-122-0203 Oxygen and Oxygen Equipment. Adds E0605 (vaporizer).

410-122-0209 Tracheostomy Care Supplies: Moves A7525 (tracheostomy mask) to 410-122-0203 Oxygen and Oxygen Equipment.

410-122-0240 Apnea Monitors for Infants: DHS Division name changes (housekeeping) only.

410-122-0320 Manual Wheelchair Base: Clarifies conditions of coverage.

410-122-0325 Motorized Power Wheelchair Base: Adds 63 new power wheelchair codes and clarifies conditions of coverage.

410-122-0340 Wheelchair Options/Accessories: Adds: "A shoulder harness/straps or chest strap (E0960) and a safety belt/pelvic strap (E0978) are covered only to treat a client's medical symptoms;

(I) A medical symptom is defined as an indication or characteristic of a physical or psychological condition;

(II) E0960 and E0978 are not covered when intended for use as a physical restraint or for purposes intended for discipline or convenience of others."

410-122-0380 Hospital Beds: Adds: "Payment Authorization: Subject to service limitations of DMAP rules, from the initial date of service through the second date of service, a hospital bed rental may be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require prior authorization."

410-122-0400 Pressure Reducing Support Surfaces: Adds: "DMAP may consider coverage for bariatric pressure reducing support surfaces coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric pressure reducing support surface has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC)."

410-122-0420 Hospital Bed Accessories: Adds: "Bariatric trapeze bars coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of DMAP rules, may be considered for coverage."

410-122-0510 Osteogenesis Stimulator: Clarifies coverage criteria for an ultrasonic osteogenesis stimulator.

410-122-0580 Bath Supplies: Adds E0705 (transfer board or device).

410-122-0600 Toilet Supplies: Adds: "Bariatric commodes coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of DMAP rules, may be considered for coverage."

410-122-0620 Miscellaneous Supplies: Clarifies conditions of coverage for some miscellaneous items.

410-122-0660 Orthotics and Prosthetics: Removes L7520 (repair prosthetic device, labor component, per 15 minutes) from exclusions list.

410-122-0700 Negative Pressure Wound Therapy Pumps: Removes PA from A7000 (canister, disposable, used with suction pump) and clarifies conditions of coverage.

410-122-0720 Pediatric Wheelchairs: Rewrites rule to reflect the same coverage criteria in 410-122-0320 Manual Wheelchair Base (which became effective 7/1/06).

(The following amendments are contingent upon CMS implementation.) Currently capped rental items are rented by DMAP for

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no more than 13 to 16 months depending on the item. In keeping with the DRA, beginning with items newly rented on or after January 1, 2006, the rental period changes to not more than 13 months for most capped rental items. Once the rental period ends, title to the equipment transfers to the client. DMAP will continue to pay for reasonable and necessary service and maintenance after the end of the rental period for covered items.

Changes the capped rental period to no more than 13 months for some codes in the following rules: 410-122-0202, 410-122-0203, 410-122-0204, 410-122-0205, 410-122-0208, 410-122-0210, 410-122-0280, 410-122-0360, 410-122-0365, 410-122-0375, 410-122-0420, 410-122-0500, 410-122-0600, 410-122-0620, 410-122-0678, 410-122-0720

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-122-0020

Orders

(1) The purchase, rental or modifications of durable medical equipment, and the purchase of supplies must have an order prior to dispensing items to a client.

(2) For any durable medical equipment, prosthetics, orthotics and supplies (DMEPOS), a provider must have a written order signed and dated by the treating practitioner prior to submitting a claim to the Division of Medical Assistance Programs (DMAP).

(3) A provider may dispense some items based on a verbal order from the treating practitioner, except those items requiring a written order prior to delivery (see below) or as specified in a particular rule:

(a) A provider must maintain documentation of the verbal order and this documentation must be available to DMAP upon request;

(b) The verbal order must include all the following elements:

(A) Client's name; and,

(B) Name of the practitioner; and

(C) Description of the item; and

(D) Start date of the order; and

(E) Primary ICD-9 diagnosis code for the equipment/supplies requested.

(c) For items that are dispensed based on a verbal order, the provider must obtain a written order that meets the requirements outlined below for written orders.

(4) For an item requiring a written order prior to delivery, Medicare criteria must be met.

(5) The DMEPOS provider must have on file a written order, information from the treating practitioner concerning the client's diagnosis and medical condition, and any additional information required in a specific rule.

(6) DMAP accepts any of the following forms of orders and Certificates of Medical Necessity (CMN): a photocopy, facsimile image, electronically maintained or original "pen and ink" document.

(a) An electronically maintained document is one which has been created, modified, and stored via electronic means such as commercially available software packages and servers;

(b) It is the provider's responsibility to ensure the authenticity/validity of a facsimile image, electronically maintained or photocopied order;

(c) A provider must also ensure the security and integrity of all electronically maintained orders and/or certificates of medical necessity;

(d) The written order may serve as the order to dispense the item if the written order is obtained before the item is dispensed;

(7) A written order must be legible and contain the following elements:

(a) Client's name; and

(b) Detailed description of the item that can either be a narrative description (e.g., lightweight wheelchair base) or a brand name/model number including medically appropriate options or additional features; and

(c) The detailed description of the item may be completed by someone other than the practitioner. However, the treating practitioner must review the detailed description and personally indicate agreement by his signature and the date that the order is signed;

(A) DMAP requires practitioners to sign for services they order;

(B) This signature may be handwritten, electronic, or stamped, and it must be in the client's medical record;

(C) The ordering practitioner is responsible for the authenticity of the signature;

(D) If a practitioner allows a signature stamp, the provider performing the service must retain a signed statement in their records that this practitioner is the only person who has and uses the stamp;

(d) Primary ICD-9 diagnosis code for the equipment/supplies requested;

(8) A provider is responsible to obtain as much documentation from the client's medical record as necessary for assurance that DMAP coverage criteria for an item(s) is met.

(9) Certain items require one or more of the following additional elements in the written order:

(a) For accessories or supplies that will be provided on a periodic basis:

(A) Quantity used;

(B) Specific frequency of change or use — "as needed" or "prn" orders are not acceptable;

(C) Number of units;

(D) Length of need: Example: An order for surgical dressings might specify one 4" x 4" hydrocolloid dressing which is changed one to two times per week for one month or until the ulcer heals;

(b) For orthoses: If a custom-fabricated orthosis is ordered by the physician, this must be clearly indicated on the written order;

(c) Length of need:

(A) If the coverage criteria in a rule specifies length of need; or,

(B) If the order is for a rental item;

(d) Any other medical documentation required by rule.

(10) For repairs: Labor for repairs, parts for DME repairs and replacement parts for DME (e.g., batteries) do not require a written order.

(11) A new order is required:

(a) When required by Medicare (for a Medicare covered service) (www.cignamedicare.com); or

(b) When there is a change in the original order for an item; or,

(c) When an item is permanently replaced; or

(d) When indicated by the treating practitioner;

(A) A new order is required when an item is being replaced because the item is worn or the client's condition has changed; and,

(B) The provider's records should also include client-specific information regarding the need for the replacement item; and,

(C) This information should be maintained in the provider's files and be available to DMAP on request; and,

(D) A new order is required before replacing lost, stolen or irreparably damaged items to reaffirm the medical appropriateness of the item;

(e) When there is a change of DMEPOS provider: In cases where two or more providers merge, the resultant provider should make all reasonable attempts to secure copies of all active CMN's and written orders from the provider(s) purchased. This document should be kept on file by the resultant provider for future presentation to DMAP, if requested;

(f) On a regular or specific basis (even if there is no change in the order) only if it is so specified in a particular rule.

(12) A provider is required to maintain and provide (when required by a particular rule) legible copies of facsimile image and electronic transmissions of orders.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 41-1982, f. 4-29-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 in the North Salem, Woodburn, McMinnville, Lebanon, Albany and Corvallis branch offices, ef. 6-30-82 in the balance of the state; AFS 20-1983, f. 5-5-83, ef. 6-1-83; AFS 49-1987, f. 10-16-87, ef. 11-1-87; AFS 48-1989, f. & cert. ef. 8-24-89; HR 13-1991, f. & cert. ef. 3-1-91, Renumbered from 461-024-0004; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 72-2002(Temp), f. & cert. ef. 12-24-02 thru 5-15-03; OMAP 36-2003, f. & cert. ef. 5-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0055

OHP Standard Benefit Package Limitations

(1) Durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) coverage for the Oregon Health Plan (OHP) Standard benefit package is limited to the codes listed in **Table 122-0055**. Coverage requirements and limitations as specified in chapter 410, division 122 apply. For more information about the OHP Standard benefit package, see the Division of Medical Assistance Programs (DMAP) General Rules (chapter 410, division 120).

(2) OHP Standard benefit package coverage includes limited home enteral/parenteral nutrition and intravenous services. For more information, see Home Enteral/Parenteral Nutrition and Intravenous Services (chapter 410, division 148).

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(3) Table 122-0055.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 49-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0080

Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (DMAP) may cover durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) for payment when the item meets all the criteria in this rule, including all of the following conditions:

(a) Has been approved for marketing by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of DMAP rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the OHP Client's benefit package of covered services.

(2) Conditions for Medicare-Medicaid Services

(a) When Medicare is the primary payer for a covered service and when DMAP DMEPOS coverage criteria differs from Medicare coverage criteria, DMAP DMEPOS coverage criteria are waived, except as provided in subsection (b) of this section, and only if the item is requested in relation to a diagnosis and treatment pair that is above the funding line on the Prioritized List of Health Services, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and included in the OHP Client's benefit package of covered services;

(b) If Medicare is the primary payer and Medicare denies payment, Medicare appeals must be timely filed prior to submitting the claim for payment to DMAP. Medicare denial on the basis of failure to submit a timely appeal may result in DMAP reducing from the amount of the claim any amount DMAP determines could have been paid by Medicare;

(c) If Medicare denies coverage on appeal, DMAP will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the Oregon Health Plan.

(3) DMAP will not cover DMEPOS when the item or the use of the item meets any of the following characteristics:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of client or caregiver;

(c) Inappropriate or unsuitable for home use;

(d) A self-help device;

(e) Not therapeutic or diagnostic in nature;

(f) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(g) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(h) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(i) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) Particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. If prior authorization is required, the request must document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. DMAP may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to DMAP on request.

(8) To identify non-covered items at a code level, providers can refer to DMAP's fee schedule for further assistance.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitute a buy-up and are prohibited. Refer to the DMAP General Rules for specific language on buy-ups.

(11) Equipment purchased by DMAP is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) Medical supplies are not separately payable to a DMEPOS provider while a client with Medicare Part A coverage is under a home health plan of care and covered home health care services.

(16) Medical supplies are not separately payable while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, DMAP or other carrier.

(17) The items listed in **Table 122-0080** generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. A request for equipment or an item on this list must meet all criteria in this rule.

(18) Table 122-0080.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 3-1982, f. 1-20-82, ef. 2-1-82; AFS 6-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 24-1990(Temp), f. & cert. ef. 7-27-90; HR 6-1991, f. & cert. ef. 1-18-91, Renumbered from 461-024-0020; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0182

Legend

(1) The Division of Medical Assistance Programs (DMAP) uses abbreviations in the tables within this division.

(2) This rule explains the meaning of these abbreviations.

(3) PA — Prior authorization (PA): "PA" indicates that PA is required, even if the client has private insurance. See OAR 410-122-0040 for more information about PA requirements.

(4) PC — Purchase: "PC" indicates that purchase of this item is covered for payment by DMAP.

(5) RT — Rent: "RT" indicates that the rental of this item is covered for payment by DMAP.

(6) MR — Months Rented:

(a) "13" — Indicates that after 13 months of continuous rental or when the usual purchase price is reached (whichever is lesser), the equipment is considered paid for and owned by the client. After 13 months of rental payments, the provider must transfer title of the equipment to the client.

(b) "36" — Beginning with the first rental month on or after January 1, 2006, indicates that after 36 months of continuous rental or when the usual purchase price is reached (whichever is lesser), the equipment is considered paid for and owned by the client. After 36 months of rental payments, the provider must transfer title of the equipment to the client.

(7) RP — Repair: "RP" indicates that repair of this item is covered for payment by DMAP.

(8) NF — Nursing Facility: "NF" indicates that this procedure code is covered for payment by DMAP when the client is a resident of a nursing facility.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

410-122-0184

Repairs, Maintenance, Replacement, Delivery and Dispensing

(1) Indications and Limitations of Coverage and/or Medical Appropriateness: The Division of Medical Assistance Programs (DMAP) may cover repairs, maintenance, and replacement of medically appropriate, covered durable medical equipment, prosthetics and orthotics, including those items purchased or in use before the client enrolled with DMAP.

(a) Repairs:

(A) To repair means to fix or mend and to put the equipment back in good condition after damage or wear to make the equipment serviceable;

(B) If the expense for repairs exceeds the estimated expense of purchasing or renting another item of equipment for the remaining period of medical need, no payment will be made for the amount of the excess;

(C) Payment for repairs is not covered when:

(i) The skill of a technician is not required; or

(ii) The equipment has been previously denied; or

(iii) Equipment is being rented, including separately itemized charges for repair; or

(iv) Parts and labor are covered under a manufacturer's or supplier's warranty;

(D) Code E1340 must not be used on an initial claim for equipment. Payment for any labor involved in assembling, preparing, or modifying the equipment on an initial claim is included in the allowable rate;

(b) Maintenance:

(A) Additional payment for routine periodic servicing, such as testing, cleaning, regulating, and checking of the client's equipment is not covered. However, more extensive maintenance which, based on the manufacturers' recommendations, is to be performed by authorized technicians, may be covered as repairs for medically appropriate client-owned equipment. For example, this might include, breaking down sealed components and performing tests that require specialized testing equipment not available to the client;

(B) Payment for maintenance/service is not covered for rented equipment, unless it is a capped rental item. DMAP may authorize payment for covered maintenance and servicing of capped rental items after six months have passed from the end of the final paid rental month or from the end of the period the item is no longer covered under the provider's or manufacturer's warranty, whichever is later. Use the corresponding Healthcare Common Procedure Coding System (HCPCS) code for the equipment in need of maintenance and servicing at no more than the rental fee schedule allowable amount;

(C) Up to one month's rental will be reimbursed at the level of either the equipment provided; or, the equipment being repaired, whichever is less costly;

(D) Maintenance that includes parts and labor covered under a manufacturer's or supplier's warranty is not covered;

(c) Replacement — Replacement refers to the provision of an identical or nearly identical item:

(A) Temporary Replacement: One month's rental of temporary replacement for client-owned equipment being repaired, any type (K0462) may be reimbursed when covered client-owned equipment such as a wheelchair is in need of repair. The equipment in need of repair must be unavailable for use for more than one day. For example, the repair takes more than one day or a part has to be ordered and the wheelchair is non-functional;

(B) Permanent Replacement: Situations involving the provision of a different item because of a change in medical condition must meet the specific coverage criteria identified in chapter 410, division 122;

(C) Equipment which the client owns or is a capped rental item may be replaced in cases of loss or irreparable damage. Irreparable damage refers to a specific accident or to a natural disaster (e.g., fire, flood, etc.). Irreparable wear refers to deterioration sustained from day-to-day usage over time and a specific event cannot be identified. Replacement of equipment due to irreparable wear takes into consideration the reasonable useful lifetime of the equipment;

(i) Reasonable useful lifetime of durable medical equipment (DME) is no less than five years;

(ii) Computation of the useful lifetime is based on when the equipment is delivered to the client, not the age of the equipment;

(iii) Replacement due to wear is not covered during the reasonable useful lifetime of the equipment;

(iv) During the reasonable useful lifetime, repair up to the cost of replacement (but not actual replacement for medically appropriate equipment owned by the client) may be covered;

(D) Cases suggesting malicious damage, culpable neglect, or wrongful disposition of equipment may not be covered;

(d) Delivery: (A) Providers may deliver directly to the client or the designee (person authorized to sign and accept delivery of durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) on behalf of the client);

(B) Providers, their employees, or anyone else having a financial interest in the delivery of an item are prohibited from signing and accepting an item on behalf of a client;

(C) A provider may deliver DMEPOS to a client in a hospital or nursing facility for the purpose of fitting or training the client in its proper use. This may be done up to two days prior to the client's anticipated discharge to home. On the claim bill the date of service as the date of discharge and specify the place of service (POS) as the client's home. The item must be for subsequent use in the client's home;

(D) A provider may deliver DMEPOS to a client's home in anticipation of a discharge from a hospital or nursing facility. The provider may arrange for actual delivery approximately two days prior to the client's anticipated discharge to home. On the claim bill the date of service as the date of discharge and specify the POS as the client's home;

(E) No payment is made on dates of service the client receives training or fitting in the hospital or nursing facility for a particular DMEPOS item;

(e) For Dispensing Refills:

(A) For DMEPOS products that are supplied as refills to the original order, providers must contact the client or designee prior to dispensing the refill to check the quantity on hand and continued need for the product;

(B) Contact with the client or designee regarding refills may only take place no sooner than approximately seven days prior to the delivery/shipping date;

(C) For subsequent deliveries of refills, the provider may deliver the DMEPOS product no sooner than approximately fifteen days prior to the end of usage for the current product. This is regardless of which delivery method is utilized. DMAP will allow for the processing of claims for refills delivered/shipped prior to the client exhausting their supply, but the provider must not dispense supplies that exceed a client's expected utilization;

(D) Supplies dispensed are based on the practitioner's order. Regardless of utilization, a provider must not dispense more than a three-month quantity of supplies at a time. This three-month dispensing restriction for supplies may be further limited by rule limitations of coverage;

(E) The provider must not automatically ship, dispense or deliver a quantity of supplies on a predetermined regular basis, even if the client or designee has "authorized" this in advance.

(F) Shipping and handling charges are not covered;

(f) The following services are not covered:

(A) Pick-up, delivery, shipping and handling charges for DMEPOS, whether rented or purchased including travel time;

(i) These costs are included in the calculations for allowable rates;

(ii) These charges are not billable to the client;

(B) Supplies used with DME or a prosthetic device prior to discharge from a hospital or nursing facility;

(C) Surgical dressings, urological supplies, or ostomy supplies applied in the hospital or nursing facility, including items worn home by the client.

(2) Documentation Requirements:

(a) For Repairs, Maintenance and Temporary Replacement: A new Certificate of Medical Necessity (CMN) and/or physician's order is not required;

(b) Submit the following documentation with the prior authorization request:

(A) For Repairs/Maintenance:

(i) Narrative description, manufacturer and brand name/model name and number, serial number and original date of purchase for the covered equipment in need of repair; and

(ii) Itemized statement of parts needed for repair including the estimated date of service, manufacturer's name (if billing for parts, include manufacturer's name and part number for each part), product name, part number, manufacturer's suggested retail price or manufacturer's invoice price and estimated labor time; and

(iii) Justification of the client's medical need for the item and statement that client owns the equipment in need of repair;

(B) For Temporary Replacement:

(i) Narrative description, manufacturer and brand name/model name and number, serial number and original date of purchase for the covered equipment in need of repair; and

ADMINISTRATIVE RULES

(ii) Narrative description, manufacturer and brand name/model name and number of the replacement equipment; and

(iii) Itemized statement of parts needed for repair including the estimated date of service, manufacturer's name (if billing for parts, include manufacturer's name and part number for each part), product name, part number, manufacturer's suggested retail price or manufacturer's invoice price and estimated labor time; and

(iv) Justification of the client's medical need for the item and statement that client owns the equipment in need of repair; and

(v) Description of why repair takes more than one day to complete;

(C) For Permanent Replacement: See specific coverage criteria in chapter 410, division 122 for more information;

(D) For Proof of Delivery: DMEPOS providers are required to:

(I) Maintain proof of delivery documentation to the client in their records for seven years;

(II) Maintain documentation that supports that conditions of coverage in this rule are met;

(III) Make proof of delivery documentation available to DMAP upon request;

(c) Proof of delivery requirements are based on the method of delivery;

(d) A signed and dated delivery slip is required for items delivered directly by the provider to the client or designee. The delivery slip must include the following:

(A) When a designee signs the delivery slip, their relationship to the client must be noted and the signature legible;

(B) The client or designee's signature with the date the items were received; and

(C) Client's name; and

(D) Quantity, brand name, serial number and a detailed description of the items being delivered; and

(E) The date of signature on the delivery slip must be the date the DMEPOS item is received by the client or designee; and

(F) The date the client receives the item is the date of service;

(e) If the provider uses a delivery/shipping service or mail order, an example of proof of delivery would include the service's tracking slip and the provider's own shipping invoice:

(A) The provider's shipping invoice must include the:

(i) Client's name, and

(ii) Quantity, brand name, serial number and a detailed description of the items being delivered; and

(iii) Delivery service's package identification number associated with each individual client's package with a unique identification number and delivery address, including the actual date of delivery, if possible; and

(iv) The shipping date must be used as the date of service, unless the actual date of delivery is available, then use this date as the date of service;

(B) The delivery service's tracking slip must reference:

(i) Each client's packages; and

(ii) The delivery address and corresponding package identification number given by the delivery service;

(f) Providers may utilize a signed/dated return postage-paid delivery/shipping invoice from the client or designee as a form of proof of delivery that must contain the following information:

(A) Client's name;

(B) Quantity, brand name, serial number and a detailed description of items being delivered;

(C) Required signatures from either the client or the designee;

(g) Delivery to Nursing Facilities or Hospitals;

(A) The date of service is the date the DMEPOS item(s) is received by the nursing facility if delivered by the DMEPOS provider;

(B) The date of service is the shipping date (unless the actual delivery date is known and documented) if the DMEPOS provider uses a delivery/shipping service;

(h) For those clients who are residents of an assisted living facility, a twenty-four hour residential facility, an adult foster home, a child foster home, a private home or other similar living environment, providers must ensure supplies are identified and labeled for use only by the specific client for whom the supplies/items are intended.

(3) Procedure Codes:

(a) Replacement parts for wheelchair repair are billed using the specific Healthcare Common Procedure Coding System (HCPCS) code, if one exists, or code K0108 (other accessories);

(b) E1340;

(A) Repair or non-routine service requiring the skill of a technician, labor component, per 15 minutes;

(B) This code is used for services not covered by other codes or combination of codes in reference to the repairs of DMEPOS;

(c) K0108 — Other wheelchair accessories — PA;

(d) K0462 — Temporary replacement for client-owned equipment being repaired, any type — Prior authorization (PA) required — PA.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0186

Payment Methodology

(1) The Division of Medical Assistance Programs (DMAP) utilizes a payment methodology for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) which is generally based on Medicare's fee schedule.

(2) Payment is calculated using the DMAP fee schedule amount, the manufacturer's suggested retail price (MSRP) or the actual charge submitted, whichever is lowest.

(3) DMAP reimburses for the lowest level of service, which meets medical appropriateness. See OAR 410-120-1280 Billing and 410-120-1340 Payment.

(4) Reimbursement for durable medical equipment, miscellaneous (E1399) and other wheelchair accessories (K0108) is capped as follows:

(a) E1399 — \$6000.00;

(b) K0108 — \$12,000.00.

(5) Reimbursement for codes E1399 and K0108 is determined as either:

(a) 80% of the Manufacturer's Suggested Retail Price (MSRP); or,

(b) If the MSRP is not available, the lowest amount of the following, plus 20 percent:

(A) Manufacturer's invoice; or

(B) Manufacturer's wholesale price; or

(C) Acquisition cost; or

(D) Manufacturer's bill to provider;

(c) If (5) (a) or (b) are not available, reimbursement will be the "estimated price" plus 20 percent. An "estimated price" is the price the provider expects the manufacturer to charge.

(6) When requesting prior authorization (PA) for items billed at or above \$100, the DMEPOS provider:

(a) Must submit a copy of:

(A) The items from (5)(a-c) that will be used to bill; and

(B) Name of the manufacturer, description of the item, including product name/model name and number and technical specifications;

(b) May be required to submit a picture of the item.

(7) The DMEPOS provider must submit verification for items billed under code E1399 when no specific Healthcare Common Procedure Coding System (HCPCS) code is available and an item category is not specified in chapter 410, division 122 rules. Verification can come from an organization such as the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC).

(8) DMAP may review items that exceed the maximum allowable/cap on a case-by-case basis. For these situations, the provider must submit the following documentation:

(a) Documentation that supports the client meets all of the coverage criteria for the less costly alternative; and

(b) A comprehensive evaluation by a licensed clinician (who is not an employee of or otherwise paid by a provider) which clearly explains why the less costly alternative is not sufficient to meet the client's medical needs; and

(c) The expected hours of usage per day; and

(d) The expected outcome or change in client's condition.

(9) For codes A4649 (surgical supplies; miscellaneous) and E1399 when \$50.00 or less per each unit;

(a) The DMEPOS provider must have documentation on file which supports the correct Healthcare Common Procedure Coding System (HCPCS) code was used for billing according to the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(b) Subject to service limitations of DMAP rules;

(c) PA is not required.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

ADMINISTRATIVE RULES

410-122-0202

Continuous Positive Airway Pressure (CPAP) System

(1) Indications and Limitations of Coverage and/or Medical Appropriateness

(a) Initial Coverage:

(A) A single-level continuous positive airway pressure (CPAP) device (E0601) may be covered by the Division of Medical Assistance Programs (DMAP) when the client has a diagnosis of obstructive sleep apnea (OSA) documented by an attended, facility-based polysomnogram and meets either of the following criteria (i or ii):

(i) The apnea-hypopnea index (AHI) is greater than or equal to 15 events per hour; or

(ii) The AHI is from 5 to 14 events per hour with documented symptoms of:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke;

(B) A three-month rental period is required for CPAP prior to purchase;

(b) Continued coverage of an E0601 beyond the first three months of therapy: Ongoing rental beyond the first three months is an option in lieu of purchase if medically appropriate and cost effective;

(c) For a client using a CPAP prior to Medicaid enrollment, and, with recent, supportive documentation from the treating practitioner indicative of effective treatment with a CPAP device, coverage criteria in this rule may be waived;

(d) Payment Authorization: From the initial date of service through the second date of service, CPAP rental and only related accessories necessary for the effective use of the CPAP during this time period and subject to rule limitations may be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require prior authorization;

(e) An order refill does not have to be approved by the ordering physician; however, a client or their caregiver must specifically request ongoing CPAP supplies and accessories, subject to rule limitations and requirements, before they are dispensed. The DMEPOS provider must not automatically dispense a quantity of supplies and accessories on a predetermined regular basis, even if the client has "authorized" this in advance.

(2) Guidelines:

(a) A continuous positive airway pressure (CPAP) device delivers a constant level of positive air pressure (within a single respiratory cycle) by way of tubing and a noninvasive interface (such as a nasal, oral, or facial mask) to assist spontaneous respiratory efforts and supplement the volume of inspired air into the lungs;

(b) A respiratory cycle is defined as an inspiration, followed by an expiration;

(c) Polysomnography is the continuous and simultaneous monitoring and recording of various physiological and pathophysiological parameters of sleep with physician review, interpretation, and report. It must include sleep staging, which is defined to include a 1-4 lead electroencephalogram (EEG), and electro-oculogram (EOG), and a submental electromyogram (EMG). It must also include at least the following additional parameters of sleep: airflow, respiratory effort, and oxygen saturation by oximetry. It may be performed as either a whole night study for diagnosis only or as a split night study to diagnose and initially evaluate treatment;

(d) For the purpose of this rule, polysomnographic studies must be performed in an attended, facility-based sleep study laboratory, and not in the home or in a mobile facility. These labs must be qualified providers of Medicare services and comply with all applicable state regulatory requirements;

(e) The diagnostic portion of the polysomnogram recording must be a minimum of two hours;

(f) Polysomnographic studies must not be performed by a durable medical equipment (DME) provider;

(g) The apnea-hypopnea index (AHI) is defined as the average number of episodes of apneas and hypopneas per hour and must be based on a minimum of two hours of recording time without the use of a positive airway pressure device, reported by polysomnogram. The AHI may not be extrapolated or projected;

(h) Apnea is defined as the cessation of airflow for at least 10 seconds documented on a polysomnogram;

(i) Hypopnea is defined as an abnormal respiratory event lasting at least 10 seconds with at least a 30% reduction in thoracoabdominal movement or airflow as compared to baseline, and with at least a 4% decrease in oxygen saturation;

(j) The AHI calculation must be based on the sleep time (in hours) within the two hours (or more) of recorded time.

(3) Documentation Requirements:

(a) Initial Coverage: Prior to the third date of service, submit the following documentation:

(A) A facility-based polysomnogram report that supports a diagnosis of obstructive sleep apnea (OSA); and, if applicable;

(B) Any other medical documentation that supports indications of coverage;

(b) Continued coverage beyond the first three months of therapy: No sooner than the 61st day after initiating therapy and prior to the fourth date of service, submit documentation from the treating physician that indicates the client is continuing to effectively comply (time spent at the effective pressure) with CPAP treatment. This means that the client is continuing to use the CPAP at the effective pressure for at least four hours in a 24-hour continuous period at least 80 percent of the time.

(4) Accessories:

(a) Accessories used with an E0601 device are covered when the coverage criteria for the device are met;

(b) Accessories are separately reimbursable at the time of initial issue and when replaced;

(c) Either a non-heated (E0561) or heated (E0562) humidifier is covered when ordered by the treating physician for use with a covered E0601 device;

(d) The following represents the usual maximum amount of accessories expected to be medically appropriate:

(A) A4604 — 1 per 3 months;

(B) A7030 — 1 per 3 months;

(C) A7031 — 1 per 6 months;

(D) A7032 — 2 per month;

(E) A7033 — 2 per month;

(F) A7034 — 1 per 3 months;

(G) A7035 — 1 per 6 months;

(H) A7036 — 1 per 6 months;

(I) A7037 — 1 per 1 month;

(J) A7038 — 2 per 1 month;

(K) A7039 — 1 per 6 months;

(L) A7046 — 1 per 6 months.

(5) Miscellaneous:

(a) It is the provider's responsibility to monitor appropriate and effective use of the device as ordered by the treating physician. When the equipment is not being used as prescribed, the provider must stop billing for the equipment and related accessories and supplies;

(b) For auto-titrating CPAP devices, use HCPCS code E0601;

(c) Products must be coded as published by SADMERC's Product Classification List for CPAP Systems and Respiratory Assist Devices.

(6) **Table 122-0202.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 46-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0203

Oxygen and Oxygen Equipment

(1) Indications and limitations:

(a) For all the sleep oximetry criteria described in (b) (c) and (d) below, the five minutes do not have to be continuous:

(A) When both arterial blood gas (ABG) and oximetry tests have been performed on the same day under the same conditions (i.e., at rest/awake, during exercise, or during sleep), the ABG result will be used to determine if the coverage criteria are met;

(B) If an ABG test at rest/awake is nonqualifying, but an exercise or sleep oximetry test on the same day is qualifying, the oximetry test result will determine coverage;

(b) The Division of Medical Assistance Programs (MAP) may cover home oxygen therapy services for clients who are:

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(A) Children under age 19 when the treating practitioner has determined it to be medically appropriate;

(B) Adults 19 years of age and older if the following conditions are met:

(i) The treating practitioner has determined that the client has a severe lung disease or hypoxia-related symptoms that might be expected to improve with oxygen therapy; and

(ii) The client's blood gas study meets the criteria stated below; and

(iii) A physician or qualified provider or supplier of laboratory services performed the qualifying blood gas study; and

(iv) The qualifying blood gas study was obtained under the following conditions:

(I) If the qualifying blood gas study is performed during an inpatient hospital stay, the reported test must be the one obtained closest to, but no earlier than two days prior to the hospital discharge date; or

(II) If the qualifying blood gas study is not performed during an inpatient hospital stay, the reported test must be performed while the client is in a chronic stable state, that is, not during a period of acute illness or an exacerbation of their underlying disease;

(v) Alternative treatment measures have been tried or considered and deemed clinically ineffective;

(C) Clients residing in a nursing facility only when continuous oxygen is required that exceeds 1000 liters in a 24-hour period. See OAR 410-120-1340 and 411-070-0085;

(c) Group I coverage duration and indications:

(A) DMAP limits initial Group I coverage to 12 months or the practitioner-specified length of need, whichever is shorter. See documentation requirements for information on recertification;

(B) Criteria for Group I include any of the following:

(i) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent taken at rest (awake); or

(ii) An arterial PO₂ at or below 55 mm Hg, or an arterial oxygen saturation at or below 88 percent, for at least five minutes taken during sleep for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89% while awake; or

(iii) A decrease in arterial PO₂ more than 10 mm Hg, or a decrease in arterial oxygen saturation more than 5 percent, for at least 5 minutes taken during sleep associated with symptoms or signs reasonably attributable to hypoxemia (e.g., cor pulmonale, "P" pulmonale on EKG, documented pulmonary hypertension and erythrocytosis); or

(iv) An arterial PO₂ at or below 55 mm Hg or an arterial oxygen saturation at or below 88 percent, taken during exercise for a client who demonstrates an arterial PO₂ at or above 56 mm Hg or an arterial oxygen saturation at or above 89 percent during the day while at rest. In this case, oxygen is provided for during exercise if it is documented that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the client was breathing room air;

(d) Group II coverage duration and indications:

(A) Initial coverage limited to three months or the practitioner-specified length of need, whichever is shorter. See documentation requirements for information on recertification;

(B) Criteria include presence of PO₂ of 56-59 mm Hg or an arterial blood oxygen saturation of 89 percent at rest (awake), during sleep for at least five minutes, or during exercise (as described under Group I criteria); and any of the following:

(i) Dependent edema suggesting congestive heart failure; or

(ii) Pulmonary hypertension or cor pulmonale, determined by measurement of pulmonary artery pressure, gated blood pool scan, echocardiogram, or "P" pulmonale on EKG (P wave greater than 3 mm in standard leads II, III, or AVF); or

(iii) Erythrocythemia with a hematocrit greater than 56 percent.

(e) Group III indications include a presumption of non-coverage and are considered precautionary, not therapeutic, in nature. Criteria include arterial PO₂ levels at or above 60 mm Hg or arterial blood oxygen saturations at or above 90 percent;

(f) DMAP does not cover oxygen therapy and related services, equipment or supplies for any of the following:

(A) Angina pectoris in the absence of hypoxemia;

(B) Dyspnea without cor pulmonale or evidence of hypoxemia;

(C) Severe peripheral vascular disease resulting in clinically evident desaturation in one or more extremities but in the absence of systemic hypoxemia;

(D) Terminal illnesses that do not affect the respiratory system;

(E) Humidifiers (E0550, E0555 and E0560) with rented oxygen equipment. All accessories, such as humidifiers necessary for the effective use of oxygen equipment, are included in the monthly rental payment;

(F) Group III clients;

(G) Emergency or stand-by oxygen systems, including oxygen as needed (i.e., PRN), since they are precautionary and not therapeutic in nature;

(H) Topical hyperbaric oxygen chambers (A4575);

(I) Oxygen for topical use;

(J) Back-up equipment, since it is part of the all-inclusive rate;

(K) Travel oxygen:

(i) Clients traveling outside the DMEPOS provider's service area must make their own arrangements for oxygen;

(ii) DMAP will only pay one DMEPOS provider for oxygen during any one rental month;

(iii) The traveling client is responsible to pay for oxygen furnished by an airline, not the DMEPOS provider.

(2) Guidelines for testing and certification:

(a) Testing specifications:

(A) The term blood gas study in this policy refers to either an arterial blood gas (ABG) test or an oximetry test:

(i) An ABG is the direct measurement of the partial pressure of oxygen (PO₂) on a sample of arterial blood;

(ii) The PO₂ is reported as mm Hg;

(iii) An oximetry test is the indirect measurement of arterial oxygen saturation using a sensor on the ear or finger;

(iv) The saturation is reported as a percent;

(B) The qualifying blood gas study must be performed by a qualified provider (a laboratory, physician, etc.);

(i) DMAP does not consider a DMEPOS provider a qualified provider or a qualified laboratory for purposes of this policy;

(ii) DMAP will not accept blood gas studies either performed by, or paid for, by a DMEPOS provider;

(iii) This prohibition does not extend to blood gas studies performed by a hospital certified to do such tests;

(C) For sleep oximetry studies, the tester must provide the client a tamper-proof oximeter that has the capability to download data that allows documentation of the duration of oxygen desaturation below a specified value;

(D) When oxygen services are based on an oxygen study obtained during exercise, DMAP requires documentation of three oxygen studies in the client's medical record:

(i) Testing at rest without oxygen; and

(ii) Testing during exercise without oxygen; and

(iii) Testing during exercise with oxygen applied, to demonstrate the improvement of the hypoxemia.

(E) The qualifying test value (i.e., testing during exercise without oxygen) on the Certificate of Medical Necessity (CMN). The other results do not have to be routinely submitted but must be available to DMAP on request;

(F) The qualifying blood gas study may be performed while the client is on oxygen, as long as the reported blood gas values meet the Group I or Group II criteria.

(b) Certification:

(A) On the CMN, the blood gas study obtained must be the most recent study prior to the initial date, indicated in Section A of the CMN, and this study must be obtained within 30 days prior to that initial date;

(B) There is an exception for clients who were on oxygen prior to enrollment with DMAP. For those clients, the blood gas study does not have to be obtained 30 days prior to the initial date, but must be the most recent test obtained prior to enrollment with DMAP;

(C) For clients initially meeting Group I criteria:

(i) The tester must report the most recent blood gas study prior to the 13th month of therapy on the recertification CMN;

(ii) If the estimated length of need on the initial CMN is less than lifetime and the practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the revised certification;

(D) For clients initially meeting Group II criteria:

(i) On the recertification CMN, the tester must report the most recent blood gas study that was performed between the 61st and 90th day following the date of the initial certification CMN;

(ii) If a tester does not obtain a qualifying test between the 61st and 90th day of home oxygen therapy, but the client continues to use oxygen

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and a test is obtained at a later date, if that test meets Group I or II criteria, DMAP will resume coverage beginning with the date of that test;

(iii) If the estimated length of need on the initial CMN is less than lifetime and the practitioner wants to extend coverage, a repeat blood gas study must be performed within 30 days prior to the date of the revised certification;

(E) On any revised CMN, the tester must report the most recent blood gas study performed prior to the revision date;

(F) DMAP may request a repeat blood gas study at any time;

(G) The treating practitioner must see and evaluate the client:

(i) Within 30 days prior to the date of initial certification;

(ii) Within 90 days prior to the date of any recertification;

(iii) If the treating practitioner fails to see and reevaluate the client within 90 days prior to recertification, but subsequently evaluates and determines the client meets the blood gas study criteria, DMAP will cover the dates of service between the scheduled recertification date and the practitioner visit date.

(3) Portable oxygen system coverage:

(a) A portable oxygen system may be covered if the client is mobile within the home and the qualifying blood gas study was performed while at rest (awake) or during exercise. If the only qualifying blood gas study was performed during sleep, portable oxygen is not covered;

(b) If coverage criteria are met, a portable oxygen system is usually separately payable in addition to the stationary system. (See the exception in Section (4) of this rule);

(c) If a portable oxygen system is covered, the DMEPOS provider must provide whatever quantity of oxygen the client uses;

(d) DMAP's reimbursement is the same, regardless of the quantity of oxygen dispensed;

(e) Code K0738 (portable gaseous oxygen system, rental; home compressor used to fill portable oxygen cylinders; includes portable containers, regulator, flow meter, humidifier, cannula or mask, and tubing) is to be used for billing and payment for oxygen transfilling equipment used in the beneficiary's home to fill portable gaseous oxygen cylinders.

(4) Liter flow greater than 4 liters per minute (LPM):

(a) DMAP will pay for a higher allowance of a flow rate of greater than 4 LPM only if:

(A) Basic oxygen coverage criteria have been met; and

(B) The client meets Group I or II criteria; and

(C) A blood gas study is performed while client is on 4 LPM oxygen;

(b) DMAP will limit payment to the standard fee schedule allowance if the provider requests a flow rate greater than 4 LPM when the coverage criterion for the higher allowance is not met;

(c) If a client qualifies for additional payment for greater than 4 LPM of oxygen and also meets the requirements for portable oxygen:

(A) DMAP will pay for either the stationary system (at the higher allowance) or the portable system (at the standard fee schedule allowance for a portable system), but not both;

(B) In this situation, if both a stationary system and a portable system are requested for the same rental month, DMAP will not cover the portable oxygen system.

(5) Oxygen contents:

(a) The DMAP allowance for rented oxygen systems includes oxygen contents;

(b) Stationary oxygen contents (E0441, E0442) are separately payable only when the coverage criteria for home oxygen have been met and they are used with a client-owned stationary gaseous or liquid system respectively;

(c) Portable contents (E0443, E0444) are separately payable only when the coverage criteria for home oxygen have been met and:

(A) The client owns a concentrator and rents or owns a portable system; or

(B) The client rents or owns a portable system and has no stationary system (concentrator, gaseous, or liquid);

(C) If the criteria for separate payment of contents are met, they are separately payable regardless of the date that the stationary or portable system was purchased.

(6) Oxygen accessory items:

(a) The DMAP allowance for rented systems includes, but is not limited to, the following accessories:

(A) Transtracheal catheters (A4608);

(B) Cannulas (A4615);

(C) Tubing (A4616);

(D) Mouthpieces (A4617);

(E) Face tent (A4619);

(F) Masks (A4620, A7525);

(G) Oxygen tent (E0455);

(H) Humidifiers (E0550, E0555, E0560);

(I) Nebulizer for humidification (E0580);

(J) Regulators (E1353);

(K) Stand/rack (E1355);

(b) The DMEPOS provider must provide any accessory ordered by the practitioner;

(c) Accessories are separately payable only when they are used with a client-owned system that was purchased prior to June 1, 1989. DMAP does not cover accessories used with a client-owned system that was purchased on or after June 1, 1989;

(7) Billing for miscellaneous oxygen items:

(a) DMAP only covers rented oxygen systems (E0424, E0431, E0434, E0439, E1390RR, E1405 RR, E1406RR, E1392RR);

(b) For gaseous or liquid oxygen systems or contents, report one unit of service for one month rental. Do not report in cubic feet or pounds;

(c) Use the appropriate modifier if the prescribed flow rate is less than 1 LPM (QE) or greater than 4 LPM (QF or QG). DMAP only accepts these modifiers with stationary gaseous (E0424) or liquid (E0439) systems or with an oxygen concentrator (E1390, E1391). Do not use these modifiers with codes for portable systems or oxygen contents;

(d) Use Code E1391 (oxygen concentrator, dual delivery port) in situations in which two clients are both using the same concentrator. In this situation, this code must only be requested for one of the clients;

(e) Use Codes E1405 and E1406 (oxygen and water vapor enriching systems) only for products for which a written coding verification has been received from the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(f) Code E1392 describes a portable oxygen concentrator system. Use E1392 when billing DMAP for the portable equipment add-on fee for clients using lightweight oxygen concentrators that can function as both the client's stationary equipment and portable equipment. A portable concentrator:

(A) Weighs less than 10 pounds;

(B) Is capable of delivering 85% or greater oxygen concentration; and

(C) Is capable of providing at least two hours of remote portability at a 2 LPM order equivalency;

(g) Contact the SADMERC for guidance on the correct coding of these items.

(8) Documentation Requirements: The DMEPOS provider must have the following documentation on file which supports conditions of coverage as specified in this rule are met:

(a) Medical records that reflect the need for the oxygen care provided include records from:

(A) Physician's or practitioner's office;

(B) Hospital;

(C) Nursing home;

(D) Home health agency;

(E) Other health care professionals;

(F) Test reports;

(b) The treating practitioner's signed and dated orders for each item billed. When the DMEPOS provider bills DMAP before the provider receives a signed and dated order, the provider must submit the claim with an EY modifier added to each affected HCPCS code;

(A) In the following situations, a new order must be obtained and kept on file by the DMEPOS provider, but neither a new CMN nor a repeat blood gas study are required:

(i) Prescribed maximum flow rate changes but remains within one of the following categories:

(I) Less than 1 LPM;

(II) 1-4 LPM;

(III) Greater than 4 LPM;

(ii) Change from one type of system to another (i.e., concentrator, liquid, gaseous);

(c) A completed, signed, dated CMN from the treating practitioner;

(A) The CMN may substitute for a written order if it is sufficiently detailed;

(B) The CMN for home oxygen is CMS form 484. Section B (order information) of the CMN must be completed by the physician or the practitioner, not the DMEPOS provider. The DMEPOS provider may use Section C to record written confirmation of other details of the oxygen order, or the practitioner can enter other details directly, such as means of deliver (e.g., cannula, mask, etc.) and the specifics of varying oxygen flow rates or non-continuous use of oxygen;

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(C) The ABG PO2 must be reported on the CMN if both an ABG and oximetry test were performed the same day under the condition reported on the CMN (that is, at rest, awake, during exercise, or during sleep);

(D) A completed sleep study documenting the qualifying desaturation for clients who qualify for oxygen coverage based only on a sleep oximetry study. The saturation value reported in Question 1(b) of the Oxygen CMN must be the lowest value (not related to artifact) during the five-minute qualifying period reported on the sleep study;

(E) The blood gas study reported on the initial CMN must be the most recent study obtained prior to the initial date and this study must be obtained within 30 days prior to that initial date;

(i) There is an exception for clients who were on oxygen in a Medicare Health Maintenance Organization (HMO) and who transition to fee-for-service Medicare;

(ii) For those clients, the blood gas study does not have to be obtained 30 days prior to the initial date, but must be the most recent test obtained while in the HMO;

(F) The DMEPOS provider must submit to DMAP an initial CMN in the situations described below. The initial date refers to the dates reported in Section A of the CMN;

(i) With the first claim to DMAP for home oxygen, even if the client was on oxygen prior to becoming eligible for DMAP coverage, or oxygen was initially covered by a Medicare HMO;

(ii) When the first CMN did not meet coverage criteria and the client was subsequently retested and meets coverage criteria, the initial date on the new CMN is the date of the subsequent, qualifying blood gas study;

(iii) When a change occurs in the client's condition that caused a break in medical necessity of at least 60 days plus whatever days remain in the rental month during which the need for oxygen ended. This indication does not apply if there was just a break in billing because the client was in a hospital, nursing facility, hospice or Medicare HMO, but the client continued to need oxygen during that time;

(iv) When a Group I client with length of need less than or equal to 12 months was not retested prior to Revised Certification/ Recertification, but a qualifying study was subsequently performed. The initial date on this new CMN is the date of the subsequent, qualifying blood gas study;

(v) When a Group II client did not have a qualifying, repeat blood gas study between the 61st and 90th days of coverage, but a qualifying study was subsequently performed. The initial date on the new CMN is the date of the subsequent, qualifying blood gas study;

(vi) When a change of provider occurs due to an acquisition and the previous provider did not file a recertification when it was due or the requirements for recertification were not met when it was due. The initial date on this new CMN is the date of the subsequent qualifying blood gas study;

(G) The DMEPOS provider must submit to DMAP a recertification CMN in the following circumstances. The initial date refers to the dates reported in Section A of the CMN:

(i) For Group I oxygen test results, 12 months after the initial certification (i.e., with the 13th month's claim). The blood gas reported study must be the most recent study performed prior to the 13th month of therapy;

(ii) If a Group I client with a lifetime length of need was not seen and evaluated by the practitioner within 90 days prior to the 12-month recertification, but was subsequently seen, the date on the recertification CMN must be the date of the practitioner visit;

(iii) For Group II oxygen test results, three months after the initial certification (i.e., with the fourth month's claim). The reported blood gas study must be the most recent study performed between the 61st and 90th day following the initial date;

(iv) If there was a change of provider due to an acquisition and the previous DMEPOS provider did not file a recertification when it was due, but all the requirements for the recertification were met when it was due, the provider would file a recertification CMN with the recertification date being 12 months (for a Group I initial CMN) or three months (for a Group II initial CMN) after the initial date;

(v) In other situations at the discretion of DMAP. The blood gas study must be the most recent study that was performed within 30 days prior to the recertification date;

(H) The DMEPOS provider must submit to DMAP a revised CMN in the following circumstances. Submission of a revised CMN does not change the recertification schedule specified elsewhere. The initial date refers to the dates reported in Section A of the CMN:

(i) When the prescribed maximum flow rate changes from one of the following categories to another:

(I) Less than 1 LPM;

(II) 1-4 LPM;

(III) Greater than 4 LPM;

(IV) If the change is from category (a) or (b) to category (c), a repeat blood gas study with the client on 4 LPM must be performed within 30 days prior to the start of the greater than 4 LPM flow;

(ii) When a portable oxygen system is added subsequent to initial certification of a stationary system. In this situation, DMAP does not require a repeat blood gas study, unless the initial qualifying study was performed during sleep, in which case a repeat blood gas study must be performed while the client is at rest (awake) or during exercise within 30 days prior to the revised date;

(iii) When a stationary system is added subsequent to initial certification of a portable system. In this situation, DMAP does not require a repeat blood gas study;

(iv) When the length of need expires, if the practitioner specified less than lifetime length of need on the most recent CMN. In this situation, a blood gas study must be performed within 30 days prior to the revised date;

(v) When there is a new treating practitioner, but the oxygen order is the same. In this situation, DMAP does not require a repeat blood gas study.

Note: In this situation, the revised CMN does not have to be submitted with the claim but must be kept on file by the provider;

(vi) If there is a new provider, that provider must be able to provide DMAP with a CMN on request. That CMN would not necessarily be an initial CMN or the first CMN for that client. If the provider obtains a new CMN, it would be considered a revised CMN;

(vii) If the indications for a revised CMN are met at the same time that a recertification CMN is due, file the CMN as a recertification CMN.

(9) Table 122-0203.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0204

Nebulizer

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) Equipment:

(A) Small Volume Nebulizer:

(i) A small volume nebulizer and related compressor may be covered to administer inhalation drugs based on evidence-based clinical practice guidelines;

(ii) When appropriate, the physician must have considered use of a metered dose inhaler (MDI) with and without a reservoir or spacer device and decided that, for medical reasons, the MDI was not sufficient for the administration of needed inhalation drugs;

(B) Large Volume Nebulizer:

(i) A large volume nebulizer (A7017), related compressor (E0565 or E0572), and water or saline (A4217 or A7018) may be covered when it is medically appropriate to deliver humidity to a client with thick, tenacious secretions, who has cystic fibrosis, bronchiectasis, a tracheostomy, or a tracheobronchial stent;

(ii) Combination code E0585 will be covered for the same indications as in (1)(a)(B)(i);

(D) The Division of Medical Assistance Programs (DMAP) will consider other uses of compressors/generators individually on a case by case basis, to determine their medical appropriateness, such as a battery powered compressor (E0571);

(b) Accessories:

(A) A large volume pneumatic nebulizer (E0580) and water or saline (A4217 or A7018) are not separately payable and should not be separately billed when used for clients with rented home oxygen equipment;

(B) DMAP does not cover use of a large volume nebulizer, related compressor/generator, and water or saline when used predominately to provide room humidification;

(C) A non-disposable unfilled nebulizer (A7017 or E0585) filled with water or saline (A4217 or A7018) by the client/caregiver is an acceptable alternative to the large volume nebulizer when used as indicated in (1)(a)(B)(i) of this rule;

(D) Kits and concentrates for use in cleaning respiratory equipment are not covered;

(E) Accessories are separately payable if the related aerosol compressor and the individual accessories are medically appropriate. The following

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table lists each covered compressor/ generator and its covered accessories. Other compressor/generator/accessory combinations are not covered;

(F) Compressor/Generator (Related Accessories): E0565 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7017, A7525, E1372); E0570 (A7003, A7004, A7005, A7006, A7013, A7015, A7525); E0571 (A7003, A7004, A7005, A7006, A7013, A7015, A7525) ; E0572 (A7006, A7014); E0585 (A4619, A7006, A7010, A7011, A7012, A7013, A7014, A7015, A7525);

(G) This array of accessories represents all possible combinations but it may not be appropriate to bill any or all of them for one device;

(H) The following table lists the usual maximum frequency of replacement for accessories. DMAP will not cover claims for more than the usual maximum replacement amount unless the request has been prior approved by DMAP before dispensing. The provider must submit requests for more than the usual maximum replacement amount to DMAP for review;

Table 122-0204-1
Accessory (Usual maximum replacement)
A4619 (One/month)
A7003 (Two/month)
A7004 (Two/month (in addition to A7003))
A7005 (One/6 months)
A7006 (One/month)
A7010 (One unit (100 ft.)/2 months)
A7011 (One/year)
A7012 (Two/month)
A7013 (Two/month)
A7014 (One/3 months)
A7015 (One/month)
A7017 (One/3 years)
A7525 (One/month)
E1372 (One/3 years) .

(2) Coding Guidelines:

(a) Accessories:

(A) Code A7003, A7005, and A7006 include the lid, jar, baffles, tubing, T-piece and mouthpiece. In addition, code A7006 includes a filter;

(B) Code A7004 includes only the lid, jar and baffles;

(C) Code A7012 describes a device to collect water condensation, which is placed in line with the corrugated tubing, used with a large volume nebulizer;

(D) Code E0585 is used when a heavy-duty aerosol compressor (E0565), durable bottle type large volume nebulizer (A7017), and immersion heater (E1372) are provided at the same time. If all three items are not provided initially, the separate codes for the components would be used for billing.

(E) Code A7017 is billed for a durable, bottle type nebulizer when it is used with a E0572 compressor or a separately billed E0565 compressor.

(F) Code A7017 would not be separately billed when an E0585 system was also being billed. Code E0580 (Nebulizer, durable, glass or autoclavable plastic, bottle type, for use with regulator or flow meter) describes the same piece of equipment as A7017, but should only be billed when this type of nebulizer is used with a client-owned oxygen system;

(b) Equipment:

(A) In this policy, the actual equipment (i.e., electrical device) will generally be referred to as a compressor (when nebulization of liquid is achieved by means of air flow). The term nebulizer is generally used for the actual chamber in which the nebulization of liquid occurs and is an accessory to the equipment. The nebulizer is attached to an aerosol compressor in order to achieve a functioning delivery system for aerosol therapy;

(B) Code E0565 describes an aerosol compressor, which can be set for pressures above 30 psi at a flow of 6-8 L/m and is capable of continuous operation;

(C) A nebulizer with compressor (E0570) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It is only AC powered;

(D) A portable compressor (E0571) is an aerosol compressor, which delivers a fixed, low pressure and is used with a small volume nebulizer. It must have battery or DC power capability and may have an AC power option;

(E) A light duty adjustable pressure compressor (E0572) is a pneumatic aerosol compressor which can be set for pressures above 30 psi at a flow of 6-8 L/m, but is capable only of intermittent operation.

(3) Documentation Requirements:

(a) When billing and dispensing for an item in **Table 122-0204**, medical records must corroborate that all criteria in this rule are met;

(b) When a battery powered compressor (E0571) is dispensed, supporting documentation which justifies the medical appropriateness must be on file with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider;

(c) The DMEPOS provider must maintain these medical records and make them available to DMAP on request.

(4) **Table 122-0204-1** (above).

(5) **Table 122-0204-2**.

[ED. NOTE: Table referenced is available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0205

Respiratory Assist Devices

(1) As referenced in this policy, non-invasive positive pressure respiratory assistance (NPPRA) is the administration of positive air pressure, using a nasal and/or oral mask interface which creates a seal, avoiding the use of more invasive airway access (e.g., tracheostomy).

(2) Indications and Coverage — General:

(a) The “treating prescribing practitioner” must be one who is qualified by virtue of experience and training in non-invasive respiratory assistance, to order and monitor the use of respiratory assist devices (RAD);

(b) For the purpose of this policy, polysomnographic studies must be performed in a sleep study laboratory, and not in the home or in a mobile facility. The sleep study laboratory must comply with all applicable state regulatory requirements;

(c) For the purpose of this policy, arterial blood gas, sleep oximetry and polysomnographic studies may not be performed by a durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) provider. For purposes of this policy’s coverage and payment guidelines, a DMEPOS provider is not considered a qualified provider or supplier of these tests;

(d) If there is discontinuation of usage of E0470 or E0471 device at any time, the provider is expected to ascertain this, and stop billing for the equipment and related accessories and supplies.

(3) Coverage criteria for E0470 and E0471 devices — **Table 122-0205-1**.

(4) Documentation:

(a) The following documentation must be submitted with the request for prior authorization (PA) and the original kept on file by the provider:

(A) An order for all equipment and accessories including the client’s diagnosis, an ICD-9-CM code signed and dated by the treating prescribing practitioner;

(B) Summary of events from the polysomnogram, if required in this rule under the indications and coverage section or **Table 122-0205-1**;

(C) Arterial blood gas results, if required under the indications and coverage section or **Table 122-0205-1**;

(D) Sleep oximetry results, if required under the indications and coverage section or **Table 122-0205-1**;

(E) Treating prescribing practitioner statement regarding medical symptoms characteristic of sleep-associated hypoventilation, including, but not limited to daytime hypersomnolence, excessive fatigue, morning headache, cognitive dysfunction, and dyspnea;

(F) Other treatments that have been tried and failed. To be submitted in addition to the above at the fourth month review.

(b) A copy of the Evaluation of Respiratory Assist Device (DMAP 2461) completed and signed by the client, family member or caregiver;

(c) Clients currently using BiPapS and BiPap ST are not subject to the new criteria.

(5) Procedure Codes — **Table 122-0205-2**.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0207

Respiratory Supplies

Table 122-0207.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

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410-122-0208

Suction Pumps

(1) Indications and Limitations of Coverage:

(a) Use of a home model respiratory suction pump may be covered for a client who has difficulty raising and clearing secretions secondary to:

- (A) Cancer or surgery of the throat or mouth; or
- (B) Dysfunction of the swallowing muscles; or
- (C) Unconsciousness or obtunded state; or
- (D) Tracheostomy; or
- (E) Neuromuscular conditions.

(b) When a respiratory suction pump (E0600) is covered, tracheal suction catheters are separately payable supplies. In most cases, in the home setting, sterile catheters are medically appropriate only for tracheostomy suctioning. Three suction catheters per day are covered for medically appropriate tracheostomy suctioning, unless additional documentation is provided. When a tracheal suction catheter is used in the oropharynx, which is not sterile, the catheter can be reused if properly cleansed and/or disinfected. In this situation, the medical appropriateness for more than three catheters per week requires additional documentation;

(c) Sterile saline solution (A4216, A4217) may be covered and separately payable when used to clear a suction catheter after tracheostomy suctioning. It is not usually medically appropriate for oropharyngeal suctioning. Saline used for tracheal lavage is not covered;

(d) Supplies (A4628) are covered and are separately payable when they are medically appropriate and used with a medically appropriate suction pump (E0600) in a covered setting;

(e) When a suction pump (E0600) is used for tracheal suctioning, other supplies (e.g., cups, basins, gloves, solutions, etc.) are included in the tracheal care kit code, A4625—(see OAR 410-122-0209 for details). When a suction pump is used for oropharyngeal suctioning, these other supplies are not medically appropriate;

(f) The suction device must be appropriate for home use without technical or professional supervision. Those using the suction apparatus must be sufficiently trained to adequately, appropriately and safely use the device.

(2) A client's medical record must reflect the need for the supplies dispensed and billed. The medical record must be kept on file by the DME provider and made available to the Division of Medical Assistance Programs (DMAP) upon request.

(3) A portable or stationary home model respiratory suction pump (E0600) is an electric aspirator designed for oropharyngeal and tracheal suction.

(4) A portable or stationary home model gastric suction pump (E2000) is an electric aspirator designed to remove gastrointestinal secretions.

(5) A tracheal suction catheter is a long, flexible catheter.

(6) An oropharyngeal catheter is a short, rigid (usually) plastic catheter of durable construction.

(7) Code E0600 must not be used for a suction pump used with gastrointestinal tubes.

(8) Code E2000 must be used for a suction pump used with gastrointestinal tubes.

(9) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(10) When billing for quantities of supplies greater than those described in the policy as the usual maximum amounts, there must be clear documentation in the client's medical records corroborating the medical appropriateness for the higher utilization. DMAP may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities billed.

(3) Table 122-0208.

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 76-2003, f. & cert. ef. 10-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0209

Tracheostomy Care Supplies

(1) Indications and Coverage: For a client following an open surgical tracheostomy which has been open or is expected to remain open for at least three months.

(2) Documentation: A prescription for tracheal equipment which is signed by the prescribing practitioner must be kept on file by the DMEPOS provider. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(3) Procedure Codes — Table 122-0209.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0210

Ventilators

(1) Indications and limitations of coverage:

(a) Mechanical ventilatory support may be provided to a client for the purpose of life support during therapeutic support of suboptimal cardiopulmonary function, or therapeutic support of chronic ventilatory failure;

(b) A ventilator may be covered by the Division of Medical Assistance Programs (DMAP) for treatment of neuromuscular diseases, thoracic restrictive diseases, and chronic respiratory failure consequent to chronic obstructive pulmonary disease. This includes both positive and negative pressure types.

(2) Primary Ventilators:

(a) A primary ventilator may be covered if supporting documentation indicates:

(A) A client is unable to be weaned from the ventilator or is unable to be weaned from use at night; or

(B) Alternate means of ventilation were used without success; or

(C) A client is ready for discharge and has been on a ventilator more than 10 days.

(b) E0450, E0460, E0461 or E0472 may be covered if:

(A) A client has no respiratory drive either due to paralysis of the diaphragm or a central brain dysfunction; or

(B) A client has a stable, chronic condition with no orders to wean from the ventilator; or

(C) A client has had a trial with blood gases and has no signs or symptoms of shortness of breath or increased work of breathing; or

(D) A client has uncompromised lung disease;

(c) E0463 or E0464 may be covered if supporting documentation indicates:

(A) A client has chronic lung disease where volume ventilation may further damage lung tissue; or

(B) A client has a compromised airway or musculature and has respiratory drive and a desire to breathe; or

(C) A client will eventually be weaned from the ventilator; or

(D) A client has compromised respiratory muscles from muscular dystrophies or increased resistance from airway anomalies or scoliosis conditions.

(3) Backup Ventilators — A backup ventilator may be covered if supporting documentation indicates:

(a) The client is more than 60 minutes from the nearest hospital or a backup ventilator and has no documented spontaneous respirations; or

(b) Documentation supports medical appropriateness; or

(c) The client is transported frequently with a portable ventilator, and the ventilator is not a portable model; or

(d) The primary ventilator is used at maximum performance with high pressure and rate.

(4) Rental fee:

(a) The rental fee for the ventilator is all-inclusive of any equipment, supplies, services, including respiratory therapy (respiratory care) services, routine maintenance and training necessary for the effective use of the ventilator; and

(b) The ventilator provider must provide 24-hour emergency coverage, including an emergency telephone number; and

(c) The client must have a telephone or reasonable access to one.

(5) Payment authorization: Prior authorization (PA) is not required when E0450, E0460, E0461 or E0472 is dispensed as the primary ventilator. The provider is responsible to ensure all rule requirements are met. Payment authorization is required prior to the second date of service and before submitting claims. Payment authorization will be given once all required documentation has been received and any other applicable rules

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and criteria have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040.

(6) PA:

(a) PA is required for a backup ventilator; and

(b) Reimbursement for a backup ventilator is paid at 50% of the fee schedule amount, 50% of the manufacturer's suggested retail price (MSRP) or 50% of the actual charge, whichever is lowest.

(7) Documentation: For services requiring payment authorization or PA, submit documentation that supports requirements found in this rule.

Table 122-0210.

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

Stat. Auth.: ORS 409

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Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 76-2004, f. 9-30-04, cert. ef. 10-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0240

Apnea Monitors for Infants

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) For infants less than 12 months of age with documented apnea, or who have known risk factors for life-threatening apnea, the Division of Medical Assistance Programs (DMAP) may cover home apnea monitors and related supplies for any of the following indications:

(A) Up to three months for:

(i) Apnea of prematurity: Sudden cessation of breathing that lasts for at least 20 seconds, is accompanied by bradycardia (heart rate less than 80 beats per minute), or is accompanied by oxygen desaturation (O2 saturation less than 90 % or cyanosis) in an infant younger than 37 weeks gestational age;

(ii) Apparent life-threatening event (ALTE): An episode that is characterized by some combination of apnea (central or occasionally obstructive), color change (usually cyanotic or pallid but occasionally erythematous or plethoric), marked change in muscle tone (usually marked limpness), choking, or gagging;

(iii) Documented gastroesophageal reflux disease (GERD) that results in apnea, bradycardia, or oxygen desaturation;

(iv) Documented prolonged apnea of greater than 20 seconds in duration;

(v) Documented apnea accompanied by bradycardia to less than 80 beats per minute;

(vi) Documented apnea accompanied by oxygen desaturation (below 90 %), cyanosis or pallor;

(vii) Documented apnea accompanied by marked hypotonia;

(viii) When off medication for bradycardia previously treated with caffeine, theophylline, or similar agents;

(B) Upon discharge from an acute care facility for up to one month post-diagnosis for diagnosis of pertussis, with positive cultures;

(C) As the later sibling of an infant who died of Sudden Infant Death Syndrome (SIDS), until the later sibling is one month older than the age at which the earlier sibling died and remains event-free;

(D) On a case by case basis for:

(i) Infants with tracheostomies or anatomic abnormalities that make them vulnerable to airway compromise;

(ii) Infants with neurologic or metabolic disorders affecting respiratory control;

(iii) Infants with chronic lung disease (bronchopulmonary dysplasia), especially those requiring supplemental oxygen, continuous positive airway pressure, or mechanical ventilation;

(b) Infant apnea monitors are usually considered medically appropriate for no longer than approximately three months except for specific conditions listed above;

(c) The rental fee includes all training, instruction, assistance, 24-hour on-call support and any other needed services for effective use of the apnea monitor, including cardiopulmonary resuscitation training. The durable medical equipment prosthetics orthotics and supplies (DMEPOS) provider is responsible for ensuring delivery of these services;

(d) DMAP may cover related supplies necessary for the effective functioning of the apnea monitor for a three-month period, based on the following limitations:

(A) Electrodes, per pair (A4556) — 3 units;

(B) Lead wires, per pair (A4557) — 2 units;

(C) Conductive paste or gel (A4558) — 1 unit;

(D) Belts (A4649) — 2 units;

(e) The cost of apnea monitor rental includes the cost of cables;

(f) DMAP does not cover apnea monitors with memory recording (E0619) when the attending physician is monitoring the infant with ongoing sleep studies and pneumograms.

(2) Coding Guidelines: For billing purposes, use diagnosis code 798.0, Sudden Infant Death Syndrome (SIDS), for later siblings of infants who died of SIDS.

(3) Documentation Requirements: Submit the following information with the prior authorization request:

(a) Documentation (medical records including hospital records, sleep studies, physician's progress notes, physician-interpreted report from an apnea monitor with memory recording, etc.) of the episode or episodes that led to the diagnosis;

(b) An order from the physician who has diagnosed the infant as having clinically significant apnea or known risk factors for life-threatening apnea. The physician's order must indicate the specific type of apnea monitor (with or without recording feature) and detailed information about the type and quantity of related supplies needed;

(c) For an apnea monitor with recording feature (E0619), submit documentation that supports why an apnea monitor without recording feature (E0618) is not adequate to meet the medical need;

(d) When dispensing and billing for an item in Table 122-0240, the provider must ensure that documentation corroborates that all criteria in this rule are met;

(e) The DMEPOS provider must maintain documentation and make it available to DMAP on request.

(4) Table 122-0240.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0280

Heating/Cooling Accessories

Procedure Codes for Heating/Cooling Accessories: Table 122-0280.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 9-1993 f. & cert. ef. 4-1-93; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0320

Manual Wheelchair Base

(1) Indications and Limitations of Coverage and/or Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a manual wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADL) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the manual wheelchair that is being requested;

(D) Use of a manual wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested manual wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested manual wheelchair in the home, during a typical day. Proper assessment of upper extremity func-

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tion should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a manual wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment;

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a manual wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a manual wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of a manual wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a manual wheelchair;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair. See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing;

(c) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(d) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(e) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(f) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(g) DMAP may cover an adult tilt-in-space wheelchair (E1161) when a client meets all of the following conditions:

(A) Is dependent for transfers;

(B) Spends a minimum of four hours a day continuously in a wheelchair;

(C) The client's plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(D) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(h) DMAP may cover a standard hemi (low seat) wheelchair (K0002) when a client requires a lower seat height (17" to 18") because of short stature or needing assistance to place his/her feet on the ground for propulsion;

(i) DMAP may cover a lightweight wheelchair (K0003) when a client:

(A) Cannot self-propel in a standard wheelchair using arms and/or legs; and

(B) Can and does self-propel in a lightweight wheelchair;

(j) High-strength lightweight wheelchair (K0004):

(A) DMAP may cover a high-strength lightweight wheelchair (K0004) when a client:

(i) Self-propels the wheelchair while engaging in frequent activities that cannot be performed in a standard or lightweight wheelchair; and/or

(ii) Requires a seat width, depth, or height that cannot be accommodated in a standard, lightweight or hemi-wheelchair, and spends at least two hours per day in the wheelchair;

(B) If the expected duration of need is less than three months (e.g., post-operative recovery), a high-strength lightweight wheelchair is rarely medically appropriate;

(k) DMAP may cover an ultralightweight wheelchair (K0005) when a client has medical needs that require determination on a case by case basis;

(l) DMAP may cover a heavy-duty wheelchair (K0006) when a client weighs more than 250 pounds or has severe spasticity;

(m) DMAP may cover an extra heavy-duty wheelchair (K0007) when a client weighs more than 300 pounds;

(n) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement and Delivery;

(o) A manual wheelchair for use only outside the home is not covered.

(2) Coding Guidelines:

(a) Adult manual wheelchairs (K0001-K0007, K0009, E1161) have a seat width and a seat depth of 15" or greater;

(b) For codes K0001-K0007 and K0009, the wheels must be large enough and positioned so that the user can self-propel the wheelchair;

(c) In addition, specific codes are defined by the following characteristics:

(A) Adult tilt-in-space wheelchair (E1161):

(i) Ability to tilt the frame of the wheelchair greater than or equal to 45 degrees from horizontal while maintaining the same back-to-seat angle; and

(ii) Lifetime warranty on side frames and crossbraces;

(B) Standard wheelchair (K0001):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: 19" or greater; and

(iii) Weight capacity: 250 pounds or less;

(C) Standard hemi (low seat) wheelchair (K0002):

(i) Weight: Greater than 36 pounds; and

(ii) Seat height: Less than 19"; and

(iii) Weight capacity: 250 pounds or less;

(D) Lightweight wheelchair (K0003):

(i) Weight: 34-36 pounds; and

(ii) Weight capacity: 250 pounds or less;

(E) High strength, lightweight wheelchair (K0004):

(i) Weight: Less than 34 pounds; and

(ii) Lifetime warranty on side frames and crossbraces;

(F) Ultralightweight wheelchair (K0005):

(i) Weight: Less than 30 pounds;

(ii) Adjustable rear axle position; and

(iii) Lifetime warranty on side frames and crossbraces;

(G) Heavy duty wheelchair (K0006) has a weight capacity greater than 250 pounds;

(H) Extra heavy duty wheelchair (K0007) has a weight capacity greater than 300 pounds;

(d) Coverage of all adult manual wheelchairs includes the following features:

(A) Seat width: 15" — 19";

(B) Seat depth: 15" — 19";

(C) Arm style: Fixed, swingaway, or detachable, fixed height;

(D) Footrests: Fixed, swingaway, or detachable;

(e) Codes K0003-K0007 and E1161 include any seat height;

(f) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(g) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(h) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(i) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229 (see 410-122-0720 Pediatric Wheelchairs);

(j) For more information on other features included in the allowance for the wheelchair base, see 410-122-0340 Wheelchair Options/Accessories;

(k) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

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(3) Documentation Requirements:

(a) Wheelchair and Seating Justification and Prescription form (DMAP 3125):

(A) Providers must submit this form or a reasonable facsimile for purchase and modifications of all manual wheelchairs except for K0001, K0002, or K0003 (unless modifications are required).

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, prescription, and specifications for the wheelchair, completed by a physical therapist, occupational therapist or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and physical or occupational therapist.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order; and

(b) Additional Documentation:

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance; and

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to or at the time of delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All Healthcare Common Procedure Coding System (HCPCS) codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed; and

(c) A written order by the treating physician, identifying the specific type of manual wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific manual wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For purchase of K0001, K0002 or K0003 (without modifications):

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a manual wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, manual wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Neck, trunk, and pelvic posture and flexibility;

(IV) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a manual wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance; and

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP's coverage of a wheelchair is determined solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client's medical needs, including the age of the equipment and why it can't be grown or modified, if applicable;

(F) The DMAP 3125 (Wheelchair and Seating Justification and Prescription form or a reasonable facsimile is not required.

(e) For an ultralight wheelchair (K0005), documentation from a physical therapist, occupational therapist or treating physician that includes a description of the client's mobility needs within the home, even though a client who qualifies for coverage of a manual wheelchair may use the wheelchair outside the home. This may include what types of activities the client frequently encounters and whether the client is fully independent in the use of the wheelchair. Describe the features of the K0005 base which are needed compared to the K0004 base; and

(f) When code K0009 requested, all information from a physical therapist, occupational therapist or treating physician that justifies the medical appropriateness for the item; and

(g) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(h) The above documentation must be kept on file by the DMEPOS provider; and

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(i) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request.

(4) Table 122-0320.

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

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Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993 f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 18-1994(Temp), f. & cert. ef. 4-1-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0325

Motorized/Power Wheelchair Base

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a power wheelchair (PWC) (K0815-K0816, K0822-K0829, K0835-K0843, K0848-K0864, K0898) when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform an MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADLs;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair in the home to perform MRADLs during a typical day;

(i) Assessment of upper extremity function should consider limitations of strength, endurance, range of motion, or coordination, presence of pain, and deformity or absence of one or both upper extremities;

(ii) An optimally-configured manual wheelchair is one with an appropriate wheelbase, device weight, seating options, and other appropriate non-powered accessories;

(D) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for the operation of the PWC that is being requested;

(E) Use of a PWC will significantly improve the client's ability to move within the home to the areas customarily used for their MRADLs to allow completion of these activities within a reasonable time frame;

(F) The client is willing to use the requested PWC in the home, and the client will use it on a regular basis in the home;

(G) The client has either:

(i) Strength, postural stability, or other physical or mental capabilities insufficient to safely operate a power-operated vehicle (POV) in the home; or

(ii) Living quarters that do not provide adequate access between rooms, maneuvering space, and surfaces for the operation of a POV with a small turning radius;

(H) The client has either:

(i) Sufficient mental and physical capabilities to safely operate the PWC that is being requested; or

(ii) A caregiver who is unable to adequately propel an optimally configured manual wheelchair, but is available, willing, and able to safely operate the PWC that is being requested;

(I) The client's weight is less than or equal to the weight capacity of the PWC that is being requested;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a PWC for any of the following situations:

(A) When the PWC can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits, and the client is compliant with treatment:

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a PWC will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home, a PWC may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-

compliance, whether willing or involuntary, can be grounds for denial of a PWC coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a PWC;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement costs;

(C) When a covered client-owned wheelchair is in need of repair, DMAP may pay for one month's rental of a wheelchair (see OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) For a PWC to be covered, the treating physician must conduct a face-to-face examination of the client before writing the order and the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider must receive a written report of this examination within 45 days after the face-to-face examination and prior to delivery of the device;

(A) When this examination is performed during a hospital or nursing home stay, the DMEPOS provider must receive the report of the examination within 45 days after date of discharge;

(B) The physician may refer the client to a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), to perform part of this face-to-face examination. This person may not be an employee of the DMEPOS provider or have any direct or indirect financial relationship, agreement or contract with the DMEPOS provider. When the DMEPOS provider is owned by a hospital, a PT/OT working in the inpatient or outpatient hospital setting may perform part of the face-to-face examination;

(i) If the client was referred to the PT/OT before being seen by the physician, then once the physician has received and reviewed the written report of this examination, the physician must see the client and perform any additional examination that is needed. The report of the physician's visit should state concurrence or any disagreement with the PT/OT examination. In this situation, the physician must provide the DMEPOS provider with a copy of both examinations within 45 days after the face-to-face examination with the physician;

(ii) If the physician saw the client to begin the examination before referring the client to a PT/OT, then if the physician sees the client again in person after receiving the report of the PT/OT examination, the 45-day period begins on the date of that second physician visit. However, it is also acceptable for the physician to review the written report of the PT/OT examination, to sign and date that report, and to state concurrence or any disagreement with that examination. In this situation, the physician must send a copy of the note from his/her initial visit to evaluate the client plus the annotated, signed, and dated copy of the PT/OT examination to the DMEPOS provider. The 45-day period begins when the physician signs and dates the PT/OT examination;

(iii) If the PWC is a replacement of a similar item that was previously covered by DMAP or when only PWC accessories are being ordered and all other coverage criteria in this rule are met, a face to face examination is not required;

(d) DMAP does not reimburse for another chair if a client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting the living quarters;

(f) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, wheelchair gloves, head lights, and tail lights;

(g) Reimbursement for the wheelchair codes includes all labor charges involved in the assembly of the wheelchair and all covered additions or modifications. Reimbursement also includes support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education and on-going assistance with use of the wheelchair;

(h) The delivery of the PWC must be within 120 days following completion of the face-to-face examination;

(i) A PWC may not be ordered by a podiatrist;

(j) The following are not covered:

(i) A PWC with a captain's chair for a client who needs a separate wheelchair seat and/or back cushion;

(ii) Portable PWCs (K0813, K0814, K0820, K0821);

(iii) Seat elevator PWC's (K0830, K0831);

(iv) A PWC for use only outside the home.

(2) Coding Guidelines:

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- (a) Specific types of PWC's:
- (A) A Group 1 PWC (K0813-K0816) or a Group 2 Heavy Duty (HD), Very Heavy Duty (VHD), or Extra Heavy Duty (EHD) wheelchair (K0824-K0829) may be covered when the coverage criteria for a PWC are met;
- (B) A Group 2 Standard PWC with a sling/solid seat (K0820, K0822) may be covered when:
- (i) The coverage criteria for a PWC are met; and
- (ii) The client is using a skin protection and/or positioning seat and/or back cushion that meets the coverage criteria defined in Wheelchair Options/Accessories, 410-122-0340;
- (C) A Group 2 Single Power Option PWC (K0835 – K0840) may be covered when the coverage criteria for a PWC are met; and
- (i) The client either:
- (I) Requires a drive control interface other than a hand or chin-operated standard proportional joystick (examples include but are not limited to head control, sip and puff, switch control); or
- (II) Meets the coverage criteria for a power tilt or recline seating system (see Wheelchair Options/Accessories, 410-122-0340) and the system is being used on the wheelchair; and
- (ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a physical therapist (PT) or occupational therapist (OT), or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, or physician may have no financial relationship with the DMEPOS provider;
- (D) A Group 2 Multiple Power Option PWC (K0841-K0843) may be covered when the coverage criteria for a PWC are met; and
- (i) The client either:
- (I) Meets the coverage criteria for a power tilt or recline seating system with three or more actuators (see Wheelchair Options/Accessories, 410-122-0340); or
- (II) Uses a ventilator which is mounted on the wheelchair; and
- (ii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical appropriateness for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, or physician may have no financial relationship with the DMEPOS provider;
- (E) A Group 3 PWC with no power options (K0848-K0855) may be covered when:
- (i) The coverage criteria for a PWC are met; and
- (ii) The client is unable to stand and pivot to transfer due to a neurological condition or myopathy; and
- (iii) The client has had a specialty evaluation that was performed by a licensed/certified medical professional, such as a PT or OT, or physician who has specific training and experience in rehabilitation wheelchair evaluations and that documents the medical necessity for the wheelchair and its special features (see Documentation Requirements section). The PT, OT, or physician may have no financial relationship with the DMEPOS provider;
- (F) A Group 3 PWC with Single Power Option (K0856-K0860) or with Multiple Power Options (K0861-K0864) may be covered when:
- (i) The Group 3 criteria (2)(a)(E) (i) and (2)(a) (E) (ii) are met; and
- (ii) The Group 2 Single Power Option (2)(a)(C)(i)(I) and (2)(a)(C)(i)(II) or Multiple Power Options (criteria (2)(a)(D)(i)(I) and (2)(a)(D)(i)(II) are met
- (b) PWC Basic Equipment Package: Each PWC code is required to include the following items on initial issue (i.e., no separate billing/payment at the time of initial issue, unless otherwise noted):
- (i) Lap belt or safety belt (E0978);
- (ii) Battery charger single mode (E2366);
- (iii) Complete set of tires and casters any type (K0090, K0091, K0092, K0093, K0094, K0095, K0096, K0097, K0099);
- (iv) Legrests. There is no separate billing/payment if fixed or swing-away detachable non-elevating legrests with/without calf pad (K0051, K0052, E0995) are provided. Elevating legrests may be billed separately;
- (v) Fixed/swingaway detachable footrests with/without angle adjustment footplate/platform (K0037, K0040, K0041, K0042, K0043, K0044, K0045, K0052);
- (vi) Armrests. There is no separate billing/ payment if fixed/swing-away detachable non-adjustable armrests with arm pad (K0015, K0019, K0020) are provided. Adjustable height armrests may be billed separately;
- (vii) Upholstery for seat and back of proper strength and type for patient weight capacity of the power wheelchair (E0981, E0982);
- (viii) Weight specific components per patient weight capacity;
- (ix) Controller and Input Device. There is no separate billing/payment if a non-expandable controller and proportional input device (integrated or remote) is provided. If a code specifies an expandable controller as an option (but not a requirement) at the time of initial issue, it may be separately billed;
- (c) If a client needs a seat and/or back cushion but does not meet coverage criteria for a skin protection and/or positioning cushion, it may be appropriate to request a captain's chair seat rather than a sling/solid seat/back and a separate general use seat and/or back cushion;
- (d) A PWC with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239,PWC, pediatric size, not otherwise specified (see OAR 410-122-0720 Pediatric Wheelchairs);
- (e) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.
- (3) Documentation Requirements: Submit all of the following documentation with the prior authorization (PA) request:
- (a) A copy of the written report of the face-to-face examination of the client by the physician:
- (A) This report must include information related to the following:
- (i) This client's mobility limitation and how it interferes with the performance of activities of daily living;
- (ii) Why a cane or walker can't meet this client's mobility needs in the home;
- (iii) Why a manual wheelchair can't meet this client's mobility needs in the home;
- (iv) Why a power-operated vehicle (POV/scooter) can't meet this client's mobility needs in the home;
- (v) This client's physical and mental abilities to operate a PWC safely in the home;
- (I) Besides a mobility limitation, if other conditions exist that limit a client's ability to participate in activities of daily living (ADLs), how these conditions will be ameliorated or compensated by use of the wheelchair;
- (II) How these other conditions will be ameliorated or compensated sufficiently such that the additional provision of mobility assistive equipment (MAE) will be reasonably expected to significantly improve the client's ability to perform or obtain assistance to participate in MRADLs in the home.
- (B) The face-to-face examination should provide pertinent information about the following elements, but may include other details. Each element does not have to be addressed in every evaluation:
- (i) Symptoms;
- (ii) Related diagnoses;
- (iii) History:
- (I) How long the condition has been present;
- (II) Clinical progression;
- (III) Interventions that have been tried and the results;
- (IV) Past use of walker, manual wheelchair, POV, or PWC and the results;
- (iv) Physical exam:
- (I) Weight;
- (II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;
- (III) Presence of abnormal tone or deformity of arms, legs or trunk;
- (IV) Neck, trunk, and pelvic posture and flexibility;
- (V) Sitting and standing balance;
- (v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:
- (I) Transferring between a bed, chair, and power mobility device;
- (II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance;
- (C) Although a client who qualifies for coverage of a PWC may use that device outside the home, because DMAP's coverage of a wheelchair is determined solely by the client's mobility needs within the home, the examination must clearly distinguish the client's abilities and needs within the home from any additional needs for use outside the home;
- (b) The physician's written order, received by the DMEPOS provider within 45 days (date stamp or equivalent must be used to document receipt date) after the physician's face-to-face examination. The order must include all of the following elements:
- (A) Client's name;

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(B) Description of the item that is ordered. This may be general — e.g., “power wheelchair” or “power mobility device”— or may be more specific;

(i) If this order does not identify the specific type of PWC that is being requested, the DMEPOS provider must clarify this by obtaining another written order which lists the specific PWC that is being ordered and any options and accessories requested.

(ii) The items on this clarifying order may be entered by the DMEPOS provider. This subsequent order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority, but does not have to be received within 45 days following the face-to-face examination;

(C) Date of the face-to-face examination;

(D) Pertinent diagnoses/conditions and diagnosis codes that relate specifically to the need for the PWC;

(E) Length of need;

(F) Physician’s signature;

(G) Date of physician signature;

(c) For all requested equipment and accessories, the manufacturer’s name, product name, model number, standard features, specifications, dimensions and options;

(d) Detailed information about client-owned equipment (including serial numbers) as well as any other equipment being used or available to meet the client’s medical needs, including how long it has been used by the client and why it can’t be grown or modified, if applicable;

(e) For the home assessment, prior to or at the time of delivery of a PWC, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client’s living quarters. This assessment must support that the client’s home can accommodate and allow for the effective use of a PWC. Assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc; and

(f) A written document (termed a detailed product description) prepared by the DMEPOS provider and signed and dated by the physician that includes:

(i) The specific base (Healthcare Common Procedure Coding System (HCPCS) code and manufacturer name/model) and all options and accessories (including HCPCS codes), whether PA is required or not, that will be separately billed;

(ii) The DMEPOS provider’s charge and the DMAP fee schedule allowance for each separately billed item;

(iii) If there is no DMAP fee schedule allowance, the DMEPOS provider must enter “not applicable”;

(iv) The DMEPOS provider must receive the signed and dated detailed product description from the physician prior to delivery of the PWC;

(v) A date stamp or equivalent must be used to document receipt date of the detailed product description; and

(g) Any additional documentation that supports indications of coverage are met as specified in this rule;

(h) The DMEPOS provider must keep the above documentation on file;

(i) Documentation that the coverage criteria have been met must be present in the client’s medical records and made available to DMAP on request.

(4) Prior Authorization:

(a) All codes in this rule required PA and may be purchased, rented and repaired;

(b) See DMAP’s fee schedule for more information;

(c) Codes specified in this rule are not covered for clients residing in nursing facilities;

(d) Rented equipment is considered purchased when the client has used the equipment for 13 months, when the provider’s actual charge for purchase is met, when the manufacturer’s suggested retail price (MSRP) is met or when DMAP’s fee schedule allowable for purchase is met, whichever is the lowest;

(e) For PWC’s furnished on a rental basis with dates of services prior to November 15, 2006, use codes K0010, K0011, K0012 and K0014 as appropriate.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0340

Wheelchair Options/Accessories

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover options and accessories for covered wheelchairs when the following criteria are met:

(A) The client has a wheelchair that meets DMAP coverage criteria; and

(B) The client requires the options/accessories to accomplish their mobility-related activities of daily living (MRADLs) in the home. See 410-122-0010 Definitions for definition of MRADLs;

(b) DMAP does not cover options/accessories whose primary benefit is allowing the client to perform leisure or recreational activities;

(c) Arm of Chair

(A) Adjustable arm height option (E0973, K0017, K0018, K0020) may be covered when the client:

(i) Requires an arm height that is different than what is available using nonadjustable arms; and

(ii) Spends at least two hours per day in the wheelchair;

(B) An arm trough (K0106) is covered if the client has quadriplegia, hemiplegia, or uncontrolled arm movements;

(d) Footrest/Legrest:

(A) Elevating legrests (E0990, K0046, K0047, K0053, K0195) may be covered when:

(i) The client has a musculoskeletal condition or the presence of a cast or brace which prevents 90 degree flexion at the knee; or

(ii) The client has significant edema of the lower extremities that requires having an elevating leg rest; or

(iii) The client meets the criteria for and has a reclining back on the wheelchair;

(B) Elevating leg rests that are used with a wheelchair that is purchased or owned by the patient are coded E0990. This code is per leg rest;

(C) Elevating leg rests that are used with a capped rental wheelchair base should be coded K0195. This code is per pair of leg rests;

(e) Nonstandard Seat Frame Dimensions:

(A) For all adult wheelchairs, DMAP includes payment for seat widths and/or seat depths of 15-19 inches in the payment for the base code. These seat dimensions must not be separately billed;

(B) Codes E2201-E2204 and E2340-E2343 describe seat widths and/or depths of 20 inches or more for manual or power wheelchairs;

(C) A nonstandard seat width and/or depth (E2201-E2204 and E2340-E2343) is covered only if the patient’s dimensions justify the need;

(f) Rear Wheels for Manual Wheelchairs: Code K0064 (flat free insert) is used to describe either:

(A) A removable ring of firm material that is placed inside of a pneumatic tire to allow the wheelchair to continue to move if the pneumatic tire is punctured; or

(B) Nonremovable foam material in a foam filled rubber tire;

(C) K0064 is not used for a solid self-skinning polyurethane tire;

(g) Batteries/Chargers:

(A) Up to two batteries (E2360-E2365) at any one time are allowed if required for a power wheelchair;

(B) Batteries/chargers for motorized/power wheelchairs are separately payable from the purchased wheelchair base;

(h) Seating:

(A) DMAP may cover a general use seat cushion and a general use wheelchair back cushion for a client whose wheelchair that meets DMAP coverage criteria;

(B) A skin protection seat cushion may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has either of the following:

(I) Current pressure ulcer or past history of a pressure ulcer on the area of contact with the seating surface; or

(II) Absent or impaired sensation in the area of contact with the seating surface or inability to carry out a functional weight shift due to one of the following diagnoses: spinal cord injury resulting in quadriplegia or paraplegia, other spinal cord disease, multiple sclerosis, other demyelinating disease, cerebral palsy, anterior horn cell diseases including amyotrophic lateral sclerosis, post polio paralysis, traumatic brain injury resulting in quadriplegia, spina bifida, childhood cerebral degeneration, Alzheimer’s disease, Parkinson’s disease;

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(C) A positioning seat cushion, positioning back cushion, and positioning accessory (E0955-E0957, E0960) may be covered for a client who meets both of the following criteria:

(i) The client has a wheelchair that meets DMAP coverage criteria; and

(ii) The client has any significant postural asymmetries due to one of the diagnoses listed in criterion (h)(A)(ii)(II) or to one of the following diagnoses: monoplegia of the lower limb; hemiplegia due to stroke, traumatic brain injury, or other etiology; muscular dystrophy; torsion dystonias; spinocerebellar disease;

(D) A combination skin protection and positioning seat cushion may be covered when a client meets the criteria for both a skin protection seat cushion and a positioning seat cushion;

(E) Separate payment is allowed for a seat cushion solid support base (E2618) with mounting hardware when it is used on an adult manual wheelchair (K0001-K0009, E1161) or lightweight power wheelchair (K0012). There is no separate payment when this is used with other types of power wheelchairs because those wheelchairs include a solid support base;

(F) There is no separate payment for a solid insert (E0992) that is used with a seat or back cushion because a solid base is included in the allowance for a wheelchair seat or back cushion;

(G) There is no separate payment for mounting hardware for a seat or back cushion;

(H) There is no separate payment for a headrest (E0955, E0966) on a captain's seat on a power wheelchair;

(I) A custom fabricated seat cushion (E2609) and a custom fabricated back cushion (E2617) are cushions that are individually made for a specific patient.

(i) Basic materials include liquid foam or a block of foam and sheets of fabric or liquid coating material;

(I) A custom fabricated cushion may include certain prefabricated components (e.g., gel or multi-cellular air inserts); these components must not be billed separately;

(II) The cushion must have a removable vapor permeable or waterproof cover or it must have a waterproof surface;

(ii) The cushion must be fabricated using molded-to-patient-model technique, direct molded-to-patient technique, CAD-CAM technology, or detailed measurements of the patient used to create a configured cushion;

(I) If foam-in-place or other material is used to fit a substantially prefabricated cushion to an individual client, the cushion must be billed as a prefabricated cushion, not custom fabricated;

(II) The cushion must have structural features that significantly exceed the minimum requirements for a seat or back positioning cushion;

(iii) If a custom fabricated seat and back are integrated into a one-piece cushion, code as E2609 plus E2617;

(J) A custom fabricated seat cushion may be covered if criteria (I) and (III) are met. A custom fabricated back cushion may be covered if criteria (II) and (III) are met:

(I) Client meets all of the criteria for a prefabricated skin protection seat cushion or positioning seat cushion;

(II) Client meets all of the criteria for a prefabricated positioning back cushion;

(III) There is a comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs;

(J) A prefabricated seat cushion, a prefabricated positioning back cushion, or a brand name custom fabricated seat or back cushion which has not received a written coding verification from the Statistical Analysis DME Regional Carrier SADMERC or which does not meet the criteria stated in this rule is not covered;

(K) A headrest extension (E0966) is a sling support for the head. Code E0955 describes any type of cushioned headrest;

(L) The code for a seat or back cushion includes any rigid or semi-rigid base or posterior panel, respectively, that is an integral part of the cushion;

(M) A solid insert (E0992) is a separate rigid piece of wood or plastic which is inserted in the cover of a cushion to provide additional support and is included in the allowance for a seat cushion;

(N) A solid support base for a seat cushion is a rigid piece of plastic or other material that is attached with hardware to the seat frame of a wheelchair in place of a sling seat. A cushion is placed on top of the support base. Use code E2618 for this solid support base;

(i) DMAP will only cover accessories billed under the following codes when SADMERC has made written confirmation of use of the code for the specific product(s) being billed: E2601-E2608, E2611-E2616, E2620, E2621; E2609 and E2617 (brand-name products), K0108 (for wheelchair cushions).

(A) Information concerning the documentation that must be submitted to the SADMERC for a Coding Verification Request can be found on the SADMERC Web site or by contacting the SADMERC;

(B) A Product Classification List with products that have received a coding verification can be found on the SADMERC Web site;

(j) Code E1028 (swingaway or removable mounting hardware upgrade) may be billed in addition to codes E0955-E0957. It must not be billed in addition to code E0960. It must not be used for mounting hardware related to a wheelchair seat cushion or back cushion code;

(k) Power seating systems:

(A) A power tilt seating system (E1002):

(i) Includes all the following:

(I) A solid seat platform and a solid back; any frame width and depth;

(II) Detachable or flip-up fixed height or adjustable height armrests;

(III) Fixed or swingaway detachable leg rests;

(IV) Fixed or flip-up footplates;

(V) Motor and related electronics with or without variable speed programmability;

(VI) Switch control that is independent of the power wheelchair drive control interface;

(VII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to tilt to greater than or equal to 45 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability for the supplier to adjust the seat to back angle;

(IV) Ability to support patient weight of at least 250 pounds.

(B) A power recline seating system (E1003-E1005):

(i) Includes all the following:

(I) A solid seat platform and a solid back;

(II) Any frame width and depth;

(III) Detachable or flip-up fixed height or adjustable height arm rests;

(IV) Fixed or swingaway detachable leg rests;

(V) Fixed or flip-up footplates;

(VI) A motor and related electronics with or without variable speed programmability;

(VII) A switch control that is independent of the power wheelchair drive control interface;

(VIII) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to recline to greater than or equal to 150 degrees from horizontal;

(II) Back height of at least 20 inches;

(III) Ability to support patient weight of at least 250 pounds.

(C) A power tilt and recline seating system (E1006-E1008)

(i) Includes the following:

(I) A solid seat platform and a solid back;

(II) Any frame width and depth; detachable or flip-up fixed height or adjustable height armrests;

(III) Fixed or swingaway detachable leg rests; fixed or flip-up footplates;

(IV) Two motors and related electronics with or without variable speed programmability;

(V) Switch control that is independent of the power wheelchair drive control interface;

(VI) Any hardware that is needed to attach the seating system to the wheelchair base;

(ii) It does not include a headrest;

(iii) It must have the following features:

(I) Ability to tilt to greater than or equal to 45 degrees from horizontal;

(II) Ability to recline to greater than or equal to 150 degrees from horizontal;

(III) Back height of at least 20 inches; ability to support patient weight of at least 250 pounds.

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(D) A mechanical shear reduction feature (E1004 and E1007) consists of two separate back panels. As the posterior back panel reclines or raises, a mechanical linkage between the two panels allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(E) A power shear reduction feature (E1005 and E1008) consists of two separate back panels. As the posterior back panel reclines or raises, a separate motor controls the linkage between the two panels and allows the client's back to stay in contact with the anterior panel without sliding along that panel;

(F) A power leg elevation feature (E1010) involves a dedicated motor and related electronics with or without variable speed programmability which allows the leg rest to be raised and lowered independently of the recline and/or tilt of the seating system. It includes a switch control which may or may not be integrated with the power tilt and/or recline control(s);

(j) Codes E2310 and E2311 (Power Wheelchair Accessory):(A) Describe the electronic components that allow the client to control two or more of the following motors from a single interface (e.g., proportional joystick, touchpad, or nonproportional interface): power wheelchair drive, power tilt, power recline, power shear reduction, power leg elevation, power seat elevation, power standing;

(B) Include a function selection switch that allows the client to select the motor that is being controlled and an indicator feature to visually show which function has been selected;

(C) When the wheelchair drive function is selected, the indicator feature may also show the direction that is selected (forward, reverse, left, right). This indicator feature may be in a separate display box or may be integrated into the wheelchair interface;

(D) Payment for the code includes an allowance for fixed mounting hardware for the control box and for the display box (if present);

(E) When a switch is medically appropriate and a client has adequate hand motor skills, a switch would be considered the least costly alternative;

(F) E2310 or E2311 may be considered for coverage when a client does not have hand motor skills or presents with cognitive deficits, contractures or limitation of movement patterns that prevents operation of a switch;

(G) In addition, an alternate switching system must be medically appropriate and not hand controlled (not running through a joystick);

(H) If a wheelchair has an electrical connection device described by code E2310 or E2311 and if the sole function of the connection is for a power seat elevation or power standing feature, it is not covered;

(k) Power Wheelchair Drive Control Systems:

(A) The term interface in the code narrative and definitions describes the mechanism for controlling the movement of a power wheelchair. Examples of interfaces include, but are not limited to, joystick, sip and puff, chin control, head control, etc.;

(B) A proportional interface is one in which the direction and amount of movement by the client controls the direction and speed of the wheelchair. One example of a proportional interface is a standard joystick;

(C) A nonproportional interface is one that involves a number of switches. Selecting a particular switch determines the direction of the wheelchair, but the speed is pre-programmed. One example of a nonproportional interface is a sip-and-puff mechanism;

(D) The term controller describes the microprocessor and other related electronics that receive and interpret input from the joystick (or other drive control interface) and convert that input into power output to the motor and gears in the power wheelchair base;

(E) A switch is an electronic device that turns power to a particular function either "on" or "off". The external component of a switch may be either mechanical or nonmechanical. Mechanical switches involve physical contact in order to be activated. Examples of the external components of mechanical switches include, but are not limited to, toggle, button, ribbon, etc. Examples of the external components of nonmechanical switches include, but are not limited to, proximity, infrared, etc. Some of the codes include multiple switches. In those situations, each functional switch may have its own external component or multiple functional switches may be integrated into a single external switch component or multiple functional switches may be integrated into the wheelchair control interface without having a distinct external switch component;

(F) A stop switch allows for an emergency stop when a wheelchair with a nonproportional interface is operating in the latched mode. (Latched mode is when the wheelchair continues to move without the patient having to continually activate the interface.) This switch is sometimes referred to as a kill switch;

(G) A direction change switch allows the client to change the direction that is controlled by another separate switch or by a mechanical pro-

portional head control interface. For example, it allows a switch to initiate forward movement one time and backward movement another time;

(H) A function selection switch allows the client to determine what operation is being controlled by the interface at any particular time. Operations may include, but are not limited to, drive forward, drive backward, tilt forward, recline backward, etc.;

(I) An integrated proportional joystick and controller is an electronics package in which a joystick and controller electronics are in a single box, which is mounted on the arm of the wheelchair;

(J) The interfaces described by codes E2320-E2322, E2325, and E2327-E2330 must have programmable control parameters for speed adjustment, tremor dampening, acceleration control, and braking;

(K) A remote joystick (E2320, E2321) is one in which the joystick is in one box that is mounted on the arm of the wheelchair and the controller electronics are located in a different box that is typically located under the seat of the wheelchair. These codes include remote joysticks that are used for hand control as well as joysticks that are used for chin control. Code E2320 includes any type of proportional remote joystick stick including, but not limited to standard, mini-proportional, compact, and short throw remote joysticks;

(L) When code E2320 or E2321 is used for a chin control interface, the chin cup is billed separately with code E2324;

(M) Code E2320 also describes a touchpad that is an interface similar to the pad-type mouse found on portable computers;

(N) Code E2322 describes a system of 3-5 mechanical switches that are activated by the client touching the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch, if provided, are included in the allowance for the code;

(O) Code E2323 includes prefabricated joystick handles that have shapes other than a straight stick — e.g., U shape or T shape — or that have some other nonstandard feature — e.g., flexible shaft;

(P) A sip and puff interface (E2325) is a nonproportional interface in which the client holds a tube in their mouth and controls the wheelchair by either sucking in (sip) or blowing out (puff). A mechanical stop switch is included in the allowance for the code. E2325 does not include the breath tube kit that is described by code E2326;

(Q) A proportional, mechanical head control interface (E2327) is one in which a headrest is attached to a joystick-like device. The direction and amount of movement of the client's head pressing on the headrest control the direction and speed of the wheelchair. A mechanical direction control switch is included in the code;

(R) A proportional, electronic head control interface (E2328) is one in which a client's head movements are sensed by a box placed behind the client's head. The direction and amount of movement of the client's head (which does not come in contact with the box) control the direction and speed of the wheelchair. A proportional, electronic extremity control interface (E2328) is one in which the direction and amount of movement of the client's arm or leg control the direction and speed of the wheelchair;

(S) A nonproportional, contact switch head control interface (E2329) is one in which a client activates one of three mechanical switches placed around the back and sides of their head. These switches are activated by pressure of the head against the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch are included in the allowance for the code;

(T) A nonproportional, proximity switch head control interface (E2330) is one in which a client activates one of three switches placed around the back and sides of their head. These switches are activated by movement of the head toward the switch, though the head does not touch the switch. The switch that is selected determines the direction of the wheelchair. A mechanical stop switch and a mechanical direction change switch are included in the allowance for the code;

(U) Code E2399 (not otherwise classified interface) is appropriately used in the following situations:

(i) An integrated proportional joystick and controller box are being replaced due to damage; or

(ii) The item being replaced is a remote joystick box only (without the controller); or

(iii) The item being replaced is another type of interface, e.g. sip and puff, head control without the controller); or

(iv) The item being replaced is the controller box only (without the remote joystick or other type of interface); or

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(v) There is no specific E code that describes the type of drive control interface system that is provided. In this situation, E2399 would be used at the time of initial issue or if the item was being provided as a replacement;

(V) The KC modifier (replacement of special power wheelchair interface):

(i) Is used in the following situations:

(I) Due to a change in the client's condition an integrated joystick and controller is being replaced by another drive control interface — e.g., remote joystick, head control, sip and puff, etc.; or

(II) The client has a drive control interface described by codes E2320-E2322, E2325, or E2327-E2330 and both the interface (e.g., joystick, head control, sip and puff) and the controller electronics are being replaced due to irreparable damage;

(ii) The KC modifier is never used at the time of initial issue of a wheelchair;

(iii) The KC modifier specifically states replacement, therefore, the RP modifier is not required. The KC modifier is not used when billing code E2399;

(l) Other Power Wheelchair Accessories: An electronic interface (E2351) to allow a speech generating device to be operated by the power wheelchair control interface may be covered if the client has a covered speech generating device. (See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services.);

(m) Miscellaneous Accessories:

(A) Anti-rollback device (E0974) is covered if the client propels himself/herself and needs the device because of ramps;

(B) A safety belt/pelvic strap (E0978) is covered if the client has weak upper body muscles, upper body instability or muscle spasticity that requires use of this item for proper positioning;

(C) A shoulder harness/straps or chest strap (E0960) and a safety belt/pelvic strap (E0978) are covered only to treat a client's medical symptoms;

(I) A medical symptom is defined as an indication or characteristic of a physical or psychological condition;

(II) E0960 and E0978 are not covered when intended for use as a physical restraint or for purposes intended for discipline or convenience of others;

(D) One example (not all-inclusive) of a covered indication for swingaway, retractable, or removable hardware (E1028) would be to move the component out of the way so that a client could perform a slide transfer to a chair or bed;

(E) A fully reclining back option (E1226) is covered if the client spends at least 2 hours per day in the wheelchair and has one or more of the following conditions/needs:

(i) Quadriplegia;

(ii) Fixed hip angle;

(iii) Trunk or lower extremity casts/braces that require the reclining back feature for positioning;

(iv) Excess extensor tone of the trunk muscles; and/or

(v) The need to rest in a recumbent position two or more times during the day and transfer between wheelchair and bed is very difficult.

(2) Documentation Requirements: Submit documentation that supports coverage criteria in this rule are met and the specified information as follows with the prior authorization (PA) request:

(a) A Certificate of Medical Necessity (CMN) or reasonable facsimile for E0973, E0990, K0017, K0018, K0020, E1226, K0046, K0047, K0053, and K0195. For these items, the CMN may act as a substitute for a written order if it contains all of the required elements of an order. Depending on the type of wheelchair, the CMN for these options/accessories is either CMS Form 843 (power wheelchairs) or CMS Form 844 (manual wheelchairs);

(b) When code K0108 is billed, a narrative description of the item, the manufacturer, the model name or number (if applicable), and information justifying the medical appropriateness for the item;

(c) Options/accessories for individual consideration might include documentation on the client's diagnosis, the client's abilities and limitations as they relate to the equipment (e.g., degree of independence/dependence, frequency and nature of the activities the client performs, etc.), the duration of the condition, the expected prognosis, past experience using similar equipment;

(d) For a custom-fabricated seat cushion:

(A) A comprehensive written evaluation by a licensed clinician (who is not an employee of or otherwise paid by a DMEPOS provider) which clearly explains why a prefabricated seating system is not sufficient to meet the client's seating and positioning needs, and;

(B) Diagnostic reports that support the medical condition;

(C) Dated and clear photographs;

(D) Body contour measurements;

(e) Documentation that the coverage criteria in this rule have been met must be present in the client's medical record. This documentation and any additional medical information from the DMEPOS provider must be made available to DMAP on request.

(3) Table 122-0340.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. & cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0360

Canes and Crutches

(1) Indications and Coverage: When prescribed by a practitioner for a client with a condition causing impaired ambulation and there is a potential for ambulation.

(2) A white cane for a visually impaired client is considered to be a self-help item and is not covered by the Division of Medical Assistance Programs (DMAP).

(3) Table 122-0360.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. & cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0365

Standing and Positioning Aids

(1) Indications and coverage: If a client has one aid that meets his/her medical needs, regardless of who obtained it, the Division of Medical Assistance Programs (DMAP) will not provide another aid of same or similar function.

(2) Documentation to be submitted for prior authorization (PA) and kept on file by the Durable Medical Equipment (DME) provider:

(a) Documentation of medical appropriateness, which has been reviewed and signed by the prescribing practitioner;

(b) The care plan outlining positioning and treatment regime, and all DME currently available for use by the client;

(c) The physician's order;

(d) The documentation for customized positioner must include objective evidence that commercially available positioners are not appropriate;

(e) Each item requested must be itemized with description of product, make, model number, and manufacturers suggested retail price (MSRP);

(f) Submit Positioner Justification form (DMAP 3155) or reasonable facsimile, with recommendation for most appropriate equipment. This must be submitted by physical therapist, occupational therapist, or prescribing practitioner when requesting a PA;

(3) Gait Belts:

(a) Covered when:

(A) The client weighs 60 lbs. or more; and

(B) The care provider is trained in the proper use; and

(C) The client can walk independently, but needs:

(i) A minor correction of ambulation; or

(ii) Needs minimal or standby assistance to walk alone; or

(iii) Requires assistance with transfer;

(b) Use code E0700.

(4) Standing frame systems, prone standers, supine standers or boards and accessories for standing frames are covered when:

(a) The client has been sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and,

(b) The client is following a therapy program initially established by a physical or occupational therapist; and

(c) The home is able to accommodate the equipment; and

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(d) The weight of the client does not exceed manufacturer's weight capacity; and

(e) The client has demonstrated an ability to utilize the standing aid independently or with caregiver; and

(f) The client has demonstrated compliance with other programs; and

(g) The client has demonstrated a successful trial period in a monitored setting; and

(h) The client does not have access to equipment from another source.

(5) Sidelyers and custom positioners must meet the following criteria in addition to the criteria in Table 122-0365:

(a) The client must be sequentially evaluated by a physical or occupational therapist to make certain the client can tolerate and obtain medical benefit; and

(b) The client must be following a therapy program initially established by a physical or occupational therapist; and, (c) The home must be able to accommodate the equipment; and

(d) The caregiver and/or family are capable of using the equipment appropriately.

(6) Criteria for Specific Accessories:

(a) A back support may be covered when a client:

(A) Needs for balance, stability, or positioning assistance; or

(B) Has extensor tone of the trunk muscles; or

(C) Needs for support while being raised or while completely standing;

(b) A tall back may be covered when:

(A) The client is over 5'11" tall; and

(B) The client has no trunk control and needs additional support; or

(C) The client has more involved need for assistance with balance, stability, or positioning;

(c) Hip guides may be covered when a client:

(A) Lacks motor control and/or strength to center hips; or

(B) Has asymmetrical tone which causes hips to pull to one side; or

(C) Has spasticity; or

(D) Has low tone or high tone; or

(E) Need for balance, stability, or positioning assistance;

(d) A shoulder retractor or harness may be covered when:

(A) Erect posture cannot be maintained without support due to lack of motor control or strength; or

(B) Has kyphosis; or

(C) Presents strong flexor tone;

(e) Lateral supports may be covered when a client:

(A) Lacks trunk control to maintain lateral stability; or

(B) Has scoliosis which requires support; or

(C) Needs a guide to find midline;

(f) A headrest may be covered when a client:

(A) Lacks head control and cannot hold head up without support; or

(B) Has strong extensor thrust pattern that requires inhibition;

(g) Independent adjustable knee pads may be covered when a client:

(A) Has severe leg length discrepancy; or

(B) Has contractures in one leg greater than the other;

(h) An actuator handle extension may be covered when a client:

(A) Has no caregiver; and

(B) Is able to transfer independently into standing frame; and

(C) Has limited range of motion in arm and/or shoulder and cannot reach actuator in some positions;

(i) Arm troughs may be covered when a client:

(A) Has increased tone which pulls arms backward so hands cannot come to midline; or

(B) Has poor tone, strength, or control is so poor that causes arms to hang out to side and backward, causing pain and risking injury; or

(C) Needs for posture;

(j) A tray may be covered when proper positioning cannot be accomplished by other accessories;

(k) Abductors may be covered to reduce tone for proper alignment and weight bearing;

(l) Sandals (shoe holders) may be covered when a client:

(A) Has dorsiflexion of the foot or feet; or

(B) Has planar flexion of the foot or feet or

(C) Has eversion of the foot or feet; or

(D) Needs for safety.

(7) Table 122-0365.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03;

OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0375

Walkers

(1) Indications and Limitations of Coverage:

(a) A standard walker (E0130, E0135, E0141, E0143) and related accessories are covered if both of the following criteria are met:

(A) When prescribed by a treating practitioner for a client with a medical condition impairing ambulation and there is a potential for increasing ambulation; and

(B) When there is a need for greater stability and security than provided by a cane or crutches;

(b) For an adult gait trainer, use the appropriate walker code. If a gait trainer has a feature described by one of the walker attachment codes (E0154-E0157), that code may be separately billed;

(c) A heavy duty walker (E0148, E0149) is covered for clients who meet coverage criteria for a standard walker and who weigh more than 300 pounds;

(d) A heavy duty, multiple braking system, variable wheel resistance walker (E0147) is covered for clients who meet coverage criteria for a standard walker and who are unable to use a standard walker due to a severe neurologic disorder or other condition causing the restricted use of one hand;

(e) When a walker with an enclosed frame (E0144) is dispensed to a client, documentation must support why a standard folding wheeled walker, E0143, was not provided as the least costly medically appropriate alternative;

(f) Enhancement accessories of walkers are noncovered;

(g) Leg extensions (E0158) are covered only for patients six feet tall or more.

(2) Coding Guidelines:

(a) A wheeled walker (E0141, E0143, E0149) is one with either two, three or four wheels. It may be fixed height or adjustable height. It may or may not include glide-type brakes (or equivalent). The wheels may be fixed or swivel;

(b) A glide-type brake consists of a spring mechanism (or equivalent) which raises the leg post of the walker off the ground when the patient is not pushing down on the frame;

(c) Code E0144 describes a folding wheeled walker which has a frame that completely surrounds the patient and an attached seat in the back;

(d) A heavy duty walker (E0148, E0149) is one which is labeled as capable of supporting patients who weigh more than 300 pounds. It may be fixed height or adjustable height. It may be rigid or folding;

(e) Code E0147 describes a 4-wheeled, adjustable height, folding-walker that has all of the following characteristics:

(A) Capable of supporting patients who weigh greater than 350 pounds;

(B) Hand operated brakes that cause the wheels to lock when the hand levers are released;

(C) The hand brakes can be set so that either or both can lock both wheels;

(D) The pressure required to operate each hand brake is individually adjustable;

(E) There is an additional braking mechanism on the front crossbar;

(F) At least two wheels have brakes that can be independently set through tension adjustability to give varying resistance;

(f) The only walkers that may be billed using code E0147 are those products listed in the Product Classification List on the SADMERC web site;

(g) An enhancement accessory is one which does not contribute significantly to the therapeutic function of the walker. It may include, but is not limited to style, color, hand operated brakes (other than those described in code E0147), or basket (or equivalent);

(h) A4636, A4637, and E0159 are only used to bill for replacement items for covered, patient-owned walkers. Codes E0154, E0156, E0157, and E0158 can be used for accessories provided with the initial issue of a walker or for replacement components. Code E0155 can be used for replacements on covered, patient-owned wheeled walkers or when wheels are subsequently added to a covered, patient-owned nonwheeled walker (E0130, E0135). Code E0155 cannot be used for wheels provided at the time of, or within one month of, the initial issue of a nonwheeled walker;

(i) Hemi-walkers must be billed using code E0130 or E0135, not E1399;

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(j) A gait trainer is a term used to describe certain devices that are used to support a client during ambulation;

(k) Column II code is included in the allowance for the corresponding Column I code when provided at the same time and must not be billed separately at the time of billing the Column I code;

(l) **Table 122-0375-1.**

(m) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(3) Documentation: An order for each item billed must be signed and dated by the treating practitioner, kept on file by the DMEPOS provider, and made available to the Division of Medical Assistance Programs (DMAP) upon request. The treating practitioner's records must contain information that supports the medical appropriateness of the item ordered, including height and weight.

(4) **Table 122-0375-2.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0380

Hospital Beds

(1) Definitions:

(a) Fixed Height Hospital Bed — A fixed height hospital bed is one with manual head and leg elevation adjustments but no height adjustment;

(b) Variable Height Hospital Bed — A variable height hospital bed is one with manual height adjustment and with manual head and leg elevation adjustments;

(c) Semi-Electric Hospital Bed — A semi-electric bed is one with manual height adjustment and with electric head and leg elevation adjustments.

(2) Hospital Bed Criterion:

(a) 1 — Client requires positioning of the body in ways not feasible with an ordinary bed due to a medical condition that is expected to last at least one month;

(b) 2 — Client requires, for alleviation of pain, positioning of the body in ways not feasible with an ordinary bed;

(c) 3 — Client requires the head of the bed to be elevated more than 30 degrees most of the time due to congestive heart failure, chronic pulmonary disease, or problems with aspiration. Pillows or wedges must have been tried and failed;

(d) 4 — Client requires traction equipment that can only be attached to a hospital bed;

(e) 5 — Client's level of functioning can only be met with a hospital bed.

(f) 6 — Client is capable of operating the controls;

(g) 7 — Client requires frequent changes in body position and/or has an immediate need for a change in body position;

(h) 8 — Client requires a bed height different from that provided by a fixed height hospital bed in order to permit transfers to chair, wheelchair or standing position;

(i) 9 — Client weighs more than 350 pounds.

(3) Indications and coverage:

(a) Fixed Height Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5.

(b) Variable Height Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5 and 8.

(c) Semi-Electric Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5, 6, and 7;

(d) Heavy-Duty and Extra Heavy-Duty Hospital Beds are covered when the client meets criterion:

(A) 1, 2, 3, or 4, and;

(B) 5, 6, 7, and 9.

(4) Payment Authorization: Subject to service limitations of the Division of Medical Assistance Programs (DMAP) rules, from the initial date of service through the second date of service, a hospital bed rental may

be dispensed without prior authorization. The provider is still responsible to ensure all rule requirements are met. Payment authorization is required prior to submitting claims and will be given once all required documentation has been received and any other applicable rule requirements have been met. Payment authorization is obtained from the same authorizing authority as specified in 410-122-0040. All subsequent services starting with the third date of service require prior authorization.

(5) Documentation:

(a) Documentation of medical appropriateness that has been reviewed and signed by the prescribing practitioner must be submitted with the request for prior authorization (PA) and kept on file by the DME provider;

(b) Document the number of hours spent in bed, the type of bed currently used by the client and why it doesn't meet the needs of the client;

(c) In addition to the above documentation requirements, you must document:

(A) The reasons why a variable height bed does not meet the needs of the client when requesting PA for semi-electric hospital beds, and;

(B) The client's height and weight when requesting PA for Heavy-Duty and Extra Heavy-Duty hospital beds.

(5) Procedure Codes — Table 122-0380.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0400

Pressure Reducing Support Surfaces

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) Group 1 (A4640, E0180-E0182, E0184-E0189, and E0196-E0199):

(A) The Division of Medical Assistance Programs (DMAP) may cover a Group 1 support surface when the client meets:

(i) Criterion (I), or;

(ii) Criteria (II) or (III) and at least one of criteria (IV)-(VII):

(I) Completely immobile — i.e., client cannot make changes in body position without assistance;

(II) Limited mobility — i.e., client cannot independently make changes in body position significant enough to alleviate pressure;

(III) Any stage pressure ulcer on the trunk or pelvis;

(IV) Impaired nutritional status;

(V) Fecal or urinary incontinence;

(VI) Altered sensory perception;

(VII) Compromised circulatory status;

(B) The DMEPOS provider must provide a support surface in which the client does not "bottom out";

(C) DMAP does not cover foam overlays or mattresses without a waterproof cover, since these are not considered durable;

(D) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(E) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(b) Group 2 (E0193, E0277, and E0371-E0373):

(A) A Group 2 support surface may be covered for up to an initial three month rental period when the client meets:

(i) Criterion (I) and (II) and (III); or

(ii) Criterion (IV); or

(iii) Criterion (V) and (VI);

(I) Multiple stage II pressure ulcers located on the trunk or pelvis (ICD-9 707.02 -707.05);

(II) Client has been on a comprehensive ulcer treatment program for at least the past month which includes the following: use of an appropriate Group 1 support surface; education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers; regular assessment by a nurse, physician, or other licensed healthcare practitioner (usually at least weekly for a patient with a stage III or IV ulcer); appropriate turning and positioning; appropriate wound care (for a stage II, III, or IV ulcer); appropriate management of moisture/incontinence; and nutritional assessment and intervention consistent with the overall plan of care;

(III) The ulcers have worsened or remained the same over the past month;

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(IV) Large or multiple stage III or IV pressure ulcer(s) on the trunk or pelvis (ICD-9 707.02 -707.05); A large wound is generally any wound of eight square centimeters (length x width) or more. Individual client circumstances may be weighed. Undermining and/or tunneling, anatomic location on the body and the size of the client may be taken into account;

(V) Recent myocutaneous flap or skin graft for a pressure ulcer on the trunk or pelvis (surgery within the past 60 days) (ICD-9 707.02 — 707.05);

(VI) The client has been on a Group 2 or 3 support surface immediately prior to a recent discharge from a hospital or nursing facility (discharge within the past 30 days);

(B) The DMEPOS provider must provide a support surface in which the patient does not “bottom out”;

(C) When a Group 2 surface is requested following a myocutaneous flap or skin graft, coverage generally is limited to 60 days from the date of surgery;

(D) DMAP may cover continued use of a Group 2 support surface if healing continues;

(E) DMAP does not cover pressure reducing support surfaces for the prevention of pressure ulcers or pain control;

(F) The allowable rental fee includes all equipment, supplies and services for the effective use of the pressure reducing support surface;

(c) DMAP may consider coverage for bariatric pressure reducing support surfaces only coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility, subject to service limitations of DMAP rules, only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric pressure reducing support surface has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(d) Group 3: Air-fluidized beds (E0194) are not covered.

(2) Definitions for Group 1 and Group 2:

(a) Bottoming out: Finding that an outstretched hand, placed palm up between the undersurface of the overlay or mattress and the patient’s bony prominence (coccyx or lateral trochanter), can readily palpate the bony prominence. This bottoming out criterion should be tested with the client in the supine position with their head flat, in the supine position with their head slightly elevated (no more than 30 degrees), and in the sidelying position;

(b) Plan of care: Written guidelines developed to identify specific problems and needs of the client and interventions/regimen necessary to assist the client to achieve optimal health potential. Developing the plan of care includes establishing measurable client and nursing goals with time lines and determining nursing/caregiver/other discipline-assigned interventions to meet care objectives;

(c) The staging of pressure ulcers used in this rule is as follows:

(A) Stage I — Observable pressure related alteration of intact skin whose indicators as compared to the adjacent or opposite area on the body may include changes in one or more of the following: skin temperature (warmth or coolness), tissue consistency (firm or boggy feel) and/or sensation (pain, itching). The ulcer appears as a defined area of persistent redness in lightly pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or purple hues;

(B) Stage II — Partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater;

(C) Stage III — Full thickness skin loss involving damage to, or necrosis of, subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue;

(D) Stage IV — Full thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining and sinus tracts also may be associated with Stage IV pressure ulcers;

(3) Guidelines:

(a) Group 1:

(A) Codes E0185 and E0197-E0199 termed “pressure pad for mattress” describe nonpowered pressure reducing mattress overlays and are designed to be placed on top of a standard hospital or home mattress;

(B) A gel/gel-like mattress overlay (E0185) is characterized by a gel or gel-like layer with a height of two inches or greater;

(C) An air mattress overlay (E0197) is characterized by interconnected air cells having a cell height of three inches or greater that are inflated with an air pump;

(D) A water mattress overlay (E0198) is characterized by a filled height of three inches or greater;

(E) A foam mattress overlay (E0199) is characterized by all of the following:

(i) Base thickness of two inches or greater and peak height of three inches or greater if it is a convoluted overlay (e.g., eggcrate) or an overall height of at least three inches if it is a non-convoluted overlay; and

(ii) Foam with a density and other qualities that provide adequate pressure reduction; and

(iii) Durable, waterproof cover;

(F) Codes E0184, E0186, E0187 and E0196 describe nonpowered pressure reducing mattresses;

(G) A foam mattress (E0184) is characterized by all of the following:

(i) Foam height of five inches or greater;

(ii) Foam with a density and other qualities that provide adequate pressure reduction;

(iii) Durable, waterproof cover; and

(iv) Can be placed directly on a hospital bed frame;

(H) An air, water or gel mattress (E0186, E0187, E0196) is characterized by all of the following:

(i) Height of five inches or greater of the air, water, or gel layer (respectively);

(ii) Durable, waterproof cover; and

(iii) Can be placed directly on a hospital bed frame;

(I) Codes E0180, E0181, E0182, and A4640 describe powered pressure reducing mattress overlay systems (alternating pressure or low air loss) and are characterized by all of the following:

(i) An air pump or blower which provides either sequential inflation and deflation of air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 2 1/2 inches or greater; and

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure provide adequate client lift, reduce pressure and prevent bottoming out;

(J) Alternating pressure mattress overlays or low air loss mattress overlays are coded using codes E0180, E0181, E0182, and A4640;

(K) Code A4640 or E0182 may only be billed when they are provided as replacement components for a client-owned E0180 or E0181 mattress overlay system;

(L) A Column II code is included in the allowance for the corresponding Column I code when provided at the same time: Column I (Column II), E0180 (A4640, E0182), E0181 (A4640, E0182);

(b) Group 2:

(A) Code E0277 describes a powered pressure reducing mattress (alternating pressure, low air loss, or powered flotation without low air loss) which is characterized by all of the following:

(a) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the mattress

(b) Inflated cell height of the air cells through which air is being circulated is five inches or greater;

(c) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure mattresses), and air pressure provide adequate patient lift, reduce pressure and prevent bottoming out;

(d) A surface designed to reduce friction and shear; and

(e) Can be placed directly on a hospital bed frame;

(B) Code E0193 describes a semi-electric or total electric hospital bed with a fully integrated powered pressure reducing mattress which has all the characteristics defined above;

(C) Code E0371 describes an advanced non-powered pressure-reducing mattress overlay which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 overlay and prevent bottoming out;

(ii) Total height of three inches or greater;

(iii) A surface designed to reduce friction and shear; and

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces;

(D) Code E0372 describes a powered pressure reducing mattress overlay (low air loss, powered flotation without low air loss, or alternating pressure) which is characterized by all of the following:

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(i) An air pump or blower which provides either sequential inflation and deflation of the air cells or a low interface pressure throughout the overlay;

(ii) Inflated cell height of the air cells through which air is being circulated is 3 1/2 inches or greater;

(iii) Height of the air chambers, proximity of the air chambers to one another, frequency of air cycling (for alternating pressure overlays), and air pressure to provide adequate patient lift, reduce pressure and prevent bottoming out; and

(iv) A surface designed to reduce friction and shear;

(E) Code E0373 describes an advanced nonpowered pressure reducing mattress which is characterized by all of the following:

(i) Height and design of individual cells which provide significantly more pressure reduction than a group 1 mattress and prevent bottoming out;

(ii) Total height of five inches or greater;

(iii) A surface designed to reduce friction and shear;

(iv) Documented evidence to substantiate that the product is effective for the treatment of conditions described by the coverage criteria for Group 2 support surfaces; and

(v) Can be placed directly on a hospital bed frame;

(F) The only products that may be coded and billed using code E0371 or E0373 are those products for which a written coding determination specifying the use of these codes has been made by the statistical analysis durable medical equipment carrier (SADMERC);

(G) Alternating pressure mattresses and low air loss mattresses are coded using code E0277;

(H) Products containing multiple components are categorized according to the clinically predominant component (usually the topmost layer of a multi-layer product). For example, a product with three powered air cells on top of a three foam base would be coded as a powered overlay (code E0180 or E0181), not as a powered mattress (E0277).

(3) Documentation Requirements: For all pressure reducing support surfaces, other than a Group 2 surface following a myocutaneous flap or skin graft, submit the following information with the prior authorization request:

(a) Initial Request:

(A) An order for each item requested, signed and dated by the attending physician;

(B) Documentation that supports conditions of coverage are met as specified in this rule;

(C) A plan of care which has been established by the client's physician or home care nurse (by the RN resident care manager for a client in a nursing facility), which generally includes the following:

(i) Education of the client, if appropriate, and caregiver on the prevention and/or management of pressure ulcers;

(ii) Regular assessment by a nurse, physician, or other licensed healthcare practitioner

(iii) Appropriate turning and positioning including the number of hours per 24-period that the client will utilize the support surface;

(iv) Appropriate wound care (for a stage II, III, or IV ulcer);

(v) Appropriate management of moisture/incontinence;

(vi) Nutritional assessment and intervention consistent with the overall plan of care by a licensed healthcare practitioner (by a registered dietitian for a client in a nursing facility) within the last 90 days;

(vii) Client's weight and height (approximation is acceptable, if unable to obtain);

(viii) Description of all pressure ulcers, which includes:

(I) Number;

(II) Locations;

(III) Stages;

(IV) Sizes;

(V) Dated photographs;

(ix) Lab reports, if relevant;

(x) Other treatments and products that have been tried and why they were ineffective; Interventions and goals for stepping down the intensity of support surface therapy;

(xi) For pressure ulcers on extremities, why pressure cannot be relieved by other methods;

(D) For a Group 2 surface following a myocutaneous flap or skin graft only, submit the following information with the prior authorization request:

(i) An order for each item requested, signed and dated by the treating physician;

(ii) Operative report;

(iii) Hospital discharge summary;

(iv) Plan of care;

(E) Required documentation may not be completed by the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider or anyone in a financial relationship of any kind with the DME-POS provider;

(F) Medical records must corroborate that all criteria in this rule are met when dispensing and billing for an item in **Table 122-0400-1** and **Table-122-400-2**;

(G) Medical records must be kept on file by the DMEPOS provider and made available to DMAP upon request;

(b) Subsequent Request: May be authorized contingent on progress towards healing: For all pressure reducing support surfaces, other than a Group 2 surface following a myocutaneous flap or skin graft, submit the following information with the prior authorization request:

(i) Progress notes from the attending physician;

(ii) Description of all pressure ulcers, including progress towards healing, by a licensed healthcare practitioner (by the RN resident care manager for a client in a nursing facility) which includes:

(I) Number;

(II) Locations;

(III) Stages;

(IV) Sizes;

(V) Dated photographs;

(iii) Current plan of care;

(iv) Any other relevant documentation;

(v) For a Group 2 surface following a myocutaneous flap or skin graft only, submit the following information with the prior authorization request:

(I) Progress notes from the attending physician;

(II) Current plan of care;

(III) Any other relevant documentation.

(4) **Table 122-0400-1** — Group 1.

(5) **Table 122-0400-2** — Group 2.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0420

Hospital Bed Accessories

(1) **Table 122-0420**.

(2) Trapeze Bars:

(a) Indications and Coverage: Trapeze bars are indicated when a client needs this device to sit up because of respiratory condition, to change body position for other medical reasons, or to get in or out of bed;

(b) The Division of Medical Assistance Programs (DMAP) may consider coverage for bariatric trapeze bars only coded as E1399 (durable medical equipment, miscellaneous) for a client residing in a nursing facility), subject to service limitations of DMAP rules, only when the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric trapeze bar has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC);

(C) Supporting documentation has been submitted to the appropriate authorizing authority for prior authorization;

(c) Documentation of medical appropriateness which has been reviewed and signed by the prescribing practitioner must be kept on file by the DME provider;

(c) See **Table 122-0420** for procedure codes.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0500

Transcutaneous Electrical Nerve Stimulator (TENS)

(1) Indications and Limitations of Coverage and/or Medical Appropriateness: transcutaneous electrical nerve stimulator (TENS)

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(E0720, E0730) is a device which utilizes electrical current delivered through electrodes placed on the surface of the skin. A TENS unit decreases the client's perception of pain by inhibiting the transmission of afferent pain nerve impulses and/or stimulating the release of endorphins. A TENS unit must be distinguished from other electrical stimulators (e.g., neuromuscular stimulators) which are used to directly stimulate muscles and/or motor nerves.

(2) A TENS unit may be covered for the treatment of:

(a) Acute post-operative pain:

(A) Coverage is usually limited to 30 days from the day of surgery; and,

(B) Payment for more than one month is determined by individual consideration based upon supportive documentation provided by the attending physician; and,

(C) Payment is made only as a rental; and

(D) Acute pain (less than three months duration) other than post-operative pain is not covered; or

(b) Chronic, intractable pain:

(A) The pain has been present for at least three months; and,

(B) Other appropriate treatment modalities have been tried and failed; and

(C) The presumed etiology of the pain is a type that is accepted as responding to TENS therapy. Examples of conditions for which a TENS unit are not considered to be medically appropriate are (not all-inclusive): headache, visceral abdominal pain, pelvic pain, and temporomandibular joint (TMJ) pain; and,

(D) The TENS unit must be used by the client on a trial basis for a minimum of one month (30 days), but not to exceed two months. The trial period is paid as a rental. The trial period must be monitored by the physician to determine the effectiveness of the TENS unit in modulating the pain;

(E) For coverage of a purchase, the physician must determine that the client is likely to derive significant therapeutic benefit from continuous use of the unit over a long period of time. The physician's records must document a reevaluation of the client at the end of the trial period, must indicate how often the client used the TENS unit, the typical duration of use each time, and the results.

(2) Documentation Requirements: Submit the following documentation from the attending or consulting physician with the prior authorization (PA) request:

(a) For both acute post-operative pain and chronic, intractable pain:

(A) A signed and dated order by the treating physician. The physician ordering the TENS unit must be the attending physician or a consulting physician for the disease or condition resulting in the need for the TENS unit; and,

(B) Documentation of multiple medications and/or therapies that have been tried and failed; and,

(C) A new order, when purchase is requested (after the required trial period). The initial date on this order must not overlap the dates of the trial period.

(b) In addition, for a client with acute post-operative pain: date of surgery resulting in acute post-operative pain;

(c) In addition, for a client with chronic, intractable pain: location of the pain, the duration of time the client has had the pain, and the presumed etiology of the pain;

(d) For authorization of quantities of supplies greater than those described in this policy as the usual maximum amounts:

(A) Each request must include documentation supporting the medical appropriateness for the higher utilization; and,

(B) There must be clear documentation in the client's medical records corroborating the medical appropriateness of this amount.

(e) When ordering a 4 lead TENS unit, the client's medical record must document why 2 leads are insufficient to meet the client's needs;

(f) The Division of Medical Assistance Programs (DMAP) may request copies of the client's medical records that corroborate the order and any additional documentation that pertains to the medical appropriateness of items and quantities requested.

(3) Rental Guidelines: During the rental of a TENS unit, supplies for the unit are included in the rental allowance; there is no additional allowance for electrodes, lead wires, batteries, etc.

(4) Purchase Guidelines: If a TENS unit (E0720 or E0730) is purchased, the allowance includes lead wires and one month's supply of electrodes, conductive paste or gel (if needed), and batteries.

(5) Coding Guidelines:

(a) Separate allowance may be made for replacement supplies when they are medically appropriate and are used with a TENS unit that has been purchased and/or approved by DMAP;

(b) If 2 TENS leads are medically appropriate, then a maximum of one unit of Code A4595 would be allowed per month; if 4 TENS leads are necessary, a maximum of two units per month would be allowed;

(c) If the use of the TENS unit is less than daily, the frequency of billing for the TENS supply code should be reduced proportionally;

(d) There is no separate allowance for replacement electrodes (A4556), conductive paste or gel (A4558), replacement batteries (A4630), or a battery charger used with a TENS unit;

(e) Codes A4556 (Electrodes, per pair), A4558 (Conductive paste or gel), and A4630 (Replacement batteries, medically appropriate TENS owned by the client) are not valid for prior authorization. A4595 should be used instead;

(f) For code A4557, one unit of service is for lead wires going to two electrodes. If all the lead wires of a 4 lead TENS unit needed to be replaced, billing would be for two units of service;

(g) Replacement of lead wires (A4557) will be covered when they are inoperative due to damage and the TENS unit is still medically appropriate. Replacement more often than every 12 months is rarely medically appropriate;

(h) A TENS supply allowance (A4595) includes electrodes (any type), conductive paste or gel (if needed, depending on the type of electrode), tape or other adhesive (if needed, depending on the type of electrode), adhesive remover, skin preparation materials, batteries (9 volt or AA, single use or rechargeable), and a battery charger (if rechargeable batteries are used);

(i) Other supplies, including but not limited to the following, are not separately payable: adapters (snap, banana, alligator, tab, button, clip), belt clips, adhesive remover, additional connecting cable for lead wires, carrying pouches, or covers.

(j) Providers should contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) for guidance on the correct coding of these items.

(k) Table 122-0500.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0510

Osteogenesis Stimulator

(1) Definitions:

(a) An electrical osteogenesis stimulator is a device that provides electrical stimulation to augment bone repair.

(b) A noninvasive electrical stimulator is characterized by an external power source which is attached to a coil or electrodes placed on the skin or on a cast or brace over a fracture or fusion site.

(c) An ultrasonic osteogenesis stimulator is a noninvasive device that emits low intensity, pulsed ultrasound signals to stimulate fracture healing. The device is applied to the surface of the skin at the fracture site and ultrasound waves are emitted via conductive coupling gel to stimulate fracture healing;

(2) Indications of Coverage and Medical Appropriateness:

(a) Nonspinal Electrical Osteogenesis Stimulator:

(A) The Division of Medical Assistance Programs (DMAP) may cover a non-spinal electrical osteogenesis stimulator (E0747) when any of the following criteria are met:

(i) Non-union of a long bone fracture (defined as radiographic evidence that fracture healing has ceased for three or more months prior to starting treatment with the osteogenesis stimulator);

(ii) Failed fusion of a joint other than in the spine, where a minimum of nine months has elapsed since the last surgery;

(iii) Congenital pseudarthrosis;

(B) Non-union of a long bone fracture must be documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenesis stimulator, separated by a minimum of 90 days, each including multiple views of the fracture site, and with a written interpretation by the treating physician stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs;

(C) A long bone is limited to a clavicle, humerus, radius, ulna, femur, tibia, fibula, metacarpal or metatarsal.

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(b) Spinal Electrical Osteogenesis Stimulator:

(A) DMAP may cover a spinal electrical osteogenesis stimulator (E0748) when any of the following criteria are met:

(i) Failed spinal fusion where a minimum of nine months has elapsed since the last surgery;

(ii) Following a multilevel spinal fusion surgery;

(iii) Following spinal fusion surgery where there is a history of a previously failed spinal fusion at the same site;

(B) A multilevel spinal fusion involves three or more vertebrae (e.g., L3-L5, L4-S1, etc.);

(c) Ultrasonic Osteogenesis Stimulator:

(A) DMAP may cover an ultrasonic osteogenesis stimulator (E0760) only when all of the following criteria are met:

(i) Non-union of a fracture documented by a minimum of two sets of radiographs obtained prior to starting treatment with the osteogenic stimulator, each separated by a minimum of 90 days. Each radiograph must include multiple views of the fracture site accompanied by a written interpretation by the treating physician stating that there has been no clinically significant evidence of fracture healing between the two sets of radiographs; and

(ii) The stimulator is intended for use prior to surgical intervention and with cast immobilization;

(B) Use of an ultrasonic osteogenic stimulator is not covered:

(i) For non-union fractures of the skull or vertebrae;

(ii) For tumor-related fractures;

(iii) For the treatment of a fresh fracture or delayed union; or

(iv) When used concurrently with other noninvasive osteogenic devices;

(C) DMAP may cover ultrasonic conductive coupling gel as a separate service when an ultrasonic osteogenesis stimulator is covered.

(2) Coding Guidelines: Use E1399 for ultrasonic conductive coupling gel.

(3) Documentation Requirements:

(a) Submit the following with the prior authorization (PA) request:

(A) Documentation that supports the coverage criteria specified in this rule for the stimulator requested are met;

(B) Copies of x-ray and operative reports;

(b) For an electrical osteogenic stimulator, a Certificate of Medical Necessity (CMN) which has been completed, signed and dated by the treating physician may substitute for a written order if it contains all the required elements of an order;

(c) Additional medical records may be requested by DMAP;

(d) The client's medical records must reflect the need for the stimulator requested. The client's medical records include, but are not limited to, the physician's office records, hospital records, nursing home records, home health agency records, records from other healthcare professionals and test/diagnostic reports.

(4) Table 122-0510.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0580

Bath Supplies

(1) Indications and Coverage — A rehab shower/commode chair is covered when all of the following criteria are met:

(a) Client is unable to use a standard shower chair/bench due to a musculoskeletal condition;

(b) Client has positioning, trunk stability or neck support needs that a standard shower chair/bench cannot provide;

(c) The home (shower) can accommodate a rehab/shower chair; and,

(d) Less costly alternatives have been considered and ruled out.

(2) Documentation:

(a) The prescription and medical justification for the equipment must be kept on file by the DME supplier. The prescribing practitioner's records must contain information which supports the medical appropriateness of the item ordered.

(b) Documentation of MSRP must be kept on file by the DME supplier.

(c) For a rehab/shower chair, submit documentation to support the above criteria, including a list of equipment available for client's use.

(3) **Table 122-0580.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0600

Toilet Supplies

(1) The Division of Medical Assistance Programs (DMAP) may consider coverage for commodes when:

(a) The client is physically incapable of utilizing regular toilet facilities. This would occur when the client is confined to:

(A) A single room; or

(B) One level of the home environment and there is no toilet on that level; or

(C) The home and there are no toilet facilities in the home;

(b) Extra-wide/heavy-duty commodes may be covered when, The client weighs 300 pounds or more and meets the conditions of coverage for commodes;

(c) Only bariatric commodes coded as E1399 (durable medical equipment, miscellaneous) may be covered for a client residing in a nursing facility, subject to service limitations of DMAP rules, when all of the following requirements are met:

(A) The client meets the conditions of coverage as specified in this rule; and

(B) The bariatric commode has been assigned code E1399 by the Statistical Analysis Durable Medical Equipment Regional Carrier (SAD-MERC);

(2) Documentation Requirements:

(a) Documentation must include the practitioner's order, the client's height and weight and information supporting the medical appropriateness for the commode dispensed;

(b) For codes requiring prior authorization (PA), submit documentation which supports conditions of coverage are met as specified in this rule.

(3) Procedure Codes — **Table 122-0600.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 32-1992, f. & cert. ef. 10-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0620

Miscellaneous Supplies

Procedure Codes — **Table 122-0620.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 32-1999, f. & cert. ef. 10-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0660

Orthotics and Prosthetics

(1) Indications and Coverage:

(a) All of the orthotic and prosthetic "L" codes and any temporary "S" or "K" codes have been removed from the rules except for:

(A) OAR 410-122-0470 Supports and Stockings;

(B) OAR 410-122-0255 External Breast Prosthesis; and

(C) OAR 410-122-0680 Facial Prosthesis.

(b) Use the current HCPCS Level II Guide for current codes and descriptions;

(c) For adults, follow Medicare current guidelines for determining coverage;

(d) For children, the prescribing practitioner must determine and document medical appropriateness.

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(2) Prior Authorization is required for the following codes:

- (a) L1499;
- (b) L2999;
- (c) L3649;
- (d) L3999;
- (e) L5999;
- (f) L7499;
- (g) L8499;
- (h) L9900.

(3) Codes Not Covered — **Table 122-0660.**

(4) Reimbursement:

(a) The hospital is responsible for reimbursing the provider for orthotics and prosthetics provided on an inpatient basis;

(b) Evaluations, office visits, fittings and materials are included in the service provided;

(c) Evaluations will only be reimbursed as a separate service when the provider travels to a client's residence to evaluate the client's need;

(d) All covered orthotic and prosthetic codes are also covered if client resides in a nursing facility except:

- (A) L1500;
- (B) L1510; and
- (C) L1520.

(e) Use type of service "J" when billing for a tracheostomy speaking valve (L8501). See Division 129, Speech-Language Pathology, Audiology and Hearing Aid Services for rule information.

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 13-1991, f. & cert. ef. 3-1-91; HR 10-1992, f. & cert. ef. 4-1-92; HR 9-1993, f. & cert. ef. 4-1-93; HR 10-1994, f. & cert. ef. 2-15-94; HR 26-1994, f. & cert. ef. 7-1-94; HR 41-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1996, f. & cert. ef. 8-1-96; HR 7-1997, f. 2-28-97, cert. ef. 3-1-97; OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 1-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 11-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 35-2006, f. 9-15-06, cert. ef. 10-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0678

Dynamic Adjustable Extension/Flexion Device

Procedure Codes — Table 122-0678.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 8-2002, f. & cert. ef. 4-1-02; OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0700

Negative Pressure Wound Therapy Pumps

(1) Indications and Limitations of Coverage and Medical Appropriateness — Initial Coverage: The Division of Medical Assistance Programs (DMAP) may cover a negative pressure wound therapy (NPWT) pump and supplies on a monthly basis for up to four months on the most recent covered wound when either criterion (a) or (b) is met:

(a) Ulcers and wounds in the home setting or nursing facility:

(A) The client has a chronic Stage III or IV pressure ulcer, neuropathic (for example, diabetic) ulcer, venous or arterial insufficiency ulcer, or a chronic (being present for at least 30 days) ulcer of mixed etiology;

(B) A complete wound therapy program described by criterion (i) and criteria (ii), (iii), or (iv), as applicable depending on the type of wound, must have been tried or considered and ruled out prior to application of NPWT:

(i) For all ulcers or wounds, the wound therapy program must include a minimum of all of the following general measures, which have either been addressed, applied, or considered and ruled out prior to application of NPWT:

(I) Documentation in the client's medical record of evaluation, care, and wound measurements by a licensed medical professional;

(II) Application of dressings to maintain a moist wound environment;

(III) Debridement of necrotic tissue if present;

(IV) Evaluation of and provision for adequate nutritional status;

(ii) For Stage III or IV pressure ulcers:

(I) Appropriate turning and positioning of the client;

(II) Use of a Group 2 or 3 support surface for pressure ulcers on the posterior trunk or pelvis (see 410-122-0400 Pressure Reducing Support

Surfaces). If the ulcer is not on the trunk or pelvis, a Group 2 or 3 support surface is not required; and

(III) Appropriate management of the client's moisture and incontinence;

(iii) For neuropathic (for example, diabetic) ulcers:

(I) The client has been on a comprehensive diabetic management program; and

(II) Reduction in pressure on a foot ulcer has been accomplished with appropriate modalities;

(iv) For venous insufficiency ulcers:

(I) Compression bandages and/or garments have been consistently applied; and

(II) Leg elevation and ambulation have been encouraged;

(b) Ulcers and wounds encountered in an inpatient setting:

(A) An ulcer or wound as described in subsection (1)(a) is encountered in the inpatient setting and, after wound treatments described in subsection (1)(a) have been tried or considered and ruled out, NPWT is initiated because the treating physician considers it the best available treatment option;

(B) The client has complications of a surgically created wound (for example, dehiscence) or a traumatic wound (for example, pre-operative flap or graft) where there is documentation of the medical appropriateness for accelerated formation of granulation tissue which cannot be achieved by other available topical wound treatments (for example, other conditions of the client that will not allow for healing times achievable with other topical wound treatments);

(c) In either situation described in subsection (1)(b), NPWT will be covered when treatment continuation is ordered beyond discharge to the home setting;

(d) If criterion in subsection (1)(a) or (1)(b) above is not met, the NPWT pump and supplies are not covered;

(e) NPWT pumps (E2402) must be capable of accommodating more than one wound dressing set for multiple wounds on a client. A request for more than one NPWT pump per client for the same time period is not covered;

(f) For the purposes of this rule, a licensed health care professional may be a physician, physician's assistant (PA), registered nurse (RN), licensed practical nurse (LPN), or physical therapist (PT). The practitioner must be licensed to assess wounds and/or administer wound care.

(2) Indications and Limitations of Coverage and Medical Appropriateness — Continued Coverage: For wounds and ulcers described in subsection (1)(a) or (1)(b), for clients placed on an NPWT pump and supplies, DMAP will only approve continued coverage when the licensed medical professional does all the following duties:

(a) On a regular basis:

(A) Directly assesses the wound(s) being treated with the NPWT pump; and

(B) Supervises or directly performs the NPWT dressing changes;

(b) On at least a monthly basis, documents changes in the ulcer's

dimensions and characteristics.

(3) Coverage for a NPWT pump and supplies ends when any of the following occur:

(a) Criteria in section (2) are not met;

(b) The treating physician determines that adequate wound healing has occurred for NPWT to be discontinued;

(c) Any measurable degree of wound healing has failed to occur over the prior month. Wound healing is defined as improvement occurring in either surface area (length times width) or depth of the wound;

(d) Four months (including the time NPWT was applied in an inpatient setting prior to discharge to the home) have elapsed using an NPWT pump in the treatment of the most recent wound. Coverage beyond four months will be given individual consideration based upon required additional documentation;

(e) Equipment or supplies are no longer being used for the client, whether or not by the physician's order.

(4) DMAP will not cover NPWT pump and supplies if one or more of the following are present:

(a) Necrotic tissue with eschar in the wound, if debridement is not attempted;

(b) Untreated osteomyelitis within the vicinity of the wound;

(c) Cancer present in the wound;

(d) The presence of a fistula to an organ or body cavity within the vicinity of the wound.

(5) DMAP will only cover NPWT pumps and their supplies that have been specifically designated as being qualified for use of HCPCS codes

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E2402, A6550 and A7000 via written instructions from the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC).

(6) DMAP covers a maximum of 15 dressing kits (A6550) per wound per month, unless there is documentation that the wound size requires more than one dressing kit for each dressing change.

(7) DMAP covers a maximum of 10 canister sets (A7000) per month, unless there is documentation evidencing a large volume of drainage (greater than 90 ml of exudate per day). For high-volume exudative wounds, a stationary pump with the largest capacity canister must be used. DMAP does not cover excess use of canisters related to equipment failure (as opposed to excessive volume drainage).

(8) Guidelines:

(a) Equipment:

(A) Negative pressure wound therapy (NPWT) is the controlled application of subatmospheric pressure to a wound. Specifically, an electrical pump (described in the definition of code E2402) intermittently or continuously conveys subatmospheric pressure through connecting tubing to a specialized wound dressing (described in the descriptor of HCPCS code A6550). The dressing includes a resilient, open-cell foam surface dressing, sealed with an occlusive dressing that is meant to contain the subatmospheric pressure at the wound site and thereby promote wound healing. Drainage from the wound is collected in a canister (described in the definition of HCPCS code A7000);

(B) Code E2402 describes a stationary or portable NPWT electrical pump which provides controlled subatmospheric pressure that is designed for use with NPWT dressings, (A6550) to promote wound healing. Such an NPWT pump is capable of being selectively switched between continuous and intermittent modes of operation and is controllable to adjust the degree of subatmospheric pressure conveyed to the wound in a range from 25 to greater than or equal to 200 mm Hg subatmospheric pressure. The pump can sound an audible alarm when desired pressures are not being achieved (that is, where there is a leak in the dressing seal) and when its wound drainage canister (A7000) is full. The pump is designed to fill the canister to full capacity;

(b) Supplies:

(A) Code A6550 describes a dressing set which is used in conjunction with a stationary or portable NPWT pump (E2402), and contains all necessary components, including but not limited to a resilient, open-cell foam surface dressing, drainage tubing, and an occlusive dressing which creates a seal around the wound site for maintaining subatmospheric pressure at the wound;

(B) Code A7000 describes a canister set which is used in conjunction with a stationary or portable NPWT pump (E2402) and contains all necessary components, including but not limited to a container, to collect wound exudate. Canisters may be various sizes to accommodate stationary or portable NPWT pumps;

(c) The staging of pressure ulcers used in this rule is as follows:

(A) Stage I — Observable pressure related alteration of intact skin whose indicators as compared to the adjacent or opposite area on the body may include changes in one or more of the following: skin temperature (warmth or coolness), tissue consistency (firm or boggy feel) and/or sensation (pain, itching). The ulcer appears as a defined area of persistent redness in lightly pigmented skin, whereas in darker skin tones, the ulcer may appear with persistent red, blue, or purple hues;

(B) Stage II — Partial thickness skin loss involving epidermis, dermis, or both. The ulcer is superficial and presents clinically as an abrasion, blister, or shallow crater;

(C) Stage III — Full thickness skin loss involving damage to, or necrosis of, subcutaneous tissue that may extend down to, but not through, underlying fascia. The ulcer presents clinically as a deep crater with or without undermining of adjacent tissue;

(D) Stage IV — Full thickness skin loss with extensive destruction, tissue necrosis, or damage to muscle, bone, or supporting structures (e.g., tendon, joint capsule). Undermining and sinus tracts also may be associated with Stage IV pressure ulcers.

(9) Documentation Requirements: Submit the following information with the prior authorization request:

(a) For Initial Coverage:

(A) A statement from the attending physician which describes the initial condition of the wound (including measurements) and the efforts to address all aspects of wound care as specified in subsection (1)(a);

(B) From the treating clinician, history, previous treatment regimens (if applicable), and current wound management for which an NPWT pump is being requested to include the following:

(i) Changes in wound conditions, including precise, quantitative measurements of wound characteristics (wound length and width (surface area), and depth), quantity of exudates (drainage), presence of granulation and necrotic tissue and concurrent measures being addressed relevant to wound therapy (debridement, nutritional concerns, support surfaces in use, positioning, incontinence control, etc.);

(ii) Dated photographs of ulcers or wounds with specific location(s) identified within the last 30 days;

(iii) Length of sessions of use;

(iv) Dressing types and frequency of change;

(v) Wound healing progress;

(b) For Continued Coverage:

(A) Progress notes from the attending physician within the last 30 days;

(B) Updated wound measurements and what changes are being applied to effect wound healing including information specified in paragraph (9)(a)(B);

(c) For both initial and continued coverage of an NPWT pump and supplies, any other medical records that corroborate that all criteria in this rule are met;

(d) When requesting quantities of supplies greater than those specified in this rule as the usual maximum amounts, include documentation supporting the medical appropriateness for the higher utilization.

(10) **Table 122-0700.**

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 11-1998, f. & cert. ef. 4-1-98; OMAP 13-1999, f. & cert. ef. 4-1-99; OMAP 37-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 4-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 32-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 47-2002, f. & cert. ef. 10-1-02; OMAP 25-2004, f. & cert. ef. 4-1-04; OMAP 44-2004, f. & cert. ef. 7-1-04; OMAP 25-2006, f. 6-14-06, cert. ef. 7-1-06; OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

410-122-0720

Pediatric Wheelchairs

(1) Indications and Limitations of Coverage and Medical Appropriateness:

(a) The Division of Medical Assistance Programs (DMAP) may cover a pediatric wheelchair when all of the following criteria are met:

(A) The client has a mobility limitation that significantly impairs their ability to accomplish mobility-related activities of daily living (MRADLs) entirely; places the client at reasonably determined heightened risk of morbidity or mortality secondary to the attempts to perform a MRADL; or the client is unable to sustain safely the performance of MRADLs throughout the course of a regular day. See OAR 410-122-0010 Definitions for complete definition of MRADL;

(B) An appropriately fitted cane or walker cannot sufficiently resolve the client's mobility limitation;

(C) The client's home provides adequate maneuvering space, maneuvering surfaces, and access between rooms for use of the pediatric wheelchair that is being requested;

(D) Use of a pediatric wheelchair will significantly improve the client's ability to move within the home to the areas customarily used for their MRADL so that the client can complete these MRADLs within a reasonable time frame;

(E) The client is willing to use the requested pediatric wheelchair in the home, and will use it on a regular basis in the home;

(F) The client has either:

(i) Sufficient upper extremity function and other physical and mental capabilities needed to safely self-propel the requested pediatric wheelchair in the home, during a typical day. Proper assessment of upper extremity function should consider limitations of strength, endurance, range of motion, coordination, presence of pain, and deformity or absence of one or both upper extremities; or

(ii) A caregiver who is available, willing, and able to provide assistance with the wheelchair;

(b) Only when conditions of coverage as specified in (1)(a) of this rule are met, may DMAP authorize a pediatric wheelchair for any of the following situations:

(A) When the wheelchair can be reasonably expected to improve the client's ability to complete MRADLs by compensating for other limitations in addition to mobility deficits and the client is compliant with treatment;

(i) Besides MRADLs deficits, when other limitations exist, and these limitations can be ameliorated or compensated sufficiently such that the additional provision of a pediatric wheelchair will be reasonably expected to significantly improve the client's ability to perform or obtain assistance

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to participate in MRADLs in the home, a pediatric wheelchair may be considered for coverage;

(ii) If the amelioration or compensation requires the client's compliance with treatment, for example medications or therapy, substantive non-compliance, whether willing or involuntary, can be grounds for denial of a pediatric wheelchair coverage if it results in the client continuing to have a significant limitation. It may be determined that partial compliance results in adequate amelioration or compensation for the appropriate use of a pediatric wheelchair;

(B) When a client's current wheelchair is no longer medically appropriate, or repair and/or modifications to the wheelchair exceed replacement cost;

(C) When a covered, client-owned wheelchair is in need of repair (for one month's rental of a wheelchair). See OAR 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing);

(c) A pediatric tilt-in space wheelchair (E1231- E1234) may be covered when a client:

(A) Is dependent for transfers; and

(B) Spends a minimum of four hours a day continuously in a wheelchair; and

(C) The plan of care addresses the need to change position at frequent intervals and the client is not left in the tilt position most of the time; and

(D) Has one of the following:

(i) High risk of skin breakdown;

(ii) Poor postural control, especially of the head and trunk;

(iii) Hyper/hypotonia;

(iv) Need for frequent changes in position and has poor upright sitting;

(d) DMAP does not reimburse for another wheelchair if the client has a medically appropriate wheelchair, regardless of payer;

(e) The client's living quarters must be able to accommodate and allow for the effective use of the requested wheelchair. DMAP does not reimburse for adapting living quarters;

(f) DMAP does not cover services or upgrades that primarily allow performance of leisure or recreational activities. Such services include but are not limited to backup wheelchairs, backpacks, accessory bags, clothing guards, awnings, additional positioning equipment if wheelchair meets the same need, custom colors, and wheelchair gloves;

(g) Reimbursement for wheelchair codes includes all labor charges involved in the assembly of the wheelchair, as well as support services such as emergency services, delivery, set-up, pick-up and delivery for repairs/modifications, education, and ongoing assistance with the use of the wheelchair;

(h) A Group 5 (Pediatric) PWC with Single Power Option (K0890) or with Multiple Power Options (K0891) may be covered when:

(i) The coverage criteria for a PWC (see 410-122-0325, Motorized/Power Wheelchair Base) are met; and

(ii) The client is expected to grow in height; and

(iii) Either of the following criteria is met:

(I) The Group 2 Single Power Option in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(C)(i)(I) and (2)(a)(C)(i)(II); or

(II) Multiple Power Options in 410-122-0325, Motorized/Power Wheelchair Base, (2)(a)(D)(i)(I) and (2)(a)(D)(i)(II);

(iv) The delivery of a PWC must be within 120 days following completion of the face-to-face examination with the physician;

(v) A PWC may not be ordered by a podiatrist;

(j) A pediatric wheelchair for use only outside the home is not covered;

(k) For more information on coverage criteria regarding repairs and maintenance, see 410-122-0184 Repairs, Maintenance, Replacement, Delivery and Dispensing.

(2) Coding Guidelines:

(a) For individualized wheelchair features that are medically appropriate to meet the needs of a particular client, use the correct codes for the wheelchair base, options and accessories (see 410-122-0340 Wheelchair Options/Accessories);

(b) For wheelchair frames that are modified in a unique way to accommodate the client, submit the code for the wheelchair base used and submit the modification with code K0108 (wheelchair component or accessory, not otherwise specified);

(c) Wheelchair "poundage" (pounds) represents the weight of the usual configuration of the wheelchair with a seat and back, but without front riggings;

(d) A manual wheelchair with a seat width and/or depth of 14" or less is considered a pediatric size wheelchair and is billed with codes E1231-E1238 or E1229;

(e) A power wheelchair (PWC) with a seat width or depth of 14" or less is considered a pediatric PWC base and is coded E1239, PWC, pediatric size, not otherwise specified;

(f) Pediatric seating system codes E2291 — E2294 may only be billed with pediatric wheelchair base codes;

(g) Contact the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) regarding correct coding. See 410-122-0180 Healthcare Common Procedure Coding System (HCPCS) Level II Coding for more information.

(3) Documentation Requirements:

(a) Wheelchair and Seating Justification and Prescription form (DMAP 3125):

(A) DMEPOS providers must submit this form or a reasonable facsimile for purchase and modifications of all pediatric wheelchairs;

(B) Information must include, but is not limited to:

(i) Medical justification, needs assessment, prescription, and specifications for the wheelchair, completed by a physical therapist, occupational therapist or treating physician. The person who provides this information must have no direct or indirect financial relationship, agreement or contract with the durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) provider requesting authorization; and

(ii) Client identification and rehab technology supplier identification information which may be completed by the DMEPOS provider; and

(iii) Signature and date by the treating physician and physical or occupational therapist.

(C) If the information on this form includes all the elements of an order, the provider may submit the completed form in lieu of an order;

(b) Additional Documentation:

(A) Information from a physical therapist, occupational therapist or treating physician that specifically indicates:

(i) The client's mobility limitation and how it interferes with the performance of activities of daily living;

(ii) Why a cane or walker can't meet this client's mobility needs in the home;

(B) Pertinent information from a physical therapist, occupational therapist or treating physician about the following elements that support coverage criteria are met for a pediatric wheelchair; only relevant elements need to be addressed:

(i) Symptoms;

(ii) Related diagnoses;

(iii) History:

(I) How long the condition has been present;

(II) Clinical progression;

(III) Interventions that have been tried and the results;

(IV) Past use of walker, pediatric wheelchair, POV, or power wheelchair and the results;

(iv) Physical exam:

(I) Weight;

(II) Impairment of strength, range of motion, sensation, or coordination of arms and legs;

(III) Presence of abnormal tone or deformity of arms, legs, or trunk;

(IV) Neck, trunk, and pelvic posture and flexibility;

(V) Sitting and standing balance;

(v) Functional assessment — any problems with performing the following activities including the need to use a cane, walker, or the assistance of another person:

(I) Transferring between a bed, chair, and a wheelchair or power mobility device;

(II) Walking around their home — to bathroom, kitchen, living room, etc. — provide information on distance walked, speed, and balance; and

(C) Documentation from a physical therapist, occupational therapist or treating physician that clearly distinguishes the client's abilities and needs within the home from any additional needs for use outside the home since DMAP determines coverage of a wheelchair solely by the client's mobility needs within the home, even though a client who qualifies for coverage of a pediatric wheelchair may use the wheelchair outside the home; and

(D) For all requested equipment and accessories, the manufacturer's name, product name, model number, standard features, specifications, dimensions and options; and

(E) Detailed information about client-owned equipment (including serial numbers), as well as any other equipment being used or available to

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meet the client's medical needs, including how long it has been used by the client and why it can't be grown or modified, if applicable; and

(F) For the home assessment, prior to or at the time of delivery of the wheelchair, the DMEPOS provider or practitioner must perform an on-site, written evaluation of the client's living quarters. This assessment must support that the client's home can accommodate and allow for the effective use of a wheelchair. This assessment must include, but is not limited to, evaluation of physical layout, doorway widths, doorway thresholds, surfaces, counter/table height, accessibility (e.g., ramps), electrical service, etc.; and

(G) All Healthcare Common Procedure Coding System (HCPCS) codes, including the base, options and accessories, whether prior authorization (PA) is required or not, that will be separately billed; and

(c) A written order by the treating physician, identifying the specific type of pediatric wheelchair needed. If the order does not specify the type requested by the DMEPOS provider on the authorization request, the provider must obtain another written order that lists the specific pediatric wheelchair that is being ordered and any options and accessories requested. The DMEPOS provider may enter the items on this order. This order must be signed and dated by the treating physician, received by the DMEPOS provider and submitted to the authorizing authority; and

(d) For a PWC request: See 410-122-0325, Motorized/Power Wheelchair Base for documentation requirements; and

(e) Any additional documentation that supports indications of coverage are met as specified in this policy; and

(f) The above documentation must be kept on file by the DMEPOS provider; and

(g) Documentation that the coverage criteria have been met must be present in the client's medical records and this documentation must be made available to DMAP on request; and

(h) For PWC's furnished on a rental basis with dates of services prior to October 1, 2006, use code E1239 as appropriate.

(4) Table 122-0720.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 21-2003, f. 3-26-03, cert. ef. 4-1-03; OMAP 44-2004, f. & cert. ef. 7-1-04;

OMAP 94-2004, f. 12-30-04, cert. ef. 1-1-05; OMAP 44-2005, f. 9-9-05, cert. ef. 10-1-05;

OMAP 47-2006, f. 12-15-06, cert. ef. 1-1-07

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Department of Human Services, Public Health Chapter 333

Rule Caption: Registry enrollment, qualification and certification fees for health care interpreters.

Adm. Order No.: PH 26-2006

Filed with Sec. of State: 11-16-2006

Certified to be Effective: 11-16-06

Notice Publication Date: 10-1-06

Rules Amended: 333-002-0010, 333-002-0035, 333-002-0040, 333-002-0050, 333-002-0070, 333-002-0080, 333-002-0090, 333-002-0100, 333-002-0110, 333-002-0120, 333-002-0130, 333-002-0140, 333-002-0150, 333-002-0160, 333-002-0170, 333-002-0210, 333-002-0220, 333-002-0230

Subject: The Oregon Department of Human Services, Public Health Division is permanently amending the Oregon Administrative Rules related to the registry enrollment, qualification and certification for Health Care Interpreters to clarify the standards and to increase the fees assessed to prospective and renewing Health Care Interpreters.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-002-0010

Definitions

As used in division 002 of OAR chapter 333:

(1) "Applicant" means any person who has applied under OAR 333-002-0050 for registry enrollment; or qualification; or certification as a Health Care Interpreter for any of the following languages: Cantonese, Korean, Mandarin, Russian, Spanish, or Vietnamese. The state reserves the right to encompass additional languages at a later date.

(2) "Central Registry" means a registry of individuals recognized as Health Care Interpreters and maintained by the Department in accordance with OAR 333-002-0030.

(3) "Certified Health Care Interpreter" means a person who has been issued a valid certificate by the Department under the provisions of OAR 333-002-0150.

(4) "Consecutive Interpreting" means the conversion of a speaker or signer's message into another language after the speaker or signer pauses.

(5) "Department" means the Department of Human Services.

(6) "Formal Training" means training obtained in a formal academic setting, seminars, in-service trainings, or other distance learning.

(7) "Fluency" means ability to interpret the dialect, slang, or specialized vocabulary of a language.

(8) "Health Care" means medical, surgical, clinic, hospital, home health, mental health, public health presentations or any other remedial care recognized by state law.

(9) "Health Care Interpreter" or "HCI" means any person who provides interpreting services in a health care setting whether they are an employee, contractor, volunteer, student, or intern.

(10) "Interpreting Knowledge" means an entry-level range of interpreting knowledge and skills that includes but may not be limited to: language fluency, ethics, cultural competency, terminology, integrated interpreting skills and translation of simple instructions.

(11) "Interpreting Proficiency" means a wide range of interpreting knowledge and skills that includes but may not be limited to: language fluency, ethics, cultural competency, terminology, integrated interpreting skills and translation of simple instructions.

(12) "Interpreting Services" means the process of understanding and analyzing a spoken or signed message and re-expressing that message completely, accurately and objectively in another language, taking the cultural and social context into account.

(13) "Limited English Proficient" or "LEP" means a legal concept referring to a level of English proficiency that is insufficient to ensure equal access to public services without an interpreter.

(14) "Office of Multicultural Health" or "OMH" means the central administrative support office of the Department responsible for implementing and maintaining the requirements of ORS 409.615 to 409.623.

(15) "OMH Health Care Interpreter Advisory Board" means the advisory body of language and health care interpreting subject matter experts comprised of industry professionals, educators and community representatives.

(16) "Qualified Health Care Interpreter" means a person who has been issued a valid letter of qualification by the Department under the provisions of OAR 333-002-0140.

(17) "Remote Interpreting" means interpreting services provided via telephone, video, online or any other electronic means where one of the principal participants (patient or provider), is present in Oregon.

(18) "Sight Translation" means translation of a written document into spoken/signed language.

(19) "Simultaneous Interpreting" means converting a speaker or signer's message into another language while the speaker or signer continues to speak or sign.

(20) "Translation" means the conversion of written text into a corresponding written text in a different language.

(21) "Verifiable Evidence" means documented proof of Health Care Interpreter experience obtained within the 24 months preceding the application date. Such documentation may include: employer endorsement, pay statement, services contract, remittance advice, and/or student practicum/intern time log.

(22) "Written verification" means documented proof of Health Care Interpreter training. Such documentation may include: official transcripts, a certificate of completion and/or an endorsement from an agency or institution whose training curriculum is approved by the Department.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0035

Fees

The Department establishes the following Health Care Interpreter program fees:

(1) An HCI Registry Enrollment Application shall have a fee of \$25 per application.

(2) An HCI Registry Renewal Application shall have a fee of \$25 per application.

(3) An HCI Qualification Application and Request for Evaluation shall have a fee of \$300 per application.

(4) An HCI Certification Application and Request for Evaluation shall have a fee of \$300 per application.

(5) An HCI Interpreting Skills Assessment shall have a fee of \$400 per attempt.

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(6) An HCI Certification Renewal Application shall have a fee of \$100 per application.

(7) An HCI External Transcript Review Request shall have a fee of \$50 per request.

(8) An HCI Expedited Application Processing Request shall have a fee of \$50 per request.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0040

Eligibility Standards for Registry Enrollment, Qualification and Certification

(1) Applicants seeking enrollment in the Health Care Interpreter registry must:

(a) Be at least 18 years of age;

(b) Submit applicable forms and fees (as established in OAR 333-002-0035);

(c) Successfully complete the Health Care Interpreter orientation session provided by the Department;

(d) Agree to abide by the National Code of Ethics for Interpreters in Health Care as established by OAR 333-002-0100; and

(e) Agree to abide by the National Standards of Practice for Interpreters in Health Care as established by OAR 333-002-0110.

(2) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking qualification must be able to:

(a) Provide written verification of at least 60 hours of formal training as defined in OAR 333-002-0060;

(b) Provide verifiable evidence of 30 hours of experience; and

(c) Demonstrate health care interpreting knowledge by passing a qualification skill evaluation offered by the Department as defined in OAR 333-002-0070.

(3) In addition to complying with the requirements set out in section (1) of this rule, applicants seeking certification must be able to:

(a) Provide written verification of at least 60 hours of formal training as defined in OAR 333-002-0060;

(b) Provide verifiable evidence of 30 hours of experience; and

(c) Demonstrate health care interpreting proficiency by passing a certification skill evaluation and assessment offered by the Department as defined in OAR 333-002-0070.

(4) The Department will accept formal training from entities outside of Oregon who can demonstrate that their criteria are equal to or exceed Oregon criteria as established by this division and Department policy. Applicants holding written verification from outside entities do not need to retake training however; they must satisfy the requirements as set forth in sections (1), (2) and (3) of this rule.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0050

Application Procedure

(1) Upon request, the Department will provide an application packet to any individual seeking registry enrollment; qualification; or certification as a Health Care Interpreter.

(2) Applicants must submit standard forms along with required documentation and fees (as established in OAR 333-002-0035) to the Department.

(3) All application materials submitted in a language other than English must be accompanied by:

(a) An accurate translation of those documents into English;

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; or

(c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.

(4) Any translation costs for documents required by the Department will be at the expense of the applicant.

(5) If the Department determines that the application and submitted documentation are acceptable; skill evaluation, skill assessment and/or a Department approved orientation session will be scheduled, as required.

(6) If the Department determines that the application is not complete or that the required documentation is not acceptable, the applicant will be notified within 30 days of receipt. An incomplete application includes, but is not limited to, an application in which:

(a) Required information or original signatures are not provided; or

(b) Required forms, documentation or fees (as established in OAR 333-002-0035) are not submitted.

(7) Applicants may withdraw from the process at any time by submitting written notification to the Department.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0070

Skill Evaluation and Assessment

(1) Qualification skill evaluations will be held at least twice annually in multiple locations state-wide.

(2) Certification skill evaluations and assessments will be held at least twice annually in multiple locations state-wide.

(3) All evaluations and assessments are given in English and the foreign language for which qualification or certification is being sought.

(4) Applicants will be notified by mail, postmarked at least two weeks before each scheduled evaluation or assessment, of the time and place.

(5) Applicants who request an extension in writing to the Department, postmarked 45 days in advance of a scheduled evaluation or assessment, may have their fees (as established in OAR 333-002-0035) apply to a subsequent date so long as the applicant sits for the evaluation or assessment within one year of the date of extension. Only one extension will be permitted and fees will not be refunded.

(6) Applicants must pass each evaluation or assessment within 18 months of the initial attempt with a maximum of three attempts. All applicable fees (as established in OAR 333-002-0035) must be submitted for each evaluation or assessment attempt. Evaluation and assessment fees will not be refunded for failed attempts.

(7) After three failed attempts; applicants must wait one year to re-apply.

(8) The Department may elect to administer evaluations or assessments at times other than those regularly scheduled. Additional costs associated with the administration of an unscheduled evaluation or assessment will be paid by the applicant.

(9) Government issued photo identification showing the name and address of the applicant must be presented to enter an evaluation or assessment. This identification could be a valid driver's license, valid state identification card, current U.S. passport or immigration/naturalization papers.

(10) An applicant whose conduct interferes with or disrupts the testing process may be dismissed and disqualified from future evaluations and assessments. Such conduct includes but is not limited to the following behaviors:

(a) Giving or receiving evaluation or assessment data, either directly or indirectly, during the testing process;

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

(c) Introducing unauthorized materials during any portion of the evaluation or assessment;

(d) Attempting to remove evaluation or assessment materials or notations from the testing site; or

(e) Violating the credentialing process by:

(A) Falsifying or misrepresenting educational credentials or other information required for admission to the evaluation or assessment;

(B) Having an impersonator take the evaluation or assessment on one's behalf; or

(C) Impersonating an applicant.

(11) Test questions, scoring keys, and other data used to administer evaluations and assessments are exempt from disclosure under ORS 192.410 to 192.505.

(12) The Department may release statistical information regarding evaluation or assessment pass/fail rates by group, evaluation or assessment type, and subject area to any interested party.

(13) Applicants with special needs may apply to the Department for the provision of accommodations to complete an evaluation or assessment. A request for accommodations must be made to the Department in writing no later than 30 days prior to the date of the evaluation or assessment.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0080

Skill Evaluation or Assessment Appeal

(1) Applicants who fail to pass a Department administered evaluation or assessment may request to review their results.

(2) The following appeal process will be utilized to request a review:

(a) Requests must be submitted on the standard form and received by the Department within 30 days of the Notification of Skill Evaluation or Assessment Results sent to the applicant; and

ADMINISTRATIVE RULES

(b) Applicants must specifically state the reason for the appeal and why they believe the results should be modified. Applicants must identify clear and convincing evidence of error in the evaluation or assessment content, bias, prejudice or discrimination in the testing process that they feel are applicable to the appeal.

(3) The Department will not consider any challenges to evaluation or assessment scores unless the total of the potentially revised score would result in issuance of a letter of qualification or certificate.

(4) Evaluation or assessment appeals and all related materials including written results, audio or videotapes, evaluator comments, and information provided by the applicant will be referred to the OMH Health Care Interpreter Advisory Board for review and recommendations.

(5) During the review, the applicants' identity will remain confidential.

(6) The Department will not consider oral arguments from the applicant regarding an evaluation or assessment appeal unless the Department determines that further information is required.

(7) The Department will make a determination as to whether to grant the appeal and that determination will become part of the public record.

(8) Granting an appeal may result in the following actions:

(a) Suspension of a failing score and opportunity for the applicant to retake the evaluation or assessment at no additional expense; or

(b) Reversal of a failing score and issuance of a letter of qualification or certificate.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0090

Orientation Session

Applicants for registry enrollment, qualification and certification must attend a Department approved orientation session. Information provided during orientation sessions will include, but may not be limited to the following topics:

(1) Presentation of ORS 409.615 to 409.623 and OAR 333-002;

(2) Review of Department, Health Care Interpreter, Provider and Patient roles and responsibilities; and

(3) Review of National Code of Ethics and National Standards of Practice for Interpreters in Health Care.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0100

Code of Ethics for Interpreters in Health Care

Health Care Interpreters must adhere to the National Code of Ethics for Interpreters in Health Care as established by the National Council on Interpreting in Health Care (July, 2004; used with permission):

(1) The interpreter treats as confidential, within the treating team, all information learned in the performance of their professional duties, while observing relevant requirements regarding disclosure.

(2) The interpreter strives to render the message accurately, conveying the content and spirit of the original message, taking into consideration its cultural context.

(3) The interpreter strives to maintain impartiality and refrains from counseling, advising or projecting personal biases or beliefs.

(4) The interpreter maintains the boundaries of the professional role, refraining from personal involvement.

(5) The interpreter continuously strives to develop awareness of his/her own and other (including biomedical) cultures encountered in the performance of their professional duties.

(6) The interpreter treats all parties with respect.

(7) When the patient's health, well-being, or dignity is at risk, the interpreter may be justified in acting as an advocate. Advocacy is understood as an action taken on behalf of an individual that goes beyond facilitating communication, with the intention of supporting good health outcomes. Advocacy must only be undertaken after careful and thoughtful analysis of the situation and if other less intrusive actions have not resolved the problem.

(8) The interpreter strives to continually further his/her knowledge and skills.

(9) The interpreter must at all times act in a professional and ethical manner.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0110

Standards of Practice for Interpreters in Health Care

Health Care Interpreters must adhere to the National Standards of Practice for Interpreters in Health Care as established by the National Council on Interpreting in Health Care (September, 2005; used with permission): Standard I — Accuracy.

(1) The interpreter renders all messages accurately and completely, without adding, omitting or substituting.

(2) The interpreter replicates the register, style, and tone of the speaker.

(3) The interpreter advises parties that everything said will be interpreted.

(4) The interpreter manages the flow of communication.

(5) The interpreter corrects errors in interpretation.

(6) The interpreter maintains transparency. Standard II — Confidentiality.

(7) The interpreter maintains confidentiality and does not disclose information outside the treating team, except with the patient's consent or if required by law.

(8) The interpreter protects written patient information in his or her possession. Standard III — Impartiality.

(9) The interpreter does not allow personal judgments or cultural values to influence objectivity.

(10) The interpreter discloses potential conflicts of interest, withdrawing from assignments if necessary. Standard IV — Respect.

(11) The interpreter uses professional, culturally appropriate ways of showing respect.

(12) The interpreter promotes direct communication among all parties in the encounter.

(13) The interpreter promotes patient autonomy. Standard V — Cultural Awareness.

(14) The interpreter strives to understand the cultures associated with the languages he or she interprets, including biomedical culture.

(15) The interpreter alerts all parties to any significant cultural misunderstanding that arises. Standard VI — Role Boundaries.

(16) The interpreter limits personal involvement with all parties during the interpreting assignment.

(17) The interpreter limits his or her professional activity to interpreting within an encounter.

(18) The interpreter with an additional role adheres to all interpreting standards of practice while interpreting. Standard VII — Professionalism.

(19) The interpreter is honest and ethical in all business practices.

(20) The interpreter is prepared for all assignments.

(21) The interpreter discloses skill limitations with respect to particular assignments.

(22) The interpreter avoids sight translation, especially of complex or critical documents, if he or she lacks sight translation skills.

(23) The interpreter is accountable for professional performance.

(24) The interpreter advocates for working conditions that support quality interpreting.

(25) The interpreter shows respect for professionals with whom he or she works.

(26) The interpreter acts in a manner befitting the dignity of the profession and appropriate to the setting. Standard VIII — Professional Development.

(27) The interpreter continues to develop language and cultural knowledge and interpreting skills.

(28) The interpreter seeks feedback to improve his or her performance.

(29) The interpreter supports the professional development of fellow interpreters.

(30) The interpreter participates in organizations and activities that contribute to the development of the profession. Standard IX — Advocacy.

(31) The interpreter may speak out to protect an individual from serious harm.

(32) The interpreter may advocate on behalf of a party or group to correct mistreatment or abuse.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0120

Continuing Education

The intent of Continuing Education is to protect the public by maintaining and enhancing credential holders' knowledge and skills related to health care interpreting.

ADMINISTRATIVE RULES

- (1) At renewal time Certified Health Care Interpreters must:
 - (a) Have completed 16 hours of continuing education; and
 - (b) Sign and submit a Department supplied Continuing Education form and written verification indicating they have completed the required number of hours of continuing education.
- (2) Continuing education must be completed within the renewal period. Contact hours taken in excess of the total number required may only be carried over to the next subsequent renewal period.
- (3) Continuing education records must be maintained by the health care interpreter for a minimum of five years.
- (4) If the Department finds indications of fraud or falsification of records, investigative action will be instituted. Findings may result in disciplinary action including revocation of the certificate.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0130

Registry Enrollment

(1) If the Department determines OAR 333-002-0040, 333-002-0050, and 333-002-0090 have been met; the applicant will be added to the central registry of Health Care Interpreters.

(2) Registry enrollment is valid for 12 months from the date of enrollment and is renewable.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0140

Letter of Qualification

(1) If the Department determines OAR 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, and 333-002-0090 have been met; a letter of qualification will be issued.

(2) Letters of Qualification are valid for 24 months from the date of issue and are not renewable.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0150

Certificate

(1) If the Department determines OAR 333-002-0040, 333-002-0050, 333-002-0060, 333-002-0070, and 333-002-0090 have been met; a certificate will be issued.

(2) Certificates are valid for 24 months from the date of issue and are renewable.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0160

Registry Enrollment Renewal

(1) Applicants for registry enrollment renewal must provide to the Department:

- (a) The completed renewal form provided by the Department;
- (b) Applicable fees (as established in OAR 333-002-0035);
- (c) A current signed copy of the National Code of Ethics for Interpreters in Health Care (as established in OAR 333-002-0100); and
- (d) A current signed copy of the National Standards of Practice for Interpreters in Health Care (as established in OAR 333-002-0110).

(2) The materials required by section (1) of this rule must be submitted to the Department prior to the expiration date of registry enrollment and no less than 30 days in advance of that date. The date of submission of these materials will be considered to be the date postmarked by the US Postal Service, or if not postmarked, by the date they are received by the Department.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0170

Certification Renewal

(1) A Certified Health Care Interpreter must provide to the Department:

- (a) The completed renewal form provided by the Department;
- (b) Applicable fees (as established in OAR 333-002-0035);
- (c) Written verification of a minimum of 16 hours of continuing education as defined in OAR 333-002-0120 during the preceding 24 months;

(d) A current signed copy of the National Code of Ethics for Interpreters in Health Care (as established in OAR 333-002-0100); and

(e) A current signed copy of the National Standards of Practice for Interpreters in Health Care (as established in OAR 333-002-0110).

(2) The materials required by section (1) of this rule must be submitted to the Department prior to the expiration date of the certificate and no less than 30 days in advance of that date. The date of submission of these materials will be considered to be the date postmarked by the US Postal Service, or if not postmarked, by the date they are received by the Department.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0210

Complaints

Any affected party or witness may submit a complaint against a Health Care Interpreter. Complaints must be submitted on the standard form provided by the Department, signed and dated by the person alleging the complaint. A complaint that does not comply with the requirements of this rule will not be accepted, responded to or acted upon by the Department.

(1) The Department may commence an investigation of a Health Care Interpreter as a result of information received from any party.

(2) Complaint forms received by the Department will be made available to the accused Health Care Interpreter and others involved in the investigation of the allegations.

(3) A preliminary review of the complaint will be made by the Department to assure there is sufficient cause to justify proceeding and that the allegations against the Respondent are such that, if proven, could result in a violation of the National Code of Ethics for Interpreters in Health Care set out in OAR 333-002-0100 or the National Standards of Practice for Interpreters in Health Care set out in OAR 333-002-0110.

(4) If the complaint is considered to be valid, the Department must notify the Respondent of the allegations by mail and request written comments. Written comments must be received by the Department within two weeks after the notification was first mailed, unless an extension is authorized by the Department, or the Department will evaluate the complaint using available evidence.

(5) Complaints and all evidence obtained, including any documents or information received from the Complainant, Respondent, Witnesses, Department investigators or Department staff, will be referred to the OMH Health Care Interpreter Advisory Board for review and recommendations.

(6) During the review, the Respondents' identity will remain confidential.

(7) The Department will not consider oral arguments from the Complainant and/or Respondent unless the Department determines that further information is required.

(8) If evidence is insufficient to show cause for action, the Complainant and Respondent will be so notified in writing.

(9) If evidence is sufficient to show cause for action, the Department will determine appropriate disciplinary action, the Respondent will be so notified in writing and that determination will become part of the public record.

Stat. Auth.: ORS 409.623
Stats. Implemented: ORS 409.621, 409.623
Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0220

Discipline

The Department may refuse to issue or renew, suspend or revoke, impose remedial education or corrective actions if an applicant, registry enrollee, Qualified or Certified Health Care Interpreter:

(1) Represents that he or she is a Qualified or Certified Health Care Interpreter without having been issued a valid letter of qualification or certificate by the Department under this division.

(2) Knowingly gives misinformation or a false impression to the Department.

(3) Violates the credentialing process by:

(a) Falsifying or misrepresenting educational credentials or other information required for admission to an evaluation or assessment;

(b) Having an impersonator take an evaluation or assessment on one's behalf; or

(c) Impersonating an applicant.

(4) Has had a credential to practice health care interpreting in another state, territory or country suspended or revoked based upon acts by the Health Care Interpreter similar to acts described in this rule.

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(5) Has been convicted of a crime in this state, or any other state, territory or country, or convicted of a federal crime which demonstrably relates to the practice of health care interpreting.

(6) Has engaged in false, deceptive or misleading advertising, which includes but is not limited to, advertising health care interpreting using the titles of Qualified or Certified Health Care Interpreter in any private or public communication or publication by a person who is not credentialed by the Department. For the purposes of this rule, "advertise" includes telephone directory listings.

(7) Allows the use of a Department issued credential by a non-credentialed person.

(8) Has presented as one's own credential, the credential of another.

(9) Has practiced health care interpreting services under a false or assumed name without notification to the Department.

(10) Has impersonated another Health Care Interpreter.

(11) Has used or attempted to use a Health Care Interpreter credential that has been revoked or suspended, lapsed or inactive.

(12) Has practiced or offered to practice beyond the scope of the National Code of Ethics or National Standards of Practice for Interpreters in Health Care.

(13) Fails to cooperate with the Department in any credentialing action or disciplinary proceeding. Such acts include but are not limited to:

(a) Failure to furnish requested papers or documents;

(b) Failure to furnish a written response to a matter contained in any complaint filed with the Department; or

(c) Failure to respond to requests for information issued by the Department whether or not the recipient is accused in the proceeding.

(14) Fails to comply with any request issued by the Department or an assurance of discontinuance entered into with the Department.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

333-002-0230

Hearings

Contested Case Hearings: A person who wishes to contest the denial, non-renewal, suspension or revocation of their registry enrollment, qualification or certification will be afforded an opportunity for a hearing by the Department according to ORS chapter 183.

Stat. Auth.: ORS 409.623

Stats. Implemented: ORS 409.621, 409.623

Hist.: PH 18-2006, f. & cert. ef. 8-2-06; PH 26-2006, f. & cert. ef. 11-16-06

Rule Caption: Commemorative Certificate of Stillbirth (Implementation of SB 787, 2005 Oregon Laws, Chapter 769).

Adm. Order No.: PH 27-2006

Filed with Sec. of State: 11-30-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 11-1-06

Rules Adopted: 333-011-0200

Subject: The Oregon Department of Human Services, Public Health Division is permanently adopting Oregon Administrative Rule 333-011-0200, pursuant to Senate Bill 787 (2005 Oregon Laws, Chapter 769), to establish the form of and information included on the Commemorative Certificate of Stillbirth.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-011-0200

Commemorative Certificate of Stillbirth

(1) The Certificate of Stillbirth shall be suitable for display and shall feature an attractive design with calligraphy-like font, high quality paper, a State of Oregon seal, and signature of the State Registrar.

(2) Information on the Certificate of Stillbirth shall be prepared using information from the "Report of Fetal Death" filed with the Center for Health Statistics. The text of the certificate shall contain the name of the child, date and place of birth, names of parent(s), date of issuance, state file number from the fetal death certificate, and a statement that the certificate is not proof of a live birth. The word deceased would be included after the name of the child.

Stat. Auth.: ORS 432.266

Stats. Implemented: ORS 432.266

Hist.: PH 27-2006, f. 11-30-06, cert. ef. 12-1-06

Rule Caption: Submission of sera positive IgM core antibody to hepatitis B to the Public Health Laboratory.

Adm. Order No.: PH 28-2006

Filed with Sec. of State: 11-30-2006

Certified to be Effective: 12-18-06

Notice Publication Date: 11-1-06

Rules Amended: 333-018-0018

Subject: The Oregon Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rule, 333-018-0018, to include a requirement for licensed laboratories to submit sera positive IgM core antibody to hepatitis B to the Oregon State Public Health Laboratory.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-018-0018

Submission of Isolates to the Public Health Laboratory

Licensed Laboratories are required to forward aliquots or subcultures of the following to the Oregon State Public Health Laboratory:

(1) Suspected *Neisseria meningitidis* and *Haemophilus influenzae* from normally sterile sites.

(2) Suspected Shiga-toxicogenic *Escherichia coli* (STEC), including *E. coli* O157, *Salmonella spp.*, *Shigella spp.*, *Vibrio spp.*, *Listeria spp.*, *Yersinia spp.*, and *Mycobacterium tuberculosis*.

(3) Serum that tests positive for IgM antibody to hepatitis A virus.

(4) Serum that tests positive for IgM core antibody to hepatitis B virus.

Stat. Auth.: ORS 438

Stats. Implemented: ORS 438.310

Hist.: HB 248, f. 6-30-70, ef. 7-25-70; HD 28-1988, f. & cert. ef. 12-7-88; HD 20-1994, f. & cert. ef. 7-20-94; HD 6-1995, f. & cert. ef. 9-13-95; OHD 11-2001, f. & cert. ef. 5-16-01, Renumbered from 333-024-0050(5); OHD 3-2002, f. & cert. ef. 3-4-02; PH 11-2005, f. 6-30-05, cert. ef. 7-5-05; PH 28-2006, f. 11-30-06, cert. ef. 12-18-06

Rule Caption: Wading Pool Compliance.

Adm. Order No.: PH 29-2006

Filed with Sec. of State: 12-13-2006

Certified to be Effective: 12-13-06

Notice Publication Date: 11-1-06

Rules Amended: 333-060-0020

Subject: The Oregon Department of Human Services, Public Health Division is permanently amending Oregon Administrative Rule, 333-060-0020, relating to wading pool compliance.

Rules Coordinator: Christina Hartman—(971) 673-1291

333-060-0020

Compliance

(1) Swimming pools and wading pools which were in public use before May 13, 1959, shall not be required to comply with Structural Stability, OAR 333-060-0050(2); and Dimensions, OAR 333-060-0060(3) and (4), provided such pools are operated in compliance with all other rules of the Division relating to public swimming pools.

(2) All swimming pools and wading pools which were constructed and in use but were not in public use as defined in Definitions, OAR 333-060-0015(19), and were not licensed by the State Board of Health before June 10, 1959, shall before being operated for any public use, have complete and detailed plans submitted to the Division. A license to operate as a public pool shall not be issued until the pool is made to comply with the requirements of these rules.

(3) Any public wading pool constructed before July 1, 2006, but not licensed by the Division or its agent health department before that date, must obtain a license to operate:

(a) Wading pools, other than spray pools, without water recirculation must comply with the requirements of OAR 333-060-0510(1) or must cease operation;

(b) All existing wading pools must provide protection against entrapment, hair entanglement and evisceration in compliance with OAR 333-060-0510(2), or cease operation by December 31, 2008.

(4) Any limited-use swimming pool operated in conjunction with a companion residential housing facility having five or more living units and which was operated and maintained for the use of the occupants thereof and their personal friends only, but which was not required to be licensed prior to February 25, 1971, shall not be required to comply with Structural Stability, OAR 333-060-0050(2); Dimensions, 333-060-0060(3), (4) and (5)(a); Piping, 333-060-0130(1), (2), and (3); and Overflow Systems, 333-060-0115(2)(b), (3) and (4); provided such pools are operated in compliance with all other requirements of these rules.

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(5) Public swimming pools built prior to March 1, 1979, are exempt from the following requirements of these rules provided such pools are operated in continuous compliance with the rules in effect at the time such pools were constructed:

- (a) Dimensions, OAR 333-060-0060(2), (5)(a)(B), (5)(b);
- (b) Finishes, Markings and Lifelines, OAR 333-060-0065(3);
- (c) Ladders, Recessed Steps and Stairways, OAR 333-060-0080(7),

(8);

- (d) Decks, OAR 333-060-0110(1)(a), (2), (6), (7);
- (e) Overflow Systems, OAR 333-060-0115(3);
- (f) Recirculation Systems, OAR 333-060-0120(2)(c);
- (g) Inlets and Outlets, OAR 333-060-0125(2), (4);
- (h) Piping, OAR 333-060-0130(1), (4);
- (i) Pumps, OAR 333-060-0135(1)(a), (b), (4);
- (j) Filters, OAR 333-060-0140(2)(a)-(d), (6), (7);
- (k) Heaters, OAR 333-060-0145(1)(c);
- (l) Disinfectant and Chemical Feeders, OAR 333-060-0150(4);
- (m) Equipment Room, OAR 333-060-0160(1);
- (n) Bathhouse and Sanitary Facilities, OAR 333-060-0170(3)(a), (b);
- (o) Signs, OAR 333-060-0215(1), (2) and (3).

(6) The exemptions of sections (1), (2), (3), and (4) of this rule apply provided the exemption does not present a health or safety hazard. Exemptions do not apply to any alteration or replacement of affected component part.

Stat. Auth.: ORS 448.011
Stats. Implemented: ORS 448.005-448.100, 448.900
Hist.: HD 2-1979, f. 1-25-79, ef. 3-1-79, Renumbered from 333-042-0088; HD 7-1986, f. & ef. 5-1-86; HD 22-1994, f. 8-22-94, cert. ef. 9-1-94; PH 17-2006, f. 6-30-06, cert. ef. 7-1-06; PH 20-2006(Temp), f. & cert. ef. 9-15-06 thru 3-13-07; PH 29-2006, f. & cert. ef. 12-13-06

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

Rule Caption: Additions of definitions for clarification, consistency and language updates.

Adm. Order No.: SPD 30-2006

Filed with Sec. of State: 11-27-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 11-1-06

Rules Amended: 411-026-0000, 411-026-0010, 411-026-0020, 411-026-0030, 411-026-0040, 411-026-0050, 411-026-0060, 411-026-0070, 411-026-0080

Subject: Seniors and People with Disabilities is amending the Guardianship and Conservatorship rules related to:

- a) Addition of definitions to clarify practice;
- b) Replace repealed citations; and
- c) Promote consistency regarding field office practice and rule application.

Rules Coordinator: Lisa Richards—(503) 945-6398

411-026-0000

Purpose and Scope of Program

(1) The purpose of these rules is to provide a means by which guardianship can be established by the Seniors and People with Disabilities Department for any elderly individual or an individual with a disability for whom there has been a strong showing of incapacity and functional impairment; for whom there can be no less restrictive form of intervention; and for whom guardianship is necessary for the individual's well-being, safety and best interest. The program will be limited to persons who lack any other means for the appointment of a guardian.

(2) The Seniors and People with Disabilities Department has the responsibility to pay for guardianship within budgetary restrictions when this procedure is the most appropriate action to protect the elderly or individual with disability and no other source of payment is available. This action must benefit the individual and must meet the eligibility criteria listed in OAR 411-026-0020. Guardianship is a restrictive option and may be used only after exhausting all other appropriate options. Temporary and limited guardianships may be used when full guardianships are not necessary to meet the individual's needs.

(3) These rules also establish guidelines for the nomination and payment of legal costs for conservators.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0010

Definitions

For purposes of these rules, the following definitions apply:

(1) "AAA" means a Type B Area Agency on Aging that 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 Department Programs.

(2) "Conservator" means a person who has fiduciary responsibility and is appointed as conservator to administer the estate of a protected individual under ORS 127.005 and 127.015.

(3) "Court" means any court in Oregon having probate jurisdiction or a judge thereof.

(4) "Department" means the Department of Human Services, Seniors and People with Disabilities (SPD) or its designee.

(5) "Extreme High Risk" means an immediate and serious danger to life, health, or safety.

(6) "Fiduciary" means a guardian or conservator appointed under the provisions of ORS 125.

(7) "Financially Incapable" means a condition in which an individual is unable to manage financial resources of the individual effectively for reasons including but not limited to, mental illness, mental deficiency, physical illness or disability, chronic use of drugs or controlled substances, chronic intoxication, confinement, detention by foreign power or disappearance.

(8) "Functional Incapacity" means an individual's inability to meet his or her needs of daily living without which perilous physical injury or illness is likely to occur.

(9) "Guardianship" means a court procedure in which a person is appointed to make personal, health or other care decisions for a functionally incapacitated individual under [ORS 126.003 to 126.005 and 126.100 to 126.143 **REPEALED.**] Guardianships can be:

(a) Temporary — limited to cases of emergency and lasting not more than 30 days;

(b) Limited — power(s) stated is not every power possible under the statutes; or

(c) Full — court finds the incapacitated individual has no capacity to decide anything without a guardian giving consent.

(10) "Incapacitated Individual" means an adult whose ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that [he/she] presently lacks the capacity to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness is likely to occur.

(11) "Interested Person" includes a person who would inherit by law or by will, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a ward or incapacitated individual that may be affected by the proceeding; persons having priority for appointment as personal representative; and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and may be determined according to the particular purposes of, and matter involved in, any proceeding.

(12) "Manage Financial Resources" means those actions necessary to obtain, administer and dispose of real and personal property, intangible property, business property, benefits and income.

(13) "Visitor" means a person who is an officer, employee or special appointee of the court, is not an interested person in the proceedings and has been trained or has the expertise to appropriately evaluate the needs of the allegedly incapacitated individual.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0020

Eligibility

SPD guardianship payment may be considered for individuals who meet all of the following criteria:

- (1) Is age 65 years or older or physically disabled (age 18 or older);
- (2) Is functionally incapacitated;
- (3) Is at extreme high risk;
- (4) Has no other person or agency available or appropriate to act;
- (5) Is unable to understand the ramifications of his or her choices and unable to make informed decisions; and

(6) Benefits directly from a guardianship.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

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411-026-0030

SPD/AAA Assessment

(1) For guardianship payments to be considered, the SPD/AAA office must complete an assessment of the individual proposed for guardianship. The assessment must provide concrete evidence of functional incapacities. The assessment must address whether the individual's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that he or /she presently lacks the essential requirements for his or /her health or safety or to manage his or /her] financial resources. The assessment must include a recommendation regarding the need for the guardian or other person to exercise any control over the estate.

(2) **SPD/AAA** field staff may recommend a person to act as guardian. This may be a family member, friend, public or community guardianship program, or a private casemanager. Pro bono services must be rigorously pursued.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0040

Recommendation for Guardianship

(1) On the basis of the assessment data and information from other appropriate sources (e.g. mental health professional, physician, etc.), the referring **SPD/AAA** field staff may request payment from SPD Central Office for the legal work, court fees and the most appropriate form of guardianship (temporary, limited or full). The request must utilize forms and procedures established by the Department.

(2) SPD may authorize payment for fees to set up a temporary guardianship when there is clear and convincing evidence that:

(a) An extreme high risk exists and no guardian has been appointed;

or
(b) A guardian is already in place and is not effectively performing duties; or

(c) The welfare of the incapacitated individual requires immediate action that can be solved within 30 days.

(3) SPD may authorize payment for fees to set up a limited guardianship when the incapacitated individual needs some but not all decisions to be made by someone else.

(4) SPD may authorize payment for fees to set up a full guardianship when it is demonstrated that ongoing guardianship is needed for the continuing care, comfort and maintenance of the incapacitated individual. An exception for ongoing guardianship fees may be sought in cases where no cost-free resources can be developed and there is a continuing serious danger to the life and health of the incapacitated individual.

(5) SPD must not authorize payment for guardianship proceedings solely for the provision of medical care or hospitalization.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0050

Assignment of Attorney

The Department must establish a list of successful respondents to a Request for Qualifications to be used by the Department to pursue guardianships, conservatorships and probate matters. The names will be placed on a geographical list and must be assigned or nominated on a rotating basis. The Department retains the right to use other attorneys in emergency situations when listed attorneys are not immediately available.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0060

Request and Authorization for Payment

(1) SPD/AAA field offices must submit to the Department a request for payment of attorney fees for the preparation of a petition to the court for a guardianship or conservatorship when no assets are available and for court or Visitor's fees that are not waived. Within budgetary constraints, SPD may authorize payment when it is documented that all eligibility criteria are met.

(2) When payment for a requested guardianship is approved or when payment for conservatorship is approved because there are no assets, the Department must send a purchase order authorization to the assigned attorney, with a copy to the local office. The Department or its designee will then send the attorney the information needed to petition the court for the proposed guardianship or conservatorship.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0070

Disclosure of Information

(1) SPD/AAA field staff may provide the information about the incapacitated individual proposed for guardianship to the attorney filing the petition to establish the need for the guardianship. When the Visitor's appointment orders are presented, the file contents relevant to the guardianship proceeding may be discussed and/or shown to the Visitor.

(2) SPD/AAA staff must provide testimony in guardianship proceedings when ordered by the court to do so pursuant to ORS 411.320 and 418.130.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

411-026-0080

SDSD Coordination of Conservatorships

(1) An individual served by SPD who is financially incapable and whose assets need protection or for whom disposition of excess property is needed to maintain eligibility for SPD services or benefits, may be referred to the Department for nomination of a conservator.

(2) SPD/AAA field staff must assess the individual and must obtain any evidence available establishing the individual is financially incapable. SPD/AAA field staff will verify that no family member, close friend, or other person is appropriate and available to petition for and serve as conservator.

(3) The Department will nominate or assign an attorney as described in OAR 411-026-0050.

(4) The conservator will be paid through the assets of the individual's estate as ordered by the court and in accordance with the contract provisions. When there are no assets, the Department may pay the costs to establish the protective proceedings.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Hist.: SSD 9-1996, f. & cert. ef. 10-15-96; SPD 30-2007, f. 11-27-06, cert. ef. 12-01-06

Department of Justice Chapter 137

Rule Caption: Increase in licensing and reporting fees paid by charitable gaming licensees/permittees.

Adm. Order No.: DOJ 7-2006

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

Certified to be Effective: 1-1-07

Notice Publication Date: 10-1-06

Rules Amended: 137-025-0060, 137-025-0090, 137-025-0150, 137-025-0210, 137-025-0280, 137-025-0410, 137-025-0415, 137-025-0480, 137-025-0530

Subject: The amended rules increase the application fees paid by prospective charitable gaming licensees/permittees and increase some fees paid by those entities in conjunction with the filing of periodic financial reports.

Rules Coordinator: Carol Riches—(503) 947-4700

137-025-0060

Application for Bingo License

(1) An application for a bingo license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization and shall be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the bingo games will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority;

(d) The full names and addresses of the responsible officials of the organization;

(e) For Class A or B bingo licensees, the name and address of the individual proposed by the applicant to act as its supervising bingo game manager;

(f) The address of the location proposed by the applicant where the bingo games will be held; the amount of rent to be paid for the location if

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not owned by the applicant; the party who is to be paid rent, if any; and a statement that rent will not be paid to a related party;

(g) The class of license sought by the applicant; and

(h) For Class A or B bingo licensees, the name and address of the financial institution and the account number for the bingo account(s) to be used by the applicant.

(2) The applicant shall submit the following documents with the application. The information required in subsections (c) through (f) of this section shall be on forms prescribed by the Department:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(c);

(b) For a Class A or B license, a copy of a current or proposed lease agreement for the location of the bingo games if the applicant does not own the premises intended for use;

(c) For a Class A or B bingo license, a completed authorization to inspect bank records on a form furnished by the Department, authorizing the financial institution to disclose customer information regarding the applicant's bingo account to the Department;

(d) As required by Chapter 914, Oregon Law 1987, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(e) A consent to inspections authorized by Chapter 914, Oregon Laws 1987, and the rules adopted thereto;

(f) A statement verifying whether or not the applicant has conducted bingo operations during the 12 months prior to submitting the application for a license and, if so, a financial summary of its operation; and

(g) Such other information as may be requested by the Department.

(3) The application fees are as follows:

(a) Class A license — \$200;

(b) Class B license — \$100;

(c) Class C license — \$40;

(d) Class D license — \$20.

Stat. Auth.: ORS 464

Stats. Implemented: ORS 464.250(2) & (4), 464.280(2)(a) & (b) & 464.510

Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0090

Bingo Game Manager Permit

(1) No person shall act as a bingo game manager for a Class A or B licensee unless he or she has a current bingo game manager permit or temporary authorization from the Department. A Class A or B bingo licensee shall not allow any person to act as a bingo game manager unless he or she possesses a current bingo game manager permit or temporary authorization from the Department. Temporary authorization to act as a manager may be granted by the Department upon the filing of a completed bingo game manager application.

(2) An application for a bingo game manager permit shall be made on a form prescribed by the Department and shall be accompanied by a \$40 permit application fee. The Department shall reject applications which are incomplete or are not accompanied by a sufficient fee. All applicants shall be immediately notified of any such deficiencies. The license application shall include a personal information statement, including information regarding personal identity and personal history; a description of prior bingo employment activity and compensation received; a criminal history statement; finger prints and a completed release of educational, employment and military records form.

(3) A Class A and B licensee shall designate a bingo game manager for the licensee. The bingo game manager permit for the licensee's manager shall be conspicuously displayed by the licensee during operating hours at its authorized location. The licensee shall notify the Department in writing if it intends to designate a different bingo game manager:

(a) The bingo game manager shall be responsible for the overall operation of the bingo games by ensuring that:

(A) The public and the licensees are protected from fraud;

(B) All provisions of ORS 167.118, ORS Chapter 464 and OAR 137-025-0010 et seq. are followed;

(C) All records are completed and correct; and

(D) All monies derived from the bingo game are safeguarded until transferred to the licensee's bingo checking account.

(b) To the extent that they are not assumed by the board of directors or a bingo committee designated by the board, the duties and responsibilities of a bingo game manager include the following:

(A) Personnel actions regarding bingo workers including hiring, firing, training, evaluating, scheduling work periods, and/or setting salaries;

(B) Scheduling the bingo activity, including determining the time and days of operation;

(C) Setting the scope of the bingo activity by determining:

(i) The number of games to be played;

(ii) The type of games to be played;

(iii) The cost to each player to participate; and

(iv) The type and amount of prizes to be awarded.

(D) Setting the scope of marketing activities related to the bingo activity by determining:

(i) Type and scope of promotional activities; and

(ii) The media, content, timing, and target market area of advertising.

(4) A bingo game manager shall be knowledgeable regarding the rules for the conduct of bingo games.

(5) Within 60 days after the filing of a completed application for a permit, the Department shall either issue a permit or notify the applicant in writing, in accordance with ORS 183.310 to 184.550 that the permit has been denied and that the applicant is entitled to a hearing. The permit shall be effective for one year from the date it is issued and may be renewed annually. The form of the permit shall be prescribed by the Department.

(6) No person may concurrently act as a bingo game manager for more than one licensee unless such participation is approved by the Department. The Department may approve requests for bingo game managers to temporarily act in that capacity on behalf of more than one licensee for a period of up to 90 days. Such requests shall be approved in emergency situations when a licensee is already operating a game and is without a bingo game manager as a result of unforeseen circumstances or circumstances beyond the licensee's control.

(7) The organization's designated bingo game manager shall be physically present and shall personally oversee the operation of the game at least 50 percent of the time the licensee's bingo games are in session for each reporting period. The Department may approve a lower percentage requirement for designated managers of licensees holding exceptions pursuant to OAR 137-025-0190.

(8) Any person to whom a bingo game manager permit is issued shall notify the Department upon any change of the person's name, residence or mailing address, or change of employment if employed by a licensee. Notice required under this section may be given in person or by mail and:

(a) Must be given within 30 days of the date of the change;

(b) Must be in writing and contain the old and new name, residence or mailing address, or employer(s); and

(c) Must contain the person's bingo game manager permit number.

Stat. Auth.: ORS 464.250(1)

Stats. Implemented: ORS 464.250(1), (2), (3) & (4) & 464.280

Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 13-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0150

Bingo Fees

(1) All annual and quarterly bingo reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, as follows:

(a) Class D license — \$20;

(b) Class C license — A fee of \$20 plus 0.5 of 1 percent of the bingo handle in excess of \$20,000;

(c) Class B license — A fee of 0.5 of 1 percent of the bingo handle up to \$75,000 and 1 percent of the bingo handle in excess of \$75,000;

(d) Class A license — A fee of 1.20 percent of the bingo handle up to \$3,000,000 and 1 percent of the bingo handle in excess of \$3,000,000.

(2) A delinquency fee of \$20 or 1 percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to \$50 after 60 days from the due date of the report.

(3) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 464.250(1)

Stats. Implemented: ORS 464.250(2) & (3)

Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; JD 2-1993, f. 6-21-93, cert. ef. 7-1-93; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0210

Application for Raffle License

(1) An application for a raffle license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible

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official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the raffle games will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(d) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(1)(c);

(b) As required by Oregon Laws 1987, Chapter 914, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to inspection authorized by Chapter 914, Oregon Laws 1987, and the rules adopted thereto; and

(d) Such other information as requested by the Department.

(3) The application fees are as follows:

(a) Class A raffle license — \$100;

(b) Class B raffle license — \$40.

Stat. Auth.: ORS 464

Stats. Implemented: ORS 464.250(2), 464.250(4) & 464.280(2)(b)

Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0280

Raffle Fees

(1) All annual raffle reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, of 2 percent of the raffle handle listed in the report up to \$125,000 and 0.5 of 1 percent of the raffle handle in excess of \$125,000. A delinquency fee of \$20 or one percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to \$50 after 60 days from the due date of the report.

(2) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 464

Stats. Implemented: ORS 464.250(3)

Hist.: JD 7-1987, f. 10-30-87, ef. 1-1-88; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0410

Application for Monte Carlo Event License

(1) An application for a Monte Carlo license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement of the purposes for which the money received from the Monte Carlo events will be used;

(c) A statement as to whether or not the organization has had a license to operate bingo, raffle games, or Monte Carlo events denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(d) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) A copy of a letter supporting tax exempt status as specified in OAR 137-025-0030(1)(c);

(b) As required by ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to inspection authorized by ORS 464.280 and the rules adopted thereto; and

(d) Copies of current or proposed rental or service contracts for facility lease or rental, and Monte Carlo event service or equipment provider. If no contract has been proposed or offered at the time of license application, applicant shall submit such contracts for approval by the Department, not less than seven days prior to the actual conduct of any Monte Carlo event;

(e) Consent to allow Department employees to be present on the premises before, during, and after the conduct of the Monte Carlo event to inspect and test equipment and examine records maintained by licensee;

(f) Such other information as requested by the Department.

(3) The non-refundable application fees are as follows:

(a) Class A Monte Carlo event license — \$100;

(b) Class B Monte Carlo event license — \$40.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0415

Application for Monte Carlo Supplier/Event Contractor License

(1) An application for a Monte Carlo equipment supplier and a Monte Carlo event contractor license or license renewal shall be made on a form prescribed by the Department, shall be signed by a responsible official of the organization, and must be accompanied by the license application fee as provided in section (3) of this rule. The Department shall reject applications which are incomplete, are not accompanied by the documents required by this section, or are not accompanied by a sufficient license fee. An applicant shall be immediately notified of any such deficiencies. The license application shall include the following information:

(a) The name, address and telephone number of the organization;

(b) A statement as to whether or not the organization has had a license to provide equipment or services for Monte Carlo events, bingo or raffle games denied, revoked or suspended by the State of Oregon or any other licensing authority; and

(c) The full names and addresses of the responsible officials of the organization.

(2) The applicant shall submit the following documents with the application. The information required in subsections (b) and (c) of this section shall be on forms prescribed by the Department and shall be signed by a responsible official of the organization:

(a) Proof of compliance with applicable state and local business registration laws and regulations;

(b) As required by Oregon ORS 464.280, a waiver of potential liability claims against the State of Oregon, its agencies, employees and agents for any damages resulting from any disclosure or publication of any information acquired by the Department during any of its investigations, inquiries or hearings;

(c) A consent to allow Department employees access to licensees' place of business for inspection and testing of equipment and examine records maintained by licensees;

(d) Consent to allow Department employees to be present on the premises where Monte Carlo events are held before, during, and after the conduct of the Monte Carlo event to inspect and test equipment and examine records maintained by licensee;

(e) A list of all games and gaming equipment offered for sale, lease, or rental;

(f) Such other information as requested by the Department.

(3) The non-refundable application and licensing investigation fees are as follows:

(a) Monte Carlo equipment supplier license — \$50;

(b) Monte Carlo event contractor license — \$300.

Stat. Auth.: ORS 914

Stats. Implemented: HB 3009, 1997

Hist.: JD 7-1997(Temp), f. 12-31-97, cert. ef. 1-1-98 thru 6-20-98; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0480

Monte Carlo Event Fees

(1) All annual Monte Carlo reports filed with the Department shall be accompanied by a fee, made payable to the Department of Justice, of 1 percent of the Monte Carlo handle listed in the report. A delinquency fee of

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\$20 or one percent of the fee described above, whichever is greater, shall be paid by the licensee if the report or regular fee is not delivered to the Department by the due date. The minimum delinquency fee shall increase to \$50 after 60 days from the due date of the report.

(2) When the filing date for reports and fees falls on a Saturday or legal holiday, the due date is the next business day following the Saturday or legal holiday.

Stat. Auth.: ORS 914
Stats. Implemented: HB 3009, 1997
Hist.: DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

137-025-0530

Effective Dates

(1) OAR 137-025-0010 is repealed, effective January 1, 1988.

(2) OAR 137-025-0020 to 137-025-0030, 137-025-0050 to 137-025-0110, 137-025-0190 to 137-025-0230 and 137-025-0330 shall take effect on November 1, 1987.

(3) OAR 137-025-0040, 137-025-0120 to 137-025-0180 and 137-025-0240 to 137-025-0320 shall take effect on January 1, 1988.

(4) The amended fee schedule, to take effect on January 1, 2007, shall apply as follows:

(a) For licensees/permit application fees, for licensees/permits which expire after December 31, 2007; and

(b) For report fees, for licensee reporting periods ending after December 31, 2006.

Stat. Auth.: ORS 464
Stats. Implemented: ORS 464.250(1)
Hist.: JD 8-1987, f. 10-30-87, ef. 11-1-87; DOJ 5-1998, f. 6-19-98, cert. ef. 6-20-98, Renumbered from 137-025-0330; DOJ 7-2006, f. 12-12-06, cert. ef. 1-1-07

Department of Oregon State Police Chapter 257

Rule Caption: Relating to the methods of operation and approval of breath-alcohol testing devices.

Adm. Order No.: OSP 3-2006

Filed with Sec. of State: 11-22-2006

Certified to be Effective: 11-22-06

Notice Publication Date: 10-1-06

Rules Adopted: 257-030-0105, 257-030-0110, 257-030-0120, 257-030-0130, 257-030-0140, 257-030-0150, 257-030-0160, 257-030-0170

Rules Amended: 257-030-0060, 257-030-0070

Rules Repealed: 257-030-0075, 257-030-0060(T), 257-030-0070(T), 257-030-0105(T), 257-030-0110(T), 257-030-0120(T), 257-030-0130(T), 257-030-0140(T), 257-030-0150(T), 257-030-0160(T), 257-030-0170(T)

Subject: Establishes the approval and methods of operation for the Intoxilyzer 8000. Amends methods of operation for the Intoxilyzer 5000. Repeals the approval and methods of operation for the Intoxilyzer 1400.

Rules Coordinator: Loree Fogleman—(503) 378-3720, ext. 4105

257-030-0060

Approved Breath Testing Equipment

The following breath testing equipment is approved under OAR 257-030-0040 for performing chemical analysis of a person's breath: The Intoxilyzer 5000:

(1) Reports of correlation studies furnished by the manufacturer(s) are maintained by the Oregon State Police.

(2) Correlation studies performed with the Intoxilyzer 5000 by Oregon State Police technician(s) are incorporated as **Appendix I: Studies Performed with the Intoxilyzer® 5000.**

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 183.335 & 813.160
Stats. Implemented: ORS 813.160
Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 2-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0070

Approved Methods for Operating the Intoxilyzer 5000

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 5000:

(1) Test Identification: A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument.

(2) Pre-Test Requirement:

(a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;

(b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit to test the alcoholic content of blood.

(c) There is no requirement that the subject rinse the mouth or remove dentures.

(3) Test Procedure:

(a) Ensure that the "Power" switch is on and the instrument is out of the "Not Ready" stage;

(b) Push "Start Test" button to initiate testing sequence;

(c) Insert test record card;

(d) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample when "Please Blow" appears on the display;

(e) Remove the test record card with printout of test results.

(4) Testing Sequence: The testing sequence the instrument follows will be:

(a) Diagnostics: The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational parameters are proper, the instrument will proceed to the next step;

(b) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(c) Subject Test: At this time the instrument will display "Please Blow". The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The subject test phase has been completed and will proceed to the next step when:

(A) The instrument has accepted the breath sample and displayed the result; or

(B) The subject test is aborted by action of the operator or by the instrument; or

(C) The three minute request period has lapsed; or

(D) The operator has depressed the Start Test button to indicate a refusal.

(d) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are proper the instrument will print the testing sequence information and display "Test Complete". If the post sample check is improper the instrument will abort the test and an error message will be displayed;

(e) Evidence Card: The final phase of the analysis is the printing of the evidence card. If all parameters and every operational aspect of the instrument were proper, a completed evidence card is received. If at any time there was a malfunction, error or condition that would affect the validity of the test, or any section of the instrument was not in perfect working order, the test would have been aborted and a completed evidence card would not be received.

(5) "Completed" Evidence Card: A "Completed" evidence card is one which indicates a breath test result, a refusal, or the presence of an interfering substance:

(a) An evidence card obtained using the "Reprint" option contains the identical information as would be printed on the original card and may be used in addition to or in place of the original test card;

(b) The operator shall record the following information on the evidence card: Name and date of birth of the subject tested, operator's name and breath test permit number;

(c) If the subject did not provide an adequate breath sample within the three minute request period, the instrument will indicate "Insufficient" and print an asterisk (*) before the "Subject Test" result, and "**Insufficient Sample — Value printed was highest obtained". The value printed is an accurate measurement of the sample provided and is equal to or less than the subject's actual blood alcohol value;

(d) If during the three minute request period the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button to terminate the breath test request phase. The instrument will indicate "Refused" and print "Subject Test Refused". A printed test record card, as described in this

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subsection, is not required to document the operator's decision to terminate the breath test request phase as "Refused".

(e) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, the message "Interfer Detected" will be displayed and the test will be aborted. The printout on the test record will indicate "Invalid Test *Interferant Detected". This is a completed test and the operator should not restart the testing sequence.

(6) Incomplete Evidence Card: The following conditions will result in an incomplete evidence card:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the breath pressure sensor at any time within the three minute request period, the instrument will indicate "No Sample Given" and print an asterisk (*) before "Subject Test" and "**No Sample Given". If the evidence card indicates "**No Sample Given", the operator should restart the testing sequence and proceed until a completed evidence card is obtained or until the subject refuses;

(b) If the operator receives an error message and print out from the instrument, such as "Invalid Test" (not to include "Invalid Test *Interferant Detected"), "Residual Alcohol Present", "Inhibited.RFI", "Invalid Mode", "Check Ambient Conditions", etc., the operator should take corrective action as outlined in the **Intoxilyzer 5000 Student Manual**, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a willful act, to follow the instructions of the operator. A printed test record card, as described in section (5) (d), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (5)(b) of this rule does not invalidate the test result obtained if the procedures were followed.

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

Stat. Auth.: ORS 183.335 & 813

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 2-1993(Temp), f. & cert. ef. 9-23-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 1-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0105

Definitions; Severability

(1) As used in these rules, "Chemical Test" and "Chemical Analysis" of a person's breath both mean the quantitative analysis for alcohol by means of direct or indirect measurement of physicochemical technique. Two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result shall constitute a "Chemical Test" of a person's breath.

(2) A "valid breath sample" means a sample of a person's breath provided in such a manner to be acceptable for analysis by the instrument.

(3) Severability: If any part or provision of OAR 257-030-0105 to 257-030-0170 or the application thereof is held invalid, the remaining part(s) or provision(s) shall remain in full force and effect.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0110

Criteria for Approval of Breath Testing Equipment

Any instrument or equipment to be used for the testing of a person's breath to determine the alcohol content of the blood may be approved by the Oregon State Police if one or more of the following criteria are met:

(1) Submission by the manufacturer or distributor of the instrument of at least two reports of studies correlating blood analysis and breath tests performed with this instrument, conducted by two separate laboratories of governmental health or law enforcement agencies, or independent organizations, financially unrelated to the manufacturer or distributor of such instruments.

(2) Provision of a production model of the instrument by the manufacturer or distributor to the Oregon State Police for a sufficient period of time to allow Oregon State Police technician(s) to conduct sufficient investigation and laboratory tests to adequately ascertain accuracy and reproducibility of the breath testing equipment.

(3) Those instruments which have been found by the National Highway Traffic Safety Administration to conform to the model specifications for evidential breath testing devices, and which are listed on the **Conforming Products List in the Federal Register**.

(4) Subsequent series of above instruments, so long as the subsequent changes and series do not diminish the instrument's ability to accurately determine blood alcohol content.

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

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0120

Approved Breath Testing Equipment

(1) The following breath testing equipment is approved under OAR 257-030-0110 for performing chemical analysis of a person's breath: The Intoxilyzer 8000:

(a) Correlation studies performed with the Intoxilyzer 8000 by Oregon State Police technician(s) are incorporated as **Appendix 2: Studies Performed with the Intoxilyzer® 8000**.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0130

Approved Methods for Operating the Intoxilyzer 8000

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 8000:

(1) **Test Identification:** A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument. Failure to record information specified in this section does not invalidate the test result obtained if the testing procedures were otherwise followed.

(2) **Pre-Test Requirement:**

(a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;

(b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit for the testing of alcoholic content of blood;

(c) The Pre-Test Requirement (observation period) does not require that the subject rinse the mouth or remove dentures prior to providing a breath sample;

(d) The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the Pre-Test Requirement.

(3) **Test Procedure:** The operator shall administer the test (consisting of two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result) as follows:

(a) Ensure that the instrument display indicates "Ready to Start";

(b) Push "Start Test" button to initiate the test sequence;

(c) Once the operator initiates the testing sequence by pressing the "Start Test" button, the testing sequence shall be conducted without interruption until:

(A) The instrument completes the test sequence and the operator obtains a completed test report; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The operator or the instrument aborts the testing sequence.

(d) Using the instrument's bar code scanner and/or keyboard, the operator shall enter sufficient information to:

(A) identify the operator conducting the test; and

(B) establish that the operator possesses a valid operator permit and PIN combination. The operator should also enter sufficient information to link the test report to the test subject. The instrument will start the testing sequence when the operator's permit has been validated and the data entry process is complete;

(e) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample through the mouthpiece when "Please blow into mouthpiece to activate tone" appears on the display;

(f) Continued Observation Period: The operator shall continue to observe the subject and remain certain that the subject does not take anything by mouth (drink, smoke, eat, take medication(s), etc.), vomit, or regurgitate liquid from the stomach into mouth until the second breath sample request period is completed. The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the observation period.

(g) When "Please blow into mouthpiece to activate tone" again appears on the display, have the subject provide a second breath sample;

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(h) Once the instrument accepts the second breath sample, it will automatically perform an analysis of a gaseous sample containing a known alcohol vapor concentration ("control sample") to test the accuracy and proper working order of the instrument. The operator does not need to take any action with the instrument at this time other than to monitor the progression of the instrument through the remainder of the test sequence. If all parameters are met, the instrument will proceed to the next step;

(i) When the instrument has successfully completed the test sequence, the operator will be afforded an opportunity to enter into and review comments added to the test report. The test report will then be printed with the test result.

(k) If at any time the operator has questions concerning the breath testing procedures or sequence, the operator should consult the **Intoxilyzer 8000 Operator's Guide** located near the instrument.

(4) **Testing Sequence:** The instrument will conduct the test as follows:

(a) **Test Authorization:** The operator shall enter into the instrument a permit and Personal Identification Number (PIN) information through the bar code scanner and/or keyboard for the purpose of: (1) identifying the operator conducting the test, and (2) establishing that the operator possesses a valid operator permit and PIN combination. Only operators who possess both a valid permit and PIN will be authorized to conduct a test sequence. If all parameters are met, the instrument will proceed to the next step;

(b) **Data Entry:** The operator should enter information into the instrument through the bar code scanner and/or keyboard for the purposes of linking a breath test document to the test subject. The instrument will proceed to the next step when the data entry process is complete;

(c) **Air Blank:** The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(d) **Diagnostics:** The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational components and standards are within proper parameters, the instrument will proceed to the next step;

(e) **Air Blank:** The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(f) **Breath Sample:** At this time the instrument will display "Please blow into mouthpiece to activate tone." The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The breath sample collection phase has been completed and will proceed to the next step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject has refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(g) **Air Blank:** This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(h) **Air Blank:** In preparation for the next breath sample, the instrument will delay for approximately ninety (90) seconds and then will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(i) **Breath Sample:** At this time, the instrument will again display "Please blow into mouthpiece to activate tone." The subject has approximately three minutes to comply with this request. The breath sample collection phase is complete and the instrument will proceed to the next step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(j) **Air Blank:** The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It

is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(k) **Control Sample:** The instrument will perform an analysis of a gaseous sample containing a known alcohol vapor concentration, the result of which must be within a range of 0.010 high to 0.020 low of the expected value, to test the accuracy and proper working order of the instrument. If all parameters are met, the instrument will proceed to the next step;

(l) **Air Blank:** This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(m) **Comments:** The instrument will display three (3) prompts for the operator to enter any observations made during the test sequence. This information will be printed on the test report by the instrument. Entry of comment information is not required and does not preclude the operator from placing handwritten comments on the test report. The instrument will proceed to the next step when the comment entry process is complete.

(n) **Test Report:** The final phase of the testing sequence is the printing of the test report. If all parameters and every operational aspect of the instrument were proper, a completed test report is produced by the instrument. The test report will be titled "Breath Test Report" with the result of the chemical test printed in the "Test Result" box. If at any time there was a malfunction, event, or condition that would affect the validity of the test, or any section of the instrument was not in correct working order, the instrument would have aborted the test sequence and not produced a completed test report.

(5) **Completed Test Report:** A "Completed" test report is one which indicates a numeric test result, a refusal, or the presence of an interfering substance:

(a) A test report obtained using the "Reprint" option contains the identical information as would be printed on the original report and may be used in addition to or in place of the original test report. A "Reprint" may be performed either locally at the instrument location or remotely by the Oregon State Police;

(b) If during either of the breath sample collection periods, the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button or the "R" key on the instrument keyboard to terminate the breath testing sequence. The instrument will indicate "Refused" on the display and a test result of "Refused" will be produced. A printed test report, as described in this subsection, is not required to document the operator's decision to terminate the breath test request phase as refused.

(c) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, it will display the message "Interfering Substance Detected" and abort the testing sequence. The printout on the test report will indicate "Interfering Substance" and "Invalid Test — Interfering Substance Detected". This is a completed test and the operator should not restart the testing sequence.

(6) **Incomplete Test Report:** The following conditions will result in an incomplete test report:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the minimum breath flow requirements of the instrument at any time within either of the three minute breath sample collection periods, the instrument will indicate "No Sample Given" and print "Invalid Test — No Sample Given". If the test report indicates "No Sample Given", the operator should restart the testing sequence and proceed until a completed test report is obtained;

(b) If the operator receives an exception message and printout from the instrument, such as "Invalid Sample — Residual Alcohol Present", or "Invalid Test —" (not to include "Invalid Test — Interfering Substance Detected"), etc., the operator should consult the "Suggested Corrective Action" outlined near the bottom of the test report, take appropriate action, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a willful act, to follow the instructions of the operator. A printed test report, as described in section (5)(b), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (4)(b) of this rule does not invalidate the test result obtained if the testing procedures were otherwise followed.

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

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

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Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0140

Determining Agreement of Breath Samples Within a Testing Sequence

Agreement between two valid breath samples within a testing sequence is established when the subject sample measurements agree within plus or minus ten percent of their mean, inclusive of the upper and lower bounds of the range. If the instrument establishes agreement, the lower breath sample measurement shall be truncated to two decimal places and reported as the chemical test result. If the subject sample measurements do not agree, the instrument will abort the testing sequence and display "Sample Correlation Failure".

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0150

Qualifications of Breath Test Equipment Operators

(1) No individual shall operate approved breath testing equipment to determine the alcoholic content of the blood of a person in accordance with the provisions of ORS 813.160 unless that individual has been issued and maintains a valid permit to operate such equipment by the Oregon State Police.

(2) To qualify for training and to obtain a permit for the operation of approved breath testing equipment, an individual must be a police officer as defined in ORS 801.395 or a trained technician of the Oregon State Police. The term police officer includes reserve police officer.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0160

Training for Operators of Breath Test Equipment

(1) The Oregon State Police, or instructors approved by the Oregon State Police will provide a course of instruction as provided in ORS 813.160.

(2) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required. Each officer or technician obtaining a passing grade will be issued a permit by the Oregon State Police stating the method and equipment the officer or technician is qualified to operate.

(3) Upon issuance of a permit to operate by the Oregon State Police, the operator shall select a Personal Identification Number (PIN) to be used by the Oregon State Police to establish the operator's operator permit and PIN combination. The operator permit number shall be the operator's Department of Public Safety Standards and Training (DPSST) number. The operator's permit and PIN combination shall be unique and kept confidential by both the operator and the Oregon Department of State Police.

(4) Expiration:

(a) Permits shall expire at intervals not to exceed three (3) years from the original date of issue, unless renewed for an additional three (3) year period.

(5) Renewal:

(a) Operators that successfully complete the permit renewal process shall be issued a new expiration date not to exceed three years from the date of renewal. The issuance of a renewal date shall have the effect of extending the same authorizations granted under the original permit to operate breath testing equipment.

(6) Suspension and Re-instatement of Permits:

(a) Operators that do not successfully complete the permit renewal process before the expiration date assigned to the individual permit shall have their authorization to operate breath testing equipment suspended.

(b) Upon suspension of a permit, an operator shall be granted a "grace period" not to exceed ninety (90) days in which to complete the renewal process without further penalty or reduction in operator status. Upon successful completion of the renewal process, the operator's permit shall be reinstated with the same authorizations issued under the original permit.

(c) Failure to complete the renewal process within the ninety (90) day grace period shall result in termination of the operator's permit.

(7) Termination and Revocation of Permits:

(a) Pursuant to ORS 813.160, operator permits are subject to termination and revocation at the discretion of the Department of Oregon State Police.

(b) Termination of an operator permit shall occur at 12:01 a.m. upon the ninety-first (91st) day after the date of expiration assigned to the permit.

(c) Revocation of an operator permit shall occur for any of the following reasons including, but not limited to:

(A) Disqualification of operator status or eligibility for training under OAR 257-030-0150;

(B) Failure to adhere to approved methods and procedures for operating breath testing equipment under ORS 813.160;

(C) For any other conduct deemed contrary to the Implied Consent Program at the discretion of the Department of State Police.

(d) An operator whose permit has been terminated or revoked by the Department may be eligible for reinstatement of their permit upon successful completion of an approved course of instruction as provided in ORS 813.160.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0170

Certification of Accuracy of Breath Test Equipment

Pursuant to ORS 813.160(b)(C), a trained technician of the Oregon State Police shall conduct an accuracy test of approved breath testing equipment and certify the accuracy of the equipment if accuracy test performance is within a range of 0.010 high to 0.020 low of the expected value. The testing can be performed by either an on site test, or by remote testing via telephone, modem, or Internet connection utilizing a computer. The computerized testing will utilize a security system to ensure the integrity of the scientific testing of the breath test equipment.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

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

Rule Caption: Adoption of the 2006 International Fire Code as amended.

Adm. Order No.: OSFM 13-2006

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 4-1-07

Notice Publication Date: 9-1-06

Rules Amended: 837-040-0001, 837-040-0010, 837-040-0020, 837-040-0140

Subject: The adoption of the 2006 International Fire Code as amended by the Office of State Fire Marshal to be known as the Oregon Fire Code, 2007 edition. The proposed amendments can be found on the Office of State Fire Marshal website at <http://egov.oregon.gov/OOHS/SFM/> or for copies, contact Pat Carroll at 503-373-1540, ext. 276 or John Caul at 503-373-1540, ext. 269.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-040-0001

Scope

(1) The **International Fire Code** and the Oregon amendments represent a total scope of regulation.

(2) None of the individual chapters in the International Fire Code and Oregon amendments are stand alone requirements.

(3) The provisions of these chapters are not retroactive for existing facilities unless the chief determines that the condition presents a distinct hazard to life or property.

(Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: FM 6-1992, f. 6-15-92, cert. ef. 7-15-92; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

837-040-0010

Adoption of the International Fire Code

(1) The Oregon Fire Code is generally adopted every three years coinciding with the publication of a nationally recognized fire code.

(2) Effective April 1, 2007 the 2007 Oregon Fire Code is the 2006 edition of the International Fire Code, as published by the International Code Council, and as amended by the Office of State Fire Marshal.

(Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

ADMINISTRATIVE RULES

Stat. Auth: ORS 476.030
Stats. Implemented: ORS 476.030
Hist.: FM 3-1986, f. & ef. 3-11-86; FM 5-1986 (corrects FM 3-1986), f. & ef. 4-30-86 & Renumbered from 837-040-0005, Sec. (3) Uniform Fire Code; FM 3-1989, f. 6-30-89, cert. ef. 7-1-89; FM 6-1990, f. & cert. ef. 9-13-90; FJM 6-1992, f. 6-15-92, cert. ef. 7-15-92; FM 2-1996, f. 1-22-96, cert. ef. 4-1-96; OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 3-1998, f. & cert. ef. 9-30-98; OSFM 4-1999, f. 12-29-99, cert. ef. 1-1-00; OSFM 3-2000, f. 4-1-00, cert. ef. 5-1-00; OSFM 13-2000, f. 10-3-00, cert. ef. 11-1-00; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 8-2004(Temp), f. 12-29-04, cert. ef. 1-3-05 thru 6-30-05; OSFM 11-2005, f. & cert. ef. 6-27-05; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

837-040-0020

Amendments to the Oregon Fire Code

(1) The Office of State Fire Marshal may amend the Oregon Fire Code approximately midway between publications of the International Fire Code based on proposed code amendments submitted for consideration by interested persons.

(2) Any time between publications of the International Fire Code, The Office of State Fire Marshal may initiate and adopt code amendments to the Oregon Fire Code, as circumstance merits.

(Referenced publications are available for review at the agency. See agency web site for information on where to purchase publications.)

Stat. Auth: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

837-040-0140

Adoption of the Oregon Structural Specialty Code and Oregon Mechanical Specialty Code

The fire and life safety provisions of the 2007 edition of the Oregon Structural Specialty Code and the 2007 edition of the Oregon Mechanical Specialty Code is hereby adopted as a standard for the purpose of evaluation of existing buildings.

(Referenced publications are available for review at the agency. See Building Codes Division web site for information on where to purchase publications.)

Stat. Auth.: ORS 476.030

Stats. Implemented: ORS 476.030

Hist.: OSFM 1-1998, f. & cert. ef. 4-30-98; OSFM 9-2001, f. 10-3-01, cert. ef. 2-1-02; OSFM 4-2004, f. 3-26-04, cert. ef. 10-1-04; OSFM 1-2006(Temp), f. 1-9-06 cert. ef. 2-1-06 thru 7-28-06; OSFM 9-2006, f. & cert. ef. 6-12-06; OSFM 13-2006, f. 12-1-06, cert. ef. 4-1-07

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Rule Caption: Extend the term of state explosives magazine certifications to align with federal explosives magazine certifications.

Adm. Order No.: OSFM 14-2006

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 11-1-06

Rules Amended: 837-012-1200, 837-012-1210, 837-012-1220, 837-012-1230, 837-012-1240, 837-012-1250, 837-012-1260, 837-012-1270, 837-012-1280, 837-012-1290, 837-012-1300, 837-012-1310, 837-012-1320, 837-012-1330, 837-012-1340, 837-012-1350, 837-012-1360, 837-012-1370, 837-012-1380, 837-012-1390, 837-012-1400, 837-012-1410, 837-012-1420

Subject: To extend the term of explosives certifications, as allowed by ORS 183.705. This rule change will allow the extension of the length of magazine certifications issued by the Office of State Fire Marshal, to align with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) magazine certifications. Also included in these rule changes are housekeeping items, such as italicizing defined words, rather than capitalizing them.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-1200

Purpose and Scope

(1) The purpose of these rules is to establish standards, policies, and procedures for the *possession*, storage, and use of *explosives* for the protection and safety of the public, first responders, and *individuals* purchasing, possessing, storing, using, and transporting *explosives*.

(2) The scope of these rules applies to the implementation of ORS 480.200 through 480.290.

Stat. Auth.: ORS 476.030 & 480.280

Stats. Implemented: ORS 480.200 - 480.290

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1210

Definitions

For purposes of OAR 837-012-1200 through 837-012-1420 the following definitions apply:

(1) "Authorized Agent" as referenced in ORS 480.210 means an employee or representative of a *manufacturer of explosives* or *dealer in explosives* licensed by *BATFE* who possesses explosives for purposes of manufacturing or dealing. The term does not include an employee or representative who uses or possesses explosives for other purposes.

(2) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(3) "Certificate of Possession" has the meaning provided in ORS 480.200(1).

(4) "Certificate of Registration" has the meaning provided in ORS 480.200(2).

(5) "Day Box" means:

(a) A structure or container used for the temporary transport or temporary keeping of *explosives* for present use.

(b) Is always attended and in line of sight vision of a holder of a *certificate of possession*.

(c) Complies with the construction requirements of NFPA 495, Explosive Materials Code, 2001 Edition, 8-6.3 (A) and (B).

(6) "Dealer" as referenced in ORS 480.210 means any *person* engaged in the business of distributing *explosives* at wholesale or retail.

(7) "Detonator" means any device containing an initiating or primary *explosive* that is used for initiating detonation, and not containing more than 10g of total *explosive* material per unit, excluding ignition or delay charges. The term includes, but is not limited to, electric detonators of the instantaneous and delay types, *detonators* for use with safety fuses, detonating cord delay connectors, and non-electric detonators of the instantaneous and delay types that consist of a detonating cord, a shock tube, or any other replacement for electric leg wires according to *NFPA 495*, Explosive Materials Code, 2001 Edition.

(8) "Expire" as referenced in ORS 480.239 and 480.244 means a renewal *certificate of possession* or renewal of *certificate of registration* has not been issued by the Office of State Fire Marshal on or before the expiration date of the current certificate.

(9) "Explosive" or "Explosives" has the meaning provided in ORS 480.200(3).

(10) "Facility" means a single building, structure, or container used or intended to be used for the storage of *explosives*. A *day box* is not a *facility*.

(11) "Fertilizer" means any substance, or any combination or mixture of substances, designed for use principally as a source of plant food, in inducing increased crop yields or plant growth, or producing any physical or chemical change in the soil and contains five percent or more of available nitrogen, phosphorus pentoxide (phosphoric acid) or potassium oxide (potash), singly, collectively or in combination, except hays, straws, peat and leaf mold, and unfortified animal manures according to ORS 633.310(5).

(12) "Formal Hearing" means a proceeding before a hearings officer conducted pursuant to the Administrative Procedures Act (APA), ORS chapter 183.

(13) "Individual" means a single human being.

(14) "Informal Conference" means a meeting between the party and the Office of State Fire Marshal, prior to a *formal hearing*, that may include a discussion about whether a basis exists for informal disposition of a contested case by stipulation, agreed settlement, consent order or other means.

(15) "Lapse" as referenced in ORS 480.239 and 480.244, has the meaning provided in subsection (8) of this rule.

(16) "Magazine" has the meaning provided in ORS 480.200(5). (Refer to OAR 837-012-1210(10) for a definition of *facility*).

(17) "Manufacturer" as referenced in ORS 480.210 means any *person* engaged in the business of manufacturing *explosives* for purposes of sale or distribution or for the *person's* own use.

(18) "May" means a regulation of conduct and implies probability or permission.

(19) "May Not" means a prohibition of conduct.

(20) "Must" means a mandatory requirement.

(21) "NFPA" means the National Fire Protection Association.

(22) "Owner" means a *person* with a vested ownership interest in the *magazine*. The term does not mean a renter, lessor, or sub-lessor of the *magazine*.

(23) "Person" means one or more *individuals*, legal representatives, partnerships, joint ventures, associations, corporations (whether or not

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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.

(24) "Possession" means to own, to have physical *possession* of, or otherwise to exercise dominion or control over explosives.

(25) "Re-location" for purposes of ORS 480.244 and OAR 837-012-1360 means moving a *magazine* any distance.

(26) "Request for Hearing" means a written request for a *formal hearing*.

(27) "Small arms ammunition" has the meaning provided in ORS 480.200(6).

(28) "Small arms ammunition primers" has the meaning provided in ORS 480.200(7).

(29) "Store" means to deposit and place *explosives* in a *magazine* for safekeeping and future use.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1220

General

(1) A *certificate of possession* allows the holder of the certificate to engage in those activities including the purchase, *possession*, storage and transportation of *explosives* when those activities are otherwise in conformance with the requirements of these rules and any other applicable federal, state and local laws, rules and regulations.

(2) Holders of a *certificate of possession* must comply with the following:

(a) ORS 480.200 through 480.290.

(b) OAR 837-012-1200 through 837-012-1420.

(c) All applicable regulations in the Oregon Fire Code, 2004 Edition, and Oregon Structural Specialty Code, 2004 Edition.

(d) NFPA 495, *Explosive Materials Code*, 2001 Edition, as adopted in OAR 837-012-1340.

(e) All applicable federal, state and local laws, rules, and regulations governing *explosives*.

(3) Holders of a *certificate of possession* may purchase *explosives* only from those *persons* who have a *BATFE* license to sell *explosives*.

(4) Pursuant to ORS 480.210(1)(b), a *BATFE* dealer or *manufacturer* license authorizes the holder of such a license to possess *explosives* only when the *possession* is for purposes of a use or activity expressly authorized by the license, namely the business of manufacturing or dealing in *explosives*.

(5) Proof pursuant to ORS 480.210(3)(b) must be:

(a) A certified copy of a *manufacturer* or *dealer* license issued by the *BATFE*;

(b) A written certification signed by a *person* that holds the license referred to in subsection (a) that certifies under penalty of perjury that the *person* charged under ORS 480.210(1) is an employee or representative of the licensed *person* and is engaged in the business of manufacturing or dealing in *explosives*.

(6) Holders of a *certificate of possession* or a *certificate of registration* must notify the Office of State Fire Marshal in writing of a change in their address within two weeks of the date of the change.

(7) Holders of a *certificate of registration* must notify the Office of State Fire Marshal in writing of a change in ownership of a *magazine* within two weeks of the date of the change.

(8) Holders of an unexpired *certificate of possession* or *certificate of registration* may request a duplicate copy of their certificate by certifying in writing to the Office of State Fire Marshal that their certificate has been lost, stolen or destroyed. Written requests must be signed and dated by the holder of the certificate.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1230

Fees

(1) Fees must be payable to the Office of State Fire Marshal.

(2) Fees may be paid at, or mailed to, the Office of State Fire Marshal and must accompany the appropriate application.

(3) Payment may be made by personal check, business check, cashier's check or money order. If the fee is paid by a personal or business check, the application will be placed in a pending status until the check clears the bank.

(4) Fees are:

(a) \$50 — *Certificate of Possession*

(b) \$30 — Examination

(c) \$125 — Initial two-year *magazine registration* with Office of State Fire Marshal inspection

(d) \$187.50 — three-year *magazine registration* renewal with Office of State Fire Marshal inspection

(e) \$250 — four-year *magazine registration* with Office of State Fire Marshal inspection

(f) \$50 — Initial two-year *magazine registration* with acceptance of *BATFE* inspection

(g) \$75 — three-year *magazine registration* renewal with acceptance of *BATFE* inspection

(h) \$100 — four-year *magazine registration* renewal with acceptance of *BATFE* inspection

(5) Fees are non-refundable and non-transferable.

(6) Three- and four-year renewal fee authority is in accordance with ORS 183.705 and OAR 837-012-1330(2).

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 4-2005, f. & cert. ef. 2-17-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 14-2005, f. 10-21-05, cert. ef. 10-22-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1240

Applications

(1) Applications for the examination required under ORS 480.225(1)(j), a *certificate of possession*, and a *certificate of registration* must be on forms provided by the Office of State Fire Marshal.

(2) Applicants must complete the applications in full and pay the applicable fees before the Office of State Fire Marshal will process the applications.

(3) Pursuant to federal law, the Office of State Fire Marshal requires disclosure of the applicant's social security number on the applications. Any social security number disclosed on an application may be used for identification purposes only and remains confidential unless otherwise provided by law.

(4) Application for the examination required under ORS 480.225(1)(j):

(a) The application must be completed by the individual who will be taking the required examination.

(b) The application and fee must be received by the Office of State Fire Marshal a minimum of fourteen days before the applicant intends to complete the examination to allow time for:

(A) The fee payment to clear the bank.

(B) The Office of State Fire Marshal to notify the applicant of the acceptance of the application and fee payment.

(5) Application for a *certificate of possession* under ORS 480.210. Any individual who intends to possess *explosives* must:

(a) Complete the application.

(b) Submit a separate application and fee for each *certificate of possession* to be issued.

(c) Submit with their application a fingerprint card compatible with the processing requirements of the Oregon State Police Identification Services Division.

(6) Application for a *certificate of registration* of *magazine* under ORS 480.244. The owner of the *magazine* must:

(a) Complete the application.

(b) Submit a separate application for each *magazine* to be registered.

(c) Specify on their application which agency they select to inspect their *magazine*:

(A) The Office of State Fire Marshal

(B) The Bureau of Alcohol, Tobacco, Firearms and Explosives.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

ADMINISTRATIVE RULES

837-012-1250

Eligibility for a Certificate of Possession

To be eligible for a *certificate of possession*, applicants *must* meet the requirements under ORS 480.225 and 480.230.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1260

Certificate of Possession — Examination

(1) Upon receipt and processing of a completed application, the Office of State Fire Marshal will notify the applicant of the date, time and place for the examination.

(2) Applicants *must* provide valid photo identification at the time they appear to take the examination. Only photo identification issued by the Department of Motor Vehicles in the applicant's state of residency is accepted by the Office of State Fire Marshal.

(3) The examination is based upon, and examines the applicant's knowledge of:

(a) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340

(b) ORS 480.200 through 480.290.

(4) The examination is open book.

(a) Applicants are responsible for providing their own copy of *NFPA* 495, Explosive Materials Code, 2001 Edition, to use during the examination.

(b) The Office of State Fire Marshal provides a copy of ORS 480.200 through 480.290 for use during the examination.

(5) To pass the examination, the applicant *must* answer correctly 80% or more of the examination questions.

(6) The Office of State Fire Marshal notifies applicants of the results of their examination using the address listed on the applicant's examination application.

(7) If an applicant fails to:

(a) arrive at the scheduled examination appointment, (b) complete the examination, or

(c) pass the examination, the applicant *must* submit a new application and fee pursuant to OAR 837-012-1230 and 837-012-1240 to the Office of State Fire Marshal.

(8) Passing examination scores are valid for two years from the date of the examination. If the examinee does not apply for and receive a *certificate of possession* within two years from the date of passing the examination, the examination score will be considered invalid and the applicant *must* re-take and pass the examination.

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

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1270

Certificate of Possession — Issuance

(1) Upon receipt of a properly completed application, application fee, and fingerprint card, the Office of State Fire Marshal will conduct an investigation to ensure the applicant meets the requirements of ORS 480.225 and 480.230.

(2) The investigation includes, but is not limited to:

(a) Electronic processing of fingerprint cards through the Law Enforcement Data System.

(b) Accessing records at Mental Health and Developmental Disability Services Division pursuant to ORS 480.225(1)(d).

(3) Upon its approval of an application, the Office of State Fire Marshal issues a *certificate of possession* to the applicant.

(4) The Office of State Fire Marshal assigns a unique number to each *certificate of possession* issued.

(5) The issuance of a *certificate of possession* does not in any way constitute an approval by the Office of State Fire Marshal of any *explosives* possessed under the certificate.

(6) The Office of State Fire Marshal mails the original *certificate of possession* to the applicant at the address listed on the application.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1280

Certificate of Possession - Renewal

(1) A *certificate of possession* *must* be renewed every three years.

(2) The holder of the *certificate of possession* is not required to retake the examination required under ORS 480.225(1)(j) unless the current certificate *expires* or *lapses*.

(3) All other requirements for the issuance of a renewal of *certificate of possession* are the same as the issuance of the original certificate.

(4) Applications for the renewal of a *certificate of possession* *may not* be submitted to the Office of State Fire Marshal more than 90 days prior to the expiration date of the current certificate.

(5) Applications for the renewal of a *certificate of possession* should be received by the Office of State Fire Marshal at least 60 days prior to the expiration date of the current certificate. This allows the Office of State Fire Marshal adequate time to process the application prior to the expiration date of the current certificate.

(6) Applications not received by the Office of State Fire Marshal at least 60 days prior to the expiration date of the current may not *certificate of possession* could result in the expiration or *lapse*, of the current certificate.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1290

Explosives Storage

(1) *Explosives* *may* be stored only in a *magazine* that has been issued a *certificate of registration* by the Office of State Fire Marshal.

(2) The storage of *explosives* *must* be in compliance with all applicable requirements of:

(a) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340.

(b) Oregon Fire Code, 2004 Edition.

(c) Oregon Structural Specialty Code, 2004 Edition.

(d) All applicable federal, state and local laws, rules and regulations pertaining to explosives.

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

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1300

Magazine Registration and Inspection

(1) *Magazines* not issued a *certificate of registration* *may not* be used for the storage of explosives.

(2) To be eligible for a *certificate of registration*, a *magazine* *must* comply with all requirements of:

(a) ORS 480.200 through 480.290.

(b) OAR 837-012-1200 through 837-012-1240.

(c) Oregon Fire Code, 2004 Edition.

(d) Oregon Structural Specialty Code, 2004 Edition.

(e) *NFPA* 495, Explosive Materials Code, 2001 Edition as adopted in OAR 837-012-1340

(f) All applicable federal, state and local laws, rules and regulations pertaining to *explosives*.

(3) Prior to the issuance of a *certificate of registration*, the *magazine* *must* be inspected for compliance with these rules.

(4) The inspection *may* be completed by:

(a) The Office of State Fire Marshal

(b) The *BATFE* pursuant to OAR 837-012-1320.

(5) A *certificate of registration* allows the holder of the certificate to *store explosives* in the registered magazine when otherwise in conformance with the requirements of these rules.

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

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1310

State Fire Marshal Inspection of Magazines

(1) The State Fire Marshal may complete an inspection of a *magazine* prior to the issuance of a *certificate of registration* pursuant to OAR 837-012-1300(3) and (4).

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(2) Upon receipt of information that a *magazine* is not in compliance with the requirements of these rules, the Office of State Fire Marshal *may* conduct an inspection of the *magazine*.

(3) If, upon its inspection, the Office of State Fire Marshal determines the *magazine* is not in compliance, the Office of State Fire Marshal *may* issue a *notice of correction* to the *owner* of the *magazine*.

(4) All *notices of correction* are on forms provided by the Office of State Fire Marshal.

(5) *Notices of correction* specify the deficiencies required to be corrected prior to the *magazine* being issued a *certificate of registration*.

(6) *Notices of correction* specify the date by which the deficiencies are to be corrected.

(7) A copy of each *notice of correction* is provided by the OSFM to the *owner* of the *magazine* by:

- (a) personal service;
- (b) service by certified mail
- (c) service by regular mail.

(8) After presenting a copy of the *notice of correction* to the *owner* of the *magazine*, the Office of State Fire Marshal retains all remaining copies of the notice until the re-inspection of the *magazine* is completed.

(9) At the end of the time allowed for correction of the deficiencies, as required by the *notice of correction*, the Office of State Fire Marshal *may*:

(a) Re-inspect the *magazine* to determine if the deficiencies specified in the *notice of correction* have been corrected.

(b) Complete the re-inspection section of the *notice of correction*.

(10) Upon re-inspection of the *magazine*, the Office of State Fire Marshal provides a copy of the completed *notice of correction* to the *owner* of the *magazine* pursuant to subsection (7) of this rule.

(11) Failure to correct the deficiencies noted in the *notice of correction* will result in the following, until such time as the deficiencies are corrected:

(a) The *magazine* will not be issued a *certificate of registration*.

(b) The *magazine* will not be issued a renewal *certificate of registration*.

(c) The *certificate of registration* for the *magazine* may be suspended or revoked.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1320

Certificate of Registration of Magazine — With Bureau of Alcohol, Tobacco, Firearms and Explosives Inspection

(1) The Office of State Fire Marshal *may* accept an inspection completed by *BATFE* in lieu of the Office of State Fire Marshal inspection.

(2) The decision to accept or not accept the *BATFE* inspection rests solely with the Office of State Fire Marshal.

(3) The Office of State Fire Marshal *may* consider, but is not limited to, the following criteria in deciding whether to accept a *BATFE* inspection:

(a) The inspection was completed not more than 180 days prior to the date of the application for a *certificate of registration*;

(b) A United States Post Office postmark date is used to determine the date of application.

(c) The inspection proves the *magazine* is in compliance with these rules.

(4)(d) If deficiencies are noted on the *BATFE* inspection, the Office of State Fire Marshal *may* decide to conduct its own inspection. Should the Office of State Fire Marshal decide to complete its own inspection, the applicant *must* submit additional payment of the following applicable fee prior to the Office of State Fire Marshal conducting its inspection:

(a) \$75 for an initial two-year registration.

(b) \$137.50 for a three-year renewal.

(c) \$175 for a four-year renewal.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 5-2004, f. & cert. ef. 11-10-04; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2005(Temp), f. & cert. ef. 11-9-05 thru 5-7-06; OSFM 7-2006, f. & cert. ef. 5-5-06; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1330

Certificate of Registration of Magazine — Renewal

(1) All requirements for the issuance of a *certificate of registration* *must* be met before a certificate is renewed.

(2) Pursuant to ORS 183.705, *certificates of registration* may be renewed every two years, or up to four years, as determined by the Office of State Fire Marshal, in order to bring the Office of State Fire Marshal *magazine* registration renewal dates in alignment with the *BATFE* renewal dates.

(3) Applications for the renewal of a *certificate of registration* *may not* be submitted to the Office of State Fire Marshal more than 120 days prior to the expiration date of the current certificate.

(4) Applications for the renewal of a *certificate of registration* should be received by the Office of State Fire Marshal at least 90 days prior to the expiration date of the current certificate. This allows the Office of State Fire Marshal adequate time to process the application, including inspection by the State Fire Marshal of the *magazine*, prior to the expiration date of the current certificate.

(5) Applications not received by the Office of State Fire Marshal at least 90 days prior to the expiration date of the current *certificate of registration* may result in the expiration or *lapse*, of the current certificate.

(6) If a current *certificate of registration* expires or lapses, *explosives* *may not* be stored in the *magazine* until the *magazine* is issued a renewal *certificate of registration*.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1340

Fire and Life Safety Standards

NFPA 495, Explosive Materials Code, 2001 Edition, is hereby adopted with the following exceptions:

(1) Chapter four is not adopted.

(2) Although *NFPA* 495, Explosive Materials Code, 2001 Edition, requires *magazines* to be opened and inspected at intervals of three days, the Office of State Fire Marshal requires *magazines* to be opened and inspected at intervals of seven days. (See *NFPA* 495, Explosive Materials Code, 2001 Edition, 8-7.2).

(3) *NFPA* standards regarding the transportation of explosives are hereby adopted for purposes of the examination required under ORS 480.225(1)(j).

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 1-2004, f. & cert. ef. 1-14-04; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1350

Removal/Confiscation of Explosives

(1) *Explosives* *may not* be stored in a *magazine*, or possessed by an *individual* if:

(a) An application for a *certification of registration*, or *certificate of possession*, is denied.

(b) A *certificate of registration*, or *certificate of possession*, is suspended or revoked pursuant to ORS 480.244(9) or 480.270 or these rules.

(c) A *certificate of registration*, or *certificate of possession*, expires or lapses.

(2) The Office of State Fire Marshal may confiscate *explosives* possessed or stored in violation of ORS 480.200 to 480.290 or these rules.

(3) Any confiscation of *explosives* by the Office of State Fire Marshal are carried out pursuant to a warrant.

(4) Upon finding a violation, the Office of State Fire Marshal may order that any *explosives* be:

(a) Transferred to a *magazine* that has been issued a *certificate of registration* by the Office of State Fire Marshal

(b) Returned to the supplier of the *explosives*

(c) Disposed of in any manner the Office of State Fire Marshal sees fit, including destruction of the *explosives*.

Stat. Auth.: ORS 476.030 & 480.280
Stats. Implemented: ORS 480.239
Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1360

Magazine Re-location — Reporting

(1) *Re-location* of any *magazine* required to be registered under ORS 480.244 *must* be reported to the Office of State Fire Marshal within 24 hours of its *relocation*.

(2) The *owner* or the *individual* with either:

(a) Physical *possession*; or

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(b) Control of the *magazine* is the *individual* responsible for reporting the *relocation* of the *magazine*.

(3) The toll free reporting number for reporting *relocation* of *magazines* is 1-877-459-9366.

(4) A report of *relocation* of the *magazine* must include the following information:

(a) *Certificate of registration* number issued to the *magazine*.

(b) New location of the *magazine* including the street address, city, and state.

(c) The name and phone number of the *individual* reporting the *relocation* of the *magazine*.

(d) The name of the fire department having jurisdiction, if known.

(3) There is no fee for reporting the *relocation* of a *magazine*.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1370

Record Keeping Requirements for Explosives

(1) Holders of a *certificate of possession* must maintain a record of the type and quantity of all *explosives* possessed.

(2) The Office of State Fire Marshal may inspect the records required to be maintained under ORS 480.235(5) and subsection (1) of this rule:

(a) At the time of the *magazine* inspection by the Office of State Fire Marshal; or

(b) Upon demand by the Office of State Fire Marshal.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1380

Hazardous Materials Reporting

Persons possessing 10 pounds or more of *explosives*, as classified by the United States Department of Transportation, must annually complete the Hazardous Substance Survey pursuant to ORS 453.307 to 453.372 and OAR chapter 837, division 85.

Stat. Auth.: ORS 453, 476, 478 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 5-2000(Temp), f. & cert. ef. 4-12-00 thru 10-9-00; OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1390

Denial, Suspension or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a *certificate of possession* if:

(a) An *individual* who has applied for, or has been issued, a *certificate of possession* is ineligible for the certificate under ORS 480.225 or 480.230; or

(b) The *individual* who has been issued a *certificate of possession* has been convicted of a violation under ORS 480.990(6).

(2) If an *individual* to whom a *certificate of possession* was issued is found to be ineligible for the certificate under ORS 480.225 or 480.230, the Office of State Fire Marshal may revoke the certificate.

(a) An *individual* is ineligible for a *certificate of possession* if, before or after being issued a certificate, the *individual* fails to comply with ORS 480.225 or 480.230.

(b) An *individual* is ineligible for a *certificate of possession* under ORS 480.225(1)(1) if the *individual* fails to possess, use, store or transport *explosives* in accordance with these rules and all other applicable federal, state or local laws, rules or regulations.

(3) If an *individual* to whom a *certificate of possession* was issued has been convicted of a violation under ORS 480.990(6), the Office of State Fire Marshal may consider the following guidelines:

(a) If the *individual* has been convicted of one violation, the Office of State Fire Marshal may deny, suspend or revoke the *certificate of possession* for up to one year.

(b) If the *individual* has been convicted of two violations, the Office of State Fire Marshal may deny, suspend or revoke the *certificate of possession* for up to two years.

(c) If the *individual* has been convicted of three or more violations, the Office of State Fire Marshal may deny, suspend or revoke the *certificate of possession* for up to three years.

(4) The Office of State Fire Marshal may deny, suspend or revoke a *certificate of registration* if:

(a) The *magazine* registered, or to be registered, is ineligible for registration under ORS 480.200 to 480.290 or these rules; or

(b) For failure to comply with any provision of ORS 480.200 to 480.290 or these rules.

(5) If a *magazine* that has been issued a *certificate of registration* is found to be ineligible, the Office of State Fire Marshal may revoke the certificate.

(6) A *magazine* is ineligible for a *certificate of registration* if, before or after the *magazine* is registered, the *magazine* does not comply with ORS 480.244 or these rules.

(7) Suspension or revocation of a *certificate of possession* or a *certificate of registration* may include suspension or revocation of the current certificate and the right to apply for a renewal certificate.

(8) The period for denial, suspension or revocation of a *certificate of possession* or *certificate of registration* may not exceed three years, unless otherwise provided by law. In determining the appropriate sanction, the Office of State Fire Marshal may consider the following criteria:

(a) The severity of the violation or violations and the impact on public safety.

(b) The number of similar or related violations.

(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 *individual* or *person*.

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation.

(9) Any notice of denial, suspension or revocation issued by the Office of State Fire Marshal is mailed by certified mail to the most recent address on file with the Office of State Fire Marshal pursuant to OAR 837-012-1220(6).

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1400

Contested Cases

(1) A *person* may request a formal hearing regarding the suspension, revocation, or denial of a *certificate of registration* or a *certificate of possession* by the Office of State Fire Marshal.

(2) A *request for hearing* must be timely filed.

(3) A *request for hearing* is timely filed when the request is post-marked or received by the Office of State Fire Marshal within 20 days from the date of service of the notice of suspension, revocation, or denial, unless a 60-day deadline applies pursuant to ORS 183.435.

(4) If a *request for hearing* is not timely filed under section (3) of this rule, the *person* waives the right to a contested case under ORS chapter 183.

(5) A *person* may write to or call the Office of State Fire Marshal to informally discuss the notice of suspension, revocation, or denial; however, an informal communication may not extend the deadline established in subsection (3) of this rule.

(6) A contested case may include:

(a) An *informal conference*, or

(b) A *formal hearing*.

(7) Contested cases are conducted pursuant to the provisions of ORS chapter 183 and the rules adopted thereto.

Stat. Auth.: ORS 183, 476, 478 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

837-012-1410

Informal Conference

(1) The Office of State Fire Marshal may provide an opportunity for an *informal conference*.

(2) A request for an *informal conference* may be made verbally or in writing; and:

(a) Be made or addressed to the Office of State Fire Marshal; and

(b) Clearly state the issue or issues to be discussed.

(3) If the Office of State Fire Marshal and the party agrees, an *informal conference* may be held by telephone.

(4) After an *informal conference*, the Office of State Fire Marshal may amend, withdraw, or reduce the suspension, revocation or denial in accordance with ORS chapter 183 and the rules adopted thereto.

Stat. Auth.: ORS 183, 476, 478 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

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837-012-1420

Formal Hearing

(1) A person may file a written request for hearing before or after an informal conference, at any time before the deadline established in OAR 837-012-1400(3).

(2) The Office of State Fire Marshal has the responsibility to arrange for a hearing officer to conduct the formal hearing.

(3) The Office of State Fire Marshal has the responsibility to set the date, time, and location for the formal hearing.

Stat. Auth.: ORS 183, 476, 478 & 480

Stats. Implemented: ORS 480.200 - 480.290 & 480.990(6)

Hist.: OSFM 12-2000, f. & cert. ef. 10-6-00; OSFM 10-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 10-2006(Temp), f. & cert. ef. 6-15-06 thru 12-12-06; OSFM 14-2006, f. & cert. ef. 12-1-06

Department of Public Safety Standards and Training Chapter 259

Rule Caption: Update Standards and Qualifications for NFPA Drivers.

Adm. Order No.: DPSST 16-2006

Filed with Sec. of State: 11-20-2006

Certified to be Effective: 11-20-06

Notice Publication Date: 8-1-06

Rules Amended: 259-009-0062

Subject: Revises provisions of the NFPA Standard 1002 from 1998 Edition to 2003 Edition relating to Fire Department Vehicle Driver/Operator Professional Qualifications.

Rules Coordinator: Bonnie Salle—(503) 378-2431

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.

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(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:

(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 pre-requisite 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) Fire Resistive Building Construction;

(ii) Ordinary Building Construction;

(iii) Incident Safety Officer or Fire Fighter Safety;

(iv) Water Supplies;

(v) Strategy and Tactics I, II, and III;

(vi) Incident Command System;

(vii) 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;

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(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.

(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.

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

Rule Caption: Revises Standards Relating to Student Conduct.

Adm. Order No.: DPSST 17-2006

Filed with Sec. of State: 11-20-2006

Certified to be Effective: 11-20-06

Notice Publication Date: 10-1-06

Rules Amended: 259-012-0005, 259-012-0010, 259-012-0035

Rules Repealed: 259-012-0005(T), 259-012-0010(T), 259-012-0015, 259-012-0020, 259-012-0025, 259-012-0030, 259-012-0035(T)

Subject: Revises rules relating to student conduct at Public Safety Academy and establishes secure weapons procedures.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-012-0005

Attendance

(1) The Oregon Public Safety Academy is open to all eligible personnel upon application from their employing agencies. All persons attending the courses may live in the dormitories provided, or, with the permission of their department, they may commute to classes. Reasonable fees may be charged to cover operating costs of the Academy for those attending courses that are not mandatory, and for persons not defined as corrections, parole and probation, emergency medical dispatchers, telecommunicators or police officers under ORS 181.610. Additionally, fees may be charged to an agency under the Act if they do not adhere to minimum standards as defined in OAR 259-008-0010. Application for Training (BPSST Form F-5) must be used to apply for Mandated courses. Other courses presented at the Oregon Public Safety Academy may be announced through mailed course announcements with response required prior to established deadlines.

(2) Students must obtain permission from their employing agency before attending any optional classes offered at the Academy.

(3) Admission to the Oregon Public Safety Academy may be denied to any person who does not meet the minimum employment standards established by OAR 259-008-0010.

(4) Selection criteria for Academy training courses sponsored by the Department will be as follows:

(a) Mandated Basic Training:

(A) For mandated basic training, first priority for acceptance will be granted to public safety personnel identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665;

(B) Second priority will be granted to persons from public or private safety agencies who are not identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665;

(C) Third priority will be granted to persons from other public or non-public agencies or organizations. These decisions will be made after reviewing course content, candidates' job assignments, and following established Department policy.

(b) Supervisory and Middle Management Training:

(A) First priority for acceptance into the mandated supervisory and middle management courses will be granted to public safety personnel identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665. These persons must be designated as supervisors or middle managers by the assigning officials;

(B) Second priority will be granted to designated supervisors or middle managers from other public or private safety agencies;

(C) Third priority will be granted to persons from agencies which come under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665 and are not designated as supervisors or middle managers;

(D) Fourth priority will be granted to persons from other public or private safety agencies who are not designated as supervisors or middle managers;

(E) Fifth priority will be granted to persons from other public or non-public agencies or organizations. These decisions will be made after reviewing candidates' job assignments and following established Department policy.

(c) Executive Level Training:

(A) First priority for acceptance into executive level courses will be granted to command officers identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665;

(B) Second priority will be granted to command officers from other public or private safety agencies;

(C) Third priority will be granted to persons identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665 and are not command officers;

(D) Fourth priority will be granted to persons from other public or private safety agencies who are not command officers;

(E) Fifth priority will be granted to persons from other public or non-public agencies or organizations. These decisions will be made after

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reviewing candidates' job assignments and following established Department policy.

(d) Advanced and Specialized Training:

(A) First priority for acceptance into advanced and specialized courses will be granted to public safety personnel identified under the mandatory provisions of ORS 181.610, 181.640, 181.644, 181.652, 181.653, and 181.665, except as noted in paragraph (D) of this subsection;

(B) Second priority will be granted to persons from other public or private safety agencies;

(C) Third priority will be granted to persons from other public or non-public agencies or organizations. These decisions will be made after reviewing candidates' job assignments and following established Department policy;

(D) Acceptance criteria for certain specialized courses will vary from these listed priorities due to the specific nature of the courses, or special entrance criteria established by the Department or a co-sponsoring organization or agency.

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

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 8-2006(Temp), f. & cert. ef. 6-9-06 thru 12-1-06; DPSST 17-2006, f. & cert. ef. 11-20-06

259-012-0010

Standards of Conduct

(1) All students must report to the Academy at the time designated in the course announcement or the Department's letter accepting their attendance to a specific course, unless prior arrangements have been made with Academy staff.

(2) All students must adhere to the Department's rules and regulations governing student conduct. The student rules and regulations will be made available to:

(a) All students during initial orientation; and

(b) The public through electronic transmission or internet access.

(3) Any person residing at the Academy or attending specialized or advanced courses is prohibited from possessing weapons, including firearms and chemical agents, in the dormitory sleeping areas.

(4) In addition to these rules, all persons attending classes at the Academy shall be held accountable to the provisions of the Criminal Justice Code of Ethics or equivalent discipline specific Code of Ethics and the current Student Rules and Regulations

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 6-2001, f. & cert. ef. 8-22-01; DPSST 8-2006(Temp), f. & cert. ef. 6-9-06 thru 12-1-06; DPSST 17-2006, f. & cert. ef. 11-20-06

259-012-0035

Penalties

(1) A person attending any course as a student or other participant, or a person residing at the Academy for any purpose, is subject to the rules which have been promulgated by the Department. The rules will be posted in a prominent location at the Academy. All persons attending the Academy will be expected to be knowledgeable of and to conform their conduct to the standards set forth in the rules.

(2) Failure to comply with the rules may result in the person being dismissed from the Academy, suspended from participating in Academy activities, or any other disciplinary action deemed appropriate. A student dismissed from the Academy or suspended from Academy participation for conduct or behavior in violation of the rules may not be given training credit or credit for completion of the course in which that student was enrolled. Any decision to withhold credit will be subject to Department approval.

(3) Any alleged violation of these rules, wherein a formal written report is made, shall be communicated to the student's department administrator by the DPSST staff. All disciplinary actions shall be made in accordance with the Oregon Public Safety Academy Student Rules and Regulations.

(4) Dismissal, suspension, or other disciplinary action may be ordered by the Director, or any DPSST staff delegated that authority.

(5) In addition to the procedures for due process outlined in the Student Rules and Regulations, if a student is to be dismissed the student may request a meeting with the Director and present written evidence.

(6) If the Director, or designee, agrees with the dismissal, the student's agency may appeal within 30 days of the dismissal to the Board. The appeal must be in writing and state the agency's case against the dismissal.

(7) Any person subject to sanctions for violation of these rules can request a hearing in accordance with OAR 259-005-0015

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.640

Hist.: PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; DPSST 4-2004, f. & cert. ef. 4-23-04; DPSST 8-2006(Temp), f. & cert. ef. 6-9-06 thru 12-1-06; DPSST 17-2006, f. & cert. ef. 11-20-06

Department of Revenue Chapter 150

Rule Caption: Calculating corporate minimum for consolidated group with more than one member doing business in Oregon.

Adm. Order No.: REV 8-2006(Temp)

Filed with Sec. of State: 11-20-2006

Certified to be Effective: 11-21-06 thru 12-31-06

Notice Publication Date:

Rules Amended: 150-317.090

Subject: 150-317.090 is amended to provide that when a consolidated tax return is filed, each corporation doing business in Oregon is subject to the \$10 minimum tax rather than having the minimum applied to the entire group.

Rules Coordinator: Debra L. Buchanan—(503) 945-8653

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 apportioned 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 317.090

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

Department of Transportation Chapter 731

Rule Caption: Public Contracting Rules affecting Procurement of Goods and Services, Public Improvement and Public Works.

Adm. Order No.: DOT 7-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 10-1-06

Rules Amended: 731-146-0010, 731-147-0010, 731-148-0010, 731-149-0010

ADMINISTRATIVE RULES

Subject: These rules are amended to reflect changes made to the Department of Justice (DOJ) Model Rules, effective January 1, 2006, affecting state and local contracting agencies. These permanent amendments replace temporary amendments that became effective May 25, 2006.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-146-0010

Application

(1) The Oregon Department of Transportation (ODOT) adopts OAR 137-046-0100 through 137-046-0480 (effective January 1, 2006), the Department of Justice Model Rules, General Provisions Related to Public Contracting including the additional provisions provided in these rules.

(2) Unless the context of a specifically applicable definition in the Code or Model Rules requires otherwise, capitalized terms used in ODOT's public contracting rules (ODOT's Rules) will have the meaning set forth in the division of ODOT's Rules in which they appear, and if not defined there, the meaning set forth in Code or Model Rules.

(3) This rule applies retroactively to January 1, 2006.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.030 & 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06

731-147-0010

Application

(1) The Oregon Department of Transportation adopts OAR 137-047-0000 through 137-047-0810 (effective January 1, 2006) with the exception of 137-047-0270(4) and 137-047-0275, the Department of Justice Model Rules, Public Procurements for Goods or Services General Provisions including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2006.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279B.015

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06

731-148-0010

Application

(1) The Oregon Department of Transportation adopts OAR 137-048-0100 through 137-048-0320 (effective January 1, 2006), the Department of Justice Model Rules, Consultant Selection: Architectural, Engineering, Land Surveying, and Related Services Contracts including the additional provisions provided in these rules.

(2) This rule applies retroactively to January 1, 2006.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06

731-149-0010

Application

(1) The Oregon Department of Transportation adopts OAR 137-049-0100 through 137-049-0910 (effective January 1, 2006), the Department of Justice Model Rules, General Provisions Related to Public Contracts for Construction Services. The adoption of the Department of Justice Model Rules by this rule does not apply to any contracts that are subject to OAR chapter 731, division 5 or 7.

(2) The Public Improvements Contracts as well as the Public Contracts for ordinary construction Services that are not Public Improvements shall also comply with OAR 731-007-0335.

(3) This rule applies retroactively to January 1, 2006.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065

Hist.: DOT 3-2005(Temp), f. 2-16-05, cert. ef. 3-1-05 thru 8-27-05; DOT 5-2005, f. & cert. ef. 8-23-05; DOT 5-2006(Temp), f. & cert. ef. 5-25-06 thru 11-20-06; DOT 7-2006, f. & cert. ef. 11-17-06

Department of Transportation, Driver and Motor Vehicle Services Division Chapter 735

Rule Caption: Relating to vehicle evidence of ownership.

Adm. Order No.: DMV 16-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 10-1-06

Rules Amended: 735-022-0000, 735-022-0030, 735-022-0040, 735-022-0070, 735-022-0080, 735-022-0090, 735-028-0020, 735-040-0030, 735-158-0000

Rules Repealed: 735-022-0020

Subject: Amendments to OAR 735-022-0000 further clarify what documents constitute evidence of ownership to a vehicle and remove unneeded language. Sections (3) and (4) have been moved to OAR 735-022-0070 (Inspection of Vehicle Identification Numbers) because they apply to the assignment of vehicle identification numbers rather than evidence of ownership. OAR 735-022-0020 is repealed because it is no longer needed. Relevant vehicle-related requirements of the Uniform Commercial Code are specified under ORS 803.100. OAR 735-022-0030 is amended to update definitions regarding vehicle manufacture's certificate of origin ownership documents. OAR 735-022-0040 is amended to clarify existing language and to improve readability. OAR 735-022-0070 is amended to add new requirements regarding the assignment of vehicle identification numbers (VINs) to motorcycles and mopeds. OAR 735-022-0080 is amended to update definitions that apply to OAR 735-022-0090. State and federal law require a vehicle with ownership documents issued outside of the United States to comply with U.S. standards for vehicle safety and emissions before it can be titled and registered in the U.S. OAR 735-022-0090 is amended to reflect current federal documentation requirements.

The amendment of OAR 735-028-0020 removes erroneous language that implies that an odometer disclosure is required to register an Oregon-titled vehicle. Odometer disclosures are required only for title transactions that include a transfer of interest to a vehicle.

OAR 735-040-0030 describes the information an applicant must submit to be eligible for disabled veteran registration plates. The amendments simplify the application process by reducing the number of documents required to prove eligibility. A letter of eligibility issued by the U.S. Department of Veterans Affairs constitutes proof of eligibility.

OAR 735-158-0000 establishes application qualifications to obtain a vehicle appraiser certificate under ORS 819.210. OAR 735-158-0000 is amended to remove all references to the term "abandoned" from the rule. The certificate authorizes the holder to appraise any vehicle for sale under ORS 819.210 and 819.220. That includes abandoned vehicles, vehicles that are disabled (not drivable) and vehicles in the process of various lien foreclosures. The amendments also delete authorization for DMV to refund the application fee when issuance of a certificate is denied because this is contrary to ORS 293.445(2).

Rules Coordinator: Brenda Trump—(503) 945-5278

735-022-0000

Evidence of Ownership to a Vehicle

(1) DMV has established the following as evidence of ownership of a vehicle:

(a) A manufacturer's certificate of origin (MCO) as defined in OAR 735-022-0030.

(b) A vehicle title or bill of sale from the owner(s) of record.

(c) A completed, signed Certification of Ownership Facts (DMV Form 550).

(d) A transfer by operation of law including a sheriff's bill of sale, a judgment awarding ownership interest in a vehicle, an estate settlement document or inheritance affidavit (DMV Form 516), or a Vehicle Repossession Certificate (DMV Form 263).

(e) For a reconstructed or assembled vehicle, a bill of sale to the frame or unibody, whichever is applicable.

(2) DMV will not issue title for a manufactured trailer without a bill of sale for the axle or trailer frame.

(3) Nothing in this rule limits DMV's discretion to request or consider other information to establish evidence of ownership of a vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045, 803.050 & 821.060

Stats. Implemented: ORS 803.045 & 803.050

Hist.: MV 7-1980, f. & cert. ef. 5-27-80; Administrative Renumbering 3-1988, Renumbered from 735-071-0071; MV 3-1993, f. & cert. ef. 4-16-93; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 16-2006, f. & cert. ef. 11-17-06

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735-022-0030

Manufacturer's Certificate of Origin (MCO) Definitions

The following definitions apply to OAR 735-022-0000 through 735-022-0060:

(1) "Manufacturer's certificate of origin" (MCO), "manufacturer's statement of origin" (MSO), or a "certificate of origin" means a transitional ownership document issued by a manufacturer to a specific vehicle, or if a multi-stage vehicle, to a specific component of the vehicle and includes a "manufacturer's statement of origin" (MSO), a certificate of origin or similar term. An MCO is used to convey ownership from the manufacturer to a franchised dealer or distributor and from the franchised dealer or distributor to a purchaser.

(2) "Glider kit" means:

(a) A kit consisting of a new truck cab or cab and hood assembly, including a front axle assembly and frame rails, with or without an engine, transmission and rear axle, manufactured and sold with an MCO, that has been used to replace damaged or worn components of an existing heavy truck or tractor; or

(b) A heavy truck or tractor was assembled using a kit consisting of all new component parts, including engine, transmission and rear axle, manufactured and sold with an MCO, and assembled by a person other than the manufacturer of the components. For purposes of this subsection, "heavy truck or tractor" means truck or tractor with a gross vehicle weight rating of more than 16,000 pounds.

(3) "Manufacturer" means a person in the business of manufacturing or assembling new vehicles.

Stat. Auth.: ORS 802.010, 803.045, 803.050 & 820.500

Stats. Implemented: ORS 803.045

Hist.: MV 6-1987, f. & ef. 6-17-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0500; DMV 16-2006, f. & cert. ef. 11-17-06

735-022-0040

Manufacturer's Certificate of Origin (MCO) Form and Content

(1) An MCO must be issued by the vehicle's manufacturer or the manufacturer's authorized representative and must include the following:

(a) The name of the manufacturer;

(b) The vehicle year model, make and VIN;

(c) The name of the franchised dealer, distributor or purchaser to whom interest has been assigned; and

(d) The signature of the manufacturer.

(2) In addition to the requirements described in section (1) of this rule, an MCO issued for a vehicle manufactured in multiple stages, for example, a vehicle manufactured as a kit or glider kit, must include assignments of interest for each stage of manufacture. In addition, the MCO must:

(a) Contain the vehicle year model, if the MCO is from the final stage manufacturer; or

(b) Indicate the vehicle is incomplete and identify what portion of the vehicle is covered by the MCO.

(3) An MCO issued for a glider kit must identify that the MCO is for a kit or glider kit and contain at least the following:

(a) The name of the glider kit manufacturer;

(b) The glider kit year model, make and VIN; and

(c) The name of the party to whom interest has been assigned.

(4) If the MCO does not contain the required information, DMV may:

(a) Require further documentation;

(b) Refuse to issue title; or

(c) Both subsections (a) and (b) of this section.

Stat. Auth.: ORS 802.010, 803.045, 803.050

Stats. Implemented: ORS 803.045

Hist.: MV 6-1987, f. & ef. 6-17-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0510; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 16-2006, f. & cert. ef. 11-17-06

735-022-0070

Inspection of Vehicle Identification Numbers

DMV adopts the following procedures relating to the inspection of the vehicle identification number (VIN) of a vehicle under ORS 803.212:

(1) DMV may designate a state agency, certified vehicle dealer or a law enforcement agency to act as an agent of DMV to perform VIN inspections under ORS 803.212. A state agency or law enforcement agency that wishes to be designated to perform VIN inspections must enter into a VIN inspection agreement with DMV.

(2) For purposes of this rule "agent" means a state agency, certified vehicle dealer or law enforcement agency designated by DMV to conduct VIN inspections on behalf of DMV.

(3) DMV may authorize a law enforcement agency to perform VIN inspections on any vehicle in the agency's custody.

(4) DMV, in its discretion, may limit the type of VIN inspections an agent may perform.

(5) Only DMV, the Oregon State Police (OSP) or other Oregon law enforcement agency acting as an agent of DMV, may perform a VIN inspection on a vehicle located in Oregon if:

(a) The vehicle is assembled;

(b) The vehicle is reconstructed;

(c) The vehicle is a replica;

(d) DMV has received notice that the vehicle has been or will be wrecked, dismantled, disassembled or substantially altered under ORS 819.010 or 822.133;

(e) The vehicle is from another jurisdiction and documents presented show the vehicle has been damaged (i.e., salvage bills of sale, salvage title, etc.);

(f) The vehicle is imported and the original manufacturer did not certify that it complies with federal vehicle standards as described in OAR 735-022-0080; or

(g) The vehicle has been reported to DMV as a totaled vehicle. This does not apply to a vehicle reported totaled due to theft and later recovered in a condition that no longer meets the definition of "totaled vehicle" under ORS 801.527.

(6) DMV may designate any person or agency to perform VIN inspections on vehicles in other jurisdictions, including:

(a) A law enforcement agency or entity with administrative or regulatory authority for vehicles within the jurisdiction;

(b) For vehicles owned by U.S. armed services personnel, the owner's commanding officer, Provost Marshal or other person in authority as authorized by DMV; or

(c) Anyone designated by DMV under a written agreement.

(7) The inspection fee established under ORS 803.215 is required for inspections performed under ORS 803.210. The fee does not apply to inspections performed outside Oregon.

(8) If a vehicle does not have a VIN, DMV will assign one and affix it to the frame. When a VIN is assigned, the title record will indicate the VIN assigned by DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.212

Stats. Implemented: ORS 803.212

Hist.: MV 2-1983, f. 3-19-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 1-1985, f. & ef. 1-30-85; MV 19-1986, f. & ef. 12-1-86; MV 28-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0009; DMV 14-1994, f. & cert. ef. 11-22-94; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 16-2006, f. & cert. ef. 11-17-06

735-022-0080

Definitions Relating to Proof of Compliance with Federal Vehicle Standards

The following definitions apply to OAR 735-022-0090:

(1) "EPA" means the U.S. Environmental Protection Agency;

(2) "Federal vehicle standards" as used in Division 22 and ORS 803.045 mean:

(a) Federal Motor Vehicle Safety Standards and Regulations as specified by NHTSA under 49 CFR, Part 571; and

(b) Motor Vehicle Emissions Standards specified by the EPA under 40 CFR, Part 52.

(3) "Manufacturer" means a person in the business of manufacturing or assembling new vehicles.

(4) "NHTSA" means the U.S. Department of Transportation, National Highway Traffic Safety Administration.

(5) "State" means a State of the United States, the District of Columbia and Puerto Rico. For purposes of this rule, "state" does not include the Northern Mariana Islands, Guam, American Samoa, or the Virgin Islands.

(6) "U.S." means the United States of America and includes all States of the United States as defined in section (5) of this rule.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045

Other Authority: 40 CFR Part 52, subpart MM and 49 CFR Part 571

Stats. Implemented: ORS 803.045

Hist.: MV 6-1986, f. 3-13-86, ef. 3-17-86; Administrative Renumbering 3-1988, Renumbered from 735-090-0550; DMV 16-2006, f. & cert. ef. 11-17-06

735-022-0090

Proof of Compliance with Federal Vehicle Standards

(1) Proof of compliance with federal vehicle standards is required when DMV is not satisfied, based on the ownership documents, that the vehicle complies with federal vehicle standards, DMV has reason to believe the vehicle does not comply, or DMV receives an application for Oregon title and the application is submitted with an ownership document issued by:

(a) A jurisdiction outside of the U.S.;

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- (b) The U.S. military; or
- (c) A person other than a U.S. authorized distributor for the vehicle listed on the manufacturer's certificate of origin (MCO).

(2) DMV will accept the following as proof that a vehicle complies with federal vehicle standards:

(a) For a vehicle imported by the U.S. military or military personnel, a written notice or form issued by the U.S. military that indicates the vehicle meets federal vehicle standards;

(b) A Dealer Certification of Compliance with Federal Emission and Safety Standards (DMV Form 7290), completed by an Oregon vehicle dealer with a current valid vehicle dealer certificate;

(c) An original letter from the manufacturer or U.S. authorized distributor that includes the VIN and that states that the vehicle meets EPA standards and can be modified to meet federal safety equipment standards. The letter must be accompanied by a Certification of Compliance with Federal Emission and Safety Standards (DMV Form 7286); or

(d) For a vehicle with an ownership document issued outside of the U.S., a U.S. Customs form that contains all of the following:

(A) A vehicle description that includes the year model, make and VIN; and

(B) Written approval from U.S. Customs indicating that the vehicle complies with federal vehicle standards. For example, a form issued by U.S. Customs with an approval stamp or the signature of an authorized U.S. Customs agent.

(3) Proof of compliance with federal vehicle standards is not required if:

(a) The vehicle is or has been titled or registered in the U.S.;

(b) The MCO submitted to DMV indicates the vehicle was manufactured for use in the U.S.; or

(c) DMV receives an original statement from the manufacturer that indicates the vehicle complies with federal vehicle standards.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045

Other Authority: 40 CFR Part 52, subpart MM and 49 CFR Part 571

Stats. Implemented: ORS 803.045

Hist.: MV 6-1986, f. 3-13-86, ef. 3-17-86; MV 3-1988, f. & cert. ef. 2-2-88; Administrative Renumbering 3-1988, Renumbered from 735-090-0560; DMV 16-2006, f. & cert. ef. 11-17-06

735-028-0020

Odometer Disclosure; Initial Application for Title with No Change in Ownership

(1) Unless exempt under OAR 735-028-0010, an odometer disclosure is required when a vehicle is initially titled in Oregon and there is no transfer of ownership, including but not limited to when:

(a) The vehicle owner listed on an out of state title is applying for an Oregon title; or

(b) The vehicle owner of an assembled vehicle is applying for a title.

(2) A vehicle odometer disclosure must be on a form approved by DMV that is complete, signed, and includes all of the following:

(a) The year model, make and VIN.

(b) The mileage on the odometer at the time of the reading and the date of the reading.

(c) A certification that states: to the best of the person's knowledge the odometer reading:

(A) Is the actual mileage;

(B) Is in excess of the designed mechanical odometer limits; or

(C) Is not the actual mileage.

(d) The signature of the vehicle owner.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.120 & 803.126

Stats. Implemented: ORS 803.015, 803.045, 803.092 & 803.120, 803.126

Hist.: MV 23-1985, f. 12-31-85, ef. 1-1-86; MV 29-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0420; MV 8-1992, f. 6-30-92, cert. ef. 7-1-92; MV 18-1992, f. 12-21-92, cert. ef. 1-1-93; MV 17-1993, f. & cert. ef. 12-17-93; DMV 16-2006, f. & cert. ef. 11-17-06

735-040-0030

Documents Needed to Issue Disabled Veteran Registration Plates

In addition to any other registration requirements, an applicant for disabled veteran registration plates must submit the following to DMV:

(1) A completed and signed Application for Disabled Veteran Plates (DMV Form 6736) and all applicable fees.

(2) A letter issued by the U.S. Department of Veterans Affairs or any branch of the Armed Forces of the United States, that states the applicant was discharged under honorable conditions and:

(a) Is a veteran with a service-related disability who completed 90 days of active duty; or

(b) Was discharged because of a service-related injury or illness prior to the completion of the minimum service period.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 805.100

Stats. Implemented: ORS 805.100

Hist.: MV 27-1987, f. & ef. 10-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0050; MV 22-1989, f. & cert. ef. 10-3-89; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 2-1998, f. & cert. ef. 2-19-98; DMV 16-2006, f. & cert. ef. 11-17-06

735-158-0000

Vehicle Appraiser Certificate

(1) An applicant for a vehicle appraiser certificate or renewal under ORS 819.230 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Vehicle Appraiser Certificate;

(b) All applicable fees; and

(c) Proof of two years combined work experience as a vehicle appraiser:

(A) For a new or used car business, tow business, insurance company, vehicle body repair business, law enforcement or a state or local jurisdiction: or

(B) In the operation or employment of a certified vehicle dismantler business.

(2) DMV will deny issuance or renewal of a vehicle appraiser certificate if:

(a) DMV determines the applicant was convicted of a felony or misdemeanor related to fraud, dishonesty or moral turpitude, if the conviction occurred less than three years before the date of application; or

(b) DMV determines the application contains false or misleading information.

(3) DMV will not process an application that is incomplete. An incomplete application and the fees submitted with the application will be returned to the applicant.

(4) Unless suspended or revoked, a vehicle appraiser certificate expires two years from the date of issuance.

(5) Failure to comply with any applicable statute or rule pertaining to a vehicle appraiser certificate is grounds to deny issuance, revoke, suspend or refuse to renew a vehicle appraiser certificate.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 819.230

Stats. Implemented: ORS 819.210, 819.220, 819.230, 822.700

Hist.: MV 25-1981(Temp), f. & ef. 12-1-81; MV 13-1982, 5-28-82, ef. 6-1-82; MV 27-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0078; DMV 7-2002(Temp), f. 3-14-02, cert. ef. 3-18-02 thru 9-13-02; DMV 13-2002, f. & cert. ef. 6-24-02; DMV 16-2006, f. & cert. ef. 11-17-06

Rule Caption: Domestic Partner Definition and Inclusion of Domestic Partner in "Immediate Family" Definition for Hardship/Probationary Permits.

Adm. Order No.: DMV 17-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 10-1-06

Rules Amended: 735-064-0005

Subject: OAR 735-064-0005 has been amended to include a definition for domestic partner and to include domestic partner in the definition of "immediate family." These amendments will allow a person with suspended driving privileges who is issued a hardship or probationary permit to drive a domestic partner, as well as other immediate family members, to obtain medical treatment on a regular basis.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-064-0005

Definitions

As used in Division 64 rules, unless the context requires otherwise:

(1) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(2) As used in this rule, "Domestic partner" means a person in a relationship with another person, each of whom:

(a) Is at least 18 years of age and capable or entering into a civil contract or, if 17, has the written consent of a parent or guardian to enter into the domestic partnership;

(b) Are not first cousins or any nearer kin to each other, whether of the whole or half blood, and whether by blood or adoption, except for first cousins by adoption only;

(c) Desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted such a marriage;

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(d) Acknowledges and accepts financial obligations to the other person and to third parties similar to the financial obligations that arise by reason of a marriage recognized under Oregon law;

(e) Is not married and has no similar commitment and responsibility to any other person;

(f) Has continuously lived for six months with the other person in an exclusive relationship that each intends to maintain for the rest of their lives; and

(g) Has joint financial accounts and joint financial responsibilities.

(3) "DUII" means driving under the influence of intoxicants.

(4) "Family necessities" means driving to and from grocery shopping, driving a household member to and from work, driving the applicant or the applicant's children to and from school, driving the applicant's children to and from child care, driving to and from medical appointments and caring for elderly family members.

(5) "Fee" is an amount defined in ORS 807.370.

(6) "Hardship/probationary permit" means a restricted driving privilege issued to a person whose privilege is both suspended and revoked and who is required to install an IID due to a DUII suspension.

(7) "IID" means ignition interlock device.

(8) "Intoxicants" means intoxicating liquor, any controlled substance, any inhalant or any combination of the three.

(9) "Immediate family" means the applicant's spouse or domestic partner, children, stepchildren, brother, sister, mother, father, mother-in-law, father-in-law, grandmother or grandfather.

(10) "OMHAS" means Office of Mental Health and Addiction Services.

(11) "Oregon resident" means a person who is domiciled in this state as defined by ORS 803.355 or is a resident of this state as defined by ORS 807.062(4) and (5).

(12) "Private transportation" means family members, friends or fellow employees who are able to serve the applicant's transportation needs.

(13) "Public transportation" means bus, shuttle or commuter service that is able to serve the applicant's transportation needs.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240 & 807.270

Stats. Implemented: ORS 807.240, 807.270 & 813.520

Hist.: DMV 12-1996, f. & cert. ef. 12-20-96; DMV 2-2001, f. & cert. ef. 1-17-01; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 2-2006, f. & cert. ef. 2-15-06; DMV 17-2006, f. & cert. ef. 11-17-06

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Rule Caption: Acceptable proof of completion of a motorcycle education course.

Adm. Order No.: DMV 18-2006

Filed with Sec. of State: 12-13-2006

Certified to be Effective: 12-13-06

Notice Publication Date: 11-1-06

Rules Amended: 735-062-0080, 735-062-0140

Rules Repealed: 735-062-0080(T), 735-062-0140(T)

Subject: OAR 735-062-0080 establishes when DMV will waive a drive test. Section (5) specifies that DMV will waive a motorcycle skills test if an applicant for a motorcycle endorsement submits a motorcycle education completion card from a department approved course. The amendment deletes a course name that is different from the currently approved course and specifies that the applicant must provide a motorcycle education course completion card dated within two years of application.

OAR 735-062-0140 establishes what DMV will accept as proof of completion of a motorcycle rider education course, which is a requirement for applicants for a motorcycle endorsement who are under 21 years of age. The amendment deletes reference to an instructor's certification number assigned by the Motorcycle Safety Foundation (MSF). The current card provided by the department approved course does include an instructor's certification number, but that number is not assigned by MSF. OAR 735-062-0140 is amended to state that the completion card must include the instructor certificate number assigned by a motorcycle education course approved by the department and must include the course name. Other changes are made for clarity.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0080

Waiving Drive Test Portion of Driver License Examination

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will waive the actual demonstration of a person's ability to drive a Class C vehicle required by ORS 807.070(3) if all of the following apply:

(a) The person surrenders to DMV a driver license issued to the person by another state, the District of Columbia, a United States Territory or a Canadian Province that has not been expired for more than one year, or if the person's driver license issued by another jurisdiction, has been lost or stolen, the person submits a letter of clearance, as required in OAR 735-062-0000;

(b) The surrendered, lost or stolen license authorizes the driving of a vehicle other than a moped or motorcycle;

(c) The surrendered, lost or stolen license includes no restrictions other than a single restriction or a combination of restrictions comparable to restrictions imposed on an Oregon driver license;

(d) The person has no physical disabilities or impairments which may necessitate any restrictions other than:

(A) "With corrective lenses";

(B) "Outside or side-view mirror(s)"; or

(C) The restriction(s) imposed on the person's surrendered, lost or stolen driver license issued by another jurisdiction.

(e) The person has no physical or mental condition that provides DMV with reason to question the person's ability to drive a motor vehicle without endangering the safety of persons or property.

(2) DMV will waive the actual demonstration of a person's ability to drive a Class A, B, or C commercial motor vehicle or any endorsement related to a commercial driver license if the person surrenders to DMV a commercial driver license and satisfies the requirements in subsection (a) or (b) of this section:

(a) The person must meet the qualifications set forth in subsections (1)(a) through (e) of this rule and possess an out-of-state commercial driver license approved by the Federal Motor Carrier Safety Administration that authorizes the driving of a commercial motor vehicle included in the Oregon classification for which the application is made; or

(b) The person submits to DMV a Certificate of Competency, Form 6771, in accordance with OAR 735-060-0130.

(3) DMV will waive the actual demonstration of a person's ability to drive a motorcycle if:

(a) The person surrenders to DMV a motor-cycle-endorsed driver license issued to the person by another state, the District of Columbia, a United States Territory or a Canadian Province, or submits a clearance letter as provided for in subsection (1)(a) of this rule; and

(b) The person meets the qualifications in subsections (1)(c), (d) and (e) of this rule.

(4) In addition to section (3) of this rule, DMV will waive the actual demonstration of a person's ability to drive a motorcycle if:

(a) The person passes a motorcycle skills test given during a motorcycle rider education course established by the Transportation Safety Division under ORS 802.320; and

(b) The motorcycle skills test administered during the motorcycle education course meets or exceeds the motorcycle skills test administered by DMV.

(5) Evidence of passing the motorcycle skills test identified in section (4) of this rule is a motorcycle education course completion card as provided for in OAR 735-062-0140. The completion card must have been issued within two years of application to be considered valid for waiver of the skills test.

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

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.070, 807.080 & 807.170

Stats. Implemented: ORS 807.070, 807.080 & 807.170

Hist.: MV 61, f. 10-14-75, ef. 11-11-75; MV 15-1986, f. 9-16-86, ef. 10-1-86; MV 15-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0045; MV 26-1988, f. & cert. ef. 11-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1990, f. & cert. ef. 8-16-90; MV 1-1991, f. & cert. ef. 3-18-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 6-1992(Temp), f. 5-29-92, cert. ef. 6-1-92; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 4-1995, f. & cert. ef. 3-9-95; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 11-2006(Temp), f. & cert. ef. 8-25-06 thru 2-20-07; DMV 18-2006, f. & cert. ef. 12-13-06

735-062-0140

Proof of Completion of a Motorcycle Education Course

For purposes of issuing a motorcycle endorsement to persons under 21 years of age, DMV will only accept a motorcycle rider education course approved by the Department of Transportation in accordance with ORS 802.320. As proof of completion of a motorcycle education course, DMV will accept a card, which minimally includes:

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- (1) The applicant's name;
- (2) The name of the course completed;
- (3) The date of the course;
- (4) Where the course was taken;
- (5) The signature of the instructor; and
- (6) The instructor's certification number as assigned by the motorcycle education course approved by the department.

Stat. Auth.: ORS 184.616, 184.619 & 807.175

Stats. Implemented: ORS 807.170 & 807.175

Hist.: MV 27-1989, f. & cert. ef. 10-3-89; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 7-1998, f. & cert. ef. 6-19-98; DMV 11-2006(Temp), f. & cert. ef. 8-25-06 thru 2-20-07; DMV 18-2006, f. & cert. ef. 12-13-06

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Rule Caption: Issuance and Cancellation of Emergency Driver Permits and Special Student Permits

Adm. Order No.: DMV 19-2006

Filed with Sec. of State: 12-13-2006

Certified to be Effective: 12-13-06

Notice Publication Date: 11-1-06

Rules Amended: 735-064-0230, 735-064-0235, 735-064-0237, 735-070-0010

Subject: OAR 735-064-0230 and 735-064-0235 deal with the issuance of emergency driver permits and special student driver permits. The amendments to the rules allow the issuance of these permits to persons between 16 and 18 years of age. The rules have been amended because of the adoption of the provisional license requirements in ORS 807.065, particularly the requirement that a person cannot be issued a provisional license without having an instruction permit for at least six months. These amendments also add a requirement that a person with an emergency driver permit or a special student driver permit have an instruction permit in order to facilitate the issuance of a provisional driver license when the person is otherwise eligible.

OAR 735-064-0237 and 735-070-0010 deal with cancellation and reinstatement. ORS 807.220(3)(i) specifies that an emergency driver permit that is canceled cannot be reissued for one year. Under ORS 807.230(9), if a special student driver permit is canceled the person may not obtain any driving privileges until old enough for a license. These rules are amended to clarify eligibility for driving privileges when an emergency driver permit or special student driver permit is canceled. The amendment to OAR 735-070-0010 specifies when DMV will reissue a driver permit, driver license or identification card after a cancellation under ORS 809.310(2). Other changes to these rules are made for clarity.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-064-0230

Emergency Driver Permit

(1) An emergency driver permit authorizes operation of only those vehicles that the holder of a Class C driver license may operate, and does not include operation of any vehicle for which a commercial driver license is required or operation of a motorcycle.

(2) DMV will issue an emergency driver permit to a person between 14 and 18 years of age for an emergency situation only, and not for convenience.

(3) An emergency situation includes, but is not limited to, the need for a person to drive to and from:

(a) Medical treatment for the person or a member of the person's immediate family when no other means of transportation is available;

(b) Work or on the job when no other transportation is available and the person's employment is essential to the welfare of the person's family;

(c) Work or on the job when the person's employment is necessary to help harvest crops that may go unharvested or be lost if the person is unable to drive;

(d) Grocery stores when no other means of transportation is available; and

(e) To and from school when no other means of transportation is available if an emergency driver permit is issued because a court has denied a juvenile's driving privileges under ORS 809.260.

(4) Except as provided in section (5) of this rule, an applicant for an emergency driver permit must:

(a) Submit a completed Emergency Operator's Permit Application, Form 735-0009, signed by the applicant's parent or legal guardian and the sheriff of the county in which the applicant resides;

(b) Provide proof satisfactory to DMV detailing the need for an emergency driver permit signed by the applicant's parent or legal guardian including, but not limited to:

(A) The circumstances of the emergency;

(B) The expected end date of the emergency;

(C) A complete description of the days, times and routes to be traveled;

(D) Employment verification. If applying to drive for employment purposes, the applicant must submit a signed letter from his or her employer on company letterhead stating the days and hours the applicant works; and

(E) If the applicant's driving privileges are suspended because of a court denial under ORS 809.260 and the applicant is applying to travel to and from school the principal must sign the application certifying that there is no other school transportation available and that the applicant attends school on the days and hours stated on the application.

(c) Pay all applicable fees;

(d) Pay the reinstatement fee as established under ORS 807.370 if the applicant's driving privileges are suspended by court denial;

(e) Fulfill all applicable requirements of ORS Chapter 807 and OAR 735, Division 62 for issuance of a class C driver license; and

(f) Have an instruction driver permit, if the applicant is over 15 years of age, or if under 15 years of age, obtain an instruction driver permit within 60 days after the applicant's 15th birthday. This subsection does not apply to an applicant whose driving privileges are suspended by court denial under ORS 809.260.

(5) To be eligible for an emergency driver permit, an applicant does not need to:

(a) Possess an instruction driver permit for at least six months prior to applying for an emergency driver permit;

(b) Have at least 50 hours of driving experience with a licensed driver over the age of 21; or

(c) Complete a traffic safety education course.

(6) In addition to any other driving restrictions that may be imposed by DMV, the holder of an emergency driver permit may not drive a motor vehicle carrying any passenger under 20 years of age who is not a member of the permit holder's immediate family.

(7) An emergency driver permit issued prior to the applicant's 16th birthday will expire on the following date, whichever occurs first:

(a) At the end of the emergency;

(b) Six months and 60 days after the emergency driver permit holder's 16th birthday; or

(c) At the end of the suspension period if the emergency driver permit was issued because a court has denied a juvenile's driving privileges under ORS 809.260.

(8) An emergency driver permit issued on or after the applicant's 16th birthday and prior to the applicant's 18th birthday will expire on the following date, whichever occurs first:

(a) At the end of the emergency;

(b) Six months and 60 days after issuance of the emergency driver permit;

(c) One week after the emergency driver permit holder's 18th birthday; or

(d) At the end of the suspension period if the emergency driver permit was issued because a court denied a juvenile's driving privileges under ORS 809.260.

(9) Notwithstanding section 7(c) of this rule, DMV will extend the expiration of an emergency driver permit issued to an individual suspended because a court denied the juvenile's driving privileges under ORS 809.260 beyond the end of the suspension if:

(a) The suspension started prior to the issuance of a provisional driver license;

(b) The applicant applies for an instruction driver permit if over 15 years of age or obtains an instruction driver permit within 60 days after the applicant's 15th birthday; and

(c) Submits proof to DMV that the emergency is still in effect.

(10) An emergency driver permit extended beyond the end of a court denial suspension under ORS 809.260 will expire on the following date, whichever occurs first:

(a) At the end of the emergency; or

(b) Six months and 60 days after the extension of the emergency driver permit; or

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(c) One week after the emergency driver permit holder's 18th birthday.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.220

Stats. Implemented: ORS 807.220

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0006; MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 1-2001, f. & cert. ef. 1-17-01; DMV 19-2006, f. & cert. ef. 12-13-06

735-064-0235

Special Student Driver Permit

(1) A special student driver permit authorizes operation of only those vehicles that the holder of a Class C driver license may operate, and does not include operation of any vehicle for which a commercial driver license is required or operation of a motorcycle.

(2) A special student driver permit authorizes a person to only drive between the person's home and the closest alternate means of transportation, or if alternate transportation does not exist, between home and the school, college or other educational institution in which the person is enrolled and is attending for an educational purpose. An educational purpose includes participation in extra curricular activities as long as the student drives only to his or her school, college or educational institution for which the permit is issued.

(3) Except as provided in section (4) of this rule, an applicant for a special student driver permit must:

(a) Submit a completed Student Driver's Permit Application, Form 735-0009, signed by the applicant's parent or legal guardian and endorsed by the sheriff of the county in which the applicant resides and the principal of the school or educational institution, or registrar of the college, in which the applicant is enrolled;

(b) Pay all applicable fees;

(c) Have an instruction driver permit, if the applicant is over 15 years of age, or if under 15 years of age, obtain an instruction driver permit within 60 days after the applicant's 15th birthday;

(d) Fulfill all applicable requirements of ORS Chapter 807 and OAR 735, Division 62 for issuance of a class C driver license; and

(e) Provide proof satisfactory to DMV that the applicant has no other means of transportation available including but not limited to:

(A) A map(s) showing the route between the applicant's home and alternate transportation or home and the school, college or educational institution in which the applicant is enrolled and public transportation routes; and

(B) The hours for which the applicant needs the special student permit and a copy of public transportation schedules.

(4) To be eligible for a special student driver permit, an applicant does not need to:

(a) Possess an instruction driver permit for at least six months prior to applying for a special student driver permit;

(b) Have at least 50 hours of driving experience with a licensed driver over the age of 21 years of age; or

(c) Complete a traffic safety education course.

(5) In addition to any other driving restrictions that may be imposed by DMV:

(a) The holder of a special student driver permit may not drive a motor vehicle carrying any passenger under 20 years of age who is not a member of the special student permit holder's immediate family; and

(b) The holder of a special student driver permit may not drive between 12 midnight and 5 a.m.

(6) A special student driver permit issued prior to the applicant's 16th birthday will expire on the following date, whichever occurs first:

(a) When the applicant has other means of transportation to and from school, college or other educational institutions; or

(b) Six months and 60 days after the applicant's 16th birthday.

(7) A special student driver permit issued on or after the applicant's 16th birthday and prior to the applicant's 18th birthday will expire on the following date, whichever occurs first:

(a) When the applicant has other means of transportation to and from school, college or other educational institution;

(b) Six months and 60 days after issuance; or

(c) One week after the applicant's 18th birthday.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.120, 807.230

Stats. Implemented: ORS 807.230

Hist.: DMV 12-1996, f. & cert. ef. 12-20-96; DMV 1-2001, f. & cert. ef. 1-17-01; DMV 31-2005, f. & cert. ef. 12-14-05; DMV 19-2006, f. & cert. ef. 12-13-06

735-064-0237

Cancellation of an Emergency Driver Permit or Special Student Driver Permit

(1) A person issued an emergency driver permit or special student driver permit shall not drive outside the permit driving restrictions. DMV will cancel an emergency driver permit or special student driver permit if DMV determines that the permit holder has driven outside the permit driving restrictions.

(2) In making a determination under section (1) of this rule, DMV may rely on information that indicates the person has driven outside the permit restrictions including, but not limited to the following:

(a) A police report which indicates the permit holder has driven outside of the permit driving restrictions;

(b) An accident report which indicates the permit holder has driven outside of the permit driving restrictions;

(c) A letter, on Sheriff's Department letterhead, signed by the sheriff of the county in which the permit holder resides, which indicates the permit holder has driven outside of the permit driving restrictions;

(d) A letter, on school letterhead, signed by the principal of the school the permit holder attends, which indicates the permit holder has driven outside of the permit driving restrictions;

(e) Any court conviction which indicates the permit holder has driven outside of the permit driving restrictions; or

(f) A written report from any individual which indicates the permit holder has driven outside of the permit driving restrictions. The report must be signed by the author and must identify the author in a manner which will allow DMV to contact him/her for further information, if necessary.

(3) DMV will reissue driving privileges to a person whose special student driver permit is cancelled as outlined in OAR 735-070-0010(12).

(4) DMV will reissue driving privileges to a person whose emergency driver permit is cancelled as outlined in OAR 735-070-0010(13).

(5) The person whose emergency driver permit or special student driver permit is canceled will be provided notice and opportunity for an administrative hearing under ORS 809.310(1) and OAR 735-070-0020(6).

Stat. Auth.: ORS 184.616, 184.619, 807.220 & 807.230

Stats. Implemented: ORS 807.220 & 807.230

Hist.: DMV 4-1998, f. & cert. ef. 4-15-98; DMV 19-2006, f. & cert. ef. 12-13-06

735-070-0010

Reinstatement Following Cancellation or Suspension Under ORS 807.220, 807.230, 807.350, 809.310 and 809.320

(1) DMV will reissue a driver permit, driver license or identification card to a person whose driving privileges or identification card is canceled under ORS 809.310(1) because the person is not entitled only if the person corrects the condition that caused the cancellation and otherwise meets all requirements for driving privileges or an identification card.

(2) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because there is an error, i.e. wrong class of license or permit, incorrect endorsement; incorrect date of birth, name, expiration date or issue date once the person surrenders the driver permit, driver license or identification card with the error. If the information on the driver permit, driver license or identification card is wrong because of a DMV error, a no fee replacement will be issued.

(3) DMV will reissue a driver permit, driver license or identification card canceled under ORS 809.310(2) because the address is not the person's residence address as required by law once the person surrenders the driver permit, driver license or identification card with the incorrect information and the person provides DMV with acceptable documentary proof of residence address as described in OAR 735-062-0030(1) and pays all applicable fees.

(4) Notwithstanding sections (1), (2) and (3) of this rule, when a person whose driving privileges or identification card are canceled under ORS 809.310(1) or 809.310(2) is not a resident of Oregon, DMV will rescind the cancellation to allow the person to obtain driving privileges or an identification card in another jurisdiction but will not reissue an Oregon driver license, driver permit, or identification card. The person must:

(a) Request that DMV rescind the cancellation;

(b) Have corrected all applicable conditions that caused the cancellation except for the domicile or residency requirements under ORS 807.062; and

(c) Provide verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction;

(B) The person has surrendered his or her Oregon driver license or identification card to the jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

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(C) The cancellation must be rescinded in order for the person to qualify for driving privileges or an identification card in the other jurisdiction.

(5) DMV will issue a driver license, driver permit or identification card when a person described in section (4) of this rule returns to Oregon and the person corrects the condition that caused the cancellation and meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(6) DMV will reinstate the person's driving privileges or identification card, including his or her right to apply suspended under ORS 809.310(3)(b)-(h) when:

(a) One year has elapsed since the effective date of the suspension; and

(b) The person pays the reinstatement fee.

(7) When a person's driving privileges or identification card, including the right to apply, is suspended under ORS 809.310(3)(a), DMV will reinstate the driving privileges or identification card one year from the effective date of the suspension if the person:

(a) Submits proof of age and identity as described in OAR 735-062-0020(2). For purposes of this rule, primary proof of age and identity does not include a driver license, instruction permit, identification card or a duplicate photograph on file with Oregon DMV;

(b) Submits proof of residence address as described in OAR 735-062-0030(1); and

(c) Pays the reinstatement fee.

(8) Notwithstanding section (7) of this rule, when a person's driving privileges or identification card are suspended under ORS 809.310(3)(a) and is no longer a resident of Oregon, he or she may request to have his or her driving privileges, identification card or right to apply be reinstated in order to be issued in another jurisdiction. DMV will not issue an Oregon driver license, driver permit or identification card, but will reinstate the driving privileges, identification card or right to apply when:

(a) One year has elapsed since the effective date of the suspension;

(b) The person provides verification from another jurisdiction that:

(A) The person has applied and meets the requirements for driving privileges or an identification card in that jurisdiction; and

(B) The person has surrendered his or her Oregon driver license or identification card to that jurisdiction, or has stated that the card was surrendered to DMV or that it was lost, destroyed or mutilated; and

(c) The person pays the reinstatement fee.

(9) A person described in section (8) of this rule, who returns to Oregon, may be eligible for a driver license, driver permit or identification card. DMV will issue a driver license, driver permit or identification card when:

(a) The person submits the proof of age and identity as described in OAR 735-062-0020(2). For purposes of this rule, primary proof of age and identity does not include a driver license, instruction permit, identification card or a duplicate photograph on file with Oregon DMV;

(b) The person submits proof of residence address as described in OAR 735-062-0030(1); and

(c) The person meets all eligibility requirements for driving privileges or an identification card and pays all applicable fees.

(10) When DMV cancels a person's driver permit or driver license for withdrawal of consent under ORS 809.320, DMV will reinstate driving privileges when the person:

(a) Pays a replacement driver permit or driver license fee or a renewal fee, if applicable; and

(b) Submits one of the following if the person is under 18 years of age:

(A) An application for a driver permit or driver license that is signed by the person's mother, father or legal guardian;

(B) Court papers showing that the person is declared emancipated by the court; or

(C) Evidence that the person is married.

(11) When DMV cancels a person's driving privileges because the person is not qualified or does not meet the requirements under ORS 807.350, DMV will not grant driving privileges until the person meets the requirements and demonstrates qualification for a driver license under ORS 807.040, 807.050, 807.060, 807.062, 807.065, 807.066 and 807.070.

(12) When the special student driver permit of a person under 16 years of age is canceled under ORS 807.230(7), DMV will only issue driving privileges when the person has reached 16 years of age and if the person is eligible and meets all applicable requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000 to obtain a driver permit or driver license. When the special student driver permit of a person over 16 years of age is canceled, DMV will not reissue a special student driver per-

mit however the person may apply for a driver license if eligible and if the person meets all applicable requirements in ORS 807.040, 807.065, 807.066 and OAR 735-062-0000.

(13) When an emergency driver permit is canceled under ORS 807.220(3)(g), DMV will:

(a) Reissue an emergency driver permit after one year has elapsed from the effective date of the cancellation if the person is eligible and meets the requirements in OAR 735-064-0230; or

(b) Issue a driver permit or a driver license if the person is eligible and meets all applicable requirements in ORS 807.040, 807.065 and 807.066 and OAR 735-062-0000.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 807.220, 807.230, 807.400, 809.310 & 809.320

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0064; MV 14-1992, f. & cert. ef. 10-16-92; MV 18-1993, f. 12-17-93, cert. ef. 1-1-94; DMV 16-1994, f. & cert. ef. 12-20-94; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 13-2006, f. 9-22-06, cert. ef. 10-2-06; DMV 19-2006, f. & cert. ef. 12-13-06

Employment Department Chapter 471

Rule Caption: Amending OAR 471-040-0010, OAR 471-040-0040 and adopting OAR 471-040-0041.

Adm. Order No.: ED 12-2006

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 12-3-06

Notice Publication Date: 11-1-06

Rules Adopted: 471-040-0041

Rules Amended: 471-040-0010, 471-040-0040

Subject: Amendments for OAR 471-040-0010 adds language for limited English proficient people in a late request for hearing, adds language for OAH to determine good cause on the late request for hearing and adds language for OAH to schedule a hearing if it is determined that testimony is required.

Amendments to OAR 471-040-0040 redefines "good cause" and adds language that a party requesting reopening can set forth the reasons for missing the hearing in a written statement.

Adoption of OAR 471-040-0041 sets out language when and how to submit a late request to reopen.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-040-0010

Late Request for Hearing

(1) "Good cause" exists when the appellant provides satisfactory evidence that factors or circumstances beyond the reasonable control of the appellant caused the late filing.

(2) Notwithstanding section (1) of this rule, good cause for failing to file a timely request for hearing shall exist when the appellant provides satisfactory evidence that the Employment Department failed to follow its own policies with respect to providing service to a limited English proficient person, including the failure to communicate orally or in writing in a language that could be understood by the limited English proficient person upon gaining knowledge that the person needed or was entitled to such assistance.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The appellant shall set forth the reason(s) for filing a late request for hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the request was filed within a reasonable time.

(5) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.875

Hist.: IDE 150, f. & ef. 2-9-76; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06

471-040-0040

Reopening of a Hearing

(1) After service of an administrative law judge's written decision as set forth in ORS 657.270, an administrative law judge may reopen the hearing if the party:

(a) Requesting the reopening failed to appear at the hearing;

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(b) Files in writing, within 20 days of the date of mailing of the hearing decision, a request to reopen; and

(c) Has good cause for failing to appear at the hearing.

(2) "Good cause" exists when the party requesting reopening provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the party to miss the hearing.

(3) The party requesting reopening shall set forth the reason(s) for missing the hearing in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for failing to appear at the hearing.

(4) The administrative law judge's ruling on a request to reopen the hearing shall be in writing and mailed to the parties.

(5) The filing date for a request to reopen shall be determined under OAR 471-010-0040.

(6) The OAH will treat as a request to reopen the hearing any application for review that a party files with the Employment Appeals Board or the Employment Department, where the filing party failed to appear at the hearing that led to the decision on appeal, unless the applicant specifically states in the application that the applicant does not wish to have the case reopened. In the event that the OAH subsequently denies the request to reopen the hearing, it shall return the case to the Employment Appeals Board, which will then proceed to review the merits of the substantive decision. The original application for review shall serve as the basis for the Employment Appeals Board's review of the merits of that decision.

(7) Nothing in subsection (3) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(8) This rule is effective for all requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.280, 657.610 & 657
Hist.: IDE 150, f. & ef. 2-9-76; IDE 153, f. 12-23-77, ef. 1-1-78; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 2-2004(Temp), f. 5-3-04, cert. ef. 5-4-04 thru 10-31-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06

471-040-0041

Late Request to Reopen

(1) The period within which a party may request reopening may be extended if the party requesting reopening:

(a) Has good cause for failing to request reopening within the time allowed; and

(b) Acts within a reasonable time.

(2) "Good cause" exists when the party provides satisfactory evidence that factors or circumstances beyond the reasonable control of that party caused the late filing.

(3) "A reasonable time," is seven days after the circumstances that prevented a timely filing ceased to exist.

(4) The party requesting reopening shall set forth the reason(s) for filing a late request to reopen in a written statement, which the Office of Administrative Hearings (OAH) shall consider in determining whether good cause exists for the late filing, and whether the party acted within a reasonable time.

(5) The filing date for a late request to reopen shall be determined under OAR 471-010-0040.

(6) Nothing in subsection (4) of this rule prevents the OAH from scheduling a hearing if in the sole judgment of the OAH testimony is required.

(7) The administrative law judge's decision on a late request to reopen shall be in writing and mailed to the parties.

(8) This rule is effective for all late requests to reopen filed after the effective date of this rule.

Stat. Auth.: ORS 657.270, 657.875
Stats. Implemented: ORS 657.280, 657.610 & 657.875
Hist.: ED 10-2006(Temp), f. & cert. ef. 9-27-06 thru 3-21-07; ED 12-2006, f. 12-1-06, cert. ef. 12-3-06

Rule Caption: OAR 471-030-0074 and OAR 471-030-0075

Adm. Order No.: ED 13-2006(Temp)

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 12-3-06 thru 6-1-07

Notice Publication Date:

Rules Amended: 471-030-0074, 471-030-0075

Subject: OAR 471-030-0074 is being amended to clarify "employment," and define "relevant period" for the proper application of ORS 657.167 and 657.221.

OAR 471-030-0075 is being amended to add language to make the rule consistent with federal guidelines. The language added includes in paragraph (1)... immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

Paragraph (2) the definition of "substantially less" is added.

Paragraph (3) the definition of "same or similar capacity" is added.

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

471-030-0074

School Employees

(1) ORS 657.167 and 657.221 apply only when the individual claiming benefits was not unemployed as defined by ORS 657.100 in the period immediately preceding the holiday, vacation or recess period. Where the week(s) claimed commenced during a holiday or vacation period, the relevant period is the week immediately prior to the holiday or vacation period. Where the week(s) claimed commenced during a customary recess period between academic terms or years, the relevant period is the academic year or term immediately prior to the recess period. Wages for services performed for an employer other than an educational institution shall not be considered in making a determination of whether the claimant was employed when applying ORS 657.167 and 657.221.

(2) The provisions of ORS 657.167 and 657.221 apply irrespective of whether or not the individual performed services only during an academic year or in a year-round position.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.167 & 657.221
Hist.: ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07

471-030-0075

"Reasonable Assurance" Defined

(1) With respect to the application of ORS 657.167 and 657.221, "reasonable assurance" means a written contract, written notification or any agreement, express or implied, that the employee will perform services immediately following the academic year, term, vacation period or holiday recess which is in the same or similar capacity unless the economic terms and conditions of the employment in the second year or period are substantially less than the employment in the first year or period. A finding of reasonable assurance may be based on the totality of circumstances.

(2) As used in this rule, "substantially less" means:

(a) The gross weekly wage offered is less than 90% of the gross weekly wage earned in the prior academic year or term which preceded the weeks of unemployment or,

(b) The average number of hours the individual will be working is less than 90% of the average number of hours worked in the prior academic year or term, which preceded the weeks of unemployment;

(c) For the purpose of this section, employer paid benefits are not to be considered.

(3) With respect to (1) of this rule, "same or similar capacity" refers to the type of services provided: i.e., a "professional" capacity as provided by ORS 657.167 or a "nonprofessional" capacity as provided by ORS 657.221.

(4) Reasonable assurance cannot be ended or abated by any unilateral action of the individual. A decision to quit work, even for good cause, and even if the employer accepts the resignation, does not end or abate reasonable assurance.

Stat. Auth.: ORS 657
Stats. Implemented: ORS 657.167 & 657.221
Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 1-1984, f. & ef. 3-21-84; IDE 3-1985, f. & ef. 12-16-85; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 13-2006(Temp), f. 12-1-06, cert. ef. 12-3-06 thru 6-1-07

Employment Department, Child Care Division Chapter 414

Rule Caption: Amending OAR 414-350-0050, 0100, 0110 and 0120 correcting clerical errors and adding Assistant I language to 0110.

ADMINISTRATIVE RULES

Adm. Order No.: CCD 6-2006

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 11-1-06

Rules Amended: 414-350-0050, 414-350-0100, 414-350-0110, 414-350-0120

Subject: OAR 414-350-0050 adding “if applicable” to (1)(E)

OAR 414-350-0100 changing the word “level” to “step” (2)(c)

OAR 414-350-0110 adding “Assistant II” language that was dropped inadvertently

OAR 414-350-0120 adding Child Care website address for reviewing tables referred to in this rule

Rules Coordinator: Lynn M. Nelson—(503) 947-1724

414-350-0050

General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

- (a) The child care certification document;
- (b) Notification of a communicable disease outbreak at the home;
- (c) The evacuation plan; and
- (d) A notice that the following items are available for parents to review:

- (A) The guidance/discipline policy;
- (B) The current week’s menus, with substitutions recorded;
- (C) The description of the general routine;
- (D) Information on how to report a complaint to CCD regarding certification requirements; and

(E) The most recent CCD and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) CCD staff shall have the right to enter and inspect the home, including access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by CCD.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to CCD, to staff, and to parent(s) at the time of enrollment:

- (a) Guidance and discipline policy;
- (b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services’ administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to CCD:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to CCD upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0400).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06

414-350-0100

The Provider

(1) The provider shall be:

(a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and

(b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with CCD, and correcting deficiencies.

(2) The provider shall have:

(a) At least one year of qualifying teaching experience, as specified in OAR 414-350-0010(25), in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or

(b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or

(c) Documentation of attaining at least step eight in the Oregon Registry.

(3) The provider shall provide evidence of the following training prior to being certified:

(a) A current certification in infant and child first aid and cardiopulmonary resuscitation;

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completion of two hours of training on child abuse and neglect issues.

(4) Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care. The provider of facilities certified on October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by CCD, that shows how the training will be attained.

(5) The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certification. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certification. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.

(6) The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.

(7) The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted.

(8) A caregiver substituting for the provider shall:

(a) Be at least 18 years old;

(b) Have current certification in infant and child first aid and cardiopulmonary resuscitation (CPR);

(c) Have current food handler certification pursuant to ORS 624.570, if the substitute will be preparing or serving food;

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(d) Be familiar with the provider's policies and procedures and with these requirements (OAR 414-350-0000 through 414-350-0400);

(e) Be authorized and able to correct a deficiency that might be an immediate threat to children; and

(f) Have on file documentation of an orientation and training in these administrative rules and the functions and duties of a provider.

(g) Meet the qualifications in (a)-(f), have completed child abuse and neglect training, and have worked in the facility at least 60 hours when substituting for the provider in a facility certified to care for more than 12 children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0732; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06

414-350-0110

Assistants

(1) Assistants may be included in the caregiver/child ratio calculation.

(2) An Assistant I shall:

(a) Be at least 15 years of age;

(b) Work under the direct supervision, i.e., within sight and sound of the provider or substitute provider; and

(c) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0400).

(3) An Assistant II shall:

(a) Be at least 18 years of age;

(b) Have on file documentation of an orientation and be familiar with the provider's policies and procedures and these requirements (OAR 414-350-0000 through 414-350-0380);

(c) Have worked at least 60 hours at the certified family child care home, in a minimum of 3-4 hour blocks of time;

(d) Have current certification in first aid and CPR; and

(e) With the approval of the provider, may be out of sight and sound of the provider with a group of children.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0734; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06

414-350-0120

Caregiver/Child Ratios and Supervision

(1) The number of caregivers and group size shall be determined by the number and ages of the children in attendance.

(a) All children in the home, including the provider's or other caregivers' own children, shall be counted in determining the caregiver/child ratio and group size.

(b) All children visiting the home on a regular basis will count in capacity. Children attending with a parent do not count as enrolled as long as the parent remains with and is responsible for non-enrolled children.

(c) The required caregiver/child ratios shall be met at all times.

(2) Children shall at all times have the full attention of and be supervised by the required number of caregivers.

(a) Children shall be within sight and/or sound of a caregiver at all times.

(b) A caregiver shall be near enough to children to respond when needed. Children out of direct visual contact shall be monitored regularly and frequently and must be in approved activity areas.

(c) Children may not be on a floor level of the home unless a caregiver is on the same floor level, except as specified in OAR 414-305-0120(2)(d).

(d) When bathroom facilities are not on the same floor level, a written plan for adequate supervision of both bathroom and child care areas shall be developed and implemented.

(3) The number of caregivers is determined by the age and number of the youngest child(ren) in the group. If the provider is certified to care for more than 12 children and plans to care for more than 8 infants and/or toddlers, the provider must develop a plan showing how infants and toddlers will be limited to a group size of not more than eight. The plan must be approved by CCD.

(a) If all children are in the same age group, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(b) If children in care include any infants and/or toddlers, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(c) If children in care include a mix of only preschool and school aged children, the following table determines the staff/child ratio. [Table not included. See ED. NOTE.]

(d) Even though staff/child ratios are specified in (a) and (b) above, a certified family child care provider may care for 10 children ages 6 weeks to school-age if:

(A) No more than 6 children are pre-school age or younger, including the provider's own children and any staff children;

(B) Of the 6, only 2 children are under 24 months of age; and

(C) Four of the children are school-age.

(4) The maximum number of children allowed in a certified family child care home at any one time is 16.

(5) If the home is certified to care for more than 12 children and the age blend is such that group separation is required:

(a) Groups may be joined for: meals, naps, outdoor play, and limited quiet activities such as a video or circle time.

(b) Provider must develop a plan that shows how the groups will be separated without requiring remodeling of the home. The plan must be approved by CCD.

(6) If the facility provides care to more than two children under 24 months of age, the provider shall meet the requirements specified in OAR 414-350-0100(4).

(7) Prior to a facility providing care to more than four children under 24 months of age, at least one caregiver other than the provider shall meet the requirements specified in OAR 414-350-0100(4). In addition, the provider shall have an extra 20 clock hours of training specific to infant and toddler care above and beyond the original requirements. If the facility is certified to care for more than 12 children, there must be someone who meets the training requirements of OAR 414-350-100(4) on site at all times that five or more children under 24 months of age are in care.

[ED. NOTE: Tables referenced are available from the agency at www.oregon.gov/EMPLOY/CCD/Rules_Summary.shtml.]

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260 & 657A.290

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 7-1989, f. & cert. ef. 3-17-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0736; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert. ef. 12-1-06

Land Conservation and Development Department Chapter 660

Rule Caption: The rules clarify requirements for Measure 37 claims based on one or more land use regulations after December 4, 2006.

Adm. Order No.: LCDD 10-2006(Temp)

Filed with Sec. of State: 12-1-2006

Certified to be Effective: 12-4-06 thru 6-2-07

Notice Publication Date:

Rules Adopted: 660-041-0000, 660-041-0010, 660-041-0020, 660-041-0030

Subject: The temporary rules adopt OAR chapter 660, division 041, to clarify the requirements for Measure 37 claims based on one or more DLCD land use regulations after December 4, 2006. The rules specify that claims based on an existing DLCD statute, land use planning goal, or rule must include a final decision by a local government that applies one or more of these state lands use regulations as approval criteria to deny or condition an application for the use that the claimant desires to carry out. Claims based on new state land use regulations may be made without applying for a local decision, so long as they are made within two years of the date of enactment or adoption. These rules apply only to claims filed after December 4, 2006 that are based on DLCD land use regulations. The Oregon Department of Administrative Services is adopting rule amendments that address claims based on other state land use regulations.

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-041-0000

Purpose

The purpose of this division is to clarify the requirements for filing a Claim based on one or more DLCD Regulations after December 4, 2006.

Stat. Auth.: ORS 197, 197.352, 125-045 Statewide land use planning goal 2

ADMINISTRATIVE RULES

Stats. Implemented: ORS 197.352, 197.040, 197.045, 197.090, 197.175, 197.180, 197.250, 197.340
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07

660-041-0010

Definitions

The following definitions apply to this division:

- (1) Agency has the meaning provided by ORS 183.310.
- (2) Claim means a written demand for compensation under ORS 197.352.
- (3) Claimant means the owner who submitted a Claim, or the owner on whose behalf a Claim was submitted.
- (4) DAS means the Department of Administrative Services.
- (5) Department means the Department of Land Conservation and Development.
- (6) DLCD Regulation means a "land use regulation" as defined in ORS 197.352 that is also a state statute codified in ORS chapter 92, 195, 197, 215 or 227, a Statewide Land Use Planning Goal, or a LCDC rule. An "Existing DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date prior to December 2, 2004. A "New DLCD Regulation" means a DLCD Regulation that was enacted by the State of Oregon or adopted by LCDC with an effective date of on or after December 2, 2004.
- (7) Land Use Application means an application for a "land use decision," a "limited land use decision," or an "expedited land use decision" as those terms are defined by ORS 197.015, or an application for a permit or zone change under ORS 227.160 to 227.187 or under ORS 215.402 to 215.437.
- (8) Land Use Regulation has the meaning provided by ORS 197.352(11).
- (9) LCDC means the Land Conservation and Development Commission.
- (10) Metro means the Portland Metropolitan Service District.
- (11) Property means the Lot or Parcel that is or that includes the private real property that is the subject of a Claim.
Stat. Auth.: ORS 197, 197.352, 125-045 Statewide land use planning goal 2
Stats. Implemented: ORS 197.352, 197.040, 197.045, 197.090, 197.175, 197.180, 197.250, 197.340
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07

660-041-0020

Contents of a Measure 37 Claim Based on a DLCD Regulation

- (1) When a Claim is based on one or more Existing DLCD Regulations, then the Claim must:
 - (a) Be received by DAS within two years of the date a city, county, Metro, or an Agency applied one or more Existing DLCD Regulations, or applied city, county or Metro land use regulations that implement Existing DLCD Regulations, as approval criteria to an application submitted by the Claimant; and
 - (b) Include one of the following:
 - (A) A copy of the final written decision by a city, a county, or Metro on a Land Use Application that includes the Property and that requests authorization for the specific use that the Claim is based on, in which the city, county, or Metro determined that one or more Existing DLCD Regulations or city or county Land Use Regulations that implement Existing DLCD Regulations were approval criteria for the decision; or
 - (B) A copy of the final written action by an Agency on a complete application to the Agency, in which Agency determined that one or more Existing DLCD Regulations were approval criteria for the application.
- (2) When a Claim identifies a New DLCD Regulation as the basis for the Claim, the Claim must be received by DAS within two years of the effective date of the New DLCD Regulation, or within two years of the date the Claimant submitted a Land Use Application in which the Land Use Regulation is an approval criterion, whichever is later.
- (3) If a Claim is based on both Existing and New DLCD Regulations, the requirements of section (1) of this rule must be met with respect to the Existing DLCD Regulations, and the requirements of section (2) of this rule must be met with respect to the New DLCD Regulations.
- (4) A DLCD Regulation is "applied as an approval criteria" for purposes of ORS 197.352(5) when a city, county or Metro makes a final written decision on a Land Use Application, or when an Agency takes final written action on an application to that Agency, and that final written decision or final written action denies the application or conditions the approval of the application on the basis (in whole or in part) of the DLCD Regulation.

Stat. Auth.: ORS 197, 197.352, 125-045 Statewide land use planning goal 2
Stats. Implemented: ORS 197.352, 197.040, 197.045, 197.090, 197.175, 197.180, 197.250, 197.340
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07

660-041-0030

Applicability

This division applies only to Claims that were received by DAS after December 4, 2006, and that are based on one or more DLCD Regulations.
Stat. Auth.: ORS 197, 197.352, 125-045 Statewide land use planning goal 2
Stats. Implemented: ORS 197.352, 197.040, 197.045, 197.090, 197.175, 197.180, 197.250, 197.340
Hist.: LCDD 10-2006(Temp), f. 12-1-06, cert. ef 12-4-06 thru 6-2-07

Office of Private Health Partnerships Chapter 442

Rule Caption: Clarifying FHIAP applicants' ability to count dependents in their family size when applying for assistance.

Adm. Order No.: IPGB 3-2006(Temp)

Filed with Sec. of State: 11-27-2006

Certified to be Effective: 11-27-06 thru 5-25-07

Notice Publication Date:

Rules Amended: 442-005-0050

Subject: Amended rule enables dependents to be counted in two separate households (i.e. divorced parents sharing custody) for the purpose of determining family size for eligibility for any state benefits including, but not limited to, premium subsidy, medical assistance, food stamps, cash assistance, etc. Amended language does not change rules regarding dual enrollment, but does enable legal dependents to be counted in their family size for eligibility.

Rules Coordinator: Cindy Bowman—(503) 378-4674

442-005-0050

Eligibility

In order for an applicant to qualify for a FHIAP subsidy, applicants must:

- (1) Be a resident of Oregon or a full-time college student with a parent who is a resident of Oregon;
- (2) Be a United States citizen or a qualified non-citizen who meets the alien status requirement;
- (3) Not be eligible for or receiving Medicare benefits;
- (4) Have investments and savings that are available of no more than \$10,000 on the last day of the month prior to the month the application is signed. Investments and Savings are not available if owned by or a beneficial interest in them is held by a separated spouse. FHIAP will determine when an applicant's spouse is deemed separated for the purposes of this subsection (4);
- (5) Have income of less than 185% of the Federal Poverty Level in effect at the time of determination. Income determination is outlined in OAR 442-005-0070;
- (6) Meet one of the statutory definitions of family in ORS 735.720(2) at the time of eligibility determination. To be included in the family size for FHIAP eligibility determination, the applicant's family members must meet the definition of dependent under OAR 442-005-0010 (8):
 - (a) A dependent may be counted in two separate households for the purposes of determining eligibility for FHIAP and any other assistance program;
 - (b) A dependent may be counted in two separate households for the purpose of determining eligibility for both families in FHIAP;
 - (c) A dependent may not be enrolled in two premium/medical assistance programs at the same time;
 - (d) A dependent may be enrolled in FHIAP and any non-premium/medical assistance program at the same time;
 - (e) If a dependent is counted in two separate households for the purpose of determining eligibility in two premium/medical assistance programs, enrollment will be determined by criteria established in procedure;
 - (7) Meet either a period of uninsurance requirement or exceptions listed in OAR 442-005-0060;
 - (8) Not be incarcerated for more than 30 days or be a ward of the State;
 - (9) Provide necessary materials in order to allow for eligibility determination. If information submitted is inconsistent, and applicant may be denied;

(10) If applying for subsidy in the group market, must be able to enroll in an group insurance plan that meets the benchmark standard established by the Office within twelve months of eligibility determination. If an applicant to the group market does not have access to a group plan, the group plan they have access to does not meet the benchmark standard, or they cannot enroll into their group plan within twelve months of eligibility

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determination, the applicant will be denied and placed on the reservation list for an individual subsidy using the same date they were placed on the group reservation list.

Stat. Auth.: ORS 735.734 & 735.720 - 735.740

Stats. Implemented: ORS 735.720 - 735.740

Hist.: IPGB 2-2006, f. & cert. ef. 6-1-06; IPGB 3-2006(Temp), f. & cert. ef. 11-27-06 thru 5-25-07

Oregon Department of Education
Chapter 581

Rule Caption: Regulations of Private Career Schools need procedural clarification.

Adm. Order No.: ODE 15-2006

Filed with Sec. of State: 12-11-2006

Certified to be Effective: 1-1-07

Notice Publication Date: 11-1-06

Rules Adopted: 581-045-0038

Rules Amended: 581-045-0001, 581-045-0006, 581-045-0012, 581-045-0014, 581-045-0018, 581-045-0019, 581-045-0023, 581-045-0032, 581-045-0060, 581-045-0061, 581-045-0062, 581-045-0064, 581-045-0200, 581-045-0210

Rules Renumbered: 581-045-0028 to 581-045-0039

Rules Ren. & Amend: 581-045-0026 to 581-045-0036, 581-045-0027 to 581-045-0037

Subject: As Oregon Department of Education regulates Private Career Schools, more prescriptive rulemaking is required at various junctures. The current OAR changes are needed, in part, due to misalignment with another state agency and/or Federal guidelines.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-045-0001

Definitions

The following definitions apply to OAR 581-045-0006 through 581-045-0210, unless otherwise indicated by the context:

(1) "Advertising" means any form of public notice used in recruiting and promoting activities, however disseminated, including but not limited to print media, catalogs, and other school publications, signs, mailing pieces, radio or television ads, audiovisual material, and the internet on behalf of a licensed school.

(2) "Ability to benefit" is a determination made by the school through some form of assessment (e.g., entrance examination) that indicates the student has a reasonable chance to succeed in the program and be employed in the profession for which the student is preparing.

(3) "Esthetics" has the meaning given in ORS 690.005.

(4) "Agent" has the meaning given in ORS 345.010(1).

(5) "Application" means a form, separate from the enrollment agreement, which is submitted by an applicant prior to the signing of the enrollment agreement and evaluated by the school for admission purposes. Schools may charge a non-refundable application fee; however, the fee must be clearly identified on the application.

(6) "Application fee" means any fee, however named, covering those expenses incurred by a school in evaluating admission of prospective students. At the school's option, the application fee may be non-refundable. The school shall not charge an application fee of more than \$25.00.

(7) "Approved" means accepted by the State Board of Education or by the Superintendent in matters relating to school licensing requirements.

(8) "Assessment" means a written, oral, and/or hands-on evaluation of an applicant's progress in the educational program.

(9) "At-risk" means the school demonstrates a pattern or history of one or more of the following conditions, that the Superintendent determines, may cause potential serious problems for the continued successful and profitable operation of the organization:

(a) Failure to meet the standards of financial responsibility or reporting;

(b) Misrepresentation;

(c) Frequent substantiated complaints filed with the Department;

(d) A decrease in enrollment from the previous reporting period of 50 percent or more or 25 students, whichever is greater;

(e) Staff turnover from the previous reporting period of 50 percent or more or three staff, whichever is greater; and

(f) Conditions listed in subsections (9) (d) and (e) of this rule, caused by unusual circumstance or reason, shall be evaluated by the Superintendent and exceptions may be granted.

(10) "Auxiliary facility" means a facility that does not use or list its address as a school location and:

(a) Absorbs a temporary overload that the principal facility cannot accommodate; or

(b) Provides a specialized training facility away from the principal school location; or

(c) Provides training under contract that is not open to general enrollment; or

(d) Is a site approved by the Department of Education for teaching a short-term course that is taught by registered teachers from the principal facility.

(11) "Barbering" has the meaning given in ORS 690.005.

(12) "Board" means the State Board of Education.

(13) "Bona fide organization or group" means any body or entity that is nationally chartered or recognized by a national or state educational/occupational policy board that has operated or functioned in good faith without fraud or deceit for at least 25 years.

(14) "Chairperson" means the person who is responsible for overseeing the business of the advisory committee.

(15) "Class" means a scheduled meeting of persons for instructional purposes.

(16) "Clinic lab" means a place where students perform assigned instructional tasks identified in the approved curriculum on models or the general public.

(17) "Completion" means the student has satisfactorily finished all the requirements of the program in which enrolled, has fulfilled the terms of the enrollment agreement, and has been awarded an appropriate certificate, diploma, or completion document.

(18) "Continuing education" means the enrollment in and completion of ongoing, Department-approved instruction, outside the normal teaching schedule, which upgrades a teacher's skills and knowledge with the intent of making the teacher more proficient and current in subject matter taught.

(19) "Course" means an aggregation of classes to achieve a complete set of competencies.

(20) "Department" means the Oregon Department of Education.

(21) "Discrimination" means any act that unreasonably differentiates treatment, intended or unintended, or any act that is fair in form but discriminatory in operation, either of which is based on age, disability, national origin, race, marital status, religion, or sex.

(22) "Distance learning instruction" means education provided by written correspondence or any electronic medium for students enrolled in a private career school in pursuit of an identified occupational objective, but not attending classes at an approved school site or training establishment.

(23) "Enrollment" means a student agrees to the purchase of a course or program of instruction from a school and signs an enrollment agreement, instrument or note, however named that commits both the student and the school to a legal and binding obligation.

(24) "Fiscal reporting period" means the period of time for which the school provides the required financial information. The fiscal reporting period is identified by the school owner upon initial license application and must remain consistent unless a written request for a change is approved by the Superintendent. The fiscal reporting period may be the calendar year or another 12-month time period.

(25) "Fund" means the private career school Tuition Protection Fund (TPF).

(26) "Gross tuition income" means all direct tuition charges from programs for which the school is licensed under OAR 581-045-0001 through 581-045-0210, including any laboratory fee. Total gross tuition income does not include:

(a) Tuition refund;

(b) Registration and application fees; or

(c) Costs for books, supplies, tools, and equipment purchased by students.

(27) "Hair design" has the meaning given in ORS 690.005.

(28) "In default" is defined in ORS 345.115(5) as "when a course or program is discontinued or canceled or the school closes prior to completion of contracted services."

(29) "License" means a license to operate a private career school.

(30) "Nail technology" has the meaning given in ORS 690.005.

(31) "On-site review" means a visit to the school by authorized Department staff who may review the facilities, classrooms, and school records; talk with students, staff, and administrators; and determine whether the school is in compliance with Oregon law.

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(32) "Operating/operation" means any form of marketing, advertising, instruction, recruitment, or any other activity regulated under ORS Chapter 345 and OAR 581-045-0001 through 581-045-0210.

(33) "Placement" means the student has been employed in the occupation for which trained.

(34) "Probation" means that a school has been officially notified by the Superintendent that it has deficiencies that must be corrected within a specified time.

(35) "Program" means an aggregation of courses to meet an identified occupational objective.

(36) "Program advisory committee" means a representative group appointed by the school, which advises the school ownership and administration.

(37) "Program improvement plan" means a written outline or plan designed to describe how the school will resolve or comply with violations of state rule or regulation assessed by the Superintendent and/or correct any deficiencies identified by the Superintendent.

(38) "Pro rata" means in accordance with a fixed proportion.

(39) "Published Class Schedule" (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(40) "Recruiting" means personally soliciting or attracting a person or persons by a school or its agent(s) with the intention of actively pursuing enrollment in the school. Recruiting does not include leaving materials at or near an office or other site for a person to pick up of his or her own accord or handing a brochure or other materials to a person.

(41) "Registration" means the process by which directors, agents, or teachers either request registration by the Superintendent to teach at the school or notify the Superintendent of their appointment of an agent to represent the school.

(42) "Registration fee" means any fee, however named, covering those expenses incurred by a school in processing the student enrollment agreement and establishing a student records system and so identified on the student enrollment agreement.

(43) "Reporting period" means the period from July 1 of one year to June 30 of the next year on which schools shall base all individual program student completion and placement reporting that must be submitted to the Department. The school's fiscal year may be for the same period, the calendar year, or another 12-month time period.

(44) "Resident instruction" means education provided at an approved school site or training establishment for students enrolled in and attending classes at the school facility in pursuit of an identified occupational objective.

(45) "Revocation" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)-(c) the Department's approval of the employee's registration is permanently withdrawn. When notice of revocation is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

(46) "Revoke" means the Superintendent terminates the school license. When the license is revoked, the school is not authorized to continue operating. Probation or suspension may, but is not required to, precede revocation.

(47) "Self-directed instruction" is a course/program with instructional materials and curriculum that is sufficient in design and scope to prepare a student for the program's occupational objectives. These objectives can be achieved without provision for regular interaction either by mail, telephone, or personally between the student and faculty employed by the school and do not require the school to measure attendance or lesson completion for satisfactory progress.

(48) "School" has the meaning given in ORS 345.010(4).

(49) "Short term course" means a course no longer than 16 clock hours in duration that is offered to prepare a student for a state examination or licensure, which is required to enter a profession.

(50) "State advisory committee" means a representative, statutory advisory committee appointed by the Superintendent of Public Instruction, consisting of members who shall serve for terms of three years ending June 30.

(51) "Structured work experience or externship" means a worksite educational activity that correlates the value of classroom training and on-site job performance, is an integral part of the student's training plan, and is supervised/evaluated by appropriate school personnel.

(52) "Superintendent" means the State Superintendent of Public Instruction or qualified designee.

(53) "Suspension" as referenced in OAR 581-045-0012 means that the Superintendent has notified an employee of a licensed private career school that because of violations of OAR 581-045-0012(9)(a)-(c) the Department's approval of the employee's registration is temporarily withdrawn. When notice of suspension is issued, the employee shall be notified and upon written request, shall be granted a contested case hearing under ORS 183.310(2).

(54) "Suspend" means the Superintendent has notified a school that because of deficiencies, it may not advertise, recruit, enroll students, or begin instruction of new students, but may remain open to complete training of currently enrolled students. Probation may, but is not required to precede suspension.

(55) "Teachout" means a defaulting school or the Department makes provisions for students enrolled at the time of the default to complete a comparable program at no additional cost beyond the original enrollment agreement with the defaulting school. Teachout arrangements, if made by the defaulting school, shall be approved in advance by the Superintendent and, if ongoing, approved annually by the Superintendent.

(56) "Transcript" means a written record that shall include, but is not limited to, name and address of student, first and last date of attendance, all programs or courses undertaken, grades achieved, whether the courses or programs were successfully completed, and signature of a school official.

(57) "Tuition" means money or other compensation paid or credited to a school by a student or on behalf of a student that is applied to the costs of instruction and training actually received or to be received by the student.

(58) "Withdrawal fee" means any fee, however named, covering those expenses incurred by a school in processing student paperwork relating to program changes (i.e., course additions/drops or transfers) or withdrawal from school and so identified on the student enrollment agreement.

Stat. Auth.: ORS 345.010

Stats. Implemented: ORS 345.030 & 345.325

Hist.: 1 EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0006

Application for Private Career School License

(1) Any person, partnership, association, corporation, or Limited Liability Company desiring to function as a private career school as defined in ORS 345.010 shall submit an application for its first approval year on forms provided by the Department. No person, partnership, association, corporation, or Limited Liability Company shall hold itself out to be a school, solicit students, or collect fees prior to the date of the license. A school requesting exemption from licensure must request such exemption from the Superintendent under the provision of ORS 345.015.

(2) An initial site inspection may be required prior to approval of the application. Any deficiencies must be corrected prior to issuance of a license.

(3) A license may be denied by the Superintendent, 60-days after the school has been notified of the application deficiencies, for failure to submit accurate and complete materials required by the application, or for other substantiated just cause.

(4) A separate license shall be required for each location of a school except those approved by the Superintendent as auxiliary sites. A license for the specific location must be issued prior to operating at that location.

(5) An initial license shall be granted after:

(a) Receipt of a complete application by the Superintendent; and

(b) Completion of an interview with and approval by the Superintendent's designee for private career schools.

(6) Each license shall be issued to the owner of an applicant school and shall be nontransferable. In the event of a change of ownership of a school and when continuous operation is desired, the buyer must apply for and obtain approval of a new license prior to the completion of the sale.

(7) Prior to the completion of the sale, the current owner of the school (seller) must submit to the Department a statement signed by both the seller and the buyer indicating who:

(a) Will acquire the school's assets, which are directly related to the school's educational activities;

(b) Will assume liability on the date the school is sold for the outstanding debts incurred as a direct result of the school's educational activities under previous ownership;

(c) Has authority to make all refunds that on the date the school is sold may be due to eligible persons;

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(d) Has agreed to honor all student contracts that were signed or approved by the school's authorities before the effective date of the change of ownership; and

(e) Has responsibility to transfer all educational transcripts of former and current students to the possession of the new school owner.

(8) Failure of the seller to notify the Department prior to completion of the sale may result in the imposition of civil penalties established in OAR 581-045-0190.

(9) Before an individually-owned (commonly referred to as a sole proprietorship), Limited Liability Company, or partnership-owned school elects to incorporate or when there are changes in existing ownership that affect financial control of the school, the Superintendent shall be notified in writing, and a new license shall be required. Such notice shall occur prior to the ownership change. Control is affected when a new party or entity assumes ownership of more than 50 percent of the school's net worth. Instances in which control is affected and a new license is required include but are not limited to the following examples:

(a) Owner(s) sells more than 50 percent to another party;

(b) Partner(s) owning less than 50 percent buy out the other partner(s) interest; or

(c) The type of ownership is changing (i.e., individual, partnership, company, or corporation).

(10) Request for confidentiality regarding the purchase/sale of a school will be honored by the Department in accordance with the public records law.

(11) The initial application for licensure shall include:

(a) The name and address of the school, the names and addresses of its owners, governing body, officials, and faculty with attendant qualification forms;

(b) Course syllabi as required by OAR 581-045-0009(1)(b)(B)(C);

(c) School facility description as required by OAR 581-045-0022;

(d) Application for admissions form if used by the school;

(e) Enrollment agreement (contract) information and procedures, including a copy of the contract or enrollment agreement for only those courses offered by the schools that are licensed by the Oregon Department of Education;

(f) A copy of school policies and procedures relating to:

(A) Admissions standards,

(B) Ability to benefit examination. If an ability to benefit examination is used, it must be:

(i) Approved by the Superintendent; and

(ii) Proctored in a manner approved by the Superintendent.

(C) Enrollment and entrance dates;

(D) Credit for previous training;

(E) Attendance;

(i) Policy on attendance; and

(ii) A statement of how the school will monitor and report enrollment and attendance information as required by federal and/or state statutes.

(F) Grading policies;

(G) Make-up work;

(H) Tardiness;

(I) Satisfactory progress standard;

(J) Methods and frequency of reporting progress;

(K) Student conduct;

(L) Suspensions, terminations, re-entry;

(M) Leaves of absence;

(N) Students filing a grievance or complaint about the school or program;

(O) Safe, healthy environment; and

(P) Discriminatory behaviors.

(g) A statement explaining how the policies and the procedures in (11)(f)(A–P) of this rule are disseminated to all students and how they are monitored by the school;

(h) Information relating to tuition charges and all other fees or costs;

(i) Policy of the school relating to cancellations and refunds of unused tuition, fees, and other charges. The policy must be consistent with the schedules established by OAR 581-045-0036, 581-045-0037, and 581-045-0038;

(j) A copy of the buy/sell agreement if the submission of the initial application is a result of the purchase of a currently licensed private career school. The buy/sell agreement shall be kept confidential within the limits permitted by the public records law;

(k) A written plan designed to protect the contractual rights of students in the event the school closes or undergoes a change of status as described in OAR 581-045-0067;

(l) Labor market information showing current employment, replacement, and expansion data for regional, state, and national labor markets for the occupational area being served;

(m) A description of placement information provided to students;

(n) The school calendar;

(o) The signature of authorized officials of the school including each owner, partner, or member of the board. If the institution is incorporated, each owner of ten percent or more of stock must sign. If the institution is incorporated and the stock is publicly traded through a stock exchange, the president or chief executive officer of the corporation must sign. If the applicant is a nonprofit corporation, each member of the governing body must sign;

(p) Full disclosure by owners, directors, and teachers of any conviction or crime referenced under OAR 581-045-0012(12)(a); and

(q) If information required by subsections (11)(a)–(n) of this rule is provided in the school catalog, references to catalog and page number will be acceptable.

(12) The application shall be accompanied by:

(a) The nonrefundable license fee required by ORS 345.080 (see OAR 581-045-0007);

(b) The initial capitalization payment for the student tuition protection plan required by ORS 345.110;

(c) A complete resumé of education and work experience for the school owner(s), corporate officer(s), directors, and teachers, including social security number, date of birth, home address, and telephone numbers;

(d) A draft of the proposed school catalog or brochure required by OAR 581-045-0019;

(e) A copy of proposed advertising and promotional information to be used by the school;

(f) Copies of program materials prescribed by OAR 581-045-0009(b), or relating to schools also regulated by another state agency as described in OAR 581-045-0014;

(g) All inspection documents required by OAR 581-045-0022(2);

(h) Copies of incorporation certificates, if applicable;

(i) A financial statement, which provides information required by OAR 581-045-0032. The financial statement shall be kept confidential within the limits permitted by the public records law;

(j) An enrollment agreement that is legally binding on both the school and the student, which shall include, but is not limited to:

(A) A description of the instructional program in which the student is enrolled;

(B) Beginning and ending dates;

(C) Length of program;

(D) Registration fee;

(E) Tuition cost (excluding the registration and other identified program fees or costs);

(F) All other program costs listed separately;

(G) Total program cost (registration, tuition cost, and all other identified program fees or costs);

(H) Installment payment plan, if available;

(I) The state-specified refund schedule or one approved by the Superintendent as being more favorable to the students;

(J) A clear and conspicuous disclosure of the student's cancellation rights; and

(K) A statement informing students who have questions regarding the enrollment agreement that they may contact the Oregon Department of Education (use current address) Salem, Oregon.

(k) Schools implementing program changes cannot require students who are currently enrolled to complete the requirements of the revised program. Enrolled students are to be taught out under the program identified in their most current signed enrollment agreement and identified in the catalog in effect at the time of their enrollment. Exceptions may be allowed when and if the school and student mutually agree to the program change(s) and a new or amended enrollment agreement is negotiated, accepted, and signed by the student and school. Examples of program changes as used in this rule include, but are not limited to, increase or decrease of hours required, changes in the schedule of hours of instruction, adding or dropping required courses, increasing program costs or fees, changes in the payment plan.

(l) The school must maintain documentation signed by each student to substantiate that the student has received and read all information contained in subsection (12) (j) of this rule. The school must also indicate any special rules or publications that the student signature acknowledges.

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Additional information not listed in the enrollment agreement may be published in the current school catalog or catalog addendum.

(13) Out-of-state schools:

(a) Any private career school whose principal place of business is outside of Oregon shall obtain an Oregon private career school license whenever it maintains a physical presence in Oregon or when the Oregon occupational licensure board requires the school to be licensed;

(b) The Superintendent may consider the following factors to determine whether a school has established a physical presence in Oregon:

(A) Maintains an office in the state;

(B) Conducts any part of the instructional program from or in the state,

(C) Employs sales representatives, who reside or solicit students within the state;

(D) Canvasses for prospective students within the state;

(E) Operates career or information booths at fairs or other such public gatherings within the state;

(F) Presents school information at high school career days within the state; or

(G) Advertises in local media that originate in Oregon.

(c) Out-of-state schools shall submit upon initial application and annually thereafter:

(A) Out-of-state application form;

(B) Copy of the most recent licensure application for the state in which the school is located;

(C) Copy of current resident state license certificate;

(D) If accredited, copy of the report for the most recent school accreditation review;

(E) List of approved programs; and

(F) Copy of the school's most recent catalog to include the items listed below. If any of the following items do not appear in the body of the catalog but appear in other specific documents they must also be submitted.

(i) Name and address of the school;

(ii) Date of publication or other reference identifier such as years(s), volume, or edition or version numbers;

(iii) The educational or vocational objective of each course or program including the name and the level of occupations for which the course or programs purport to train;

(iv) The number of clock or credit hours of instruction in each course and the length of time in weeks or months normally required for completion;

(v) A complete listing and description of courses or programs offered specifying subjects included in each course or program that clearly identifies coverage of the training;

(vi) A description of the school's physical facilities, equipment available for student use, and the maximum or usual class size;

(vii) Policies relating to tardiness, absences, make-up work, conduct, termination, reentry, and other rules and regulations of the school, including the student appeals process;

(viii) The grading system, including definition of ratings and credit units, if any;

(ix) Refund policy;

(x) The requirements for graduation;

(xi) Statement describing certificates, diplomas, or degrees awarded upon graduation;

(xii) Information regarding any limitations on transfer of credits, and

(G) Teachers' education and experience requirements for employment at the school. (Information about individual teachers does not need to be submitted if the teachers are licensed or approved in the state in which the school is located.)

Stat. Auth.: ORS 345.030

Stats. Implemented: ORS 345.030

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1EB 23-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 32-1991, f. & cert. ef. 12-18-91; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0012

Personnel

(1) A school shall establish, publish, and enforce specific written policies that set standards for the staff's:

(a) Professional performance and conduct;

(b) Evaluation; and

(c) Continuing education.

(2) Schools shall employ only teachers who are registered with the Department and who meet the requirements of section (3) of this rule. All applications for approval of teachers shall:

(a) Be recorded on forms provided by the Department;

(b) Indicate the specific subjects the prospective teacher will teach;

(c) Be signed by the prospective teacher and the school director, except teachers regulated by OAR 581-045-0200 need only the prospective teacher's signature; and

(d) Be accompanied by relevant official transcripts, letters, and documents that confirm that the teacher meets the minimum requirements listed in subsection (3)(a) and (b) of this rule.

(3) Teachers must:

(a) Hold all Oregon licenses, certificates and ratings, and successfully pass qualifying exams legally required for employment in the field in which they teach. The Superintendent may grant a waiver upon written request from the school;

(b) Have graduated from high school as evidenced by a photocopy of a transcript indicating graduation, or a diploma or its foreign equivalent. As an alternative, the teacher may show evidence of a General Education Development (GED) certificate. The Superintendent may grant a waiver to this limitation if sufficient evidence of post-secondary education is submitted;

(c) Have at least two years of work experience or two years of education, or any combination of both, in the subject that they instruct. For new teachers the work experience must have been within the last five years. The Superintendent may grant a waiver upon written request from the school;

(A) Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time work experience,

(B) Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks).

(4) In emergency situations, not to exceed three months, schools may hire substitute teachers who are the best-qualified persons available. Under no circumstances shall students be allowed to substitute as approved teachers.

(5) If a school utilizes any form of teacher assistants, aides, or trainees, it shall establish and maintain policies that set forth qualifications, duties, procedures for use of these personnel, and maintain a copy of these policies for review by the Department. Teacher assistants, aides, and/or trainees shall:

(a) Not be used as substitutes or replacements for regular teachers,

(b) Work under the direct supervision of an approved teacher, and

(c) Evaluate students only under direct supervision of an approved teacher.

(6) The school shall have and implement written policies to promote improvement of teacher competency in their fields and in levels of performance in their teaching assignments. A recommended minimum for continuing education is 30 hours during each three-year period.

(7) The teacher's registration shall not be transferable from one school to another and shall terminate on cessation of the teacher's employment with the school. Exceptions to this rule include registered instructors of hair design, nail technology, esthetics, and barbering.

(8) Directors must have at least two years of experience in school or business administration, teaching, or other experience directly related to their duties within the school's organization. The experience must have been within the last five years. Part-time experience will be allowed if the total hours equal the equivalent of two years of full-time experience. Full-time work experience is a minimum of 1,875 hours per year (37.5 hours per week times 50 weeks). Qualified persons who do not meet the criteria in section (12) of this rule may be appointed as directors with prior approval by the Superintendent and with a letter as required in subsection (12)(c) of this rule.

(9) Owners and directors, administrators, agents, supervisors, and instructors (hereinafter collectively "employees") subject to registration, licensure, or approval pursuant to ORS 345.010 to 345.450 are subject to suspension, revocation, or other discipline if the employee:

(a) Is charged with knowingly making any false statements in the application for a license, registration, or approval;

(b) Is charged with gross neglect of duty; or

(c) Is charged with gross unfitness.

(10) Gross neglect of duty is any serious and material inattention to or breach of professional responsibilities. The following acts constitute gross neglect of duty:

(a) Knowing falsification of any document or knowing misrepresentation directly related to licensure, employment, or professional duties;

(b) Substantial deviation from professional standards of competency;

(c) Violation of any ethical standard contained in OAR 581-045-0012(13);

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(d) Engaging in acts in violation of laws or rules applicable to the profession;

(e) Failure or refusal to respond to questions, to provide information, or to furnish documents to a Department of Education representative pursuant to review, assessment, or investigation; or

(f) Any other statement or act or omission not consistent with personal integrity, ethics, or honesty.

(11) Gross unfitness is any conduct that renders an owner or employee unqualified to perform duties. The following acts constitute gross unfitness:

(a) Convictions of a crime or offense specified in OAR 581-045-0012(12) or engaging in such wrongful acts even in the absence of a conviction;

(b) Commission of fraud, misrepresentation, or deceit;

(c) Commission of unfair, deceptive, or unlawful trade practices as defined in the Oregon Unlawful Trade Practices Act.

(12) No licensed school shall be owned by or employ an individual who is not of good moral character and reputation.

(a) Upon review by the Department, the Superintendent may find a person not to be of good moral character and reputation when the person:

(A) Has been convicted of a felony or a misdemeanor that involves the illegal use, sale or possession of a controlled substance, or that involves any sexual offense, or any violent offense;

(B) Has been convicted of an offense involving fraud or misrepresentation, or has committed fraud, misrepresentation, or deceit or has committed unfair, deceptive, or unlawful trade practices regulated by the Oregon Unlawful Trade Practices Act (ORS 646.605–646.652), or

(C) Is currently subject to suspension or revocation under OAR 581-045-0012(9).

(b) The Superintendent shall not make a finding that a person is not of good moral character and reputation solely for the reason that the person has been convicted of a crime, but shall consider the relationship of the facts that support the conviction and all intervening circumstances as they relate to the specific occupational standards and requirements; and

(c) If the prospective employee has been convicted of a crime listed in subsections (12)(A) and/or (12)(B) of this rule, the Superintendent shall request a letter of recommendation from the employing school and the individual's most recent employer, parole officer, or other appropriate professional source. The Superintendent shall fully consider such recommendation along with all other supporting materials submitted by the prospective employee. The Superintendent, after reviewing submitted materials, may approve an employee registration on a probationary basis for a period not to exceed one year. Upon completion of the probationary period, if no further violation of subsection (12) has occurred, the probationary status will be removed.

(13) The school shall set minimum expectations and provide training for all instructional personnel and supervisors of instructional personnel in:

(a) Curriculum and Instruction — including the educator's competent application of:

(A) The school approved curriculum; and

(B) Effective teaching strategies; and

(b) Supervision and Evaluation of Students — including the educator's responsibility to:

(A) Record progress of individual students;

(B) Evaluate student performance; and

(C) Use effective classroom management;

(c) Ethics — including the educator's responsibility to:

(A) Know, respect, and obey all policies of the school;

(B) Exemplify personal integrity, ethics, and honesty;

(C) Keep student information confidential; and

(D) Avoid exploiting students for personal profit or advantage.

Stat. Auth.: ORS 345.325

Stats. Implemented: ORS 345.325

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0014

Exceptions for Schools with Programs also Regulated by another State Agency

(1) Private career school programs with curriculum and other requirements that are established and approved by another state agency are exempt from having a program advisory committee as defined in OAR-581-045-0013.

(2) While the programs described in section (1) of this rule must meet the Department's approval criteria for teacher registration, the

Superintendent may defer approval of the school's teachers to the appropriate state agency.

(3) The Superintendent may modify the financial reporting requirements and/or Student Completion and Placement reporting requirements for any school or programs described in section (1) of this rule when the school is operated by an agency or business only as a minor portion of their operation.

Stat. Auth.: ORS 345.325

Stats. Implemented: ORS 345.325

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0018

Recordkeeping

(1) Schools must furnish each prospective student, and have evidence of receipt acknowledged by student signature, with the following:

(a) A copy of the school's most recent catalog/bulletin, with any supplements and/or correction sheets with volume or date indicated, prior to or in conjunction with the applicant signing an enrollment agreement;

(b) A copy of the student's signed and dated enrollment agreement;

(c) Upon request of the student, completion and placement data for students enrolled in the program for the last two years; and

(d) Upon request of the student, a copy of the Oregon Revised Statutes and Oregon Administrative Rules that govern Private Career Schools.

(2) Schools shall maintain a file for each student that must include:

(a) A statement signed by the student at the time of enrollment certifying receipt of a catalog and all other pertinent material;

(b) A copy of the student's signed enrollment agreement;

(c) Written progress reports that shall include information on how the student is progressing in areas such as classroom attendance and performance (but not used as final grades) updated at appropriate intervals;

(d) A copy of the results of any enrollment evaluation or examination;

(e) Student information that shall include:

(A) Legal name of the student;

(B) Address;

(C) Telephone number;

(D) Student identification number assigned, if any;

(E) Social security number (if student signs disclaimer);

(F) Date of birth;

(G) Dates of attendance (beginning and ending dates);

(H) Course or program of instruction; and

(I) Date of transfer if appropriate.

(f) The student file must be maintained for a minimum of 3 years after the student has completed or withdrawn.

(3) Upon the student's satisfactory completion of instruction, schools shall:

(a) Issue an appropriate certificate or diploma; and

(b) Issue appropriate educational transcripts that shall include, but are not limited to:

(A) School name and location;

(B) Student's name;

(C) First and last date of attendance;

(D) Specific program(s) taken;

(E) Clock or credit hours;

(F) Grade for each course;

(G) Name of accrediting agency, if the school is accredited;

(H) Statement indicating the school maintains transcripts for a minimum of 25 years; and

(I) Signature of the appropriate school official with school seal (if any) and date of issue.

(4) Schools shall maintain and issue transcripts as follows:

(a) Store transcripts in a safe, vault, or file having a minimum one-hour fire-safe rating unless duplicate records are kept in a safe location outside the school building. The address of locations outside the school building must be on file with the Department;

(b) Keep transcripts of all former students that include the information described in subsection (3)(b)(A–H) of this rule for a period of no less than 25 years from date of termination of enrollment. Transcripts must be stored under the same conditions as described in section (4)(a) of this rule;

(c) Make a student's records available to the student upon request. Availability of records shall comply with the "Family Educational Rights and Privacy Act" (Public Law 93-380 as amended by Public Law 93-568). The educational institution shall respond within a reasonable period of time, but not more than 45 days after receipt of the request;

(d) Deliver to the Superintendent all permanent student transcripts for safekeeping if the school should cease to operate. The Superintendent will

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maintain the transcripts of all closed schools. If available, certified copies of the transcripts will be provided, when a written request signed by the student, is received at the Department. A non-refundable search fee of \$10 must accompany the request; and

(e) A school may withhold an official transcript, certificate of completion, and/or diploma if the student has any outstanding debt owed to the school. Forms, letters, questionnaires, or other material printed or written for the purpose of debt collection must clearly and conspicuously state that they are used for the purpose of attempting to collect a debt or attempting to obtain information concerning a debtor.

Stat. Auth.: ORS 345.325

Stats. Implemented: ORS 345.325

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0019

School Catalogs

A school catalog shall include the following. If any of the following items do not appear in the body of the catalog, a reference to other specific documents where the required information appears must be in the catalog:

- (1) Name and address of the school;
- (2) Date of publication or other reference identifier such as year(s), volume or edition, or version numbers, etc.;
- (3) The educational or vocational objective of each program including the name and level of occupations for which the course or program purports to train;
- (4) The number of clock or credit hours of instruction in each course and the length of time in weeks or months normally required for completion;

(5) A complete listing and description of courses offered specifying subjects included in each program that clearly identifies coverage of the training. If for the purpose of continuing education and/or self-improvement the courses must be identified as such;

(6) A description of the school's physical facilities and equipment available for student use;

(7) Admission standards addressing:

- (a) Admission requirements; and
 - (b) Admission process.
- (8) Policies and procedures relating to:

- (a) Attendance;
- (b) Tardiness;
- (c) Leaves of absence;
- (d) Make-up work;
- (e) Student conduct;

(f) Academic and attendance satisfactory progress standards for:

- (A) Minimum;
 - (B) Cumulative; and
 - (C) Frequency and method of reporting student progress.
- (9) Discipline (as applicable):

- (a) Probation;
 - (b) Suspension; and
 - (c) Termination.
- (10) Reinstatement or reentry:

(a) When student's withdrawal was voluntary and the student was in compliance with all school policies, and

(b) When the student's withdrawal was not voluntary and involved noncompliance of academic, attendance, or conduct policies, and/or financial obligations.

(11) A student grievance policy, which includes:

(a) Appeal process; and

(b) This statement: "students aggrieved by action of the school should attempt to resolve these problems with appropriate school officials. Should this procedure fail students may contact: Oregon Department of Education, Public Service Building, (use current address), Salem, OR 97310-0203." After consultation with appropriate Department staff and if the complaint alleges a violation of Oregon Revised Statutes 345.010 to 345.470 or standards of the Oregon Administrative Rules 581-045-0001 through 581-045-0210, the Department will begin the complaint investigation process as defined in OAR 581-045-0023 Appeals and Complaints.

(c) The grading system, including definition of ratings and credit units, if any;

(d) The requirements for graduation or completion;

(e) A statement describing certificates, diplomas, or degrees awarded upon graduation;

(f) The total cost of tuition and registration fee and other charges related to enrollment such as deposits, fees, books and supplies, tools and equipment, and other charges for which a student may be responsible. This information may be presented as an addendum or insert to the main publication;

(g) The state refund policy or the school's refund policy if determined by the Superintendent to be more favorable to the student;

(h) A description of the extent and nature of placement assistance provided to students and/or graduates, including but not limited to job search techniques, resume' writing, job interview techniques, and the assistance the school provides in establishing job contacts/interviews for graduates;

(i) Specifics describing the availability of student housing, counseling, and other student services, if any;

(j) A school calendar including enrollment/registration dates, beginning and ending dates of classes and programs, holidays, and other dates of importance that are reasonably likely to affect the decision of the potential student;

(k) A clear and conspicuous disclosure of the student's cancellation rights.

Stat. Auth.: ORS 345.325

Stats. Implemented: ORS 345.325

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0023

Appeals and Complaints

(1) Each school shall implement a process for the prompt resolution of a complaint by a student of the school. Unless specifically provided by state or federal law or administrative rule, the decision of the school shall be final.

(2) Complaints filed on behalf of or by a student against a school must be postmarked within one year of the student's last date of attendance.

(3) If the complaint alleges a violation of Oregon Revised Statutes, ORS 345.010 to 345.470 or standards of OAR 581-045-0006 through 581-045-0210, the complainant may direct an appeal to the State Superintendent of Public Instruction, after exhausting the school's procedures or after 45 days from filing a written complaint with the school, whichever occurs first. The appeal shall be in writing and shall contain:

(a) The complainant's name, address, phone number, and signature;

(b) School name, address, and phone number;

(c) A brief statement indicating which statute or rule the school is alleged to have violated and how the school is alleged to have violated it, e.g., failure to refund tuition, failure to provide a portion of the program described in the enrollment agreement;

(d) Facts detailing dates of attendance, termination date, date of occurrence, names, addresses and positions of school officials contacted, financial loss, if any, and any other pertinent information;

(e) An explanation of what efforts have been taken to resolve the problem with the school, if any; and

(f) Copies of pertinent documents, such as the enrollment agreement, catalog and advertisements.

(4) After receipt of a complaint or other allegation that a school has failed or is failing to comply with the provisions of any laws or rules, the Superintendent shall investigate the facts surrounding the allegations.

(5) The Superintendent shall notify the complainant and the school of the findings resulting from the investigation.

(6) The Superintendent may impose penalties as defined in OAR 581-045-0190 if the school is found to be in violation of any standard or rule.

(7) Sections (1) and (2) of this rule do not limit the statutory authority of the Superintendent to investigate schools regardless of receiving allegations from the public.

(8) At the request of the Superintendent, complaints may be resolved with the assistance of such other parties as the Oregon Student Assistance Commission, Oregon Department of Justice, U.S. Department of Education, and other appropriate organizations and/or individuals.

Stat. Auth.: ORS 345.120

Stats. Implemented: ORS 345.120

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0032

Standards for Financial Reporting

(1) All private career schools shall submit at initial licensing, and annually thereafter in conjunction with the license renewal, financial information reflecting the fiscal condition of the school at its start-up or at the close of its most recent fiscal or calendar year, whichever is applicable. For such purposes the information submitted shall conform to the following:

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(a) At initial application for licensing, the school must submit a business plan based on the major goals of the school for the first two years of operation along with the methods and procedures for achieving the goals. Included as part of the plan will be an opening balance sheet. The school shall have sufficient capital to provide all the appropriate instruction, support and administrative services (including appropriate comprehensive general liability insurance), staffing, equipment, and facilities. The Superintendent will use financial ratios found in such sources as "Almanac of Business and Industrial Financial Ratios," accrediting organizations, and other appropriate financial statistics to determine the sufficiency of the planned capital. The plan also shall include a projected income statement showing the projected income and expenses for each of the first two years of operation;

(b) In addition to the licensing requirements cited in subsection (1)(a) of this rule, financial requirements shall be based on a school's ability to fulfill its obligations to students, meet refund obligations, meet operational expenses and other financial obligations, and make the required contributions to the existing tuition protection fund;

(c) The financial report for license renewal shall be prepared in accordance with the Generally Accepted Accounting Principles (GAAP), Generally Accepted Audit Standards (GAAS), and Statements on Standards for Accounting and Review Services (SSARS) currently in effect. Such report shall cover the most recent annual accounting period completed. The balance sheet information must clearly show all assets, liabilities, and net worth, while the income statement must clearly show the profit and/or loss for the fiscal or calendar year. Each school also must provide a cash flow statement showing its:

- (A) Cash flow from operations;
- (B) Cash flow used in investing; and
- (C) Cash flow from financing activities.

(d) The information for license renewal must also show total instructional income and expense for the school for the preceding fiscal or calendar year and clearly identify gross tuition income from which license fees and tuition protection fund assessment will be computed. The amount of the tuition protection fund assessment required for an initial license will be computed on the basis of projected first year tuition income but shall not be less than a liability limit of \$6,250;

(e) At the option of the school, the financial report may be in the format provided by the Superintendent;

(f) Each school must certify in its financial report that all refunds due students have been made and are not in default;

(g) In all instances, information supplied must be certified true and correct by the school owner or an authorized representative;

(h) Schools that are accredited and offer students Title IV financial aid shall submit an audited financial report signed by an independent certified public accountant; and

(i) Schools reporting gross tuition income over \$15,000 will submit a financial report completed and signed by a licensed Public Accountant (PA), Certified Public Accountant (CPA), or licensed tax consultant.

(2) If after analyzing a school's financial reports and records, the Superintendent determines the school is not financially responsible or that the school's records are incomplete or inaccurate, the Superintendent may require the school to submit within 75 calendar days of written notice:

(a) An audited financial report signed by an independent certified public accountant; and

(b) Its most recent federal and state income tax reports.

(3) The Superintendent may waive or modify all or part of the requirements in sections (1) and (2) of this rule for schools offering prelicense programs or courses.

Stat. Auth.: ORS 345.325(8)

Stats. Implemented: ORS 345.325

Hist.: 1EB 34-1978, f. & ef. 10-5-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0016, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0036

Cancellation and Refund Policy: Resident Instruction

(1) A student may cancel enrollment by giving written notice to the school. Unless the school has discontinued the program of instruction, the student is financially obligated to the school according to the following:

(a) If cancellation occurs within five business days of the date of enrollment, and before the commencement of classes, all monies specific to the enrollment agreement shall be refunded;

(b) If cancellation occurs after five business days of the date of enrollment, and before the commencement of classes, the school may retain only

the published registration fee. Such fee shall not exceed 15 percent of the tuition cost, or \$150, whichever is less;

(c) If withdrawal or termination occurs after the commencement of classes and before completion of 50 percent of the contracted instruction program, the student shall be charged according to the published class schedule. The student shall be entitled to a pro rata refund of the tuition when the amount paid exceeds the charges owed to the school. In addition to the pro rated tuition, the school may retain the registration fee, book and supply fees, and other legitimate charges owed by the student;

(d) If withdrawal or termination occurs after completion of 50 percent or more of the program, the student shall be obligated for the tuition charged for the entire program and shall not be entitled to any refund;

(e) The enrollment agreement shall be signed and dated by both the student and the authorized school official. For cancellation of the enrollment agreement referenced in Subsections 1 (a) and (b), the "date of enrollment" will be the date that the enrollment agreement is signed by both the student and the school official, whichever is later.

(2) Published Class Schedule (for the purpose of calculating tuition charges) means the period of time between the commencement of classes and the student's last date of attendance as offered by the school and scheduled by the student.

(3) The term "Pro rata Refund" means a refund of tuition that has been paid for a portion of the program beyond the last recorded date of attendance.

(4) When a program is measured in clock hours, the portion of the program for which the student will be charged is determined by dividing the total clock hours into the number of clock hours accrued according to the published class schedule as of the last date of attendance.

(5) When a program is measured in credit hours, the portion of the program for which the student will be charged is determined by dividing the total number of weeks into the number of weeks accrued according to the published class schedule as of the last date of attendance.

(6) For other measurements of time such as days or weeks, the portion of the enrollment period for which the student will be charged is determined by dividing the total number of days or weeks into the number of days or weeks, accrued according to the published class schedule as of the last date of attendance.

(7) The term "tuition cost" means the charges for instruction including any lab fees. "Tuition cost" does not include application fees, registration fees, or other identified program fees and costs. The school shall adopt and publish policies regarding the return of resalable books and supplies and/or the prorating of user fees, other than lab fees.

(8) The school shall not charge a withdrawal fee of more than \$25.

(9) The school may adopt and apply refund calculations more favorable to the student than those described under this policy.

(10) When a cancellation, withdrawal, termination, or completion occurs, a calculation of all allowable charges under this rule shall be made. If such calculations evidence that the school received total payments greater than its allowable charges:

(a) Within 40 days after notification of such cancellation, withdrawal, termination, or completion, a written statement showing allowable charges and total payments received shall be delivered to the student by the school, together with a refund equal in amount to monies paid to the school in excess of those allowable charges;

(b) In the event payments to a student account are derived from federal and/or state tuition assistance program(s), including student loan programs, regulations governing refund notification and awarding within respective program(s) shall prevail in lieu of Section (10) (a) of this rule, but only with respect to the covered portions thereof; and

(c) In the event payments to a student account are derived from a sponsoring public agency, private agency, or any source other than the student, the statement of charges and payments received together with an appropriate refund described under section (10) (a) of this rule may be delivered instead to such party(ies) in interest, but only with respect to the covered portions thereof.

(11) In case of disabling illness or accident, death in the immediate family, or other circumstances beyond the control of the student that causes the student to leave school, the school shall arrange a prorated tuition settlement that is reasonable and fair to both parties.

(12) A school shall be considered in default of the enrollment agreement when a course or program is discontinued or canceled or the school closes prior to completion of contracted services. When a school is in default, student tuition may be refunded by the school on a pro rata basis. The pro rata refund shall be allowed only if the Superintendent determines that the school has made provision for students enrolled at the time of

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default to complete a comparable program at another institution. The provision for program completion shall be at no additional cost to the student in excess of the original contract with the defaulting school. If the school does not make such provision, a refund of all tuition and fees shall be made by the school to the students.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 24-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 41-1990, f. & cert. ef. 7-10-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; Renumbered from 581-045-0026, ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0037

Cancellation and Refund Policies: Distance Learning Instruction

(1) A student may cancel enrollment by giving written notice to the school. Unless the school has discontinued the program of instruction, the student is financially obligated to the school according to the following:

(a) If cancellation occurs within 5 business days of the date of enrollment and lesson materials have not been delivered, all monies related to the enrollment agreement shall be refunded;

(b) If cancellation occurs within 5 business days of the date of enrollment and lesson materials have been delivered, all monies related to the enrollment agreement shall be refunded with the exception of the cost of unreturned lesson materials or the cost of replacement for returned materials that are damaged or marked;

(c) If cancellation occurs after five business days of the date of enrollment and the lesson materials have been shipped but not delivered to the student:

(A) The school may charge an amount equal to 15 percent of the tuition cost, or \$150, whichever is less; that being established as its registration fee;

(B) If the student returns the unopened books and supplies to the school within five days of receipt, the school will refund the total cost of lesson materials.

(d) If cancellation occurs after five business days of the date of enrollment and the lesson materials have been delivered to the student but not returned within five days of receipt, and before the completion of the first lesson assignment, the school may charge:

(A) An amount equal to 15 percent of the tuition cost, or \$150, whichever is less; that being established as its registration fee; and

(B) The total cost of books and supplies.

(e) If withdrawal or termination occurs after the completion of the first lesson assignment and before 50 percent of the total lesson assignments are completed, the student shall be entitled to a pro rata refund of the tuition when the amount paid for the instructional program exceeds the charges owed to the school. In addition to the pro rated tuition charge, the school may retain the registration fee, book and supply fees, and any other legitimate charges owed by the student;

(f) If withdrawal or termination occurs after completion of 50 percent or more of the total lesson assignments, the student shall be obligated for the tuition charged for the entire instructional program and shall not be entitled to any refund;

(2) For cancellation under Subsections 1 (a)-(c), the "date of enrollment" will be determined:

(a) When enrollment occurs by a document exchange through a mail delivery service, the enrollment date shall be the date the enrollment agreement is signed by both the student and the authorized school official, whichever is later;

(b) When the enrollment occurs online, the date of enrollment will be the date the school receives:

(A) A copy of the enrollment agreement signed by the student and the student is granted access to the program; or

(B) Submission of student enrollment information through a secured website. The website must have a registration process that includes, but is not limited to, statements detailing the legal and financial obligations related to enrollment in a school. The student must verify that he/she has read and understands the enrollment agreement. A copy of the student enrollment agreement information that includes "a declaration by the student acknowledging the reading, understanding and acceptance of the enrollment obligations" shall be placed in the student file in lieu of a signed enrollment agreement.

(3) When a program is measured in lesson assignments, the portion of tuition cost for which the student will be charged is determined by dividing the number of lesson assignments completed by the total number of lesson assignments for the program.

(4) A program that includes both distance learning and resident instruction must state separately on the enrollment agreement the costs for the distance learning portion of the program and the costs for the resident portion. The appropriate refund policies for distance learning and resident instruction will apply for each portion of the program.

(5) Resident instruction dates must be scheduled by the time the student completes 50 percent of the distance learning portion of the program.

(a) For the resident portion, charges can be assessed only after a student attends the first resident class session;

(b) Maximum charges shall be calculated by applying the pro rata refund requirements established under OAR 581-045-0036(1) (a) through (e); and

(c) In the event that a school denies a student entrance in the residence portion of the program because of scheduling delays exceeding 30 days between completion of the distance learning portion and commencement of the residence portion, or other changes in contract conditions, all tuition paid for both the distance learning and scheduled residence portions must be refunded.

(6) "Withdrawal or Termination" is acknowledged to have occurred when:

(a) Written notice of same is provided to the school by the student; or

(b) The student has failed to submit completed lesson assignments and/or to otherwise maintain the school's published standards of satisfactory progress; or

(c) In the instance of a resident portion of a program, the student has failed to attend classes and/or to otherwise maintain the school's published standards for satisfactory progress.

(7) The term "tuition cost" means the charges for instruction including any lab fees. Tuition cost does not include application fees, registration fees, or other identified program fees and costs. The school shall adopt and publish policies regarding the return of resalable books and supplies and/or the prorating of user fees, other than lab fees.

(8) The term "Pro rata refund" means a refund of tuition paid for that portion of the program not completed by the student.

(9) The school shall not charge a withdrawal fee of more than \$25.

(10) The school may adopt and apply refund calculations more favorable to the student than those described under this policy.

(11) When a cancellation, withdrawal, termination, or completion occurs, a calculation of all allowable charges under this rule shall be made. If such calculations evidence that the school received total payments greater than its allowable charges:

(a) Within 40 days after notification of such cancellation, withdrawal, termination, or completion, a written statement showing allowable charges and total payments received shall be delivered to the student by the school, together with a refund equal in amount to monies paid to the school in excess of those allowable charges;

(b) In the event payments to a student account are derived from federal and/or state tuition assistance program(s), a sponsoring public agency, private agency, or any source other than the student, the statement of charges and payments received together with an appropriate refund described under section (11)(a) of this rule may be delivered instead to such party(ies) in interest, but only with respect to the covered portions thereof.

(12) In case of disabling illness or accident, death in the immediate family, or other circumstances beyond the control of the student that causes the student to leave school, the school shall arrange a prorated tuition settlement that is reasonable and fair to both parties.

(13) A school shall be considered in default of the enrollment agreement when a functioning course or program is discontinued or canceled or the school closes prior to completion of contracted services. When a school is in default, student tuition may be refunded by the school on a pro rata basis. The pro rata refund shall be allowed only if the Superintendent determines that the school has made provision for students enrolled at the time of default to complete a comparable program at another institution. The provision for program completion shall be at no additional cost to the student in excess of the original contract with the defaulting school. If the school does not make such provision, a refund of all tuition and fees shall be made by the school to the students.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 41-1990, f. & cert. ef. 7-10-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; Renumbered from 581-045-0027, ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

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581-045-0038

Cancellation and Refund Policy: Self-Directed Instruction (Clock Hour Program/Lesson Based)

(1) A student may cancel enrollment by giving written notice to the school. Unless the school has discontinued the program of instruction, the student is financially obligated to the school according to the following:

(a) If cancellation occurs within five business days of the date of enrollment, and lesson materials have not been delivered, all monies specific to the enrollment agreement shall be refunded;

(b) If cancellation occurs within 5 business days of the date of enrollment and lesson materials have been delivered, all monies related to the enrollment agreement shall be refunded with the exception of the cost of unreturned lesson materials or the cost of replacement for returned materials that are damaged or marked;

(c) If cancellation occurs after five business days of the date of enrollment and the lesson materials have been shipped but not delivered to the student:

(A) The school may charge an amount equal to 15 percent of the tuition cost, or \$150, whichever is less; that being established as its registration fee;

(B) If the student returns the unopened books and supplies to the school within five days of receipt, the school will refund the total cost of lesson materials.

(d) If cancellation occurs after five business days of the date of enrollment and lesson materials have been delivered to the student but not returned within five days of receipt, and before the commencement of the accrual of clock-hours or the completion of the first lesson, the school may charge:

(A) An amount equal to 15 percent of the tuition cost, or \$150, whichever is less; that being established as its registration fee; and

(B) The total cost of books and supplies.

(e) If withdrawal or termination occurs after the commencement of the accrual of clock-hours or the completion of the first lesson assignment and before either 50 percent of the program has been offered, or before 50 percent of the program clock-hours or lesson assignments are completed, the student shall be entitled to a pro rata refund of the tuition when the amount paid exceeds the charges owed to the school. In addition to the prorated tuition charge, the school may retain the registration fee, book and supply fees, and any other legitimate charges owed by the student;

(f) If withdrawal or termination occurs after completion of 50 percent or more of the program has been offered or after completion of 50 percent or more of the program clock-hours or lesson assignments, whichever occurs first, the student shall be obligated for the tuition charged for the entire instructional program and shall not be entitled to any refund.

(2) For cancellation under Subsections (1)(a) through (c), the "date of enrollment" will be determined:

(a) When enrollment occurs in the school setting, the enrollment date shall be the date the enrollment agreement is signed by both the student and the authorized school official, whichever is later;

(b) When enrollment occurs online, the date of enrollment will be the date the school receives:

(A) A copy of the enrollment agreement signed by the student, and the student is granted access to the program, or

(B) Submission of student enrollment information through a secured website. The website must have a registration process that includes, but is not limited to, statements detailing the legal and financial obligations related to enrollment in a school. The student must verify that he/she has read and understands the enrollment agreement. A copy of the student enrollment agreement information that includes "a declaration by the student acknowledging the reading, understanding and acceptance of the enrollment obligations" shall be placed in the student file in lieu of a signed enrollment agreement.

(3) Under Subsections (1)(d) and (e), the term "offered" means the period of time between the beginning date and ending date of the program as identified on the enrollment agreement.

(4) Under Subsections (1)(d) and (e), the portion of tuition cost for which the student shall be charged is determined by dividing the total clock hours into the number of clock hours accrued by the student, or the total number of lessons into the number of lessons completed by the student.

(5) The term "tuition cost" means the charges for instruction including any lab fees. Tuition cost does not include application fees, registration fees, or other identified program fees and costs. The school shall adopt and publish policies regarding the return of resalable books and supplies and/or the prorating of user fees, other than lab fees.

(6) The term "Pro rata refund" means a refund of tuition paid for that portion of the program not completed by the student.

(7) The school shall not charge a withdrawal fee of more than \$25;

(8) The school may adopt and apply refund calculations more favorable to the student than those described under this policy.

(9) When a cancellation, withdrawal, termination, or completion occurs, a calculation of all allowable charges under this rule shall be made. If such calculations evidence that the school received total payments greater than its allowable charges:

(a) Within 40 days after notification of such cancellation, withdrawal, termination, or completion, a written statement showing allowable charges and total payments received shall be delivered to the student by the school, together with a refund equal in amount to monies paid to the school in excess of those allowable charges;

(b) In the event payments to a student account are derived from federal and/or state tuition assistance program(s), including student loan programs, regulations governing refund notification and awarding within respective program(s) shall prevail in lieu of Section (9)(a) of this rule, but only with respect to the covered portions thereof; and

(c) In the event payments to a student account are derived from a sponsoring public agency, private agency, or any source other than the student, the statement of charges and payments received together with an appropriate refund described under section (9)(a) of this rule may be delivered instead to such party(ies) in interest, but only with respect to the covered portions thereof.

(10) In case of disabling illness or accident, death in the immediate family, or other circumstances beyond the control of the student that causes the student to leave school, the school shall arrange a prorated tuition settlement that is reasonable and fair to both parties.

(11) A school shall be considered in default of the enrollment agreement when a course or program is discontinued or canceled or the school closes prior to completion of contracted services. When a school is in default, student tuition may be refunded by the school on a pro rata basis. The pro rata refund shall be allowed only if the Superintendent determines that the school has made provision for students enrolled at the time of default to complete a comparable program at another institution. The provision for program completion shall be at no additional cost to the student in excess of the original contract with the defaulting school. If the school does not make such provision, a refund of all tuition and fees shall be made by the school to the students.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0039

Cancellations, Tuition and Refund Policies: Exceptions

(1) A school may adopt a refund or cancellation policy different from the policies described under OAR 581-045-0036, 581-045-0037, and 581-045-0038 only if:

(a) The policy is more favorable to the student than what those respective rules require; or

(b) The school enters into contractual arrangements for training services where the costs are paid by a contract with another agency, and no refund liability is created between those students and the school.

(2) The Superintendent may, upon request, establish an alternative refund policy for a school that offers courses or programs with such an organizational structure that application of the refund policies prescribed, if applied, would cause unfair results to either the school or enrollees.

Stat. Auth.: ORS 345.115

Stats. Implemented: ORS 345.115

Hist.: 1EB 31-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; Renumbered from 581-045-0028, ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0060

Standards Governing Recruitment for Private Career Schools and their Agents

All agents and schools will be subject to the following conditions of this rule:

(1) A school shall provide training to admissions staff that includes:

(a) Knowledge of the Oregon Private Career School law, and rules; and

(b) Detailed understanding of the school's catalog, admission standards, application fee if charged, enrollment agreement/contract, refund policy, other written school policies, and code of ethical conduct when dealing with prospective students and parent(s) or guardian(s).

ADMINISTRATIVE RULES

(2) As the recruitment of prospective students relates to admissions policies and practices:

(a) The school or agent shall clearly explain to each applicant for enrollment the nature of the course under consideration and what the training can reasonably be expected to do for the student in preparation for or furtherance of a trade or occupation;

(b) The school shall not enroll, and no agent or any person involved in recruitment or admission shall recommend for enrollment, any person without having reason to believe that the person is likely to succeed in and benefit from the proposed training or course of instruction;

(c) Where a school or agent enrolls a person who does not meet regular basic admission qualifications of the school, the school must have a written record of the reasons why the enrollee was permitted to enroll, and be prepared to justify its action in accepting the enrollment;

(d) No school or agent may accept an enrollment from a person of compulsory school age, nor one attending a school of elementary or secondary level, until the agent has written assurance from the enrollee's parent, guardian, or principal of the elementary or secondary school attended, that pursuit of the course would not be detrimental to enrollee's regular school work; and

(e) The school must produce, upon demand of the Department, documents attesting to completion of subsections (1)(a) and (b) of this rule and, when applicable, subsections (1)(c) and (d) of this rule.

(3) As recruitment of prospective students relates to enrollment agreements or contracts:

(a) The enrollment agreement or contract must clearly outline obligations of both school and student, and a copy of the enrollment agreement or contract must be furnished the student by the agent before payment is made;

(b) The school or agent must inform each applicant of the nature of the obligation entered into and the responsibilities and rights of the student under the enrollment agreement or contract before the student signs the document. Evidence of compliance with this will be the student's signature on file at the school verifying receipt of a copy of the contract as well as other documents required in OAR 581-045-0018;

(c) The total tuition for any specific course must be the same for all persons enrolling at a specific time, except that a group-training contract showing lower individual rates may be negotiated;

(d) Tuition changes in courses shall be effective on specific dates and applicable to all who enroll thereafter; and

(e) All charges and costs incidental to training must be revealed by the school or agent to the prospective student before any enrollment agreement or contract is signed.

(4) As recruitment of prospective students relates to advertising and promotional literature: No bonus or other incentive may be given a prospective student for the purpose of enticing the student to sign an enrollment agreement other than that which is offered to all students in a special promotional effort. This rule does not prohibit a school from establishing a bona fide program with clearly identified criteria.

(5) As recruitment of prospective students relates to the school's responsibility for its agents:

(a) The school is responsible for ensuring that the agent has been provided training and is knowledgeable about the school's:

- (A) Beginning, history, and owners;
- (B) Program of studies;
- (C) Refund policy;
- (D) Admission and assessment requirements;
- (E) Graduation requirements;
- (F) Rules and regulations;
- (G) Financial policies and procedures;
- (H) Governance by Oregon private career school law and rules;
- (I) Relationship to applicable consumer protection laws; and
- (J) Code of ethical conduct when dealing with prospective students and parent(s) or guardian(s).

(b) The school is responsible for all advertising or promotional literature used by its agents;

(c) The school or agent must provide the student a receipt for all money collected and a copy of the enrollment agreement;

(d) No person who has any responsibility for the recruitment of students shall use the title of counselor, advisor, or any term of similar import, as determined by the Superintendent. Persons responsible for student recruiting may use the titles of admissions representative, career consultant, or other similar titles. The use of such titles shall be allowed so long as neither the school nor any such titled person represents, either directly or by

implication, that they are acting on behalf of the prospective student rather than on behalf of the school;

(e) No school or agent may discredit other schools or agents in any manner that may influence a student to leave another school or discourage a student from signing an enrollment agreement with another school; and

(f) All schools and their agents shall comply with all standards set forth in OAR 581-045-0033 and 581-045-0034 concerning advertising and promotional material.

Stat. Auth.: ORS 345.040 & 345.325

Stats. Implemented: ORS 345.040

Hist.: 1EB 257, f. 1-3-77, ef. 7-1-77; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; ODE 23-2000(Temp), f. 7-27-00, cert. ef. 7-27-00 thru 1-22-01; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0061

Private Career School Agents

(1) An agent shall be a person who has attained the age of 18 years, is of good moral character and is otherwise competent and qualified to safeguard and protect the interests of the public.

(2) No person shall act in the state as an agent for a private career school unless the Superintendent has received the agent's registration.

(3) Agents shall be considered registered only when the school notifies the Department in writing of the name, address, date of employment, and geographic territory for each agent.

(4) For licensing purposes, registered agents shall be considered employees of the school.

(5) No agent shall begin recruiting students until completing school-provided training in the areas identified in OAR 581-045-0060(5)(a).

(6) The school shall be responsible for developing identifying credentials and passport pictures for each of its agents. The credentials shall remain the property of the school. The identifying credentials shall include:

- (a) The full name and address of the agent;
- (b) The full name and address of the career school to be represented;

and

- (c) A passport-type picture affixed to the identifying credentials.

(7) The school shall immediately notify the Superintendent of the termination of employment of an agent and demand return of the agent's credentials.

(8) The school may be fined for failure to keep its agent files current and accurate.

(9) Agents, when representing more than one school, shall disclose to each employing institution that they are employed by more than one school.

(10) Agents, when representing a school, shall:

- (a) Report first to the administrative offices of any high school or college before conducting any student interviews or presentations;
- (b) Make no statements which are false, misleading or fraudulent;
- (c) Respond with all facts about the school the prospective student may wish to know prior to the making of an enrollment decision;
- (d) Use only advertising that complies with OAR 581-045-0033 and 581-045-0034;

(e) Provide a copy of the school's catalog/brochure to high school administrators or counselors prior to making any presentation at a high school;

(f) Disclose information on tuition and other instructional costs upon request by prospective students;

(g) Explain to the student payment obligations before the student signs the enrollment agreement, and explain the school's refund policy;

(h) Make clear the school's academic policies and code of conduct;

(i) Accurately describe the school's facilities and living accommodations, and explain living costs;

(j) Give a report on current job prospects;

(k) Make available for review samples of the school's distance learning lessons prior to the signing of the enrollment agreement;

(l) Explain the school's placement assistance, and provide placement statistics;

(m) Explain the school's admissions criteria;

(n) Provide a copy of the enrollment agreement and fully explain all terms and conditions;

(o) Suggest that the prospective student visit the school to talk with teachers, guidance counselors, employment counselors and students; and

(p) Wear identifying credentials at all times when involved in recruitment activities outside of the school.

(11) Agents shall not:

(a) Make false, inaccurate or misleading statements concerning any degree, certificate or diploma offered by the school;

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(b) State that credits from the school are transferable unless such claims are supported by documentation in the school's files and provided to and on file with the Department. The agent shall, at the time of representation, identify each school or type of school and program which accepts such credits. The agent shall clearly and conspicuously disclose all limitations on such transferability; for example, it is not possible to transfer credits from a certificate program to a degree program;

(c) Recommend a prospective student for acceptance if the agent does not have reason to believe the student has a chance to succeed;

(d) Distribute distance learning lessons if to do so limits the student's right to cancel the enrollment within five business days of signing and receive a full refund of all monies paid to the school;

(e) Collect any fee other than the application fee prior to the student's official admittance; or

(f) Represent that any commodity or service is free when, in fact, such commodity or service is regularly included as part of a course for which tuition or any other fee is paid.

(12) The school shall monitor its agent's activities and sales and marketing practices and immediately investigate and resolve complaints about their activities. The school shall be accountable for the adherence of its agents to ORS Chapter 345 and OAR chapter 581, division 045.

Stat. Auth.: ORS 345.325 & 345.040

Stats. Implemented: ORS 345.040

Hist.: 1EB 119, f. & ef. 7-19-68; 1EB 131, f. 5-19-72, ef. 6-1-72; 1EB 25-1978, f. 6-30-78, ef. 7-1-78; 1EB 30-1986, f. & ef. 7-23-86; EB 11-1990, f. & cert. ef. 2-1-90; EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0050, ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0062

Application for Private Career School License Renewal

(1) Each school shall annually renew its license. At least 30 calendar days prior to the anniversary date of its license, the school must file with the Department a completed application for license renewal, including a current financial statement, certified true and accurate by the school's chief administrative officer. Any statements or materials on file that are no longer accurate must be amended on the application.

(2) If a school has been licensed for three years or more and there are no changes in the school's structure, the Superintendent may allow the school to submit an abbreviated renewal application that confirms the school's compliance with applicable Oregon Revised Statutes and Oregon Administrative Rules. Such abbreviated renewal application shall include the required renewal fee.

(3) The school must provide the following information on the application for the reporting period identified on the renewal:

(a) Number of students continuing from the prior enrollment period;

(b) Number of students who enrolled in the program during the reporting period;

(c) Number of students who left the program without completing it during the reporting period;

(d) Number of students who were graduated from the program during the reporting period; and

(e) Number of those who graduated and were placed or working in full-time directly related occupations during the reporting period.

(4) An application for renewal of license shall be considered late if not postmarked (or date stamped if hand delivered to the Department) before or on the due date. The Superintendent as allowed under ORS 345.995 may impose a late fee and OAR 581-045-0190(5) for each calendar day the renewal application is late. Such fees, where applicable, shall be included with the renewal application.

(5) The Superintendent may invoke immediate license suspension as defined in OAR 581-045-0001(54) and begin revocation procedures as described in ORS 183.413-497:

(a) When a school fails to submit the application for license renewal by the date of expiration; or

(b) If submitted, it does not include accurate or complete materials necessary for license renewal; or

(c) The school is on probation and not making satisfactory progress to comply with all provisions of the program improvement plan.

(6) License renewal may be denied if the Superintendent determines that:

(a) The school's license has been suspended;

(b) The school is on probation and not making satisfactory progress to comply with all provisions of the program improvement plan. When notice of denial of license renewal is issued, the school shall be notified and, upon written request, shall be granted a contested case hearing under ORS 183.310(2);

(c) In such cases a school shall be granted a hearing, if requested, within 20 calendar days of the date of denial.

(7) The Superintendent may conditionally approve a license renewal providing a school agrees to a program improvement plan acceptable to the Superintendent.

Stat. Auth.: ORS 345.030

Stats. Implemented: ORS 345.030

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; Renumbered from 581-045-0004 by ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0064

Student Completion and Placement

(1) Schools shall submit true and correct data annually to the Superintendent which identifies completion and placement rates for each approved program. These rates shall be computed by individual programs and substantiated by worksheets and records.

(2) Any school failing to maintain completion and placement rates for each approved program of at least 50 percent may be placed on probation for up to one full year or such time as evidence submitted indicates that a 50 percent level of completion and placement is being achieved.

(3) The Superintendent may withdraw approval of any program that fails to maintain completion and placement rates of at least 50 percent for two consecutive reporting periods. Unusual cause or circumstance will be considered by the Superintendent and exceptions may be granted.

(4) The Superintendent may require the name, address, and telephone number of any or all graduates and employers accounted for in Section (1) of this rule for verification and reporting purposes.

(5) The Superintendent, upon written request from a school, may waive or modify all or part of the requirements of the annual submission of student placement data.

Stat. Auth.: ORS 345.080

Stats. Implemented: ORS 345.080

Hist.: ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0200

Barbering, Hair Design, Esthetics, and Nail Technology

In addition to OAR 581-045-0001 through 581-045-0190, schools of barbering, hair design, esthetics, and nail technology shall comply with this rule and OAR 581-045-0210.

(1) Minimum hourly training requirements:

(a) For hair design, 1,450 hours;

(b) For barbering, 1,100 hours;

(c) For esthetics, 250 hours;

(d) For nail technology, 350 hours; and

(e) In addition to the programs listed above, students are required to successfully complete the following requirements once:

(A) Safety and sanitation, 150 hours; and

(B) Career development, 100 hours.

(2) Individual progress records must be regularly maintained for the purpose of monitoring each student's progress through the instructional program and verifying actual hours of instruction in each certifiable classification. Once a student completes the state minimum and the school program requirements, the school shall administer a Department-approved written and practical exam prior to the student taking the State Board exam for licensure. The time required to take the practical exam shall be included as part of the contracted program hours included in the tuition cost.

(3) The Department, with the assistance of a curriculum committee, will develop minimum standards for each certificated program or any combination of programs.

(4) No student shall perform any task in a clinic lab without first having achieved verifiable minimum competence. The following hours are recommended as a guideline for classroom and laboratory instruction that students should experience prior to any assignment in the clinic lab:

(a) Hair design, 160 hours;

(b) Esthetics, 40 hours;

(c) Nail technology, 40 hours; and

(d) Barbering, 100 hours.

(5) The instructional program shall determine the type of assignments students will receive in the clinic lab. Clinic lab assignments should, as nearly as possible, reflect the emphasis of the student's current and cumulative theory and laboratory experiences. Schools shall establish a minimum and maximum number of clinic activities for each type of task required in the clinic lab. These minimums/maximums should show a comparable distribution of activities reflective of industry practice. Only when students have completed the minimum in all areas can they be assigned to clinic activities in excess of the maximums.

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(6) As an alternative to section (1) of this rule a competency-based training program that is self-paced may be approved by the Superintendent when the school has developed written requirements which it administers for graduation including:

(a) Clearly defined student performance objectives that measure levels of performance at each level of instruction for each skill/task and knowledge required for students to successfully pass the appropriate practitioner certificate examination and successfully and safely perform on members of the public all services allowed in the certificate classifications;

(b) Individual progress records maintained for the purpose of monitoring each student's progress through the instructional program and recording/verifying actual hours of instruction and performance achievement by each student;

(c) A curriculum design, which the Superintendent determines to be comparable to the Board adopted model curriculum, showing a logical progression of academic and practical training experiences leading to the levels of student performance required for graduation and certification;

(d) The identification of specific levels of competence to be achieved by each student prior to any clinic lab experience that will ensure students have achieved sufficient skill and knowledge to successfully and safely perform assigned tasks on members of the general public;

(e) A diagnosis of each student's beginning level of competency and a prescriptive instructional program for specific competency completion with projected timelines resulting in an estimated program completion date; a copy to be given to the student on commencement of the program and on file in the student's personal file. Revisions to the prescriptive program must be based on recorded performance evaluations and as a result of school/student negotiation. Copies of revisions must be given to the student and on file in the student's academic file;

(f) Assurances that the instructional program will determine the type of assignments that students receive for the clinic lab; that, as nearly as possible, the clinic lab assignments reflect the emphasis of the student's current and cumulative theory and laboratory experiences;

(g) School catalogs and/or student enrollment agreements, that show the average time for students to complete the requirements for the various certificate programs during the previous reporting period;

(h) An annual report at the time of relicensing to the Department showing the actual total hours of instruction received by each student who has completed or left the school during the previous reporting period;

(i) Assurances that no student's competency-based prescriptive training program will be significantly altered or regulated in any way, once the student and the school administration have signed a competency-based agreement; and

(j) When the school informs a student that he/she is competent, the student may elect to leave the school with a diploma at that time or stay in school until he/she has been trained for an amount of time equal to the training hours listed in section (1) of this rule, and no additional tuition may be charged. The student shall notify the school of his/her decision within two weeks of notice of competency.

(7) With the exception of the teacher training program in section (24) of this rule, a school shall not conduct both fixed-hour and student competency-based training programs in the same school facility concurrently unless the school is in transition from one training program to another. The Department may set a time limit in which the transition must be completed.

(8) No school shall enroll a student wishing to transfer hours from a school of barbering, hair design, esthetics, and nail technology in Oregon or out-of-state without first receiving an official transcript properly signed and/or sealed directly from the previous school(s). A school may admit a student on a temporary basis without receiving an official transcript. In no event should a student be considered a graduate until an official transcript from a prior school(s) is in the graduating school's student file. Schools shall evaluate and grant appropriate credit for any education and training students received at state regulated postsecondary schools.

(9) Schools shall validate only their own hours of instruction provided a student but not any hours provided by other schools.

(10) Upon receipt and evaluation of official transcripts from schools previously attended:

(a) Schools shall give full credit for hours earned within the last ten years; and

(b) Schools may grant credit for hours earned prior to the last ten years, if approved by the Superintendent.

(11) No school shall deny a student a record of hours earned. A record of hours does not infer or include the official transcript.

(12) The school shall have as a minimum the following staff present at all times:

(a) 1-15 students present — one approved teacher;

(b) 16-30 students present — two approved teachers; and

(c) One additional approved teacher for each additional 20 students or part thereof. Teachers must be certified in all areas they teach and supervise. When only one teacher is present at the school, clinic lab operations, and classroom instruction shall not occur simultaneously. The lone teacher shall conduct and supervise one or the other but not both concurrently. Teachers who supervise the clinic lab and/or approve student practical performance must be certified in all areas they supervise or approve;

(d) Exceptions to the student to teacher ratios in (a)–(c) may be granted for theory/lecture classes only. All hands-on practical lab and clinic lab classes are required to maintain specified staffing ratios.

(13) The minimum teaching staff, as set forth in these rules, shall not perform administrative or financial aid or any other non-instructional duties during the time that the clinic lab and classroom instruction are taking place concurrently.

(14) A teacher or student teacher shall not perform any services in the school during school hours except for teaching purposes.

(15) Schools may use resource persons who are not approved teachers for enrichment of instruction.

(a) Maximum time limits for resource persons are:

(A) Hair design, 340 hours;

(B) Esthetics, 100 hours;

(C) Nail technology, 100 hours; and

(D) Barbering, 270 hours.

(b) Instruction by resource persons, if provided outside the school premises, must be supervised by a certified teacher.

(16) All services performed by students shall take place under the supervision and direction of a certified teacher.

(17) Premises shall be used during school hours only for instructing students and teacher trainees in barbering, hair design, esthetics, or nail technology.

(18) The school shall provide a minimum of 2,800 square feet of total floor space to be allocated as follows; one work station for each of the first twenty students; one additional work station for every five students in excess of twenty; and, where hair design is taught, one shampoo bowl for every five work stations. The superintendent must approve any exception to this requirement. Classroom and clinic space are in compliance with OAR 581-045-0022. Schools must comply with ORS 345.240 relative to accessibility of programs for persons with handicapping conditions.

(19) The Superintendent may approve a facility of less than 2,800 square feet of floor space for schools if the school presents a written plan as to how the number of students will be served in the space provided. The plan must include how the school meets the entire model curriculum standards.

(20) The school shall be separated from adjoining rooms used for another business or for domestic purposes, by means of walls or substantial partitions extending from floor to ceiling; all doors leading to the school from the aforesaid adjoining rooms must be kept closed. Access to the school shall be provided by means of an outside or separate entrance, or from a public passageway in a public building.

(21) Currently, certified practitioners of barbering, hair design, esthetics, or nail technology may be approved by the Department to teach subjects or programs directly relating to their certified classification(s) if they:

(a) Have graduated from high school as evidenced by a photocopy of a transcript indicating graduation, diploma or its foreign equivalent. As an alternative, the teacher may show evidence of obtaining a General Education Development (GED) certificate. The Superintendent may grant a waiver upon written request from the school;

(b) Are at least 18 years of age as evidenced by a photocopy of a birth certificate, driver's license, or baptismal certificate;

(c) Have completed the Standard Course of Study as set forth in section (24)(b) of this rule unless they meet the requirements as set forth in subsection (21)(d)–(f) of this rule;

(d) Hold all Oregon licenses, certificates, and ratings legally required for employment in the field in which they teach. The teacher requirements found in OAR 581-045-0012, apply, if the applicants:

(A) Have at least one year of work experience as a certified practitioner in the subject in which they instruct, following certification or licensure. The work experience and the training for certification or licensure must equal a minimum of two years; or

(B) Have completed an approved teacher training program, and

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(e) Provide evidence to the satisfaction of the Superintendent that the requirements of this section have been met; and

(f) Submit the \$50.00 registration fee.

(22) Each school shall include the names of all actively employed (full-time or part-time) approved teachers on its annual license renewal application.

(23) Continuing education of teachers shall be required to maintain approval:

(a) A teacher may maintain registration status by completing 30 clock hours of continuing education approved by the Superintendent within every 36-month period following that teacher's first date of common teacher registration (including any period of time from the actual date of registration until the first date of common teacher registration); and by completing 30 clock hours of approved continuing education within every 36-month period thereafter, even if the teacher is not teaching for all or a portion of each three-year period. The common teacher registration dates are from August 1 until July 31. Only 10 of the 30 clock hours may be from an authorized manufacturer or distributor show;

(b) The Department shall, in conjunction with the state advisory committee, approve courses for which continuing education credit will be allowed;

(c) Proof of completion of the requirements of subsection (23)(a) of this rule, and the \$25.00 renewal of registration fee, must be submitted to the Superintendent prior to each teacher's next date of registration; and

(d) An individual failing to comply with the requirements of subsection (23)(a) of this rule shall not be approved for registration renewal or for a new registration until such requirements have been met.

(24) A licensed school of barbering, hair design, esthetics, or nail technology may offer a teacher training program if it complies with the following:

(a) Courses of teacher training for instruction in barbering, hair design, esthetics, and nail technology may be offered only in a school of hair design licensed under the provisions of ORS Chapter 345 or Mt. Hood Community College. Courses of study must be submitted to the Superintendent for approval;

(b) The Standard Course of Study shall require 1,000 hours of instruction that shall include the following:

(A) Preparation and use of lesson plans,

(B) Use of audiovisual and other instructional aids,

(C) Development and administration of tests and evaluation of test results,

(D) Evaluation and recording of student progress, and recording of attendance,

(E) Observation of practical demonstrations,

(F) Assisting with practical demonstrations,

(G) Setting up and performance of practical demonstrations, and

(H) Practice teaching.

(c) The Superintendent shall approve teacher-training programs of 200 hours for:

(A) Teachers whose certification has lapsed more than three years, and

(B) Teachers from other states whose licensing requirements are less than the minimum requirements for Oregon.

(d) The school shall:

(A) Maintain daily records of the teacher trainee's attendance, and the subject matter covered; and

(B) Conduct and record the results of periodic evaluations of each teacher trainee.

(e) The school may evaluate and give up to 500 hours credit for professional teaching experience or any academic training received in a community college or institution of higher education when that academic training contributes to achievement of the total approved Standard Course of Study. The Superintendent may grant a waiver to the 500 hour limitation if sufficient evidence is submitted;

(f) A school shall not have more than three approved teacher trainees at one time. The school shall designate who shall have the principal supervisory responsibility for the student in the teacher-training program. Each trainee, when in the clinic lab, must be under direct supervision of an approved teacher with a minimum of two years teaching experience;

(g) Teacher trainees shall evaluate students only under the direct supervision of a certified teacher; and

(h) Teacher training students must be registered with the Superintendent prior to commencement of their training.

Stat. Auth.: ORS 345.400, 345.460 & 345.470

Stats. Implemented: ORS 345.400 & 345.460

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 21-2002, f. 9-26-02 cert. ef. 10-1-02; ODE 17-2003, f. 12-30-03, cert. ef. 1-1-04; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

581-045-0210

Safety and Sanitation Compliances and Inspections for Schools of Hair Design, Barbering, Esthetics and Nail Technology Only

(1) Students, teachers and school owners shall observe and be subject to all state, county and municipal laws and regulations pertaining to public health. Compliance with state and municipal fire regulations is required.

(2) Sanitation and safety rules set forth in OAR chapter 817 shall be available in the school.

(3) The current sanitation inspection report required by this section shall be conspicuously displayed in the school.

(4) Sanitation and safety inspections of schools regulated by this rule shall be conducted periodically by agents of the Oregon Health Licensing Agency. Such inspections shall be for the purpose of determining whether schools are in compliance with the standards set forth in OAR chapter 817, divisions 5, 10, and 60 as they relate to the schools.

(5) A school is considered to be open and subject to inspection when the school is serving the public.

(6) The inspecting agent shall submit to the Superintendent a written report of sanitation and safety conditions observed in each school inspected. Any violation of standards existing in a school at the conclusion of an inspection shall be specifically noted in the inspection report.

(7) Failure of a school to correct a condition of violation within the time allotted for compliance as determined by the Superintendent shall be subject to penalties as set forth in OAR 581-045-0190.

Stat. Auth.: ORS 345.440 & 345.450

Stats. Implemented: ORS 345.440

Hist.: EB 13-1996, f. & cert. ef. 7-26-96; ODE 32-2000, f. 12-11-00 cert. ef. 1-1-01; ODE 15-2006, f. 12-11-06, cert. ef. 1-1-07

Rule Caption: Adoption of instructional materials list for English/Language Arts and English as a second language.

Adm. Order No.: ODE 16-2006

Filed with Sec. of State: 12-11-2006

Certified to be Effective: 12-12-06

Notice Publication Date: 11-1-06

Rules Amended: 581-011-0077

Subject: Adoption of instructional materials as specified in ORS 337.050 is done through the administrative rule making process. The adoption of OAR 581-011-0077 will add to the reference list programs in English/Language Arts and English as a second language in the following categories:

Category 1 — English/Language Arts, Grades K–5/6

Category 2 — English/Language Arts, Grades 6–8

Category 3 — English/Language Arts, Grades 9–12

Category 4 — English as a Second Language, Grades K–5/6

Category 5 — English as a Second Language, Grades 6–8

Category 6 — English as a Second Language, Grades 9–12

Rules Coordinator: Paula Merritt—(503) 947-5746

581-011-0077

Instructional Materials Adopted by the State Board of Education 2007-2013

(1) The State Board of Education adopts by reference “*State-Adopted Instructional Materials for English, 2000–2006*” listing basal instructional materials in the following categories:

(a) English, Grades K–2/3;

(b) English, Grades K–5;

(c) English, Grades 6–8;

(d) English, Grades 9–12.

(2) The recommended materials are adopted for the adoption cycle beginning July 1, 2000 and ending June 30, 2006.

(3) The State Board of Education adopts by reference “*State-Adopted Instructional Materials for English/Language Arts and English as a Second Language, 2007-2013*” for the following categories:

(a) English/Language Arts, Grades K–5/6;

(b) English/Language Arts, Grades 6–8;

(c) English/Language Arts, Grades 9–12;

(d) English as a Second Language, Grades K–5/6;

(e) English as a Second Language, Grades 6–8; and

(f) English as a Second Language, Grades 9–12.

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(4) The recommended materials are adopted for the adoption cycle beginning July 1, 2007 and ending June 30, 2013.

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

Stat. Auth.: ORS 337.050

Stats. Implemented: ORS 337.050

Hist.: ODE 26-1999, f. & cert. ef. 11-1-99; ODE 16-2006, f. 12-11-06, cert. ef. 12-12-06

Rule Caption: Related to use of physical restraint and seclusion with students in public schools.

Adm. Order No.: ODE 17-2006

Filed with Sec. of State: 12-11-2006

Certified to be Effective: 12-12-06

Notice Publication Date: 11-1-06

Rules Adopted: 581-021-0062

Rules Amended: 581-021-0061

Subject: Rules require public schools to develop policies and procedures on the use of physical restraint and seclusion in schools. Policies and procedures must meet specified criteria Schools must develop behavior support plans with specific content requirements and with parent participation. The rules address staff training, incident documentation, protections, debriefing, and notice to parents.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-021-0061

Corporal Punishment Defined

(1) Corporal punishment is any act which willfully inflicts or willfully causes the infliction of physical pain on a student.

(2) Corporal punishment does not include the emergency use of reasonable physical force by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property.

(3) Corporal punishment does not include physical pain or discomfort resulting from or caused by:

(a) Training for or participation in athletic competition voluntarily engaged in by a student;

(b) Recreational activity voluntarily engaged in by a student;

(c) Physical exertion shared by all students in a teacher directed class activity, which may include, but is not limited to, physical education exercises, field trips, or vocational education projects; or

(d) Physical restraint or seclusion;

(A) As part of a behavior support plan in a student's individual education program which has been developed with parent participation as required in Chapter 343, or, with parent participation, in a student's Section 504 plan or other behavior support plan;

(B) That includes an individual threshold (number of incidents within a specific time period) for reviewing the plan; and

(C) Is carried out according to district policies and procedures under OAR 581-021-0062, which must be provided to the parents upon request when a plan is developed that includes the use of physical restraint and/or seclusion.

Stat. Auth.: ORS 339

Stats. Implemented: ORS 339.250

Hist.: ED 25-1989(Temp), f. & cert. ef. 9-8-89; EB 20-1990, f. & cert. ef. 4-5-90; ODE 17-2006, f. 12-11-06, cert. ef. 12-12-06

581-021-0062

Use of Physical Restraint and Seclusion

(1) Definitions:

(a) "Physical restraint" means the restriction of a student's movement by one or more persons holding the student or applying physical pressure upon the student. "Physical restraint" does not include touching or holding a student without the use of force for the purpose of directing the student or assisting the student in completing a task or activity;

(b) "Seclusion" means the involuntary confinement of a student alone in a room from which the student is prevented from leaving. Seclusion does not include "time out" as defined in subsection (c);

(c) "Time out" means a removing a student for a short time to provide the student with an opportunity to regain self-control, in a setting from which the student is not physically prevented from leaving.

(2) Effective September 1, 2007, school district boards must establish written policies and procedures on the use of physical restraint and seclusion. These policies and procedures must include, at a minimum:

(a) The use of physical restraint or seclusion only;

(A) As part of a behavior support plan when other less restrictive interventions would not be effective and the student's behavior poses a threat of imminent, serious, physical harm to the student or others; or

(B) In an emergency by a school administrator, teacher, school employee, or volunteer as necessary to maintain order or to prevent a student from harming him/herself, other students, and school staff or property in accordance with OAR 581-021-0061(2).

(b) The use of physical restraint and/or seclusion only for as long as the student's behavior poses a threat of imminent, serious physical harm to the student or others;

(c) Any room used for seclusion of a student must allow staff full view of the student in all areas of the room, and be free of potentially hazardous conditions such as unprotected light fixtures and electrical outlets;

(d) A provision that staff will continuously monitor a student's status during physical restraint and/or seclusion;

(e) Identification of the training program(s) or system(s) of physical restraints and seclusion selected for use in the district, which must include behavior support, prevention, de-escalation, and crisis response techniques;

(f) A provision that only staff who are current in the required training in accordance with the training program selected under (e) will implement physical restraint or seclusion with a student except as described in OAR 581-021-0061(2)

(g) Verbal or written notification of parents or guardians following the use of physical restraint or seclusion by the end of the day the incident occurred;

(h) Within two school days of use of physical restraint or seclusion, a documented debriefing by appropriate staff, including staff involved in the restraint or seclusion;

(i) Documentation requirements for the use of any physical restraint and seclusion that meets the definitions in subsection (1), including:

(A) Name of the student;

(B) Name of staff member(s) administering the physical restraint or seclusion;

(C) Date of the restraint or seclusion, and the time the restraint or seclusion began and ended;

(D) Location of the restraint or seclusion;

(E) A description of the restraint or seclusion;

(F) A description of the student's activity immediately preceding the behavior that prompted the use of restraint or seclusion;

(G) A description of the behavior that prompted the use of restraint or seclusion;

(H) Efforts to deescalate the situation and alternatives to restraint or seclusion that were attempted;

(I) Information documenting parent contact and notification; and

(J) A summary of the debriefing in section (h).

(j) A documented process for annual review of the use of physical restraint and seclusion in the district to ensure that restraint and seclusion are used in accordance with the district's policies and procedure; and

(k) A procedure for receiving and investigating complaints regarding restraint and seclusion practices which may be the same as in OAR 581-022-1940. This does not preclude complaints under other applicable provisions.

(3) Educational programs that are located in facilities subject to different rules regarding use of physical restraint and seclusion, such as long-term care and treatment programs, youth detention education programs, and youth corrections education programs, are not subject to these rules.

Stat. Auth.: ORS 326.250

Stats. Implemented: ORS 339.250

Hist.: ODE 17-2006, f. 12-11-06, cert. ef. 12-12-06

Rule Caption: Amendment of OAR 581-022-1130 implementing HB 3129 to increase graduation requirements.

Adm. Order No.: ODE 18-2006

Filed with Sec. of State: 12-11-2006

Certified to be Effective: 12-12-06

Notice Publication Date: 7-1-06

Rules Amended: 581-022-1130

Subject: The proposed amendments to OAR 581-022-1130 will increase the diploma requirements for, 1) mathematics from 2 credits to 3 credits and 2) English from 3 credits to 4 credits.

Rules Coordinator: Paula Merritt—(503) 947-5746

581-022-1130

Diploma Requirements

Each district school board with jurisdiction over high school programs shall award diplomas to all students who fulfill all state requirements as described in sections (1)–(8) of this rule and all local school district requirements as described in district school board policies. A school district

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may award an alternative document to a student who has met some but not all of the graduation requirements:

(1) Unit of Credit Requirements for students graduating before July 1, 2009:

(a) Each student shall earn a minimum of 22 units of credit to include at least:

(A) English Language Arts — 3 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 2;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Applied Arts, Fine Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 22;

(d) A school district may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(2) Unit of Credit Requirements for students graduating on or after July 1, 2009:

(a) Each student shall earn a minimum of 24 units of credit to include at least:

(A) English Language Arts — 4 (shall include the equivalent of one unit in Written Composition);

(B) Mathematics — 3;

(C) Science — 2;

(D) Social Sciences 3 — (including history, civics, geography and economics (including personal finance));

(E) Health Education — 1;

(F) Physical Education — 1;

(G) Applied Arts, Fine Arts or Second Language — 1 (one unit shall be earned in any one or a combination).

(b) A district school board with a three-year high school may submit through the waiver process alternative plans to meet unit requirements;

(c) A district school board may increase the number of units required in specific areas, and may increase or decrease the number of elective units; however, the total units of credit required for graduation shall not be less than 24;

(d) A school district may grant high school credit for courses taken prior to grade 9 if students taking pre-grade 9 courses are required to meet performance criteria that are equivalent to the performance criteria for students taking the same high school courses;

(e) Course syllabi shall be written for courses in grades 9 through 12 and shall be available to students, staff, parents, the district school board and other interested individuals.

(3) Each student shall develop an education plan and build an education profile (as defined in OAR 581-022-1120, section (3)(a) and (b));

(4) Each student shall build a collection of evidence, or include evidence in existing collections(s), to demonstrate extended application (as defined in OAR 581-022-0102);

(5) Each student shall demonstrate career-related knowledge and skills in the following areas: personal management, problem solving, communication, teamwork, employment foundations, and career development; and

(6) Each student shall participate in career-related learning experiences outlined in the education plan (as defined in OAR 581-022-1120, section (3)(e));

(7) Students graduating in the 2006–2007 school year, and thereafter, must meet the requirements in section (4)–(7) of this rule.

(8) Attendance Requirements:

(a) Twelve school years shall be required beginning with grade 1, except when the school district adopts policies providing for early or delayed completion of all state and school district credit and performance requirements;

(b) The district school board may adopt policies for alternative learning experiences, such as credit by examination and credit for off-campus experiences;

(c) With any modification of the attendance requirements for graduation, school district staff shall consider age and maturity of students, access to alternative learning experiences, performance levels, school district guidelines and the wishes of parents and guardians

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051 & 339.280

Hist.: EB 2-1997, f. 3-27-97, cert. ef. 9-1-97; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 18-2006, f. 12-11-06, cert. ef. 12-12-06

Oregon Film and Video Office Chapter 951

Rule Caption: Procedures for Greenlight Labor Rebate payment of rebates.

Adm. Order No.: FVO 1-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 8-1-06

Rules Adopted: 951-005-0000, 951-005-0001, 951-005-0002

Subject: Establishes procedures for Greenlight Labor Rebate payment of rebates.

Rules Coordinator: Susan K. Haley—(503) 229-5832

951-005-0000

Purpose

The purpose of these rules is to provide guidance for the payment of rebates from the Greenlight Oregon Labor Rebate Fund as authorized by Oregon Laws 2005, chapter 559. The Greenlight Oregon Labor Rebate Fund was authorized by the 2005 legislature to encourage film and video production in Oregon, thereby increasing job opportunities for Oregonians in the film and video industry and bringing additional production spending into the state.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559

Stats. Implemented: OL 2005, ch 559

Hist.: FVO 1-2006, f. & cert. ef. 11-17-06

951-005-0001

Definitions

(1) “Actual Expenses” means the costs paid in Oregon for principal photography, production or postproduction in Oregon of a Qualifying Film Production, including but not limited to the purchase or rental cost of equipment, food, lodging, real property and permits and payments made for salaries, wages and benefits for work in Oregon.

(2) “Commercial” means a moving image production created to advertise a product or service.

(3) “Qualifying Compensation” means wages paid by an employer to an employee for services performed in Oregon in connection with a Qualifying Film Production.

(4) “Qualifying Film Production” means a production that occurs primarily in Oregon of: one or more commercials; one or more episodes of a television show; or a movie to be released in theatres, on video, on television, over the internet or over any other distribution channel. “Qualifying film or television production” does not include the production of one or more segments of a newscast or sporting event.

(5) “OFVO”, or “Oregon Film & Video Office” means the Oregon Film & Video Office created by ORS 284.305.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559

Stats. Implemented: ORS 284.367 & OL 2005, ch 559

Hist.: FVO 1-2006, f. & cert. ef. 11-17-06

951-005-0002

Payment of rebates

(1) Upon completion of the qualifying film production for which a certificate was issued the OFVO shall verify the actual expenses supporting a claim. The qualifying production must:

(a) Submit to the OFVO an application for a rebate within the following time frames:

(A) A feature film or television episode or series — 30 days from completion work in Oregon on the qualifying film production;

(B) A commercial — on or before January 31 of the year following the year in which the commercials were produced.

(b) Submit to the OFVO, after completion of the work in Oregon on the qualifying film production, financial and other records sufficient to ver-

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ify that the production satisfied the minimum expenditure requirement for a rebate;

(c) Authorization for the OFVO to deduct from the rebate the costs reasonably incurred by the OFVO in verifying the production expenditures in Oregon, including but not limited to, the costs incurred by OFVO in obtaining an outside accounting review, audit, or both, of the financial and other records evidencing the expenditures. The OFVO will usually submit the expenditure documentation to an outside accounting firm for a review after the OFVO has completed its review. Based on the advice of the outside accounting firm, the OFVO may require an audit of the production's financial records.

(2) If the OFVO is unable to verify actual expenses of a minimum of \$1 million, the office may decline to pay a labor rebate to the certificate holder.

Stat. Auth.: ORS 284.335 & 284.368
Stats. Implemented: ORS 284.367 & 284.368
Hist.: FVO 1-2006, f. & cert. ef. 11-17-06

Rule Caption: Greenlight Oregon Labor Rebate application, certification and withholding.

Adm. Order No.: FVO 2-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 8-1-06

Rules Adopted: 951-004-0000, 951-004-0001, 951-004-0002, 951-004-0003, 951-004-0004

Subject: Establishes procedures for administrating Greenlight Oregon Labor Rebate application, certification and withholding.

Rules Coordinator: Susan K. Haley—(503) 229-5832

951-004-0000

Purpose

The purpose of these rules is to provide guidance for the administration of the Greenlight Oregon Labor film and television production rebates as authorized by Oregon Laws 2005, chapter 559. The Greenlight Oregon Labor Rebate Program was authorized by the 2005 legislature to encourage film and video production in Oregon, thereby increasing job opportunities for Oregonians in the film and video industry and bringing additional production spending into the state.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559
Stats. Implemented: OL 2005, ch 559
Hist.: FVO 2-2006, f. & cert. ef. 11-17-06

951-004-0001

Definitions

(1) "Actual Expenses" means costs paid in Oregon for pre-production, principal photography, production or postproduction in Oregon of a Qualifying Film Production, including but not limited to the purchase or rental cost of equipment, food, lodging, real property and permits and payments made for salaries, wages and benefits for work done in Oregon.

(2) "OFVO" means the Oregon Film & Video Office created by ORS 284.305.

(3) "Qualifying Film Production" means a film or television production that occurs primarily in Oregon of: one or more commercials; one or more episodes of a television show; or a movie to be released in theatres, on video, on television, over the internet or over any other distribution channel.

(4) "Qualifying Compensation" means wages paid by an employer to an employee for services performed in Oregon in connection with a Qualifying Film Production.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559
Stats. Implemented: OL 2005, ch 559
Hist.: FVO 2-2006, f. & cert. ef. 11-17-06

951-004-0002

Application for Certification

A person proposing to produce a Qualifying Film Production and wishing to receive a labor rebate with respect to the production shall submit an application to the Oregon Film and Video Office for certification. The application must be in a form designated by OFVO and submitted within 10 business days of commencement of pre-production in Oregon.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559
Stats. Implemented: OL 2005, ch 559
Hist.: FVO 2-2006, f. & cert. ef. 11-17-06

951-004-0003

Certification

After receipt of an application for certification, the OFVO will review the application to determine if the proposed Qualifying Film Production satisfies the following certification requirements:

(1) OFVO determines that it is reasonably likely that the applicant will incur Actual Expenses of at least \$1 million that are related to the Qualifying Film Production proposed by the applicant;

(2) If the Qualifying Film Production proposed by the applicant consists of one or more episodes of a television series, the Actual Expenses are associated with production that comprises no more than a single season of episodes;

(3) If the Qualifying Film Production proposed by the applicant consists of one or more commercials, the Actual Expenses are to be incurred within a single year; and

(4) If the Qualifying Film Production proposed by the applicant consists of a movie or other film production not described in sections (1) or (2) above, the Actual Expenses are associated with that movie or other film production;

(6) If the OFVO determines that the Qualifying Film Production proposed by the applicant satisfies the certification requirements set forth in section (1) of this rule, the OFVO will send a written certificate evidencing the certification to the applicant and a copy of the certificate to the Oregon Department of Revenue.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559
Stats. Implemented: OL 2005, ch 559
Hist.: FVO 2-2006, f. & cert. ef. 11-17-06

951-004-0004

Withholding and Reporting

A person issued a written certificate under OAR 951-004-003 who is engaged in a Qualifying Film Production and who pays Qualifying Compensation shall:

(1) Withhold from that compensation and pay to the Oregon Department of Revenue a minimum aggregate withholding of 6.2% of the total qualifying compensation.

(2) Send a written report to the OFVO by the 31st of each month following the regular quarterly payroll tax reporting period, or as soon as is practicable following completion of the Qualifying Film Production or, in the case of qualifying production that consists of commercials, annually on or before January 31 of the year following the year in which the commercials were produced, specifying:

(a) The total amount of Qualifying Compensation paid by the person;

(b) The names, taxpayer identification numbers and amounts of qualifying compensation paid to each employee receiving Qualifying Compensation during which the Qualifying Production was produced; and

(c) Any other information required by the OFVO.

Stat. Auth.: ORS 284.335 & OL 2005, ch 559
Stats. Implemented: OL 2005, ch 559
Hist.: FVO 2-2006, f. & cert. ef. 11-17-06

Rule Caption: Establish payment procedures and availability of tax credits.

Adm. Order No.: FVO 3-2006

Filed with Sec. of State: 11-17-2006

Certified to be Effective: 11-17-06

Notice Publication Date: 8-1-06

Rules Amended: 951-003-0005

Subject: Establish payment procedures and availability of tax credits.

Rules Coordinator: Susan K. Haley—(503) 229-5832

951-003-0005

Allocation of Certificates

(1) Taxpayers making a contribution to the Oregon Production Investment Fund and wishing to receive a tax credit must submit the contribution, together with an application for tax credit, to the Oregon Film and Video Office, in care of the Oregon Economic and Community Development Department. The contribution need not accompany the application to the extent the taxpayer is only requesting a reservation of tax credits for future issuance with respect to future committed contributions, as provided in these administrative rules:

(a) Contributions from \$1.00 to \$10,000.00 may be made by check, VISA or Mastercard;

(b) Contributions in excess of \$10,000.00 must be made by direct wire from Contributors bank to the OPIF treasury fund or by check.

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(2) Availability of tax credits is determined at the time the contributed funds have cleared the contributor's account, not on the date a check or visa payment is written or received by the Oregon Film Office or Oregon Economic and Community Development Department.

(3) The Oregon Film and Video Office shall make tax credit application forms available to taxpayers in hard copy and electronic formats and taxpayers may submit applications and contributions either in hard copy format or electronically through the Oregon Film and Video Office website.

(4) The Oregon Film and Video Office will begin accepting contributions and applications for tax credits on January 1, 2005. The Oregon Film and Video Office shall consider applications for tax credits in the chronological order in which the applications are received.

(5) After approval of a taxpayer's application for a tax credit, the Film and Video Office shall issue to the tax payer a tax credit certificate for the tax year during which the qualifying contribution was received:

(a) The Oregon Film and Video Office shall not issue a tax credit certificate to the contributing taxpayer until the Oregon Economic and Community Development Department has verified the amount of contribution;

(b) Tax credit certificates for qualifying contributions made between January 1, 2005 and June 30, 2005, shall be issued after July 1, 2005;

(c) Tax credit certificates for qualifying contributions made on or after July 1, 2005 shall be issued within 45 days of the Oregon Film and Video Office's receipt of verification of the qualifying contribution from the Oregon Economic and Community Development Department.

(6) The amount of a qualifying contribution shall be 90% of the amount of tax credit issued with respect to that contribution.

(7) The tax credit certificates issued during a single State of Oregon fiscal year may not evidence more than \$1 million of tax credits, in aggregate.

(8) If at the time an application for tax credit is considered, the Oregon Film and Video Office has already issued or reserved tax credits totaling \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office will deny the application. If at the time an application for tax credit is considered, the Oregon Film and Video office has already issued or reserved tax credits that, when added to the tax credits that would be issued if the application were approved, would total more than \$1 million for the fiscal year in which the contribution submitted with the application is received, the Oregon Film and Video Office may either deny the application in full or approve the application in an amount necessary to bring the total tax credits issued or reserved to \$1 million for the fiscal year in which the contribution is received and deny the remainder of the application.

(9) If the Film and Video Office denies an application for a tax credit in full or in part, it shall notify the taxpayer applicant of the denial in writing within 45 days of the denial.

(10) A taxpayer who receives notice of denial of an application for tax credit may request, in writing and within 90 days after its receipt of the notice of denial, a refund of that portion of its contribution, actually received by the Film and Video Office, with respect to which the Film and Video Office did not issue a tax credit certificate. The Film and Video Office shall issue the refund within 60 days after its receipt of the refund request.

(11) In its application, a taxpayer may, in addition to or in lieu of applying for immediate issuance of a tax credit, request that the Oregon Film and Video Office reserve tax credits for future issuance based on future contributions committed by the taxpayer. The Oregon Film and Video office may approve, approve in part and deny in part, or deny tax credit reservation requests in its discretion. In determining whether to approve, approve in part and deny in part, or deny a tax credit reservation request, the Film and Video Office will consider the following factors:

(a) The current uncommitted balance in the Oregon Production Investment Fund;

(b) The amount of tax credits then available for issuance for the fiscal year with respect to which the reservation is requested;

(c) The number of pending applications for tax credits;

(d) The anticipated future demand for tax credits for the fiscal year with respect to which the reservation is requested.

(e) The number of tax credits the taxpayer is requesting the Film and Video Office to reserve;

(f) The length of time between the approval of the reservation and the anticipated receipt of the contributions with respect to the reserved tax credits;

(g) Such other factors as the Film and Video office considers appropriate in the particular circumstance in order to further the purposes of the Oregon Production Investment Fund tax credits.

(12) The Film and Video Office shall notify a taxpayer requesting a tax credit reservation of the approval, approval in part and denial in part, or denial of the request within 45 days after the Film and Video Office's receipt of the request. If the reservation request is approved in whole or in part, the Film and Video Office shall reserve tax credits for future issuance consistent with that approval.

(13) A taxpayer with reserved tax credits must submit to the Film and Video Office sufficient contributions to support tax credits reserved for issuance during a particular fiscal year, no later than the date set forth in the Film and Video Office's notice of reservation approval. Contributions must be submitted to the Film and Video Office in care of the Oregon Economic and Community Development Department. If the contributions necessary to support issuance of reserved tax credits are not received by the applicable deadline, the reservation of those tax credits and the reservations of all other tax credits for that taxpayer shall automatically expire and those tax credits shall no longer be considered reserved tax credits and shall become immediately available for issuance to or reservation by other taxpayers in accordance with these administrative rules.

(14) No tax credits or tax credit certificates shall be issued with respect to reserved tax credits until the Film and Video Office receives sufficient contributions to support issuance of tax credits and tax credit certificates with respect to the reserved tax credits. The Film and Video Office shall issue tax credit certificates to the taxpayer with respect to reserved tax credits within 45 days after the Film and Video Office's receipt of verification from the Oregon Economic and Community Development Department of receipt of sufficient contributions to support issuance of the reserved tax credits.

Stat. Auth: ORS 284.335 & 315.514

Stats. Implemented: ORS 315.514

Hist: FVO 4-2004, f. & cert. ef. 11-26-04; FVO 3-2006, f. & cert. ef. 11-17-06

Oregon Health Licensing Agency
Chapter 331

Rule Caption: Align continuing education requirements with the Board of Certification for an Athletic Trainer (BOC).

Adm. Order No.: HLA 2-2006

Filed with Sec. of State: 11-30-2006

Certified to be Effective: 12-1-06

Notice Publication Date: 11-1-06

Rules Amended: 331-105-0020, 331-105-0030, 331-110-0005, 331-110-0010, 331-110-0055, 331-120-0000, 331-120-0020, 331-125-0010, 331-135-0000

Subject: Conform the administrative rules to correspond with name change from National Athletic Trainer Association Board of Certification (NATABOC) to Board of Certification for an Athletic Trainer (BOC), and define BOC which is the national organization that provides a certification program for the entry-level athletic trainer and establishes requirements for maintaining status as a certified athletic trainer.

Amend provisions for Oregon Law 1999, Chapter 736 to Oregon Revised Statutes Chapter 688.701 to 688.734 due to the 2001 Oregon State Legislature removing the repeal and permanently establishing the Board of Athletic Trainers.

Adjust administrative rules to meet the BOC's January 1, 2006, reduction of continuing education hours required from 80 to 75. The BOC lowered the allotted number for continuing education hours recognized for Cardio Pulmonary Resuscitation (CPR).

Change central agency name from Health Licensing Office to Oregon Health Licensing Agency as mandated by the 2005 Legislature.

Rules Coordinator: Patricia C. Allbritton—(503) 378-8667, ext. 4322

331-105-0020

Definitions

The following definitions apply to OAR 331-105-0000 through 331-125-0020.

(1) "Accredited" means fully accredited and approved to offer degrees at the specified level by an agency or association recognized as an accreditor by the U.S. Secretary of Education, under the 1965 Higher

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Education Act as amended at the time of recognition, or having candidacy status with such an accrediting agency or association whose pre-accreditation is also recognized specifically for HEA purposes by the Secretary of Education, or the foreign equivalency of such accreditation as determined in consultation with the Office of Degree Authorization.

(2) "Board" means, pursuant to ORS 688.705, the entity that advises the agency in matters relating to the practice of athletic training, including practice standards, education and training requirements, and advises the agency on all disciplinary issues in accordance with ORS 688.709 and 688.734. The agency director controls the regulatory operations and has decision-making authority on all substantive matters.

(3) "Board of Certification for an Athletic Trainer" (BOC) means the national organization that provides a certification program for the entry-level athletic trainer and establishes requirements for maintaining status as a certified athletic trainer.

(4) "Athletic Trainer" means a person who is registered by the Board of Athletic Trainers to practice athletic training as defined in ORS 688.701.

(5) "Date of registration" means the date upon which the applicant has met all requirements for registration and is issued a valid current registration document.

(6) "Director" means the individual who is responsible for the performance of the Oregon Health Licensing Agency as defined in ORS 676.610. The director appoints all subordinate officers and employees to carry out the duties of the agency.

(7) "Equivalent" means substantially comparable but not identical, covering the same subject matter or requirement.

(8) "Expired registration" means a registration that is not renewed prior to the expiration date and lapses into inactive status.

(9) "Oregon Health Licensing Agency" means the central licensing department assigned to carry out the administrative, programmatic and daily operations, and regulatory functions of the Boards, Councils and Programs listed in ORS 676.606.

(10) "Registration" means the document issued by the agency authorizing the holder to practice athletic training and use the title "Athletic Trainer, Registered."

Stat. Auth.: OL 1999, Ch. 736, Sec. 5

Stats. Implemented: OL 1999, Ch. 736, Sec. 5

Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 2-1-97, Renumbered from 333-315-0010; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-105-0030

Fees

(1) Applicants and registrants are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Agency are as follows:

- (a) Application: \$100;
- (b) Original registration: \$275 for one-year renewal cycle;
- (c) Renewal of Registration: \$275;
- (d) Permits and waivers: \$150;
- (e) Reinstatement: \$150;
- (f) Delinquency or late renewal of registration: \$50;
- (g) Replacement of registration including name change: \$25;
- (h) Reciprocity: \$325;

Stat. Auth.: OL 1999, Ch. 736, Sec. 5(3) & (4) & Sec. 10

Stats. Implemented: OL 1999, Ch. 736, Sec. 5(3) & (4) & Sec. 10

Hist.: HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; Administrative correction 3-16-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-110-0005

Training/Education Requirements

At the time of application for Oregon registration, an applicant is required to provide adequate documentation of a bachelor's degree from an accredited four-year college or university pursuant to ORS 688.720 and satisfactory completion of one of the following training/education qualification pathways:

(1) Official documentation of a passing score of the BOC or documentation of successful completion of an equivalent examination approved or recognized by the Board. The applicant must provide official documentation verifying current certification by the BOC at the time of application for Oregon registration. The applicant assumes responsibility for payment of fees assessed by BOC in obtaining required official documentation; or

(2) Official documentation verifying completion of course work, education and practical work experience as follows:

(a) Graduation from an entry-level Commission on Accreditation of Allied Health Education Programs (CAAHEP) curriculum in athletic training; or

(b) Successful completion of approved course work, by means of official transcripts submitted directly from the education institution by mail to the Oregon Health Licensing Agency. At least one course must be completed in each of the following areas: health (i.e. nutrition, drugs/substance abuse, health education, personal health and wellness), human anatomy, kinesiology/biomechanics, human physiology, physiology of exercise, basic athletic training, and advanced athletic training or in related subject areas approved by the board. Completion of at least 1500 hours of practical work experience in athletic training under the supervision of a qualified athletic trainer or other qualified professional approved by the Board. Practical work experience must meet the following requirements and criteria:

(A) Experience must be gained over a period of the previous two calendar years;

(B) At least 1000 hours must be attained in a traditional athletic training setting at the interscholastic, intercollegiate, or professional sports level.

(C) The remaining balance of practical hours, not to exceed 500 hours, may be attained from an allied clinical setting and/or sports camp setting under the supervision of a qualified athletic trainer or other qualified professional as approved by the Board.

(D) At least twenty-five percent of the hours obtained must be in actual on-location practice and/or game coverage with one or more of the following sports: football, soccer, hockey, wrestling, basketball, gymnastics, lacrosse, volleyball, rugby, rodeo or other high risk sport approved by the Board.

(3) Applicants who hold a current athletic training licensing credential issued from another state, territory, or country must arrange for a completed Affidavit of Registration, issued from the credentialing state, to be mailed directly to the Agency. The Affidavit must attest to the applicant's registration record and indicate successful completion of an examination by an entity recognized or sanctioned by the Board.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(2), (3) & (6) & Sec. 8

Stats. Implemented: OL 1999, Ch. 736, Sec. 4(2), (3) & (6) & Sec. 8

Hist.: HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-20-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-110-0010

Application Requirements

(1) Individuals applying for registration to practice athletic training must meet the requirements of OAR 331-030-0000 in addition to the provisions of this rule.

(2) Applicants must be at least 18 years of age and provide a copy of their birth certificate, driver's license, passport, or school/military/governmental record with age documented.

(3) Applicants must submit a completed application form prescribed by the agency, which shall contain the information listed in OAR 331-030-0000 and be accompanied by payment of the application and registration fees and include the following:

(a) Disclosure of all information pertaining to degree from a four year accredited college or university;

(b) Information pertaining to satisfactory completion of competency examination, including examination type, source, date, location and score(s); and

(c) A copy of a cardio-pulmonary resuscitation certification (CPR). The CPR course must include adult CPR techniques from a source approved by the Board. A valid emergency medical technician certification is an acceptable alternative for satisfying the CPR requirement; and

(d) Documentation verifying completion of required training/education according to the provisions of OAR 331-110-0005.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(3) & (6) & Sec. 8

Stats. Implemented: OL 1999, Ch. 736, Sec. 4(3) & (6) & Sec. 8

Hist.: HD 8-1994, f. & cert. ef. 3-15-94; HDLB 2-1996, f. 12-13-96, cert. ef. 1-1-97, Renumbered from 333-315-0020; HDLP 1-2000(Temp), f. 2-14-00, cert. ef. 2-15-00 thru 8-11-00; HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-110-0055

Registration Required; Exception

(1) To practice athletic training in the state of Oregon, individuals must be registered in accordance with ORS 688.718.

(2) Athletic trainers or other designated persons from another state, or territory, who are performing services for their respective team or for a sponsoring organization and only during the course of that team's stay or

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the duration of a sponsored event in this state, are not required to hold an Oregon registration or to apply for a waiver if the time in Oregon is less than 60 days in one calendar year.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(3) & Sec. 6(2)(e)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(3) & Sec. 6(2)(e)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-120-0000

Profession Statement

(1) The purpose of the Oregon Board of Athletic Trainers is to protect the health, safety, and welfare of Oregon's citizens by granting or withholding the privilege of practicing athletic training in accordance with strict standards for education and conduct; to regulate the use of that privilege in such a way that the public is protected from the practice of athletic training by unauthorized or unqualified persons from unprofessional conduct by Board registrants; and to build and encourage athletic training excellence in Oregon.

(2) In addition to its licensing function, the Oregon Health Licensing Agency conducts investigations, imposes disciplinary actions, and in collaboration with the Board supports rehabilitation education and initiatives, which further the Board's legislative mandate to protect the citizens of Oregon.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(5)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(5)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-120-0020

Standards of Practice

Athletic trainers shall adhere to the following standards of professional conduct.

(1) Physician Collaboration: Athletic trainers are required to collaborate with a physician in the treatment of an athletic injury as provided in OAR 331-120-0030.

(2) Registered Athletic Trainers shall be responsible for the conduct and performance of student assistants under their supervision.

(3) Documentation: Athletic trainers are required to accept responsibility for recording details of the athlete's health status and include details of the injured athlete's medical history, including name, address and legal guardian if a minor, referral source, all assessments, test results, database by date of service provided, treatment plan and estimated length for recovery, record all methods used, results achieved, any changes in the treatment plan, record the date that the treatment plan is concluded and provide a summary, sign and date each entry.

(4) Confidentiality: Athletic trainers are required to maintain confidentiality and in a timely manner communicate assessment results, treatment program plans, or periodic progress reports with any other person involved in the injured athlete's treatment.

(5) Initial Assessment: Prior to treatment, athletic trainers are required to assess the athlete's history and level of functioning.

(6) Treatment Program Planning: The treatment program objectives must include goals, expectations and measures to determine the effectiveness of the program.

(7) Athletic trainers are required to observe the Standard Precautions adopted by the Centers for Disease Control as defined in Oregon Administrative Rules 437 division 2, when providing services to clients.

(8) Working under the influence of alcohol or any drugs, including prescription medications, which may impair performance, is prohibited. Athletic trainers are required to seek professional assistance through a diversion program if necessary to achieve and maintain freedom from substance abuse.

(9) Sexual misconduct in the practice of athletic training is prohibited.

(10) Practicing athletic training or offering to perform services beyond the scope of practice permitted by law and defined in ORS 688.701, is prohibited.

(11) Performing services which have not been authorized by the consumer or his/her legal representative is prohibited.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(5)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(5)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-21-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

331-125-0010

Continuing Education Requirements

(1) Registrants must complete 75 clock hours of continuing education coinciding with BOC's three-year reporting period. The three-year period

is independent of the date of first registration. Reporting periods begin January 1 and end December 31 in three-year increments.

(2) Required continuing education will be pro-rated according to the date initial Oregon registration occurs within BOC's continuing education three-year reporting period. Requirements are as follows:

(a) Registrations issued during the first year of a three-year reporting period require completion of 50 clock hours of continuing education within the reporting period.

(b) Registrations issued during the second year of a the three-year reporting period require completion of 25 clock hours of continuing education within the reporting period.

(c) Registrations issued during the third year of the three-year reporting period do not require completion of any clock hours of continuing education to be eligible for a first renewal of a registration.

(3) Continuing education obtained by a registrant will be approved if the content or experience falls within at the scope of practice for athletic training identified in OAR 331-120-0010.

(4) The Board recognizes, as its approved criteria in determining qualification for registration renewal, BOC's January 1, 2006, adopted continuing education requirements and current guidelines, including pre-approved courses and providers, continuing education categories A through E, contact hour requirements and limitations for awarding credit based on category type and source. Continuing education must be obtained from the following sources: Symposiums, seminars, workshops, conference; speaker or panelist at allied health care professional setting; author, co-author, contributing author, or editor of publication, such as journal, article or textbook; approved home study, such as video, audio tapes, software program or on-line course; post certification education at college or university; and cardiopulmonary resuscitation. A copy of BOC's January 1, 2006, adopted continuing education requirements is available for review at the agency and on-line at BOC's website www.bocac.org.

(5) Continuing education acquired from sources identified in BOC's Category E adopted in January 1, 2006, will be reviewed on a case-by-case basis to determine Board approval. Education must be pertinent to the scope of practice for athletic training listed in OAR 331-120-0010. Documentation for approval of continuing education must address the following criteria:

(a) Relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(b) Objectives of specific information or skill to be learned;

(c) Subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(d) Sponsorship and leadership of programs, including the name of the sponsoring individual(s) or organization(s), and program leaders or faculty if different from sponsors and contact person.

(6) Credit for completion of continuing education will be limited according to course work type, source and categories identified by BOC and adopted in January 1, 2006. A copy of contact hour requirements is available for review at the agency and on-line at BOC's website www.bocac.org.

(7) Continuing education credit will not be awarded to registrants for the following activities:

(a) Education incidental to the regular professional activities of a registrant, such as learning occurring from experience or research;

(b) Professional organization activity, such as serving on committees or councils or as an officer;

(c) Activities, with the exception of CPR, which have been completed more than once during the continuing education period; or

(d) Performance of duties that are routine job duties or requirements.

(8) Continuing education hours earned in excess of those required for the reporting period may not be carried forward for credit toward meeting future requirements.

(9) Documentation of continuing education hours earned must be furnished to the Board only when selected for audit.

(10) At the time of application for renewal, registrants must submit the completed renewal form, affix their signature attesting to completion of required continuing education, and pay appropriate fees.

(11) Documentation supporting compliance with continuing education requirements must be maintained for a period of two years following the last day of any reporting period and be available to the agency upon request.

Stat. Auth.: OL 1999, Ch. 736, Sec. 4(8)
Stats. Implemented: OL 1999, Ch. 736, Sec. 4(8)
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HDLP 4-2000, f. 11-17-00, cert. ef. 11-21-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

ADMINISTRATIVE RULES

331-135-0000

Investigative Authority

The Oregon Health Licensing Agency may initiate and conduct investigations of matters relating to the practice of athletic training, pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of ORS 676.612 and 688.734.

Stat. Auth.: OL 1999, Ch. 736, Sec. 5(8), 6(1) & 11
Stats. Implemented: OL 1999, Ch. 736, Sec. 5(8), 6(1) & 11
Hist.: HDLP 3-2000, f. 7-26-00, cert. ef. 8-1-00; HLO 3-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 2-2006, f. 11-30-06, cert. ef. 12-1-06

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Stipulates how employee contributions, being made up under USERRA, are to be remitted to PERS.

Adm. Order No.: PERS 16-2006

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06

Notice Publication Date: 9-1-06

Rules Amended: 459-011-0100, 459-080-0100

Subject: Amends clarify payment methods of employee contributions under USERRA.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-011-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238.156(1).

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means an individual employed by a participating public employer in a qualifying position, as defined in ORS 238.005(19) and who is not excluded from the definition of employee as set forth in ORS 238.005(7).

(b) "Employee contributions" means contributions made to the Fund.

(c) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the State of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(d) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;
- (F) A period for which an employee is absent from a position of employment for the purpose of an examination to determine the fitness of the employee to perform any of the above types of duty; or
- (G) A period for which an employee is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(e) "Salary" means the rate of pay the employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(f) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of individuals designated by the President in time of war or national emergency.

(g) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as in effect on the effective date of this rule.

(4) Retirement credit under USERRA.

(a) Eligibility. An employee shall be eligible for the benefits of this section if:

(A) The employee leaves PERS-covered employment to perform military service;

(B) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(C) The employee initiates reemployment on or after December 12, 1994, with the same PERS-covered employer within the time limits specified in USERRA §4312; and

(D) All other eligibility requirements for benefits under USERRA are met.

(b) Credit for military service. An employee who meets the eligibility requirements of subsection (a) of this section shall be credited with the amount of retirement credit the employee would have accrued if he or she had remained in employment with the employer during the period of military service, only to the extent that the employee contributions have been made.

(c) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(5) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Contributions to be made by the employer. If the employee was entitled to employer-paid pre-tax (EPPT) contributions as described in OAR 459-009-0200(2) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Contributions to be made by the employee. If the employee was entitled to only member-paid pre-tax (MPPT) or member-paid after-tax (MPAT) contributions, the employee may contribute part or all of the employee contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule. Contributions made under this paragraph must be remitted to PERS by:

- (i) Payroll deduction; or
- (ii) Monthly payment of no less than one month of contributions; or
- (iii) Lump-sum payment.

(b) Any individual, agency, or organization may pay the employee contributions specified in paragraph (5)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Contributions made under this section must be made during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Any contributions made under this section shall be added to the employee's regular or variable account(s).

(e) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(6) Employer contributions. Any employer contributions associated with credit for military service under this rule shall be made as directed by PERS in accordance with ORS 238.225.

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

Stat. Auth.: ORS 238.650 & 238.156

Stats. Implemented: ORS 238.156

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0015; PERS 2-2004, f. & cert. ef. 1-22-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 16-2006, f. & cert. ef. 11-24-06

459-080-0100

Credit for Military Service under USERRA

(1) Purpose. The purpose of this rule is to implement ORS 238A.415.

(2) Limitation of scope of rule. Contributions, benefits and service credit provided under this rule shall not exceed contributions, benefits and service credit required under federal law for periods of military service.

(3) Definitions. For purposes of this rule:

(a) "Employee" means:

(A) An eligible employee, as defined in ORS 238A.005;

(B) An active member of PERS, as defined in ORS 238.005, on or after January 1, 2004; or

(C) An employee who is entitled to credit toward the probationary period required by ORS 238.015.

ADMINISTRATIVE RULES

(b) "Employer" means the legal entity that employed an individual at the time that individual left for military service. For purposes of this rule, the state of Oregon is a single legal entity. Each separate school district is a separate legal entity.

(c) "Military service" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes:

- (A) Active duty;
- (B) Active duty for training;
- (C) Initial active duty for training;
- (D) Inactive duty training;
- (E) Full-time National Guard duty;

(F) A period for which an individual is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any of the above types of duty; or

(G) A period for which an individual is absent from employment for the purpose of performing funeral honors duty as authorized by 10 U.S.C. § 12503 or 32 U.S.C. § 115.

(d) "Salary" means the rate of pay the eligible employee would have earned if he or she had remained employed during the period of military service, including any increases that would have been awarded the employee based on longevity of employment or seniority of position. If such rate of pay is not reasonably certain, the rate shall be based on the employee's average rate of pay from the employer. The average rate of pay shall be calculated for a period not to exceed the 12-month period immediately preceding the period of military service.

(e) "Uniformed services" means the following:

- (A) Armed Forces;
- (B) Army National Guard;
- (C) Air National Guard;
- (D) Commissioned corps of the Public Health Service; and
- (E) Any other category of persons designated by the President in time of war or national emergency.

(f) "USERRA" means the 1994 federal Uniformed Services Employment and Reemployment Rights Act as of the effective date of this rule.

(4) Eligibility for retirement benefits under USERRA. An eligible employee shall be entitled to the benefits of this rule if:

(a) The employee leaves employment with a participating public employer to perform military service;

(b) The cumulative length of the employee's absence from employment with the employer for military service does not exceed the limits set forth in USERRA §4312;

(c) The employee initiates reemployment with the same participating public employer within the time limits specified in USERRA §4312;

(d) All employee contributions have been made; and

(e) All other eligibility requirements for benefits under USERRA are met.

(5) Service credit for military service under USERRA. An employee who meets the eligibility requirements of section (4) of this rule shall receive the amount of credit toward the period of employment required under ORS 238A.300 and the vesting requirements described under ORS 238A.320, the employee would have accrued if he or she had remained in employment with the employer during the period of military service.

(6) Termination. An employee's eligibility for the benefits of this rule terminates upon the occurrence of one of the disqualifying events listed in USERRA §4304.

(7) Employee contributions.

(a) Employee contributions shall be made upon reemployment for eligible military service in accordance with the following:

(A) Employee contributions to be made by the employer. If the employee's employer had agreed to pay employee contributions under ORS 238A.335(2)(b) as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(B) Employee contributions to be made by the employee. If the employee's employer had not agreed to pay employee contributions, or had agreed to pay employee contributions under ORS 238A.335(2)(a) as of the date the employee left employment to perform military service, the employee may pay all or part of the contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section

(3) of this rule. Contributions made under this paragraph may be remitted to PERS by:

- (i) Payroll deduction; or
- (ii) Monthly payment of no less than one month of contributions; or
- (iii) Lump-sum payment.

(b) Any individual, agency or organization may pay the employee contributions specified in paragraph (7)(a)(B) on behalf of the employee under the payment provisions set forth in subparagraph (5)(a)(B)(ii) or (iii).

(c) Employee contributions may only be paid during the period beginning with reemployment and whose duration is three times the period of the employee's military service, such period not to exceed five years.

(d) Employee contributions shall be credited to the employee account established in ORS 238A.350(2).

(e) Employee contributions shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(8) Employer contributions.

(a) If the employee's employer had agreed to make employer contributions under ORS 238A.340 as of the date the employee left employment to perform military service, the employer shall pay, in a lump sum payment, the amount of contributions that would have been made if the employee had remained in the employment of the employer during the period of military service, based on salary as defined in section (3) of this rule.

(b) Any contributions made under this section shall be added to the employee's employer account established in ORS 238A.350(3).

(c) Contributions made under this section shall not include nor be entitled to earnings or losses that would have been credited during the period of military service.

(9) Military service that includes January 1, 2004. If an employee as defined in section (3)(a)(B) or (C) of this rule performs military service over a period including January 1, 2004:

(a) Retirement credit and contributions for military service prior to January 1, 2004, shall be determined in accordance with OAR 459-011-0100.

(b) Retirement credit and contributions for military service on or after January 1, 2004, shall be determined in accordance with this rule and OAR 459-011-0100.

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

Stat. Auth.: ORS 238A.450 & 238A.415

Stats. Implemented: ORS 238A.415

Hist.: PERS 3-2004, f. & cert. ef. 1-22-04; PERS 16-2006, f. & cert. ef. 11-24-06

Rule Caption: Amend employer lump-sum payments rules and adopt non-UAL employer lump-sum payments rule.

Adm. Order No.: PERS 17-2006

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06

Notice Publication Date: 9-1-06

Rules Adopted: 459-009-0090

Rules Amended: 459-009-0084, 459-009-0085

Subject: OAR 459-009-0084 and 459-009-0085 deal with lump-sum payments by an employer with an unfunded actuarial liability (UAL). Current rules require that the employer and PERS enter into an inter-governmental agreement (IGA), whereby the employer prepays the PERS actuary for the cost of the required UAL calculation. The IGAs are unnecessary because the provisions they must contain are already included in the rule language and/or statute. These rule modifications remove the IGA requirement. Also, the current rules provide a 30-day timeframe for processing the employer's prepayment and completing the requested UAL calculation. To accommodate the current PERS actuary's billing process, the timeframe is being extended to 45 days.

OAR 459-009-0090 adopts a procedure for a fully funded employer (based on the most recent actuarial valuation) to make a lump-sum payment, including establishing a timeline for making a request and calculating the employer's total liability; minimum and maximum payment amounts; and treatment of the payment upon receipt. Different minimum payment thresholds are established based upon the employer's total liability to ensure that small employers have the same opportunity to make lump-sum payments as large employers.

Rules Coordinator: Daniel Rivas—(503) 603-7713

ADMINISTRATIVE RULES

459-009-0084

Unfunded Actuarial Liability Lump-Sum Payments by Employers Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer participating in an actuarial group.

(1) Definitions. For the purposes of this rule:

(a) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

(c) "Transition Unfunded Actuarial Liabilities" means the unfunded actuarial liabilities attributed to an individual employer for the period prior to entry into the Local Government Rate Pool, or the State and Local Government Rate Pool if the employer did not participate in the Local Government Rate Pool.

(d) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(e) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(2) Lump-sum payment amount. If an individual employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the individual employer's UAL calculated under section (6) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the individual employer's UAL calculated under section (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the individual employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) Calculation of the individual employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(a) 100 percent of the employer's share of the UAL for the actuarial group in which the employer is participating. This calculation shall be:

(A) Based on the fair value UAL of the actuarial pool in which the employer participates, from the most recent actuarial valuation;

(B) Based on the covered salary, as a proportion of the pool, reported by the employer for the year of most recent actuarial valuation; and

(C) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the individual employer's contribution rate using the one or two potential

dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the individual employer's UAL calculated in subsection (6)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(7) Notification of calculation. PERS staff shall notify the employer in writing of the results of the individual employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(8) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Employer Liability Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall first be applied to any transition unfunded actuarial liabilities. The remainder of the payment shall offset any pooled unfunded actuarial liabilities and shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the Side Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the Side Account to the Employer Contribution Account of the actuarial group in which the employer is participating.

(12) Crediting earnings or losses. For the purposes of this rule, Side Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

ADMINISTRATIVE RULES

(13) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06

459-009-0085

Unfunded Actuarial Liability Lump-Sum Payments by Employers Not Participating in an Actuarial Group

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when an unfunded actuarial liability lump-sum payment is made by an individual public employer not participating in an actuarial group.

(1) Definitions. For the purposes of this rule:

(a) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions which are to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(b) "Fair Value UAL" means the unfunded actuarial liability calculated using the fair market value of assets.

(c) "Unfunded Actuarial Liability" or "UAL" means the excess of the actuarial liability over the actuarial value of assets.

(d) "Unfunded Actuarial Liability Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(2) Lump-sum payment amount. If an employer elects to make a UAL lump-sum payment under this rule, the payment must be at least 25 percent of the employer's UAL calculated under section (6) of this rule or \$1 million, whichever is less. Alternatively, an employer may elect to pay 100 percent of the employer's UAL calculated under section (6) of this rule.

(3) Requirements. In order to make a UAL lump-sum payment, an employer must comply with the process described in sections (4) through (10) of this rule.

(4) Initiating UAL lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a UAL lump-sum payment. The notification shall specify:

(a) The amount of the intended lump-sum payment;

(b) Whether the intended payment is to be for 100 percent of the employer's calculated UAL; and

(c) No more than two potential dates for the payment. PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended dates of the UAL lump-sum payment.

(5) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a UAL lump-sum payment, the employer shall remit payment for the cost of the UAL calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's UAL calculation by the proposed UAL lump-sum payment date.

(6) Calculation of an employer's UAL. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(A) 100 percent of the employer's UAL. This calculation shall be:

(A) Based on the fair value UAL from the most recent actuarial valuation; and

(B) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(b) The effect of the following UAL lump-sum payment amounts on the employer's contribution rate using the one or two potential dates for payment specified by the employer in its notification in section (4) above:

(A) 100 percent of the employer's UAL calculated in subsection (6)(a) of this rule;

(B) The UAL lump-sum payment amount specified by the employer in its notification, if provided; and

(C) The minimum amount of the UAL lump-sum payment under section (2) of this rule.

(7) Notification of calculation. PERS staff shall notify the employer in writing of the results of the employer's calculation in section (6) above, including the effective date(s) for the reduced employer contribution rates based on the one or two potential dates for payment. In addition, PERS shall send the employer a notification describing risks and uncertainties associated with the calculation of the individual employer's UAL.

(8) Notification of UAL lump-sum payment. The employer or its agent shall notify the PERS Employer Liability Coordinator in writing at least three business days prior to making a UAL lump-sum payment. This notification shall be in addition to the notification in section (4) of this rule and shall specify the amount of the payment and the date it intends to make the payment.

(9) Method of payment. A UAL lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(10) Receipt of UAL lump-sum payment. In order to adjust the employer contribution rate to that reported by PERS in section (7) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the UAL lump-sum payment specified in the notification described in section (8) of this rule.

(a) If the UAL lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (8) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after:

(A) The date specified in the notification; or

(B) The first of the month following receipt of the UAL lump-sum payment by PERS, whichever is later.

(b) If the UAL lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the UAL lump-sum payment.

(c) If the UAL lump-sum payment received is other than any amount specified in the notification under section (8) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in subsection (6)(b) of this rule.

(d) If the UAL lump-sum payment received is less than the minimum amount described in section (2) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (7) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(11) Actuarial treatment of the UAL lump-sum payment. For actuarial purposes, the UAL lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(a) The UAL lump-sum payment shall be held in a Side Account for the benefit of the employer making the UAL lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the Side Account that are to be amortized for that year.

(b) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the Side Account to the Employer Contribution Account.

(12) Crediting earnings or losses. For the purposes of this rule, Side Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(13) Nothing in this rule shall be construed to convey to an employer making a UAL lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the UAL lump-sum payment made to the fund by the employer.

ADMINISTRATIVE RULES

(14) Effective date of rule. This rule shall apply to all UAL lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 5-2002(Temp), f. & cert. ef. 5-24-02 thru 9-30-02; PERS 13-2002, f. & cert. ef. 9-11-02; PERS 20-2005, f. 11-1-05, cert. ef. 11-4-05; PERS 17-2006, f. & cert. ef. 11-24-06

459-009-0090

Lump-Sum Payments by Employers

Purpose. The purpose of this rule is to establish procedures and requirements pursuant to ORS 238.225 for the adjustment of employer contribution rates when a lump-sum payment is made by an individual public employer that does not have an existing unfunded actuarial liability, or when an individual employer makes a lump-sum payment in excess of the employer's unfunded actuarial liability.

(1) Definitions. For the purposes of this rule:

(a) "Actuarial Surplus" means the excess of the actuarial value of an employer's assets over the employer's actuarial liability.

(b) "Employer Contribution Account" means that portion of the Fund designated by the Board, as a portion of the net assets of the Fund, that is funded by employer contributions to be used for the sole benefit of members of the trust with the purpose of paying future retirement and death benefits.

(c) "Fair Value UAL" or "Fair Value Actuarial Liability" means the UAL or actuarial liability calculated using the fair market value of assets.

(d) "IAP" means the Individual Account Program of the Oregon Public Service Retirement Plan.

(e) "Pension Program Contributions" means the total calculated employer contribution due in any reporting period for both the PERS and OPSRP pension programs, excluding any IAP contribution due.

(f) "Surplus Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of creating an actuarial surplus or increasing an existing actuarial surplus; and

(D) Where the employer has control over the timing or whether to make the payment.

(g) "UAL Lump-Sum Payment" means any employer payment:

(A) That is not regularly scheduled;

(B) That is not paid as a percentage of salary;

(C) That is made for the express purpose of reducing the employer's unfunded actuarial liability; and

(D) Where the employer has control over the timing or whether to make the payment.

(h) "Unfunded Actuarial Liability" or "UAL" means the excess of an employer's actuarial liability over the actuarial value of assets.

(2) For employers making a combined surplus lump-sum payment and UAL lump-sum payment, the provisions of this rule apply only to the surplus lump-sum payment unless otherwise indicated.

(3) Minimum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment must be at least:

(a) \$100,000 or 100 percent of the individual employer's actuarial liability, whichever is less, for an employer whose actuarial liability as calculated under section (9) of this rule is less than \$1 million; or

(b) Ten percent of the individual employer's actuarial liability, for an employer whose actuarial liability as calculated under section (9) of this rule is equal to or greater than \$1 million.

(4) Maximum surplus lump-sum payment amount. If an individual employer elects to make a surplus lump-sum payment under this rule, the payment shall not be greater than the amount required to bring the employer's total defined-benefit pension program contributions to zero percent of payroll based upon the individual employer's reported payroll in the most recent actuarial valuation.

(5) Requirements. In order to make a surplus lump-sum payment, an employer must comply with the process described in sections (6) through (14) of this rule.

(6) Initiating surplus lump-sum payment process. At least 45 calendar days prior to the date the employer intends to make a surplus lump-sum payment, the employer shall notify the PERS Employer Liability Coordinator in writing that it intends to make a surplus lump-sum payment. The notification shall specify:

(a) Whether the intended payment is to be for 100 percent of the individual employer's calculated actuarial liability or, if other than 100 percent, the percent of the individual employer's calculated actuarial liability or amount of the intended payment; and

(b) No more than two potential dates for the payment.

(7) PERS staff shall notify the employer within five business days of receipt of the notification if the notification is incomplete or the process cannot be completed by the intended date(s) of the surplus lump-sum payment.

(8) Payment to the actuary. At least 30 calendar days prior to the date the employer intends to make a surplus lump-sum payment, the employer shall remit payment for the cost of the actuarial liability calculation directly to the PERS consulting actuary according to the instructions on the invoice provided by the PERS consulting actuary. Failure to remit payment according to the terms of this section may result in the PERS consulting actuary not completing the employer's actuarial liability calculation by the proposed surplus lump-sum payment date.

(9) Calculation of the individual employer's actuarial liability. Upon receipt of a complete notification and verification of payment to the actuary for actuarial services, PERS staff shall request that the PERS consulting actuary calculate:

(a) 100 percent of the employer's actuarial liability, or 100 percent of the employer's share of the actuarial liability for the actuarial group in which the employer is participating, as applicable;

(b) The minimum amount of the surplus lump-sum payment under section (3) of this rule;

(c) The maximum amount of the surplus lump-sum payment under section (4) of this rule;

(d) The alternative percentage or dollar amount specified by the employer in its notification under section (6) of this rule; and

(e) The effect of the following surplus lump-sum payment amounts on the individual employer's contribution rate using the potential date(s) for payment specified by the employer in its notification in section (6) of this rule:

(A) 100 percent of the individual employer's actuarial liability calculated in subsection (9)(a) of this rule;

(B) The surplus lump-sum payment amount specified by the employer in its notification, if other than 100 percent;

(C) The minimum amount of the surplus lump-sum payment calculated in subsection (9)(b) of this rule; and

(D) The maximum amount of the surplus lump-sum payment calculated in subsection (9)(c) of this rule.

(10) The calculations described in section (9) of this rule shall be:

(a) Based on the individual employer's fair value actuarial liability from the most recent actuarial valuation;

(b) Based on the covered salary, for the individual employer or as a proportion of the pool, as applicable, reported by the employer for the year of the most recent actuarial valuation; and

(c) Adjusted to reflect the effect of time from the most recent actuarial valuation to the intended date(s) of payment, using generally recognized and accepted actuarial principles and practices.

(11) Notification of calculation. PERS staff shall notify the employer in writing of the results of the individual employer's calculation under section (9). In addition, PERS shall send the employer a notification describing risks and uncertainties associated with making a lump-sum payment.

(12) Notification of payment. The employer or its agent shall notify the PERS Employer Liability Coordinator in writing at least three business days prior to making a surplus lump-sum payment. This notification shall be in addition to the notification in section (6) of this rule and shall specify the dollar amount of the payment and the date the employer intends to make the payment.

(13) Method of payment. A surplus lump-sum payment must be made by either electronic transfer or check payable to the Public Employees Retirement System.

(14) Receipt of payment. In order to adjust the employer contribution rate to that reported by PERS in section (11) of this rule, PERS must receive the correct funds no later than five business days after the corresponding intended date of the surplus lump-sum payment specified in the notification described in section (12) of this rule.

(a) If the surplus lump-sum payment is received by PERS on or before the intended date specified in the notification described in section (12) of this rule or within the five business days following the intended date, the new employer contribution rate will be effective for payrolls dated on or after the first of the month following receipt of the payment by PERS.

(b) If the surplus lump-sum payment is received by PERS more than five business days after the intended payment date, the employer's contribution rate shall be adjusted in the next actuarial valuation based on the date of receipt of the payment.

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(c) Except as provided in subsection (14)(d), if the surplus lump-sum payment received by PERS is other than any amount specified in the notification under section (12) of this rule, the employer's contribution rate shall be adjusted to the rate the payment amount fully funds using the actuarial calculation in section (9) of this rule.

(d) If the surplus lump-sum payment received by PERS is less than the minimum amount described in section (3) of this rule, or greater than the maximum amount described in section (4) of this rule, the funds will be returned to the employer and no adjustment will be made to the employer contribution rate.

(e) Nothing in this rule shall be construed to prevent the Board from:

(A) Adjusting employer contribution rates based upon the date of receipt of funds or errors in the notification described in section (11) of this rule; or

(B) Taking action pursuant to ORS 238.225.

(15) Frequency of surplus lump-sum payments. An employer may make only one surplus lump-sum payment per calendar year.

(16) Actuarial treatment of the payment. For actuarial purposes, the surplus lump-sum payment made by the employer shall be treated as pre-funded contributions and additional assets for the payment of obligations of the employer under ORS chapters 238 or 238A, rather than as a reduction of those obligations.

(a) If the employer makes a combined surplus lump-sum payment and UAL lump-sum payment, the UAL lump-sum payment amount shall be held in a separate Side Account to which the provisions of OAR 459-009-0084 or 459-009-0085, as applicable, shall apply.

(b) The surplus lump-sum payment shall be held in a Side Account for the benefit of the employer making the surplus lump-sum payment. On an annual basis the PERS consulting actuary shall notify PERS staff of the amount of pre-funded contributions held in the Side Account that are to be amortized for that year.

(c) After earnings or losses have been credited for the year, the amount amortized shall be transferred from the Side Account to the Employer Contribution Account of the individual employer or of the actuarial group in which the employer is participating, as applicable.

(17) Crediting earnings or losses. For the purposes of this rule, Side Accounts shall be credited with all interest and other income received from investment of the account funds during the calendar year, less any amounts withheld from earnings for administrative expenses under ORS 238.610 or paid into the reserve account established under ORS 238.670(1).

(18) Nothing in this rule shall be construed to convey to an employer making a surplus lump-sum payment any proprietary interest in the Public Employees Retirement Fund or in the surplus lump-sum payment made to the fund by the employer.

(19) Effective date of rule. This rule shall apply to all surplus lump-sum payments initiated on or after the effective date of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.225

Hist.: PERS 17-2006, f. & cert. ef. 11-24-06

Rule Caption: Clarify administration of unit benefits for P & E members of the PERS Chapter 238 Program.

Adm. Order No.: PERS 18-2006

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06

Notice Publication Date: 9-1-06

Rules Amended: 459-016-0100

Subject: Amendments clarify the administration of unit benefits for police officer & firefighter members of the PERS Chapter 238 Program.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-016-0100

Purchase of Additional Units of Income by a Policeman or Fireman

(1) For the purposes of this rule:

(a) "Active" means an "active member" as defined in ORS 238.005(12)(b).

(b) "Current" means a member who is currently employed as a police officer or firefighter.

(c) "Firefighter" has the same meaning as set forth in ORS 238.005(9).

(d) "Five years" means five full years ending on the fifth anniversary date of the transfer from a police or fire position.

(e) "Inactive" means an "inactive member" as defined in ORS 238.005(12)(c).

(f) "Police officer" has the same meaning as set forth in ORS 238.005(16).

(2) Eligibility to Purchase Units. An active and current police officer or firefighter may purchase a maximum of eight units to provide increased benefits between the date of retirement and age 65. A member who retires prior to age 60 will receive unit payments over a minimum five-year period.

(3) Lump-Sum Purchase at Retirement. An active and current police officer or firefighter may choose to make a lump-sum purchase of police and fire units within the 60 days prior to the police officer's or firefighter's effective retirement date.

(a) If previous payroll contributions for unit benefits have been made, a lump-sum purchase of any remaining units, for a maximum of eight units, may be made within 60 days prior to the member's retirement date if the member is less than age 65.

(b) If no payroll contributions for unit benefits have been made, a lump-sum purchase of units may be made within the 60 days prior to the member's retirement date only if the member is less than age 60.

(4) Additional Contributions for Police Officers or Firefighters Retiring Prior to Age 60. An active and current police officer or firefighter who retires prior to age 60 may make additional contributions to purchase actuarially reduced unit benefits beginning at any date between the date of early retirement and age 60.

(5) Police Officers or Firefighters Who Work Until the Age of 65. Contributions for unit benefits are not permitted once the member reaches the age of 65. The amount in the unit account of a member who works until age 65 will be refunded to the member in a lump sum.

(6) Cancellation of Police and Fire Unit Contributions. A police officer or firefighter who has elected to make unit contributions may elect, in writing, to cancel the additional contributions at any time. Once canceled, the member will not be permitted to participate in the unit benefit program at a future time.

(7) Refund of Unit Account.

(a) Voluntary Refund. A police officer or firefighter may request a refund of the unit account if the police officer or firefighter is separated from all participating employers and their control groups.

(b) Involuntary Refund. A police officer or firefighter who has elected to make unit contributions and transfers to an inactive position or a non-police or fire job class will:

(A) Retain the unit account for five years immediately following the transfer.

(B) If at the end of the five years, the member has not turned age 50 or returned to a qualifying police or fire position, the member's election will be canceled and the amount in the unit account automatically refunded.

(c) A voluntary or involuntary refund results in a cancellation of the unit account. Once a unit account is canceled, the member may not participate in the unit benefit program at a future time.

(d) A police officer or firefighter who requests a withdrawal of the PERS member account will automatically receive a refund of the unit account.

(8) Disability Retirement. A police officer or firefighter who is approved for a PERS chapter 238 Program disability retirement is eligible to purchase the balance of the police and fire units or make an initial purchase equal to the maximum eight units.

(9) Reemployment under USERRA. An eligible PERS chapter 238 Program police or fire member who leaves a qualifying position to serve in the Uniformed Services is eligible upon initiating reemployment to make up the unit benefit contributions which would have been made to the member's unit account had the member not left to serve in the Uniformed Services.

(a) Contributions made under this section must be remitted to PERS by:

(A) Payroll deduction; or

(B) Monthly payment of no less than one month of contributions; or

(C) Lump-sum payment.

(b) Any individual, agency, or organization may pay the employee contributions specified in subsection (a) of this section on behalf of the employee under the payment provisions set forth in paragraph (B) or (C) of this section.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.440

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0200; PERS 18-2006, f. & cert. ef. 10-24-06

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Oregon State Marine Board Chapter 250

Rule Caption: Periodic rule update for rules governing the Agency's Boating Facility Program.

Adm. Order No.: OSMB 10-2006

Filed with Sec. of State: 11-22-2006

Certified to be Effective: 7-1-07

Notice Publication Date: 8-1-06

Rules Amended: 250-014-0001, 250-014-0002, 250-014-0003, 250-014-0004, 250-014-0005, 250-014-0010, 250-014-0020, 250-014-0030, 250-014-0040, 250-014-0041, 250-014-0080

Subject: At the June meeting of the Marine Board staff was directed to initiation of a formal rulemaking to seek public comment on proposed revisions to OAR Chapter 250, Division 14 governing many aspects of the agency's Facility Grant program, Maintenance Assistance Program (MAP), Vessel Waste Collection (CVA) and Boating Infrastructure Grant (BIG) program. Many minor house-keeping revisions were identified. A number of substantive changes were proposed to modify state rules to comply with federal rules for facilities funded with federal grants; allow certain permit fees to be used as "soft" match; require grant recipients to provide public notice and project signs; accommodate eligibility of private participants under the BIG program. Proposed amendments were distributed to the Facility Program mailing list for comments. At the September 19 meeting the Board adopted the rules as amended.

Rules Coordinator: Jill E. Andrick—(503) 378-2617

250-014-0001

Definitions

For the purposes of OAR-250-14-001 to 250-14-005, the following definitions shall apply:

(1) "Annual Maintenance" means routine maintenance and operation activities performed on an annual basis when the facility is open to public use.

(2) "Biennium" means the 24-month period beginning July 1 of each odd numbered year and ending June 30 of the next odd numbered year.

(3) "Board" means the State Marine Board.

(4) "Boarding Float" means a floating structure on or adjacent to a launch ramp used for temporary short term use for loading or off loading from a boat. Floats are normally 6 to 8 ft. wide.

(5) "Boating Facility Grant Program" means the program authorized by ORS 830.150. Funds are available for the acquisition, development and rehabilitation of public boating facilities available to, and ordinarily used by, motorized boats.

(6) "Boat Ramp" means an inclined hard surface consisting of asphalt or concrete used to launch and retrieve boats. One lane normally is 15 to 20 ft wide.

(7) "Boating Infrastructure Grants Program" (BIG) means the federal program authorized by 50 CFR Part 80 and ORS 830.150. Funds are available for the development and rehabilitation of transient tie-up facilities at public and private facilities used principally by non-trailer recreational boats.

(8) "Clean Vessel Act (CVA) Grant Program" means the federal program authorized by 50 CFR Part 85 and ORS 830.150. Clean Vessel Act grants can be used to develop, refurbish, or maintain floating restrooms and vessel waste collection systems ordinarily used by recreational boats at public and private boating facilities.

(9) "Director" means the State Marine Board Director.

(10) "Emergency Maintenance Assistance Program" ("E-MAP") means emergency funds provided to eligible facilities with extraordinary or emergency maintenance that occurs beyond routine or annual activities.

(11) "Fiscal Year" means the twelve-month period beginning July 1 of any year and ending June 30 of the next year.

(12) "Floating Restroom" means a floating structure moored in open water that provides toilet facilities to boaters.

(13) "Grounds" means the area at or immediately adjacent to an improved boating facility and includes garbage pickup and maintenance activities to include, turf, vegetation, trees/shrubs, bank stabilization and small picnic areas.

(14) "Improved Public Boating Facility" means improved public facilities with boat ramps, boarding floats, parking areas, access roads, restrooms, grounds, transient tie-up floats or vessel waste collection facilities.

(15) "Maintenance Assistance Program" ("MAP"), means funding assistance to eligible public participants for the routine maintenance and operations of improved public boating facilities. Funds are provided on an allocation basis.

(16) "Mixed Use Site" means a boating facility where annual use is mixed (31%–69%) between registered and non-registered boats.

(17) "Motorized Use Site" means a boating facility where annual use by registered boats is 70% or more of all boat use.

(18) "Non-Motorized Use Site" means a boating facility where the annual use by registered boats is 30% or less of all boat use.

(19) "Off-Season" means the six month period of lowest registered boat use generally the period from October 15 to April 15.

(20) "Parking Area" means a developed gravel and/or asphalt surface with at least 6 boat trailer spaces (10' x 40') and two single car spaces (10' x 20') associated with a boat ramp. This includes any required accessible parking spaces.

(21) "Peak Season" means the three month period of heaviest boat use generally the period from June 1 to August 31.

(22) "Public Boating Facility Grant Project" means a project to acquire property, or develop, improve, rehabilitate or replace public boating facilities.

(23) "Private Boating Facility Grant Project" means a project to develop, improve, rehabilitate or replace private marina facility vessel waste collection systems and transient tie-up facilities that are available/open for public use.

(24) "Public Boating Facility" or "Public Marine Facility" means public launch ramps, parking, boarding floats, transient tie-up facilities, restrooms, access roads, floating restrooms, vessel waste collection systems, signing and water markers, potable water systems and related facilities for the use and convenience of the boating public.

(25) "Private Marine Facility" or "Private Marina Facility" means private facilities that have the capability to provide vessel waste collection systems or transient tie-up facilities that are open and available for public use.

(26) "Public Project Sponsor," "Eligible Public Participants," or "Public Entity" means cities, counties, park and recreation districts, port districts and state agencies that own and or operate public marine facilities as specified in these rules.

(27) "Private Project Sponsor," "Eligible Private Participants," or "Private Entity" means any individual firm, corporation, association, partnership, consortium, joint venture, industry, or any other nonpublic entity that operates a marina facility as specified in these rules.

(28) "Restroom" means all types of landside facilities used to collect human waste to include flush, vault, composting and portable toilets. A restroom may include one or more stalls (urinal and/or toilet).

(29) "Routine Maintenance" means all types of ordinary maintenance activities completed on a regular basis (daily, weekly or monthly).

(30) "Shoulder Season" means the three month period of moderate boat use generally the period from April 15 to May 31 and September 1 to October 15.

(31) "Transient Tie-Up" means a floating structure at least 100 feet used for short term boat tie-up and broadside tie-up or space for mooring at least 6 non-trailer boats. Transient tie-up does not include tenant based moorage or facilities that allow longer than a 10 consecutive day stay.

(32) "Use Fee" means any form of user fee charged to boaters for access or use of a boating facility. This includes day use, launch, parking, tie-up or any other general entrance or use fee.

(33) "Vessel Waste Collection System" means all types of stationary or portable systems that pump or remove human waste from a recreational boat holding tank or portable potties. This includes pumpouts, dump stations, related forward sewage lift stations, necessary floats, piles, and gangways, and related facilities.

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

Stat. Auth.: ORS 830.110 & 830.150

Stats. Implemented ORS 830.150

Hist.: MB 18-1985, f. & ef. 10-21-85; MB 11-1987, f. 5-20-87, ef. 6-1-87; MB 12-1987, f. & ef. 6-15-87; MB 7-1992, f. & cert. ef. 5-15-92; MB 8-1995, f. & cert. ef. 11-6-95; OSMB 6-1998, f. & cert. ef. 4-15-98; OSMB 8-2001, f. & cert. ef. 7-30-01; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0002

Eligibility

(1) The Boating Facility Grant Program is available to eligible public project sponsors.

(2) The Clean Vessel Act and Boating Infrastructure Grant programs are available to eligible public and private project sponsors.

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(3) The Maintenance Assistance Program is available to eligible public project sponsors.

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

Stat. Auth.: ORS 830.110 & 830.150

Stats. Implemented: ORS 830.150

Hist.: MB 18-1985, f. & ef. 10-21-85; MB 11-1987, f. 5-20-87, ef. 6-1-87; MB 12-1987, f. & ef. 6-15-87; MB 7-1992, f. & cert. ef. 5-15-92; MB 8-1995, f. & cert. ef. 11-6-95; OSMB 6-1998, f. & cert. ef. 4-15-98; OSMB 8-2001, f. & cert. ef. 7-30-01; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0003

Boating Facility Grant Program

(1) Program Description:

(a) The Board is authorized by ORS 830.150(2)(a) to provide funds for the construction, rehabilitation, and replacement of boating facilities. The program can provide for the acquisition of property and related development projects such as ramps, parking, potable water, sanitation, docks, and other facilities for the convenience and safety of recreational boaters. The Board may adopt other policies, guidelines, and procedure manuals as necessary to implement these rules. The funds are available to eligible participants on a full grant or matching basis. Applicants are strongly encouraged to provide some form of matching funds. This will enhance a project's potential for funding. The applicant's match may be a hard match of cash or a soft match of "in-kind" materials or services such as project administration, design, engineering, force-account labor and permit fees specifically related to the Boating Facility Grant as set forth in the Procedure Guide. Eligible permit fees include application fees for US Army Corps of Engineers and Department of State Lands section 404 and section 10 permits, other state and local government permit fees required for construction or other activities associated with the grant, but not system development charges, impact fees, and general government overhead charges, or waterway leases and licenses associated with ownership of property.

(b) In granting funds, ORS 830.150(2)(a), requires the Board to give first priority to applications for facilities designed to control water pollution or otherwise enhance water quality, including but not limited to, pumping stations for recreational boat holding tanks, and to those other facilities for which there appears the greatest public need. Funds may also be granted for removal of obsolete and abandoned dock or mooring facilities, if these constitute a boating or navigational hazard.

(c) Applications for grants may be submitted by:

(A) Cities;

(B) Counties;

(C) Park and Recreation Districts;

(D) Port Districts;

(E) State Agencies.

(F) In addition, Counties with consent of the County Commission may sponsor a Federal Agency participant such as U.S. Forest Service, Bureau of Land Management or Corps of Engineers.

(d) Prior to issuing any grant, the Board shall hold a public hearing in the area where a facility is to be constructed or land acquired if, in the judgment of the Board, use of the facility would stimulate significant change in the character of the recreational use of the waters.

(e) Cities, counties, park and recreation districts, port districts, and state or federal agencies that have developed long-range plans for development of boating facilities are encouraged to file a copy with the State Marine Board.

(2) Procedures:

(a) Pre-Application: Prior to submitting an application for a Marine Board boating facility grant, the applicant should contact the Marine Board for a pre-application conference to discuss the proposed project. This will provide applicants with an opportunity to ask any questions regarding the grant program, and will permit the Marine Board staff to assist the applicant in the early planning stages of a project. Requests for application forms, guidance, and assistance may be obtained from: Facilities Program, Oregon State Marine Board, PO Box 14145, 435 Commercial St. NE, Salem, OR 97309-5065, Phone: (503) 378-8587. www.boatorregon.com

(b) Application: When an applicant for a grant has completed the planning phase, application shall be made to the Board on such forms as described in the Procedure Guide. A complete application must include the following enclosures:

(A) Completed original application form, and five (5) copies, for a total of six (6) copies.

(B) A resolution or statement from the governing body authorizing the project.

(C) Certification from the local city or county planning agency that the project is in compliance with local comprehensive plans and zoning ordinances or not subject to local plans and ordinances.

(D) The following supporting documents must be submitted:

(i) Location map of the city or county, showing geographic reference location of the project.

(ii) A vicinity map showing the entire facility, boundaries, geographical features and land use adjacent to the project.

(iii) A site plan showing the area to be developed with this grant. All items should be clearly labeled on the plan as existing or proposed development. The plan should show appropriate dimensions to scale.

(iv) Photographs of the existing project site. These should be sufficient to show major site features and any special characteristics. (An aerial photo is desirable if available).

(v) A preliminary cost estimate, with calculations and quantities, including all proposed facilities and work tasks. Where marine facilities are only a portion of the total project cost, indicate the boating related facilities to be developed with Marine Board funds.

(vi) Preliminary Plans of all proposed structures, including a plan view (top) and elevation view (side) of each proposed structure.

(vii) Third Party Agreements including copies of leases, special use permits, or intergovernmental agreements if the applicant manages but does not own the project site. If applicable, a cooperative agreement between the eligible applicant and a third party participant outlining scope and nature of the project should be included.

(viii) A description and chronology of notice given to the public of the application or proposed project and the opportunities for public input and the comments received.

(E) If lands are to be acquired, complete information pertaining to description, present ownership, appraised value, etc. is required.

(F) For all applications, a brief Environmental Checklist describing the anticipated environmental impacts of the project is required.

(G) For certain projects, various regulatory permits, leases, licenses, certifications, and plan reviews must be obtained. It is the responsibility of the applicant to secure the necessary clearances prior to implementing any project. The applicant shall indicate to the Board the status of any such permits, etc., as part of its application.

(H) The Board will not consider incomplete applications.

(c) Notice to Applicants: Following Board consideration, the applicant shall be advised in writing of the Board's decision. If a denial is made based on the protection of water quality, specific notice shall be provided indicating the point or points of the plan which are inadequate ORS 830.150(4).

(d) Approval of Boating Facility Grant: In order to approve a Boating Facility Grant, the Board shall assure that the project complies with the statewide planning goals and is compatible with applicable acknowledged comprehensive plans by following the procedures set out in the Board's state agency coordination program adopted pursuant to ORS 197.180.

(e) Approved Boating Facility Grants: Following Board approval of a Boating Facility Grant, a special cooperative agreement shall be entered into between the applicant, the Board and any third party participant. This agreement shall describe the responsibilities of all party participants. Failure by the applicant or any third parties to execute the grant agreement within 90 calendar days of project approval by the Board may result in the cancellation of the Boating Facility Grant.

(f) Completion and Final Reimbursement: Upon completion of the project, the sponsor shall notify the Board. A final billing with cost documentation shall be provided to the Board. After a satisfactory review of billing documents and final inspection by Marine Board staff, final reimbursement will be authorized.

(g) Boating Facilities Grant Procedure Guide: The Procedure Guide, adopted by the Board shall set forth policies, application form, billing form and sample cooperative agreement for use by all eligible participants.

(h) Boating Facility Grant Availability: Boating Facility Grants are available each biennial period as prescribed by the Board. Large projects may be phased in over a period of years or bienniums to maximize leverage, distribution and availability of funds. Notice of grant fund availability will be given once to all interested applicants on or about February 15 for the ensuing new biennial period.

(3) Priorities:

(a) The Board shall provide grants for boating facilities as the need for facilities appear to the Board as authorized by ORS 830.150(1).

(b) Since funding for the program is derived from boat registration fees and state motorboat gas tax, the highest priorities will go to projects that serve registered motorboats and sailboats.

(c) When applications for grants exceed funds available, the Marine Board will, pursuant to ORS 830.150(2), consider the results of the Boating Survey conducted in accordance with ORS 830.115 in determining areas of

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greatest need. The Statewide Six Year Boating Facilities Plan, prepared under ORS 830.110(6), with input from cities, counties, park districts, port districts, state and federal agencies, shall also be used to guide the allocation of funds to priority needs.

(d) The Board in its Procedure Guide shall prescribe specific ranking criteria for grant applications. The Board may convene an advisory committee to assist in the review grant project requests.

(4) Policies:

(a) It is the policy of the Board to encourage applicants to make use of matching funds. As a part of this policy, applicants will be encouraged to seek other sources of matching monies and/or to provide some form of local matching contribution. This local matching contribution may be a "hard" match of cash and/or a "soft" match of "in-kind" materials or services such as project administration, design, engineering, force account labor, and permit fees specifically related to the Boating Facility Grant. The Board recognizes that, in some instances, this local matching contribution may be beyond the applicant's capabilities. In such cases, the Board may provide a grant covering the full eligible costs. The availability of matching funds and/or local participation, while not the primary factor in considering a grant application, will be examined as one aspect of the project in the decision-making process. The Board in its Procedure Guides shall develop a general policy on applicant matching funds.

(b) Grants will be limited to actual certified expenditures for materials, equipment, labor, and services directly related to construction. Applicants are encouraged to supply "in-house" administration, design, labor, equipment and engineering services as a form of match to the Marine Board grant. "In-kind" participation shall be documented to the maximum extent possible.

(c) The Board requires project sponsors to place a credit sign at facilities developed with a Marine Board grant. This sign shall indicate that the facility was developed with assistance from the Marine Board. The credit sign shall also recognize grant funding received through the U.S. Fish & Wildlife Services Clean Vessel Act, Boating Infrastructure, or Sport Fish Restoration programs, or other funding sources as appropriate. The cost of design, fabrication and installation is an eligible cost and may be included in the construction contract. The sponsor shall place the required sign in a suitable location at the facility.

(d) In determining approval of the grants, the Board will give priority to those facilities providing free services to the general public.

(e) Marine Board staff will, within budgetary limitations, inspect each proposed facility site with the grant applicant prior to Board consideration of any grant. On-site visits shall be made to assure that the facts presented in the application are correct and to furnish Board members such additional data as may be desired. A final inspection will, within budgetary limitations, also be made prior to the final grant reimbursement.

(f) Grant applications must be received 30 calendar days or more prior to scheduled State Marine Board meetings to be considered by the Board. Applicants should contact the Facilities Program Manager concerning grant application deadlines and availability of funds.

(g) At the discretion and direction of the Board, the Director may be authorized each biennium to approve small grants up to \$10,000 for minor public boating facility improvements not to exceed \$20,000 in total cost. The Board may limit the total amount of funds available for small grants each biennium. Applicants eligible to receive Boating Facilities Grants may apply for small grants by letter from the governing body of the applicant, addressed to the Director and accompanied by appropriate supporting information sufficient to describe the proposed project, including a drawing or plan of the site and proposed improvements, photographs, and a cost estimate or written cost quote from a qualified contractor or vendor. Small grants may not be used for routine maintenance activities that are eligible under the Maintenance Assistance Program. The Director may waive all or part of the standard cooperative agreement for small grants. At each regularly scheduled Board meeting, the Director shall report on the status of all authorized small grants.

(h) It is the policy of the Board to require that projects be completed within a biennial budget period or less from the date of grant approval. Exceptions may be allowed by the Director if warranted by extraordinary circumstances. The Director is authorized to approve project time extensions up to 90 days, provided this is reported to the Board or as provided by state rule.

(i) Partial reimbursement can be made based upon percentage of project completion with submittal of appropriate documentation (invoices, receipts, photographs, etc.). Final reimbursement will be forwarded upon receipt and approval of appropriate final billing documentation, and a satisfactory final inspection by Board staff. Project sponsors must inform the

staff of any alterations to the project, and should provide an early indication of any possible cost overruns or delays which will necessitate a time extension beyond the two year limit.

(j) Except as provided in the Consent Agenda Grant Consideration Policy applicants shall attend the Marine Board meeting at which their facility grant request is being considered. The Marine Board staff shall inform applicants as to the date, time, and location of the Board meeting. Failure to appear at the meeting may result in a deferral of the grant request. The Director may waive this requirement for smaller projects or if special conditions prevent the applicant from being present.

(k) Reimbursement will not be made for projects initiated or completed prior to approval by the Board and federal granting agency. Recognizing that emergencies may arise necessitating quick action, applicants with emergencies should contact the Facilities Program Manager for instructions before initiating any improvements.

(l) Grants will not be approved for the routine maintenance of facilities (e.g., cleaning, litter pickup, lawn care, painting, etc.). These items may be eligible for funding through the Maintenance Assistance Program.

(m) The Director is authorized to approve minor cost overruns (less than \$10,000). Applicants must notify the Board of possible cost overruns prior to incurring them in order to be eligible for possible reimbursement.

(n) In submitting the Grant Application and by execution of the Cooperative Grant Agreement the Applicant certifies that all developments will occur on property owned, leased or controlled by Applicant during the term of the agreement. All property or facilities developed with Facilities Grant funds must be dedicated for public use and maintained for a period not less than twenty (20) years. In the event the applicant fails to maintain the facility, or converts the use of the facility, the applicant shall promptly reimburse the Board for all improvement costs provided by the Board.

(o) All projects must comply with "Uniform Sign Guidelines" as published by the Board. All launch ramp facilities developed with Marine Board funds must have at least one uniform boat ramp sign placed on roads leading to the facility in order to direct the public.

(p) All projects must be designed and engineered by a registered engineer or architect unless completed using force account labor or otherwise provided by law. This will assure the applicant and the Board that proper and necessary provisions are being met with respect to public health, life and safety through the best use of materials and labor at a minimal cost.

(q) A publication by the Board titled "Layout and Design Guidelines for Recreational Boat Facilities" provides basic technical specifications and design criteria for the development of facility grant projects. All projects must comply with these guidelines or other approved methods.

(r) Applicants shall forward one copy of the final plans and specifications to the Board for review, prior to procuring any contractor, material supplier or commencing any work at the project site. Marine Board staff will notify applicants of plan approval, at which time they may commence implementation of the approved plan.

(s) The Board has the capability to provide some design-engineering services for grant applicants. Requests for technical engineering assistance should be directed to the Facilities Program Manager.

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

Stat. Auth.: ORS 830.110 & 830.150

Stats. Implemented: ORS 830.150

Hist.: MB 18-1985, f. & ef. 10-21-85; MB 11-1987, f. 5-20-87, ef. 6-1-87; MB 12-1987, f. & ef. 6-15-87; MB 4-1988, f. 4-21-88, cert. ef. 5-15-88; MB 7-1992, f. & cert. ef. 5-14-92; MB 9-1994, f. & cert. ef. 8-5-94; MB 8-1995, f. & cert. ef. 11-6-95; OSMB 6-1998, f. & cert. ef. 4-15-98; OSMB 8-2001, f. & cert. ef. 7-30-01; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0004

Maintenance Assistance Program

(1) Program Description:

(a) The Board is authorized by ORS 830.150(2)(a) to provide funds for annual maintenance of improved public marine facilities.

(b) The Board is also authorized to provide federal Clean Vessel Act CFR 50 Part 85 funds made available through the U.S. Fish and Wildlife Service, to assist in the maintenance of vessel waste collection facilities, floating restrooms, and related support facilities.

(c) Federal Clean Vessel Act funds require at least a 25% non-federal match of funds, which is usually provided by the Board. All participants must agree to comply with any and all federal funding requirements.

(d) The intent of the Maintenance Assistance Program (MAP) is to augment existing levels of routine maintenance at improved public marine facilities provided by eligible participants throughout the state. Eligible participants are encouraged to use MAP funds to enhance their existing level of funding and to improve the quality of maintenance provided.

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(e) This program is not intended to replace participant maintenance funds or be the sole source of funding for all boating facility maintenance. The Program is voluntary and by accepting MAP funds the participant agrees to comply with all program rules, policies and procedures.

(f) Eligible participants include cities, counties, park and recreation districts, port districts and state agencies.

(g) Eligible facilities include boat ramps, boarding floats, restrooms, parking areas, access roads, transient tie-up floats, floating restrooms, vessel waste collection systems and related facilities. To be eligible, a facility must be open at least during the peak season of use and, at a minimum, provide:

(A) A single-lane boat ramp with at least 6 vehicle/boat trailer and 2 single car parking spaces or at least 100 linear feet of transient tie-up floats; Vessel waste collection facilities; or floating restrooms.

(B) A single-stall restroom; and

(C) One garbage can.

(h) The MAP funds may be used for routine and ordinary maintenance of boating facilities to include but not limited to: cleaning boat ramps, docks, parking areas, restrooms, garbage and litter pick up, grounds keeping, and minor repairs to eligible facilities. Federal Clean Vessel Act funds may be used for routine and ordinary maintenance of vessel waste collection facilities and floating restrooms to include cleaning, septic disposal, minor repairs and deployment and winterization.

(2) Allocation:

(a) MAP funds are provided, on an allocation basis each fiscal year, to eligible participants who own or operate eligible facilities. The amount of MAP funds available in any fiscal year shall be one-half of the biennial amount approved by the Board.

(b) Federal Clean Vessel Act funds are provided to eligible participants contingent on availability and approval by the U.S. Fish and Wildlife Service.

(c) Prior to each biennial period the Board shall approve the MAP allocation formula and point system for site elements found at eligible facilities. The point system will establish the Board's share of the estimated level of effort necessary to meet the minimum level of maintenance expectations as established by the Board. Each point has a value of \$100. The MAP payment shall be made to eligible participants annually, on or about August 1, using the allocation methodology as follows:

(A) Determine the Base Allocation for each boating facility. Calculate the number of launch lanes, boat trailer parking spaces, restroom stalls, length of boarding floats, length of transient tie-up floats, grounds and garbage service by the point values as prescribed by the Board. Multi-site participants with facilities that are only accessible by boat or participants that provide four or more facilities will receive additional points as established by the Board.

(B) Determine the Boating Facility Allocation. Adjust the Gross Allocation with a 25% reduction for each \$1 facility fee charged by the participant in excess of \$2. Facility fees may be any day use, entry, launch, parking or other fee charged to users for a single use of the boating facility. The Board will use the highest of any single use fee paid by the boater. Any fee charged over \$5 will disqualify that facility from receiving any MAP funds. The Board may prescribe other fee reduction values for transient tie-up facilities based on local or regional market conditions. Facility Allocation = Gross - (.25 Gross)(Fee \$2).

(C) The Board may balance the number of launch lanes to the number of parking spaces in conformance with the "Design Guidelines." The Board may further make adjustments for restrooms that clearly serve other developed activity areas besides boating, such as large day use areas, marinas, campgrounds and downtown areas. These facilities will assume to have joint use and points will be adjusted accordingly. The Board may further make adjustments for restrooms that have seasonal stall closures where the entire restroom facility is not open to public boating use.

(D) Adjust the Boating Facility Allocation for seasonal facility closures:

(i) 50% MAP Allocation = 3 month peak season;

(ii) 25% MAP Allocation = 3 month shoulder season;

(iii) 25% MAP Allocation = 6 month off-season.

(E) Determine Total Eligible Boating Facility Participant Allocation. Participant's annual allocation is the sum total of each eligible facility. Total Allocation = (Facility 1 + Facility 2 +...).

(d) Determine the Base Allocation for each vessel waste collection facility. Calculate the number of pumpouts, dump stations and floating restrooms by the development point values as prescribed by the Board.

(A) Adjust the Vessel Waste Collection Systems Allocation for seasonal closures when the facility is not open for public use:

(i) 50% Facility Allocation = 3 month peak season;

(ii) 25% Facility Allocation = 3 month shoulder season;

(iii) 25% Facility Allocation = 6 month off-season.

(B) Determine Total Eligible Vessel Waste Collection Systems Participant Allocation. Participant's annual allocation is the sum total of each eligible facility. Total Allocation = (Facility 1 + Facility 2 +...).

(C) Boat waste collection facilities built with Board grants are required to provide free use for the public. No user fees may be collected or charged. The facility must be open and available to the general boating public to include hoses, adapters, power and other necessary items for operation and use.

(D) The Board shall re-allocate any MAP funds remaining in the biennium to the Marine Facility Grant Program.

(3) Procedures:

(a) On or about May 15 of each year, the Board shall estimate the funds available for the next fiscal year, and shall use the point allocation in Section 2 of these rules to estimate each participant's allocation.

(b) Eligible participants shall be notified in writing of their estimated allocation for the ensuing fiscal year.

(c) For the fiscal year beginning July 1 and ending June 30, the participant shall certify by July 15 to the Board the following:

(A) The participant has adopted a budget that includes the estimated MAP allocation; and

(B) The number of eligible improved marine facilities and site elements maintained by the participant; and

(C) That the MAP funds will be spent only to maintain improved marine facilities in accordance with the MAP procedures and policies; and

(D) The season(s) of use that the improved marine facility will be open and maintained for public use; and

(E) The amount of any user fees to be charged during the fiscal year for use of the eligible boating facility by boaters. User fees include the highest of any entrance, day use, launch ramp, parking, transient moorage or other fees paid daily, monthly, or annually.

(d) Any participant that does not certify to the Board by July 15, as required above, shall be deemed to have waived participation in the MAP program.

(e) Participants allocated more than \$10,000 annually shall submit to the Board an estimated expenditure report at the end of each fiscal year period and an operations and maintenance budget outlining actual MAP and participant expenditures for labor, supplies, materials and services for all eligible sites individually. Reports shall be in the manner and form as required by the Board. Failure to submit this report within the specified time shall result in participant disqualification.

(4) Policies:

(a) It is the policy of the Board that the MAP program is designed to supplement funds expended by an eligible participant in the maintenance of improved boating facilities. The intent of the Board is to assist in improving the quality of maintenance at improved boating facilities. MAP funds may not be used to match grant funds or other capital projects.

(b) Funding for the program may be denied to an eligible participant if the Board determines that a sponsor has expended MAP funds for purposes other than those allowed by these rules, failure to provide an adequate level of maintenance, or failure to provide additional funds beyond MAP or failure to report any changes in facility user fees or season of use.

(c) It is the policy of the Board to encourage eligible participants to develop and improve the quality of facilities using the Facility Grant Program in order to reduce the cost of maintenance and operations.

(d) It is the policy of the Board to encourage free public access to the waters of this state.

(e) It is the policy of the Board to allow MAP funds to be expended on small tools and equipment capital purchases not to exceed \$1,000 for each site, provided the applicant provides sufficient maintenance that complies with expectations as established by the Board.

(f) The Board requires that park maintenance expenditure records be available to the Board for inspection and audit upon request. The Board may establish certain operation and maintenance expectations based on use, seasons and/or level of site development.

(g) Restroom facilities at each site must be available and maintained for public use whenever the boating facility is available and open for public use, but in no instance may this be less than 3 months during peak season.

(h) Only motorized and mixed use facilities are eligible for MAP. It is the policy of the Board that facilities located on bodies of water that are principally non-motorized or where motorboat use is prohibited, are not eligible for MAP.

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(i) The Board may require participants to report on the maintenance needs and activities performed. The report shall be in such form and detail as the Board may require.

(j) If a participant's actual annual maintenance expenditures or budget for marine facility maintenance is less than the MAP allocation, a maximum of 10% of the total annual MAP allocation may be carried forward to the next fiscal year. All carry-forward amounts must be fully expended within that period. The participant shall reimburse the Board for any excess MAP funds not expended within the fiscal year. Failure to notify the Board of unexpended MAP funds may result in disqualification from the program.

(k) The participant shall match any MAP funds received from the Board. Participant match may include cash and/or in-kind services directly relating to maintenance of boating facilities. Participant match may only include those items relating to boating facilities and shall not include any cash or in-kind activities expended on campgrounds, marinas, fuel stations, trails, picnic shelters, swim areas or other large day use components.

(l) It is the policy of the Board that MAP funds may not exceed 60% of a participants total maintenance expenditure on boating facilities.

(m) It is the policy of the Board not to increase a participants' allocation of MAP funds during any fiscal year.

(n) MAP participants are encouraged to document any percentage of estimated in-kind matching sources to include: fleet services, overhead, program administration, higher level supervision or other general service assessments/charges. MAP participants are encouraged to develop a cost accounting system that separates out MAP funds by line item revenue and expenditures. Expenditure detail should be sufficient to demonstrate that MAP funds provided are being appropriately expended.

(o) Participants shall identify any shared use of public boating facilities such as restrooms and parking areas with non-boating use such as campgrounds, sports fields, trails, etc. Where shared use occurs, participants shall estimate the percentage of use shared facilities that is attributable to boaters.

(p) MAP funds are principally targeted for labor, supplies, or contract services that will be expended at the site. Justification will be required for expenditures for overhead, program administration, supervision or other general service assessments/charges that amount to 15% or more of MAP funds received.

(q) MAP participants that provide four or more sites may shift up to 25% of the individual MAP site allocation to other eligible MAP sites to accommodate changing use patterns, water conditions or maintenance needs, provided that minimum maintenance expectations are met at all sites.

(r) Any daily, monthly or annual use fees charged at MAP sites must be uniform for a specific class of users. No differential in-area or out-of-area annual, seasonal or day use fees may be charged at MAP sites.

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

Stat. Auth.: ORS 830.110 & 830.150

Stats. Implemented: ORS 830.150

Hist.: MB 18-1985, f. & ef. 10-21-85; MB 11-1987, f. 5-20-87, ef. 6-1-87; MB 12-1987, f. & ef. 6-15-87; MB 7-1992, f. & cert. ef. 5-15-92; MB 9-1994, f. & cert. ef. 8-5-94; MB 8-1995, f. & cert. ef. 11-6-95; OSMB 6-1998, f. & cert. ef. 4-15-98; OSMB 8-2001, f. & cert. ef. 7-30-01; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0005

Vessel Waste Collection and Boating Infrastructure Grant Program

(1) Program Descriptions:

(a) The Board is authorized to provide federal Clean Vessel Act and Boating Infrastructure Grant funds made available through the U.S. Fish and Wildlife Service, in the form of grants in accordance with ORS 830.150(2)(a), for the construction, rehabilitation or replacement of facilities, such as vessel waste collection systems, transient tie-ups and related support facilities.

(b) Federal Clean Vessel Act and Boating Infrastructure Grant funds are provided to the Board contingent on availability and approval by the U.S. Fish and Wildlife Service. Federal Clean Vessel Act and Boating Infrastructure Grant funds require at least a 25% non-federal match. For Clean Vessel Act projects, the required non-federal matching funds are generally provided by the Board. All participants must agree to comply with any and all federal funding requirements including but not limited to compliance with the Single Audit Act, federal OMB Circular A-133.

(c) Clean Vessel Act Grant Funds may be used for the construction/renovation of pumpouts, dump stations and floating restrooms.

(d) Clean Vessel Act Grant Funds may not be used for the construction/renovation of upland restroom facilities; or the construction/renovation, operation and maintenance of on site sewage treatment plants such as

package treatment plants and septic systems, or municipal sewage treatment plants for primary and secondary treatment.

(e) Boating Infrastructure Grant funds may be used for the construction/renovation of docks and piers, gangways, fixed and floating breakwaters, debris booms, vessel waste collection systems, utilities and restrooms that principally support tie-up facilities serving non-trailer boats.

(f) Boating Infrastructure Grant funds may not be used for the construction/renovation of any trailer boat facilities, routine maintenance activities, dry stack storage, annual, seasonal or homeport moorage or other related facilities.

(g) Eligibility:

(A) Applications for grants may be submitted by:

(i) Cities;

(ii) Counties;

(iii) Park and Recreation Districts;

(iv) Port Districts;

(v) State Agencies; and

(vi) Private Project Sponsors;

(B) In addition, Counties with consent of the County Commission may sponsor a Federal Agency participant such as U.S. Forest Service, Bureau of Land Management or Corps of Engineers.

(2) Procedures:

(a) Pre Application:

(A) Cities, counties, park and recreation districts, port districts, state agencies and private project sponsors that have developed long-range plans for development of boating facilities are encouraged to file a copy with the State Marine Board.

(B) Prior to submitting an application for a Marine Board facility grant, the applicant should contact the Marine Board for a pre-application conference to discuss the proposed project. This will provide applicants with an opportunity to ask any questions regarding the grant program, and will permit the Marine Board staff to assist the applicant in the early planning stages of a project. Requests for application forms, guidance, and assistance may be obtained from: Facility Program, Oregon State, Marine Board, PO Box 14145, 435 Commercial St. NE, Salem, OR 97309-5065, Phone: 503-378-8587. www.boatoregon.com

(C) *The Public Boating Facility Grant Procedure Guide*, adopted by the Board shall set forth policies, application form and sample cooperative agreement for use by all eligible public participants.

(D) *The Private Grant Procedure Guide* shall set forth policies, application form and sample cooperative agreement for use by all eligible private participants.

(b) Application: When an applicant for a grant has completed the planning phase, application shall be made to the Board on such forms and manner as described in the Public or Private Procedure Guide. The application must include the following enclosures:

(A) A completed original application form and enclosures, and five (5) copies, for a total of six (6) copies.

(B) For Public Project Sponsors, a resolution or statement from the governing body authorizing the project.

(C) For Private Project Sponsors, a statement from the legal owner, corporation or entity authorizing the project.

(D) Permits and Environmental Assessment:

(i) Certification is from the local city or county planning agency that the project is in compliance with local comprehensive plans and zoning ordinances or statement that the project is not subject to these.

(ii) For certain projects, various regulatory permits, leases, licenses, certifications, and plan reviews must be obtained. It is the responsibility of the applicant to secure the necessary clearances prior to implementing any project. The applicant shall indicate to the Board the status of any such permits, etc., as part of its application.

(iii) For all projects, a brief Environmental Checklist describing the anticipated environmental impacts of the project is required.

(E) The following planning attachments must be submitted:

(i) Location map of the city or county, showing geographic reference location of the project.

(ii) Vicinity map showing entire facility, boundaries, geographical features and land use adjacent to the project.

(iii) Site Plan showing the area to be developed with the grant. All items should be clearly labeled on the plan as existing or proposed development including dimensions to scale.

(iv) Photographs of the existing project site. These should be sufficient to show major site features and any special characteristics. (An aerial photo is desirable if available).

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(v) A preliminary cost estimate, with calculations and quantities, including all proposed facilities and work tasks. For projects where proposed boating facilities are only a portion of the total cost, the estimate must indicate the boating related facilities to be developed with Marine Board funds.

(vi) Preliminary Plans of all proposed structures, including a plan view (top) and elevation view (side) of each proposed structure.

(vii) Third Party Agreements including copy of leases, special use permits, or intergovernmental agreements if the applicant manages but does not own the project site. If applicable, a cooperative agreement between the eligible applicant and a third party participant outlining scope and nature of the project should be included.

(viii) A description and chronology of notice given to the public of the application or proposed project and the opportunities for public input and the comments received.

(c) Application Evaluation:

(A) Marine Board staff shall evaluate each and every complete grant application using evaluation criteria as established by the Board.

(B) Marine Board staff shall prepare a report and funding recommendation for the Board. A copy of this report will be forwarded to the applicant prior to the Board meeting when the application will be considered.

(C) Incomplete applications will not be considered by the Board.

(D) Board Consideration:

(a) Except as provided in the Consent Agenda Grant Consideration Policy applicants shall plan to attend the Marine Board meeting at which their facility grant request is being considered. The Marine Board staff shall inform applicants as to the date, time, and location of the Board meeting. Failure to appear at the meeting may result in a deferral of the grant request. The Director may waive this requirement for smaller projects or if special conditions prevent the applicant from being present.

(b) Following Board consideration, the applicant shall be advised in writing of the Board's decision. If a denial is made based on the protection of water quality, specific notice shall be provided indicating the point or points of the plan which are inadequate (ORS 830.150(4)).

(c) Prior to issuing any grant, the Board shall hold a public hearing in the area where a facility is to be constructed or land acquired if, in the judgment of the Board, use of the facility would stimulate significant change in the character of the recreational use of the waters.

(d) In order to approve a Facility Grant, the Board shall assure that the project complies with the statewide planning goals and is compatible with applicable acknowledged comprehensive plans by following the procedures set out in the Board's state agency coordination program adopted pursuant to ORS 197.180.

(E) Approved Projects:

(a) Following Board approval of a grant, a special cooperative agreement shall be entered into between the applicant, the Board and any third party participant. This agreement shall describe the responsibilities of all parties. Failure by the applicant or any third parties to execute the grant agreement within 90 calendar days of project approval by the Board may result in the cancellation of the grant.

(b) The Board requires that projects be completed within a biennial budget period or less from the date of grant approval. Exceptions may be allowed by the Director if warranted by extraordinary circumstances. The Director is authorized to approve project time extensions up to 90 days, provided this is reported to the Board.

(F) Project Closeouts:

(a) Upon completion of the project, the public or private project sponsor shall notify the Board. A final billing with cost documentation shall be provided to the Board. After a satisfactory review of billing documentation and final inspection by Marine Board staff, final reimbursement will be authorized.

(B) Upon final approval and inspection by the Marine Board staff, ownership of all facilities (and components) developed with partial or full grant funds shall remain with the public or private project sponsor subject to the terms of the Cooperative Agreement.

(3) Priorities:

(A) Funding:

(a) The funds are available to eligible participants on a full grant or matching basis.

(b) In granting funds, the Board shall give first priority to applications for public facilities and to those facilities which appear to have the greatest public need as determined by the Marine Board.

(c) Grant funds are available each biennial period as prescribed by the Board. Large projects may be phased in over a period of years or bienniums to maximize leverage, distribution and availability of funds.

(d) Notice of grant fund availability will be given once to all interested applicants on or about February 15 for the ensuing new biennial period.

(B) Need:

(a) The Board shall provide grants for Marine facilities as the need for facilities appear to the Board ORS 830.150(2).

(b) When applications for grants exceed funds available, the Marine Board will, pursuant to ORS 830.150(2), consider the results of the Boating Survey conducted in accordance with ORS 830.115 in determining areas of greatest need. The Statewide Six Year Boating Facilities Plan, prepared under ORS 830.110(6), and the Statewide Boat Waste Facility Plan prepared for the federal Clean Vessel Act of 1992, with input from cities, counties, park districts, port districts, state and federal agencies, and private project sponsors, shall also be used to guide the allocation of funds for boat waste collection facilities.

(c) The Board's Public and Private Procedures Guides shall prescribe specific ranking criteria and project priorities.

(4) Policies:

(A) Matching Funds:

(a) It is the policy of the Board to encourage applicants to make use of matching funds. As a part of this policy, applicants will be encouraged to seek other sources of matching monies and/or to provide some form of matching contribution. This public or private matching contribution may be a "hard" match of cash and/or a "soft" match may consist of "in-kind" materials such as project administration, design, engineering, force account labor, permit fees exclusively related to the eligible grant component, and in the case of private participants long term maintenance costs. The Board recognizes that, in some instances, this matching contribution may be beyond the applicant's capabilities. In such cases, the Board may provide a grant covering the full eligible project costs.

(b) Grants will be limited to actual certified expenditures for materials, equipment, labor, and services directly related to construction. Applicants are encouraged to supply "in-house" administrative, design, labor, equipment and engineering services as a form of match to the Marine Board grant. "In-kind" participation shall be documented to the maximum extent possible.

(B) Fees:

(a) Since the Board intends to provide the majority of capital development costs in the form of grants, public and private project sponsors shall not charge any type of user fee for the use of vessel waste collection facilities during the term of the Agreement.

(b) To encourage public use, all public and private vessel waste collection facilities developed in whole or in part by grant funds shall be available free for public use during the term of the Agreement.

(c) Approval must be obtained by the Board prior to charging any user fees for all facilities funded by Boating Infrastructure Grant funds. Any fees charged shall be reasonable and based on the prevailing rate charged by other public and private facilities in the area.

(C) Signs:

(a) The Board requires public and private project sponsors to place a credit sign at facilities developed with a Marine Board grant. The use of any federal Clean Vessel Act or Boating Infrastructure Grant funds requires placement of a credit sign at the facility indicating use of federal funds.

(b) The sponsor shall place a standard logo pumpout and/or dump station sign at each facility developed with federal Clean Vessel Act grant funds.

(c) The cost of design, fabrication and installation of required signs is an eligible cost and may be included in the construction contract.

(D) Applications:

(a) Grant applications must be received 30 calendar days or more prior to scheduled State Marine Board meetings to be considered by the Board. Applicants should contact the Facilities Program Manager concerning grant application deadlines and availability of funds.

(b) Applications will be considered by the Board at regular or special meetings as determined by the Board. Funding periods (rounds) shall be established on or about February 15 for the ensuing new biennium period. Notice will be given to any interested applicant.

(E) Public Use and Access:

(a) All vessel waste collection and transient tie-up facilities developed with Facility Grant funds must be open and available for public use. Reasonable hours of operation may be prescribed if necessary. The facility may be closed for short periods to protect against cold weather damage.

(b) Public and private project sponsors shall agree to provide unrestricted and/or unencumbered access to the general public by either land or water to vessel waste collection facilities or Boating Infrastructure Grant

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facilities developed in whole or part with Facility Grants and/or federal funds.

(F) Cooperative Agreements:

(a) Public and private project sponsors shall enter into an agreement with the Board in the manner and form prescribed by the Board. This agreement, which outlines the terms and conditions of funding and other obligations by all parties, must be executed by the Director and the project sponsor and any third party participant prior to commencing any project work. Failure by the applicant and any third party to execute the agreement within 90 calendar days of project approval by the Board may result in the cancellation of the grant.

(b) The term of the Cooperative agreement for Vessel Waste Collection Systems shall be 10 years and Boating Infrastructure Grant facilities shall be 20 years, the assumed average useful life span of these facilities.

(c) The public or private project sponsor or third party participant shall provide ordinary and routine maintenance activities during the term of this agreement.

(d) The public or private sponsor or third party participant shall agree to allow unencumbered facility access to the Board or its authorized agents during the term of the Cooperative Agreement.

(e) Funding recipients shall maintain accurate records on the expenditure of project funds, provide the Board with these records consistent with the agreement and upon request, and permit the Board to audit the use of grant funds in accordance with generally accepted audit practices and standards.

(f) Private project sponsors are not required to follow State of Oregon Public Contract Laws but must procure goods and/or services at reasonable cost and avoid any favoritism with contractors, vendors or suppliers.

(g) In the event the public or private project sponsor or third party participant fails to maintain the facility or converts the use of the facility, the public or private project sponsor shall reimburse the Board for all grant funds provided by the Board.

(G) Operation and Maintenance:

(a) Grants will not be approved for the routine maintenance of facilities.

(b) Private Project Sponsors — Since the Board intends to provide the majority of all capital development costs in the form of grants, the private project sponsor shall agree to furnish long term ordinary and routine operation and maintenance costs as “match” to the project. Annual usage reports will be submitted to the Marine Board in the manner and form described.

(H) Engineering and Design Criteria:

(a) All projects must be designed and engineered by a registered engineer or architect unless completed using force account labor or otherwise provided by law. This will assure the applicant and the Board that proper and necessary provisions are being met with respect to public health, life and safety through the best use of materials and labor at a minimal cost.

(b) Applicants shall forward one copy of the final plans and specifications to the Marine Board staff for review, prior to procuring any contractor or material supplier or commencing any work at the project site. Marine Board staff will notify applicants of plan approval, at which time they may commence implementation of the approved plan.

(c) The Marine Board staff has the capability to provide some design-engineering services for grant applicants. Requests for technical engineering assistance should be directed to the Facilities Program Manager.

(d) A publication by the Board titled **Vessel Waste Collection System Guidelines or Layout and Design Guidelines for Recreational Boat Launching and Transient Tie-up Facilities** provides basic technical specifications and design criteria for the development of facility grant projects. All projects must comply with these guidelines or other approved methods.

(I) Payments and Inspection:

(a) Partial reimbursement can be made monthly based upon percentage of project completion with submittal of appropriate documentation (invoices, receipts, photographs, etc.). Final reimbursement will be forwarded upon receipt and approval of appropriate final billing documentation, and a satisfactory final inspection by Board staff;

(b) Project sponsors must inform the staff of any alterations to the project, and should provide an early indication of any possible cost overruns or delays which will necessitate a time extension beyond the two year limit;

(c) Reimbursement will not be made for projects initiated or completed prior to approval by the Board and federal granting agency. Recognizing that emergencies may arise, necessitating quick action, applicants with emergencies should contact the Facilities Program Manager for instructions before initiating any improvements;

(d) The Director is authorized to approve minor cost overruns (not to exceed \$10,000). Project sponsors must notify the Board of possible overruns prior to incurring them in order to be eligible for possible reimbursement;

(e) Marine Board staff will, within budgetary limitations, inspect each proposed facility site with the grant applicant prior to Board consideration of any grant. A final inspection will, within budgetary limitations, also be made by Marine Board staff prior to the final grant reimbursement;

(f) On-site visits by Marine Board staff shall be made to assure that the facts presented in the application are correct, to furnish Board members such additional data as may be desired, to inspect work in progress, and to perform final project inspections. The public or private project sponsor or third party participant shall agree to give the Board and its authorized agents unrestricted access to the project at all times during the term of the Cooperative Agreement.

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

Stat. Auth.: ORS 830.110 & 830.150

Stats. Implemented: ORS 830.150

MB 8-1995, f. & cert. ef. 11-6-95; OSMB 6-1998, f. & cert. ef. 4-15-98; OSMB 8-2001, f. & cert. ef. 7-30-01; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0010

Definitions

For the purposes of OAR 250-014-0010 to 250-014-0090 the following definitions shall apply:

(1) “Addition or Alteration” — means any change or modification to existing floating structures.

(2) “Applicant” — means any person or contractor who is completing the pre certification or post event log.

(3) “Approved” — means the items accepted and formally approved for use in waterways or marine use.

(4) “Board” — means the State Marine Board.

(5) “Bonded” — means an effective and permanent means of physical or chemical adhesion.

(6) “Buoy” — means any public or private floating device used as a waterway marker or a sign for the purpose of a navigation aid.

(7) “Contractor” — means a business that performs ten (10) or more projects and is registered with the Oregon Construction Board.

(8) “Director” — means the State Marine Board Director.

(9) “Dock” — means the same as float or floating structure.

(10) “Encapsulation or Encapsulation” — means a protective covering or physical barrier between the polystyrene foam floatation and the water.

(11) “Floats or Floating Structure” — means a structure supported by polystyrene foam floatation and held in place by piling and mooring devices, including but not limited to bathhouses, floating homes, marinas, and walkways, boarding floats or combination thereof, representative of one defined project.

(12) “Fuel Floats” — means any floating structure used to dispense any form of fuel or any floating structure used to store, maintain or repair boat engines.

(13) “Mil(s)” — means one-one thousand of an inch of thickness or 0.001 of an inch.

(14) “Maintenance and Repair” — means the reconstruction or renewal of any part of an existing floating structure for the purpose of its maintenance.

(15) “New Construction” — means any new floating structure.

(16) “Person” — means an individual at least eighteen (18) years old, a political subdivision or public agency, or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation except contractors as defined by this rule.

(17) “Polystyrene Foam Floatation” — means all products manufactured from expanded polystyrene foam beads with cell diameters of 0.125” or larger used as floatation.

(18) “Post Certification Log” — means the completion of an event log by contractors submitted monthly to the Board for review.

(19) “Pre-Certification Form” — means the certification form approved by the Board before construction by a person as defined by this rule.

(20) “Project” — means one floating structure or series of floats physically connected, which would be representative of one defined activity.

(21) “Submersible Polystyrene Device” — means any molded or expanded type of polystyrene foam used for floatation.

(22) “Treated Wood” — means dimensional wood or plywood that has been pressure treated by a commercial supplier with preservative, and is acceptable for use in waterways as specified by the EPA.

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(23) "Waters of this state" — means all waters within the territorial limits of this state, the marginal sea adjacent to this state and the high seas when navigated as part of a journey or ride to or from the shore of this state.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.950

Hist.: MB 4-1992, f. & cert. ef. 3-13-92; OSMB 3-1999, f. & cert. ef. 2-4-99; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0020

Purpose and Scope

(1) The purpose of this rule is to protect Oregon's waterways, fish and wildlife from polystyrene foam floatation that may escape from floating structures. The intent of this rule is to require the use of appropriate encapsulation method(s) and material(s) that reduce or eliminate deterioration of polystyrene foam and resulting loss of particulate matter into waterways.

(2) These rules recognize that floating structures by their very nature are unique in design and construction methods from land structures. Nothing in this rule is intended to conflict or displace any other relevant local, state or federal; permits, regulations, or health, life and safety codes.

(3) The following rules shall govern the encapsulation of all submersible polystyrene devices placed on the waters of this state.

(4) As of January 1, 1992, no person shall install a submersible polystyrene device on a dock, buoy or float unless the device is encapsulated by a protective covering or is designed to prevent the polystyrene from disintegrating into the waters of this state.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.950

Hist.: MB 4-1992, f. & cert. ef. 3-13-92; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0030

Materials and Methods of Encapsulation — New Construction

(1) Effective methods of encapsulation shall completely cover or be a physical barrier between the polystyrene foam floatation and the water. Small gaps up to 0.75 inch diameter ballast holes are permitted in the physical barrier or covering provided they are 0.1% or less of the square footage of the floating structure.

(2) All materials and methods of encapsulation shall meet Environmental Protection Agency (EPA) or approved material testing requirements for use and placement in waterways and shall be effective for a period not less than ten (10) years. Any fasteners used to hold encapsulation materials together shall be effectively treated or be of such form as to reduce corrosion and decay.

(3) Any polystyrene foam floatation or part thereof installed, removed, replaced or repaired during construction or maintenance activities shall be effectively contained. All unused or replaced polystyrene foam shall be removed from the waters of this state and disposed of in an approved manner at an upland disposal site.

(4) The Board may approve other encapsulation materials, categories or methods, if based on their judgment the proposed alternatives meet or exceed the provision of this rule. The Board shall not approve or endorse specific products of any person or firm.

(5) The following materials or methods of encapsulation are approved:

(a) Treated dimensional wood, 1.5 inches (actual) or more in thickness. Non-Treated dimensional wood 4.0 inches or more in thickness and round wood logs are permitted.

(b) Treated plywood 0.5 inches or more in thickness. Non-Treated marine grade plywood 0.5 inches or more in thickness is permitted.

(c) Concrete 1.0 inch or more in thickness.

(d) Galvanized steel 0.065 inch or 16 gauge or more in thickness.

(e) Liquid coatings, 30 mils or more in thickness, chemically or securely bonded.

(f) Rigid (hard) plastics, 50 mils or more in thickness.

(g) Fiberglass and plastic resins, 30 mils or more in thickness, chemically or securely bonded.

(h) Pliable (soft) plastic sheets, 7 mils or more in thickness, chemically or securely bonded. Multiple layers of single plastic sheets less than 7 mils in thickness are not permitted. The process of using shrink-wrap is permitted.

(6) All fuel floats or floating structures used to store, maintain or repair boat engines shall be encapsulated with materials that are not subject to degradation by fuel oils or products.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.950

Hist.: MB 4-1992, f. & cert. ef. 3-13-92; OSMB 3-1999, f. & cert. ef. 2-4-99; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0040

Pre-Certification Encapsulation Form

(1) It is illegal to place any polystyrene foam floatation supporting a new construction project on the waters of the state without prior written approval by the Board.

(2) A Maintenance or Repair project is subject to provisions as specified in Section 250-014-0050. An Alteration or Addition project is subject to provisions as specified in Section 250-014-0060. Buoys and Other Floating Devices are subject to provisions as specified in Section 250-014-0070.

(3) The Applicant shall submit a completed Certification Form for each project to the Board for review and approval. The Certification Form shall be on such forms as required by the Board. Incomplete Certification Forms will not be considered.

(4) The Applicant shall furnish information on the method(s) and material(s) used to encapsulate a floating structure and include any other information deemed necessary by the Board to ascertain compliance with this rule.

(5) If the proposed project is found to be consistent with these rules, the Board shall give the person written approval.

(6) Each approved Certification shall be valid for a period of 20 years or the useful life expectancy of the floating structure.

(7) If the Board finds the proposed project to be inconsistent with these rules, the Board shall notify the person in writing of its findings. The person may alter, amend or modify the method(s) or material(s) used and resubmit an amended Certification Form to the Board.

(8) Any person failing to submit a required Certification Form and who places any non-encapsulated floating structure on the waters of this state shall be found in violation of this rule and be subject to a penalty as specified in Section 250-014-0090.

(9) An approved Encapsulation Certification does not relieve the person from obtaining any other federal, state or local permits, licenses or approval that may be required.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.950

Hist.: MB 4-1992, f. & cert. ef. 3-13-92; OSMB 3-1999, f. & cert. ef. 2-4-99; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

250-014-0041

Post Certification Encapsulation Log

(1) To qualify, for post certification reporting, a contractor must be licensed with the Oregon Contractors Construction Board and perform work at ten (10) or more projects within the State of Oregon each calendar year and report all work on the post certification encapsulation log monthly.

(2) If a contractor performs work at less than ten (10) different projects during a calendar year, the contractor is not eligible for post certification reporting and shall comply with the pre-certification process for persons.

(3) The contractor shall complete and submit a monthly event log listing all foam encapsulation activities. The log is due by the first of each month and shall be received no later than the tenth. The log shall be on the form prescribed by the Board.

(4) Maintenance or Repair projects are subject to provisions as specified in Section 250-014-0050. An Alteration or Addition project is subject to provisions as specified in Section 250-014-0060. Buoys and Other Floating Devices are subject to provisions as specified in Section 250-014-0070.

(5) The Post Certification Log shall be submitted and approved by the Board. The Board shall certify that the individual project listed on the log is in compliance with these rules. Board certification is valid for a period of 20 years or the useful life expectancy of the floating structure.

(6) If the Board finds any completed project listed on the log to be inconsistent with these rules, the Board shall notify the contractor in writing of its findings. The contractor shall perform any corrective action(s) necessary to comply with these rules.

(7) Any contractor failing to submit a required Post Certification Encapsulation Log and placing any non-encapsulated floating structure on the waters of this state shall be found in violation of this rule and be subject to a penalty as specified in Section 250-014-0090 and shall not be eligible for Contractor Post Certification for one calendar year.

(8) The completion and submittal of a Post Certification Log does not relieve the contractor from obtaining any other federal, state or local permits, licenses or approval that may be required.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.950

Hist.: OSMB 3-1999, f. & cert. ef. 2-4-99; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

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250-014-0080

Exemptions

(1) This rule does not apply to construction, maintenance or operation of boats or vessels.

(2) Any polystyrene foam device manufactured into extruded closed cell beads 0.125 inch or smaller, approved for marine use, is exempt.

(3) No exemptions shall apply to any polystyrene foam device used to support fuel floats, docks, or floating structures used to store, maintain or repair boat engines. These structures must comply with New Construction OAR 250-014-0030.

Stat. Auth.: ORS 830.110 & 830.950

Stats. Implemented: ORS 830.110 & 830.950

Hist.: MB 4-1992, f. & cert. ef. 3-13-92; OSMB 10-2006, f. 11-22-06, cert. ef. 7-1-07

Oregon University System Chapter 580

Rule Caption: Implements guidelines permitting criminal records checks for prospective OUS employees, contractors, volunteers, and vendors.

Adm. Order No.: OSSHE 7-2006

Filed with Sec. of State: 11-29-2006

Certified to be Effective: 11-29-06

Notice Publication Date: 11-1-06

Rules Adopted: 580-023-0005, 580-023-0010, 580-023-0015, 580-023-0020, 580-023-0025, 580-023-0030, 580-023-0035, 580-023-0040, 580-023-0045, 580-023-0050, 580-023-0055, 580-023-0060, 580-023-0065

Subject: Authorizes the Chancellor's Office and OUS institutions to conduct criminal records checks on subject individuals who seek to provide services as an employee, contractor, vendor or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-023-0005

Purpose

The Oregon University System is committed to protecting the security, safety, and health of faculty, staff, students, and others, as well as safeguarding the assets and resources of OUS and each of its universities. To meet these objectives, the Board delegates to the Chancellor and president of each university electing to conduct criminal records checks responsibility for developing institutional policies governing the conduct of criminal records checks. Institutional policies must be consistent with this rule and applicable Oregon state laws and federal law.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 through 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0010

Definitions

(1) "Criminal records check" means the process used by the Chancellor's Office and OUS institutions to conduct criminal records background checks on candidates to verify that candidate does not have any undisclosed criminal convictions or pending criminal charges and accurately states the disposition of criminal charges. A conviction includes a plea of no contest, plea of guilty, or any court determination of guilt. Criminal offender information will be obtained using computerized and/or fingerprint-based processes. Statewide criminal records checks will be performed by the Oregon State Police (OSP) using the Oregon Law Enforcement Data System. A nationwide criminal records check and/or a state-specific criminal records check may be obtained from the OSP through the Federal Bureau of Investigation (FBI).

(2) "Critical" or "Security-Sensitive Position" means and is limited to positions or contracts for services in which a person:

(a) Has direct access to persons under 18 years of age or to student residence facilities because the person's work duties require the person to be present in the residence facility;

(b) 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;

(c) 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;

(d) Has access to property where chemicals, hazardous materials, and other items controlled by state or federal laws or regulations are located;

(e) Has access to laboratories, nuclear facilities or utility plants to which access is restricted in order to protect the health or safety of the public;

(f) Has fiscal, financial aid, payroll or purchasing responsibilities as one of the person's primary responsibilities; or

(g) 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 background information.

(3) "Fingerprint-based criminal record check" means a criminal records check using subject individual's fingerprints. Fingerprint-based criminal record checks and criminal records checks may only be requested from the OSP for non-criminal justice purposes. If a nationwide criminal records check of a subject individual is necessary, the Chancellor's Office or OUS institutions may request that the OSP conduct the check, including fingerprint identification, through the FBI.

(4) "OUS institution" means an institution of higher education in the state of Oregon under the authority of the Oregon State Board of Higher Education.

(5) "Subject individual" means a person from whom the Chancellor's Office or OUS institutions may require criminal records checks as a condition to provide services as a contractor, vendor, employee, or volunteer. Subject individual includes persons currently serving as a contractor, vendor, employee, or volunteer who seek appointment as an employee, volunteer, or engagement as a contractor or vendor to a position that is designated as a critical or security-sensitive position.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0015

Criminal Records Check Policy

(1) The Chancellor's Office and OUS institutions are authorized to conduct criminal records checks only on subject individuals who seek to provide services as an employee, contractor, vendor, or volunteer that will be working or providing services in a capacity that is designated as a critical or security-sensitive position.

(2) Criminal records checks may not be performed on employees who are involuntarily transferred to a new position, unless the position is designated as a critical or security-sensitive position and requires a determination of fitness based on criminal records check.

(3) A determination of fitness based on a criminal records check for critical or security-sensitive positions is considered a minimal qualification of the position.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0020

Obtaining Criminal Offender Information

Any criminal records check policy instituted by the Chancellor's Office or OUS institution must be in consultation with the OSP and must be implemented through institution specific policies that include but need not be limited to:

(1) Specifying categories of subject individuals who are subject to criminal records checks.

(2) Specifying the information that may be required from a subject individual to permit a criminal record check.

(3) Specifying which programs or services are subject to the checks.

(4) Specifying the types of crimes that may be considered in reviewing criminal offender information of the subject individual.

(5) Specifying when a nationwide fingerprint-based criminal records check must be conducted. If a nationwide fingerprint-based criminal records check is to be required, the Chancellor's Office or OUS institution must take into consideration the additional cost associated with the check.

(6) Establish fees, if any, in an amount not to exceed the actual cost of acquiring and furnishing criminal records. An established fee may be waived by an appropriately designated official of the employer.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

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580-023-0025

Criminal Records Check Notice to Applicants

Application forms and solicitations for contract and vendor services must give notice to any prospective employee, contractor, vendor, or volunteer if the position requires a fingerprint-based criminal record check or criminal records check.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0030

Confidentiality of Criminal Records Checks

Any information obtained in the criminal records check is confidential. The Chancellor's Office and OUS institutions in adopting policies must restrict dissemination of information obtained in the criminal records check. Only those persons, as identified by the Chancellor's Office or OUS institutions, with a demonstrated and legitimate need to know the information may have access to criminal records check records.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0035

Subject Individual's Access to Criminal Offender Records

The Chancellor's Office and OUS institutions must permit a subject individual for whom a criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0040

Pre-employment Status

The Chancellor's Office and OUS institutions must establish policies that specify when and under what conditions a subject individual will be hired, promoted, transferred, participate in training or orientation or engage in activities required of a critical or security-sensitive position or contract pending results of a criminal records check. These policies shall be clearly communicated as part of the Criminal Records Check Notice to Applicants pursuant to OAR 580-023-0025.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0045

False Statements or Refusal to Consent to Criminal Records Check

(1) The Chancellor's Office and OUS institutions must determine whether a subject individual is fit to hold a position, provide services, or be employed if the criminal records check evidences that the applicant made a false statement regarding the background information provided.

(2) If a subject individual refuses to consent to a criminal records check or refuses to be fingerprinted, the Chancellor's Office or OUS institution shall deny the employment of the individual, or deny any applicable position, or deny any request to provide volunteer services, or deny authority to provide contracted services.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0050

Fitness to Hold Position Based on Criminal Records Check

The Chancellor's Office and OUS institutions must use these rules and resulting policies to determine whether the subject individual is fit to hold a position, provide a service, or be employed based upon the criminal records check obtained, or on any false statement made regarding criminal history. In making the fitness determination, the Chancellor's Office or OUS institution must consider:

(1) The nature of the crime;

(2) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(3) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's proposed position, services, or employment; and

(4) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, or employment. Intervening circumstances include but are not limited to:

(a) The passage of time since the commission of the crime;

(b) The age of the subject individual at the time of the crime;

(c) The likelihood of a repetition of offenses or of the commission of another crime;

(d) The subsequent commission of another relevant crime;

(e) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(f) A recommendation of an employer.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0055

Contested Case Process for Criminal Records Check

The Chancellor's Office and OUS institutions must establish a contested case process pursuant to ORS Chapter 183 by which a subject individual may appeal the determination that the individual is not fit to hold a position, provide services, or be employed on the basis of information obtained as a result of a criminal records check. Challenges to the accuracy or completeness of information provided by the OSP, the FBI, and agencies reporting information to the OSP or FBI must be made through the OSP, FBI, or reporting agency and not through the contested case process. Subject individuals may provide information that is contrary to that contained in the records received.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0060

Notice of Adverse Fitness Determination Based on Criminal Records Check

The Chancellor's Office or OUS institutions shall inform the subject individual who has been determined not to be fit, via certified mail, of such disqualification. The notice will indicate that the subject individual:

(1) Has a right to inspect and challenge their Oregon criminal offender information in accordance with the OSP procedures as adopted per ORS 181.555(3) and 257-010-0035;

(2) May challenge the accuracy or completeness of any entry on the subject individual's criminal records obtained from the FBI by filing a challenge with the FBI in accordance with Title 28 Code of Federal Regulations Part 16.34 (28 CFR 16.34) or the then current regulation; and

(3) May appeal the determination of fitness through the process described in this rule.

Stat. Auth.: ORS 181.534 & 352.012
Stats. Implemented: ORS 181.534 & 352.012
Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

580-023-0065

Challenging a Fitness Determination

If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing.

(1) The subject individual must notify the Chancellor's Office or OUS institution in writing of his/her intent to challenge the fitness determination and to request a contested case hearing not later than 14 calendar days from the date of the denial notice. The Chancellor's Office or OUS institution may extend the time to appeal if the Chancellor's Office or OUS institution determines the delay was caused by factors beyond the reasonable control of the subject individual.

(2) The Chancellor's Office and OUS institution has no jurisdiction over allegations that the criminal offender information received from OSP, the FBI, or other entities is inaccurate, incomplete, or maintained in violation of any federal or state law.

(3) The Chancellor's Office and OUS institution is entitled to rely on the criminal offender information supplied by OSP, the FBI, or other entities until the Chancellor's Office or OUS institution is notified that the information has been changed or corrected.

(4) Any contested case hearing under this rule is not open to the public.

(5) The issues at a contested case hearing shall be limited to whether the Chancellor's Office or OUS institution considered the relationship of the facts that support the conviction and all intervening circumstances to

ADMINISTRATIVE RULES

the position at issue in determining the fitness of the subject individual to hold the position, provide a service or be employed.

(6) The Chancellor or president of the university shall select an appropriate hearing officer. The role of the hearing officer is limited to conducting the hearing and developing a proposed order for the Chancellor or president or his/her designee.

Stat. Auth.: ORS 181.534 & 352.012

Stats. Implemented: ORS 181.534 & 352.012

Hist.: OSSHE 3-2006(Temp), f. & cert. ef. 6-12-06 thru 11-30-06; OSSHE 7-2006, f. & cert. ef. 11-29-06

Parks and Recreation Department
Chapter 736

Rule Caption: New Administrative Rules to implement House Bill 2739.

Adm. Order No.: PRD 6-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 12-15-06

Notice Publication Date: 8-1-06

Rules Adopted: 736-017-0000, 736-017-0005, 736-017-0010, 736-017-0015, 736-017-0020, 736-017-0025, 736-017-0030, 736-017-0035, 736-017-0040, 736-017-0050

Subject: House Bill 2739 gave authority to Oregon Parks and Recreation Department (OPRD) to make funding assistance available to nonprofit veterans' organizations for the construction and restoration of memorials honoring veterans and war memorials located on public property. The legislation directed OPRD to adopt rules to carry out the program. The proposed rules create a separate grant program for veteran/war memorials consistent with other grant programs OPRD administers. The Local Government Grant Advisory Committee, augmented with representatives of veterans' organizations, will review and recommend grants for funding. Under the proposed rules, the Oregon Parks and Recreation Commission will approve all grants awarded under this new program.

Rules Coordinator: Pamela Berger—(503) 986-0719

736-017-0000

Purpose

The purpose of this division is to establish the procedures and criteria that the Oregon Parks and Recreation Department (OPRD) will use in recommending Veterans and War Memorial Grants for funding to the commission pursuant to ORS 390.180(1)(d).

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0005

Definitions

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Agreement" means the formal contract between OPRD and the Project Sponsor describing the terms and conditions associated with any granting of funds. Also called "Grant Agreement."

(2) "Commission" means the Oregon Parks and Recreation Commission.

(3) "Committee" means the Veterans and War Memorial Grant Review Committee described in OAR 736-017-0010.

(4) "Department" means the Oregon Parks and Recreation Department (OPRD).

(5) "Construction" means the creation of a new memorial on public property.

(6) "Director" means the director of the Oregon Parks and Recreation Department.

(7) "Eligible Project" means a construction or restoration undertaking which satisfies the requirements of the Veterans and War Memorial Grant Program.

(8) "Governmental Entity" means a body of government, whether district, local, state, or federal, that owns or leases the property on which the project is to reside.

(9) "Grant" means an award from the Veterans and War Memorial Grant Program.

(10) "Grant Application" means the form and its format as developed by the OPRD that an applicant uses to request a grant.

(11) "Match" means project sponsor's budgeted funds, donated funds, value of equipment, materials, labor, planning, or any combination thereof.

(12) "Maintenance" means the continuation or preservation of a memorial. It includes the routine maintenance of or around a memorial such as landscaping, power washing, general cleaning, dusting, or removal of trash.

(13) "Memorial" means a monument or place designed to commemorate or preserve the memory of wars involving the United States of America or to honor veterans of the Armed Forces of the United States of America.

(14) "Nonprofit Veterans' Organization" means a group that:

(a) Is a nonprofit group that represents veterans of the Armed Forces of the United States, or is established for the purpose of supporting or recognizing such veterans;

(b) Has an established membership, that includes officers, and bylaws; and

(c) Is physically located in Oregon or has a chapter that is physically located in Oregon.

(15) "OPRD" means the Oregon Parks and Recreation Department.

(16) "Planning" means the research, design, engineering, environmental, and site survey of any Memorial construction or restoration project.

(17) "Project Completion" means satisfaction of all requirements of a grant agreement as determined after review or inspection by OPRD.

(18) "Project Authorization" means the Agreement that authorizes the project as signed by the director and the Project Sponsor.

(19) "Project Sponsor" means the recipient of the grant funds and the responsible party for implementation of the project.

(20) "Public Property" means public lands, premises and buildings, including but not limited to any building used in connection with the transaction of public business or any lands, premises or buildings owned or leased by the federal government, this state or any political subdivision therein.

(21) "Restoration" means the improvement, rehabilitation, repair, or reconstruction of an existing memorial. It does not include routine maintenance.

(22) "Veterans and War Memorial Grant Instruction Manual" means a manual prepared by the OPRD containing state policies, procedures, instructions and grant criteria to assist applicants and Project Sponsors wishing to participate in the Veterans and War Memorial Grant Program.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0010

Veterans and War Memorial Grant Review Committee

(1) The Veterans and War Memorial Grant Review Committee shall be composed of 12 members. The committee shall include:

(a) The Local Government Grant Advisory Committee described in OAR 736-006-0145; and

(b) Two people appointed by the director to four-year terms that represent either a veterans' organization or a governmental agency responsible for the administration of law relating to veterans.

(2) The director shall appoint the chair from the committee membership, considering the recommendations of the committee.

(3) The committee shall meet upon the call of the director.

(4) The Veterans and War Memorial Grant Review Committee shall follow grant application review procedures as provided in this division.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0015

Director Authority

(1) In addition to those considered by the committee, the director may recommend eligible projects to the commission for grant funding. The director may recommend grants for construction and restoration.

(2) The director may recommend funding eligible projects either in whole or in part.

(3) The director may establish minimum or maximum grant award amounts each funding cycle.

(4) The director may establish funding priorities or other criteria for each funding cycle.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

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736-017-0020

Eligibility

(1) The department may consider a grant application from any non-profit veterans' organization that meets the requirements of this section.

(2) Site. To be eligible for a grant, a memorial must be placed on public property owned or controlled by a governmental entity.

(3) The governmental entity must agree in writing to having the memorial sited and maintained for not less than 20 years from completion of the project. The agreement between the government entity and the project sponsor must identify the party or parties responsible for maintenance of the memorial:

(a) For a construction project, an applicant must demonstrate that the governmental entity or entities that owns or controls the public property will accept the memorial on that site. For a restoration, an applicant must demonstrate that the governmental entity or entities that owns or controls the public property will authorize restoration activities on the memorial;

(b) An applicant must provide in their grant application:

(A) General description of the intended construction or restoration project;

(B) Documentation that establishes the project sponsor is a nonprofit veterans' organization, including, but not limited, proof of existing nonprofit status as recognized by the Internal Revenue Service;

(C) Location of project with site maps;

(D) Conceptual design drawings, engineering plans, or both.

(E) Description of project time period including proposed beginning and completion dates;

(F) Roles and responsibilities of the project sponsor and government entity including post-project completion responsibilities;

(G) Description of financing plan for eligible projects, including sources of funds and match;

(H) Summary of proposed budget for the eligible project;

(I) Allowance by the state for any audits.

(4) Matching Requirements. The Veterans and War Memorial Grant program provides, subject to the availability of funds, for up to 80 percent funding assistance with a minimum of 10 percent cash match. The project sponsor shall provide a minimum 10 percent cash match. The project sponsor may provide the remaining match by planning work done prior to project authorization or planning, construction, or restoration work performed following project authorization.

(5) Ineligible costs for grant:

(a) Overhead — The regular operating expenses of either the applicant or the governmental entity receiving the memorial such as rent, building upkeep, utilities, and all fixed costs associated with the daily operations of a business, agency or group;

(b) Overtime;

(c) Expenses for equipment or materials used outside the scope of this project;

(d) Costs or expenses incurred prior to a Grant Agreement except planning work done prior to project authorization under section (4) above.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0025

Application Process

(1) When the commission has Veterans and War Memorial Grant Program funds to award, the director will announce through a variety of media the availability of, application procedures for, deadlines and other information for applying for a grant, including whether the director has established funding priorities for that funding cycle.

(2) Applicants must submit a grant application to the department. Applicants may use the "Veterans and War Memorial Grant Instruction Manual" for guidance in preparing and submitting a grant application to the department.

(3) A grant application that contains multiple work items must be structured so that the commission may award partial funding to a specific work item proposed in the grant application.

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

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

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0030

Evaluation of Applications

(1) The department will review eligible applications that the department receives by the announced deadline for completeness. The department will provide all complete, eligible applications to the committee.

(2) The committee will rank applications based on the following criteria:

(a) Whether the application meets the director's funding priorities for that funding cycle;

(b) Whether the application has demonstrated the need for the project;

(c) Whether the applicant has demonstrated that adequate budget and financial controls are in place to properly administer the grant; and

(d) Any other criteria determined by the director prior to the announcement of the availability of grant funding, and which are contained in that announcement.

(3) The committee recommends funding grants up to the amount of funds that may be available in the program that biennium. The committee may also rank several alternates in priority order that may be funded if any of the recommended grants are not awarded.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0035

Award of Grants

(1) Grants will be subject to binding grant agreements between the OPRD and the Project Sponsor. The grant agreement will specify the terms and conditions of the grant, generally including:

(a) The total project costs, the match to be provided by the Project Sponsor, and the amount of the grant;

(b) A statement of the work to be accomplished;

(c) When the grant-assisted project may begin and a schedule for accomplishing work, reporting on progress, delivering products, and project completion.

(2) If grant funds remain or become unobligated, the department may reallocate such funds to other department grant programs.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0040

Disbursement of Grant Funds

(1) All grant funds shall be disbursed to project sponsors on a reimbursable basis after submission of billings on approved schedules specified in grant agreements. Project sponsor shall supply information substantiating billings if requested by the department.

(2) Under certain conditions such as reduction or increase of these funds an emergency procedure for awarding or canceling grants may be initiated at the discretion of the director.

(3) In implementing the emergency procedure, the director shall consider the availability of funds; the scope and need of projects available for funding; and the urgency and statewide importance of prospective projects. The director may propose projects to the commission for funding under this section and the commission may waive other requirements of these rules for the purpose of obligating funds in a timely manner.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

736-017-0050

Recovery of Grant Funds

(1) Project sponsors that fail to complete approved projects to the department's satisfaction shall return all unexpended grant funds.

(2) Project sponsors shall maintain records adequate for audit purposes for a period of not less than five years after project completion and shall reimburse the department for any costs questioned in audit findings.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.180(1)(d)

Hist.: PRD 6-2006, f. & cert. ef. 12-15-06

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Public Utility Commission Chapter 860

Rule Caption: In the Matter of a Rulemaking to Amend Division 016 Rules Governing Interconnection Agreements.

Adm. Order No.: PUC 11-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 12-15-06

ADMINISTRATIVE RULES

Notice Publication Date: 10-1-06

Rules Amended: 860-016-0020, 860-016-0021, 860-016-0025, 860-016-0030

Subject: Previously, Commission rules for processing negotiated interconnection agreements exceeded federal law by requiring an opportunity for other carriers to formally comment on the negotiated interconnection agreement filings. The Commission's experience is that most agreements are routine in nature and only in the rare case does another carrier file comments. To help expedite the approval process, the Commission has eliminated the specific comment period. Other carriers may still comment on a negotiated agreement when the recommendation for approval is placed on the consent agenda for one of the Commission's regular public meetings. This rulemaking also clarifies the rights of the parties in arbitration.

Rules Coordinator: Diane Davis—(503) 378-4372

860-016-0020

Agreements Arrived at Through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include an original plus two copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application.

(4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-013-0036.

(5) The Commission will approve or reject the agreement within 90 days of filing, with written findings as to any deficiencies. Prior to rejecting the agreement, the Commission will notify the negotiating parties of its intended action and provide an opportunity for the carriers to respond. The grounds for rejection are that the agreement:

- (a) Discriminates against a carrier not a party to the agreement; or
- (b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert. ef. 12-15-06

860-016-0021

Wholesale Promotions

(1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036.

(3) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(5).

(4) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05; PUC 11-2006, f. & cert. ef. 12-15-06

860-016-0025

Adoption of Previously Approved Agreement or Statement of Generally Available Terms

(1) If a requesting telecommunications carrier decides to adopt an identical agreement or an identical individual arrangement contained in an agreement, pursuant to Section 252(i) of the Act and 47 CFR Section 51.809, with the exception of the adopting party's name and new effective date, previously approved by and on file with the Commission, or a Statement of Generally Available Terms approved by the Commission under OAR 860-016-0040, it shall file notice of the adoption with the Commission. The notice shall include a completed Carrier-to-Carrier Agreement Checklist.

(2) The requesting carrier shall also submit a copy of the checklist in electronic format compatible with Adobe Acrobat Reader or Rich Text Format.

(3) If the notice is filed jointly with the affected telecommunications carrier, the adoption shall become effective on the date filed.

(4) If the notice is filed unilaterally by the requesting telecommunications carrier, the requesting telecommunications carrier shall simultaneously provide notice of the adoption to the affected carrier. The affected carrier may then file objections to the adoption within 21 calendar days of such notice. If no objections are filed, the adoption shall become effective on the 22nd day after filing.

(5) An affected carrier may object to an adoption on the following grounds:

(a) The costs of providing a particular interconnection, service, or element to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement;

(b) The provision of a particular interconnection, service, or element to the requesting carrier is not technically feasible;

(c) There is new federal or state law that requires modification of the agreement proposed to be adopted;

(d) The agreement proposed to be adopted has expired or been cancelled; or

(e) The proposed adoption is unlawful.

(6) If the affected carrier files objections, the requesting carrier may file a reply within 14 calendar days after the objections are filed. An assigned Administrative Law Judge (ALJ) shall schedule a conference within five business days after the reply is filed, to be held as soon thereafter as practicable. At the conference, the ALJ shall determine whether the issues raised by the affected carrier's objection can be resolved based on the pleadings and all supporting documentation, or whether further proceedings are necessary. If further proceedings are necessary, the ALJ shall establish a schedule for resolving the dispute on an expedited basis. Pending resolution of the dispute, other provisions of the proposed adoption not contested by the affected carrier will become effective.

Stat. Auth.: ORS 183 & 756

Stat. Implemented: 47 USC 252

Hist.: PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 11-2006, f. & cert. ef. 12-15-06

860-016-0030

Arbitration of Disputes

(1) Negotiating parties may engage the services of an outside arbitrator rather than file a petition with the Commission. If the negotiating parties petition the Commission to arbitrate their dispute, the Commission will use an ALJ as arbitrator unless workload constraints necessitate the use of an outside arbitrator.

(2) A petition for arbitration must contain:

(a) A statement of all unresolved issues;

(b) A description of each party's position on the unresolved issues;

(c) A proposed agreement addressing all issues, including those on which the parties have reached agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organiza-

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tion of clauses and subjects contained in an agreement previously approved by the Commission;

(d) Documentation showing that the request complies with the time requirements of the Act.

(3) Respondent may file a response within 25 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on those issues, and identify and present any additional issues for which the respondent seeks resolution.

(4) The arbitration will be conducted in a manner similar to a contested case proceeding, and the arbitrator will have the same authority to conduct the arbitration process as an ALJ has in conducting hearings under the Commission's rules. However, the arbitration process will be streamlined to meet the Act's timelines. An early conference will be held to discuss processing of the case, and to receive the proposal put forth by each party. The arbitrator will establish the schedule, and decide whether an oral hearing would be helpful. After the oral hearing or other procedures (for example, rounds of comments), each party will submit its "final offer" proposed agreement. The arbitrator will choose between the two final offers. However, if neither offer is consistent with the Act and Commission policies, the arbitrator will make an award that meets those requirements.

(5) Formal discovery procedures will be allowed only to the extent deemed necessary by the arbitrator. Parties will be required to cooperate in good faith in voluntary, prompt, and informal exchanges of information relevant to the matter. Unresolved discovery disputes will be resolved by the arbitrator upon request of a party. The arbitrator will order a party to provide information if he/she determines the requesting party has a reasonable need for the requested information and that the request is not overly burdensome.

(6) Only the two negotiating parties will have full party status. The arbitrator may confer with Staff for assistance throughout the arbitration process. If Staff assistance is desired, the arbitrator will notify (by telephone or other means) the parties at least 24 hours before the consultation with Staff. The parties may attend or listen to the consultation and may respond in a manner allowed by the arbitrator.

(7) To keep the process moving forward, appeals to the Commission will not be allowed during the arbitration process. An arbitrator may certify a question to the Commission if deemed necessary.

(8) To accommodate the need for flexibility, the arbitrator may use procedures that vary from those set out here if he/she deems it helpful in a particular arbitration, as long as the procedures are fair, treat the parties equitably, and substantially comply with the procedures listed here.

(9) Each arbitration award must:

(a) Ensure that the requirements of sections 251 and 252 of the Act and any valid applicable Federal Communications Commission regulations under that section are met;

(b) Establish interconnection and network element prices consistent with the Act;

(c) Establish a schedule for implementation of the agreement; and

(d) Be consistent with Commission policies.

(10) After an arbitration award is submitted to the Commission, notice will be served on those who have indicated a desire to receive notice of mediated and arbitrated agreements. Any person may then file comments within 10 days of service of the award.

(11) The Commission will accept or reject an arbitration award within 30 days.

(12) Within 14 days after the Commission issues its arbitration decision, petitioner must prepare an interconnection agreement complying with the terms of the arbitration decision and serve it on respondent. Respondent shall either sign and file the agreement, or file objections to it, within 10 days of service of it. If objections are filed, respondent shall state how the agreement fails to comply with the arbitration decision, and offer substitute language complying with the decision. The Commission will approve or reject a filed interconnection agreement within 30 days of its filing, or the agreement will be deemed approved. If petitioner, without respondent's consent, fails to timely prepare and serve an interconnection agreement on respondent, respondent may file a motion requesting the Commission dismiss the petition for arbitration with prejudice. The Commission may grant such motion if the petitioner's failure to timely prepare and serve the interconnection agreement was the result of inexcusable neglect on the part of petitioner.

Stat. Auth.: ORS 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 11-2006, f. & cert. ef. 12-15-06

Secretary of State, Archives Division Chapter 166

Rule Caption: Amends county health — public/community health records retention schedule.

Adm. Order No.: OSA 5-2006

Filed with Sec. of State: 12-15-2006

Certified to be Effective: 12-15-06

Notice Publication Date: 11-1-06

Rules Amended: 166-150-0065

Subject: Amends the County Health — Public/Community Health Records retention schedule to incorporate changes in the federal code.

Rules Coordinator: Julie Yamaka—(503) 378-5199

166-150-0065

County Health — Public/Community Health Records

(1) **Alcohol and Drug Service Records** Series documents services provided to clients in alcohol and drug treatment programs. These services may include residential treatment and care, outpatient services, detoxification, DUII education and treatment, sex offender treatment, methadone treatment, and other services. Series may consist of clinical records or patient files including assessment records, treatment plans, progress notes, treatment reviews, termination reports, and medical records. (Minimum retention: 6 years after last service or until 21st birth-day, whichever is longer)

(2) **Board of Health Reports** Series documents the activities of the county health departments such as public or community health, mental health, environmental health, family mediation, alcohol and drug, developmental disabilities, deputy medical examiner, and fiscal administration. Series includes semi-annual reports to the County Board of Health prepared by the various departments. The reports summarize department activities, and discuss concerns and problems of future importance. Series may also contain reports on special topics such as AIDS and other issues. Reports may be sent to the Board of County Commissioners. (Minimum retention: (a) Reports filed with County Commissioners: 10 years (b) Reports not filed with County Commissioners: Permanent)

(3) **Car Seat Rental Service Records** Series documents the rental of car seats for infants and young children. Information contained in the records may include name, weight, and date of birth of child; name and address of recipient; signatures; witnesses; conditions for loan; car seat number; and related documentation. (Minimum retention: (a) If car seat returned: Until return of car seat (b) If car seat is not returned: 5 years)

(4) **Communicable Disease Intake Report** Series is used to identify persons with communicable diseases such as sexually transmitted diseases, HIV, tuberculosis, food-borne diseases, and others. Information contained in the report may include name of disease, patient identification, name of physician, symptoms, laboratory results, and other related data. Information from this intake report may be transferred to the investigation report or the intake report may be attached to the investigation report. (Minimum retention: 1 year)

(5) **Communicable Disease Investigation Reports** Series documents investigations into reports of communicable diseases. The investigation form is used by nurses to compile information about persons with a communicable disease. Information contained in the investigation reports (there are forms for different diseases) may include patient identification; demographics; sources of report; basis of diagnosis including clinical data, laboratory data and report, and epi-linkage; infection timeline indicating exposure and communicable periods; and other related data. The Notice of a Disease or Condition form may contain disease, patient identification, date of onset of disease, names and addresses of physician and person reporting, and other related data. Copies of both forms are sent to the Oregon Health Division. (Minimum retention: (a) Investigation Form: 5 years (b) Notice of a Disease or Condition Form: 3 years)

(6) **Communicable Disease Log** Series documents communicable diseases by providing a summary of information taken from the intake report. Information contained in the log may include type of disease, patient name, date of report, and other related data. Series is used for quick reference and to compile statistics. (Minimum retention: 5 years)

(7) **Complaint Correspondence Records** document formal and informal complaints involving extended investigation and/or litigation concerning environmental health issues; staff or division policies; or other perceived health problems in the community. Records may include letters, memorandum, hearing transcripts, Board of County Commissioner min-

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utes, and other records which document or add significant information to the complaint. (Minimum retention: 10 years after resolution)

(8) **Health Insurance Portability and Accountability Act (HIPAA)** Disclosure Notices Records document notification to clients about the agency's practices regarding client medical records and information under HIPAA. Records include notification forms and related records. (Minimum retention: 6 years after last service)

(9) **HIV Test Records** Series documents the results of anonymous or confidential HIV tests. Information contained in the records may include test results, demographic information, patient history, number of test results, and other related data. Anonymous testing programs do not give the name of the patient, and may include only a client number and demographic information such as race, age, and sex. Confidential programs include the name and address of the patient which is then kept confidential. (Minimum retention: 2 years)

(10) **Immunization and Injection Records** Series documents immunizations received by a patient. Services may include immunizations for infants, children, and adults; TB skin tests; flu and pneumonia shots; and overseas immunizations for travelers. Information contained in the records may include name and date of birth of patient; name, address, and phone number of parent/guardian; type of vaccine; dose number; date; and other related data. Records may include ITARS (Immunization Tracking and Recall System) documentation. (Minimum retention: (a) Immunization records: 10 years (b) ITARS records: 25 years from date of last service (c) Other records: 6 years after last service or until 21st birthday, whichever is longer)

(11) **Immunization Authorization Records** Series documents authorizations and parental/guardian consent for children and other patients to receive immunizations. Information contained in the records may include name and address of person receiving immunization; name and signature of patient or parent/guardian; date vaccinated; manufacturer and lot number of vaccine; site of injection; signature of provider; and other related data. (Minimum retention: 10 years)

(12) **Immunization Cards Series** used to enter information about immunizations given to clients in the county's immunization database. Information includes type of vaccine, PPD results, and a clients contraindications of precautions regarding a specific vaccine. Vaccines include Measles, Mumps, Rubella; Diphtheria/Pertussis/Tetanus; Polio; Immune Globulin; Hepatitis A; Hepatitis B; Haemophilus Influenza Type B; Influenza; Pneumococcal; and Varicella. (Minimum retention: Until entered into system and verified)

(13) **Interpreter Service Records** Series documents the scheduling of interpreters for needed county departments, and the services provided for payment purposes. Records may include interpreter scheduling and request forms, on-call invoices, timesheets, and related records. (Minimum retention: 2 years)

(14) **Laboratory Logs Series** documents laboratory tests performed for patients. Types of laboratory tests may include hematocrits, urinalysis, GC cultures, wet mounts, serologies, blood typing and Rh factor, and pregnancy tests. Information contained in the logs may include name of patient, date, name of test, results of test, date of results, name of person who performed the test, and other related data. (Minimum retention: 2 years)

(15) **Maternal-Child Health (Children and Family) Service Referral Reports** Series documents referrals involving maternal-child health concerns from other providers, such as physicians or hospitals. Information contained in the reports may include the name and address of the family; name and age of child; reason for referral; history and concerns; and any actions or services provided by the referral agency. If services are provided to the patient, the referral report becomes part of the Public Health Service Records. (Minimum retention: (a) If services provided: Transfer to Public Health Service Records (b) All other cases: 2 years)

(16) **Medicaid Financial Screening Records** Series documents the screening of clients who appear eligible for Medicaid for a final eligibility determination by Adult and Family Services (AFS). Records contained in the series include Medicaid Financial Screening Form, which indicates the client's income status, lists of clients, and AFS forms which indicate the client's personal data as it applies to eligibility, client's understanding of rights and responsibilities, effective date of eligibility pending client's provision of appropriate documentation, narrative notes completed by screeners, information on insurance already held by client, and information relating to injuries caused by automobile accidents. (Minimum retention: 2 years)

(17) **Medical Examiner Case Files** Series documents investigations into deaths by the county medical examiner, coroner, or other designated official. Series contains records on any deceased person that requires med-

ical examiner involvement. Records include the autopsy report and the medical examiners report. Records may also include other data that is considered significant as to the manner of death such as a police report, family interview, personal identification, and disposition of unclaimed funds. (Minimum retention: (a) Pre-1965 Coroner's Reports: Permanent (b) Post-1965 case files: 25 years (c) No case file developed: 5 years)

(18) **Pharmacy Logs Series** documents the dispensing or issuing of drugs such as birth control pills or antibiotics. Information contained in the log may include identification number, client name, date, name of drug, dosage, number of pills, initials of person dispensing the drug, and other related data. (Minimum retention: 3 years)

(19) **Public Health Service Index (Master Patient Index) Cards** Series provides an index to patients and the services provided to them. Information contained in the index may include patient name, address, and birthdate; services provided; program; first date of service; dates admitted and discharged; health record number; and other related data. Separate indexes may be kept for different programs. (Minimum retention: 25 years after date of last service)

(20) **Public Health Service Records** Series documents the services given to a patient. Series contains records for patients in specialized programs such as the Women, Infants, and Children (WIC) nutrition program; clinical services (including tuberculosis, HIV, sexually transmitted diseases, hepatitis, and immunizations); dental services; sero-wellness; family planning and pregnancy testing; car-seat rental; maternal-child health nursing services concerning high risk pregnancies, high risk infants, or young children with major health problems or disabilities; and public health field nursing services which may include counseling, teaching, and referral services concerning maternal and child health care, pregnancy and postpartum health, child development, parenting skills, and Sudden Infant Death Syndrome (SIDS). Series may include correspondence; reports; professional notations; laboratory reports; treatment and x-ray authorizations; release of information; clinical or medical records including client identification, progress notes, and records of visits; and other related data. (Minimum retention: (a) Outpatient physical therapy and speech-language pathology service records: 6 years after last service or until 21st birthday, whichever is longer (b) Dental patient records: 7 years after last service (c) All other outpatient service records: 6 years after last service (d) Counties participating in the Medicare Advantage Program, retain all records 10 years after contract expires (42CFR 422.504)

(21) **Sero-Positive Wellness Program Charts** Series documents the services and treatment provided to people with HIV. Information contained in the charts may include a record of service and treatment, laboratory results, work plans, and other related data. The records are used for counseling and education purposes. The records may be transferred to the Oregon Health Division upon closure, or they may become part of the patient's clinical file in the Public Health Service Records. (Minimum retention: 6 years after last service)

(22) **Sexually Transmitted Disease Epidemiological Reports** Series documents the investigation into sexually transmitted diseases. Information is compiled on two forms. The Confidential Sexually Transmitted Disease Case Report contains information such as patient identification; diagnosis, site, and treatment of disease; provider name and address; and other related data. The Field Report (a form provided by the U.S. Department of Health & Human Services) contains information such as patient identification; exposure, referral, examination, and treatment information; interview notes; and other identifying or medical information. Copies of both records may be forwarded to the Oregon Health Division. Individuals who are seen and treated at STD clinics will have a clinical file in the Public Health Service Records. (Minimum retention: (a) If patient is treated: transfer to Public Health Service Records (b) If patient is not treated: 5 years)

(23) **Tuberculosis Client Records (Tuberculosis Registry)** Series documents patients with active and inactive cases of tuberculosis. Records may contain information such as patient identification; source of specimen; drug treatment information such as dosage and dates; dates the case was opened and closed; epidemiological reports; and other related data. (Minimum retention: (a) Active cases where death date is known: retain for life of individual (b) Active cases where death date is unknown: retain for 70 years after last service (c) Inactive cases with patients on preventive drug therapy: 6 years after last service)

(24) **Tuberculosis Negative Cases Epidemiological Reports** Series documents services to patients with negative tuberculosis tests, that is, patients with positive skin tests who do not have the disease and have not received treatment. Information contained in the reports may include patient name, date, x-ray report, skin test results, and other related data.

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(Minimum retention: 2 years; destroy reports when recorded in Tuberculosis Client Records (Registry))

(25) **Tuberculosis X-Ray Authorization Records** Series documents authorizations and parental consent for children and other patients to receive tuberculosis x-rays. Information contained in the records may include patient identification, demographics, PPD test results, name of radiology lab, and related documentation. (Minimum retention: 6 years after last service)

(26) **Tuberculosis X-Ray Records** Series documents x-rays used to screen and diagnose cases of tuberculosis. Records may include registration cards and x-ray film. Information contained in the records may include patient identification, demographics, medical history, x-ray results, assessment of condition, treatment plan, drugs ordered, and related documentation. (Minimum retention: (a) Active cases where death date is known: Retain for life of individual (b) Active cases where death date is unknown: Retain for 70 years after last service (c) Inactive cases with patients on preventive drug therapy: 6 years after last service)

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005-192.170 & 357.805-357.895

Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 5-2006, f. & cert. ef. 12-15-06

Teacher Standards and Practices Commission Chapter 584

Rule Caption: Adopts 584-017-0251 and 584-017-0261 as permanent rules. Previously adopted as temporary rules.

Adm. Order No.: TSPC 12-2006

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Rules Amended: 584-017-0251, 584-017-0261

Subject: 584-017-0251 *Knowledge, Skills and Abilities Required for Initial Administrator License*: Previously adopted as temporary rule requiring existing approved administrative programs implement new standards no later than July 1, 2007.

584-017-0261 *Knowledge, Skills and Abilities for Continuing Administrator License*: Previously adopted as temporary rule requiring existing approved administrative programs implement new standards no later than July 1, 2007.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0251

Knowledge, Skills and Abilities Required for Initial Administrator License

(1) Visionary Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by facilitating the development, articulation, implementation, and stewardship of a school or district vision of learning supported by the school community.

(a) Candidates develop a vision. Candidates:

(A) Develop a vision of learning for a school that promotes the success of all students; and

(B) Base this vision on culturally relevant knowledge and theories, including but not limited to an understanding of learning goals in a democratic and pluralistic society, the diversity of learners and learners' needs, schools as interactive social and cultural systems, and social and organizational change.

(b) Candidates articulate a vision. Candidates:

(A) Demonstrate the ability to articulate the components of this vision for a school and the leadership processes necessary to implement and support the vision;

(B) Demonstrate the ability to use data-based research strategies and strategic planning processes that focus on student learning to inform the development of a vision, drawing on relevant information sources such as student assessment results, student and family demographic data, and an analysis of community needs; and

(C) Demonstrate the ability to communicate the vision to staff, parents, students, and community members through the use of symbols, ceremonies, stories, and other activities.

(c) Candidates implement a vision. Candidates:

(A) Can formulate the initiatives necessary to motivate staff, students, and families to achieve the school's vision; and

(B) Develop plans and processes for implementing the vision (e.g., articulating the vision and related goals, encouraging challenging stan-

dards, facilitating collegiality and teamwork, structuring significant work, ensuring appropriate use of student assessments, providing autonomy, supporting innovation, delegating responsibility, developing leadership in others, and securing needed resources).

(d) Candidates steward a vision. Candidates:

(A) Demonstrate an understanding of the role effective communication skills play in building a shared commitment to the vision;

(B) Design or adopt a system for using data-based research strategies to regularly monitor, evaluate, and revise the vision; and

(C) Assume stewardship of the vision through various methods.

(e) Candidates promote community involvement in the vision.

Candidates:

(A) Demonstrate the ability to involve community members in the realization of the vision and in related school improvement efforts; and

(B) Acquire and demonstrate the skills needed to communicate effectively with all stakeholders about implementation of the vision.

(2) Instructional Improvement: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by promoting a positive school culture, providing an effective instructional program, applying best practice to student learning, and designing comprehensive professional growth plans for staff.

(a) Candidates promote positive school culture. Candidates:

(A) Assess school culture using multiple methods and implement context-appropriate strategies that capitalize on the diversity (e.g., population, language, disability, gender, race, socio-economic) of the school community to improve school programs and culture.

(b) Candidates provide effective instructional program. Candidates:

(A) Demonstrate the ability to facilitate activities that apply principles of effective instruction to improve instructional practices and curricular materials;

(B) Demonstrate the ability to make recommendations regarding the design, implementation, and evaluation of a curriculum that fully accommodates learners' diverse needs;

(C) Demonstrate the ability to use and promote technology and information systems to enrich curriculum and instruction, to monitor instructional practices and provide staff the assistance needed for improvement;

(D) Demonstrate the ability to use aggregated and disaggregated student achievement data to develop effective instructional programs;

(E) Demonstrate the ability to use individual and group achievement data to develop school improvement plans; and

(F) Are able to use a variety of assessment tools and techniques to improve student achievement.

(c) Candidates apply best practice to student learning. Candidates:

(A) Demonstrate the ability to assist school personnel in understanding and applying best practices for student learning;

(B) Apply human development theory, proven learning and motivational theories, and concern for diversity to the learning process; and

(C) Demonstrate an understanding of how to use appropriate research strategies to promote an environment for improved student achievement.

(d) Candidates design comprehensive professional growth plans.

Candidates:

(A) Apply human development theory, proven learning and motivational theories, and concern for diversity to the learning process; and

(B) Demonstrate an understanding of how to use appropriate research strategies to promote an environment for improved student achievement.

(3) Effective Management: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by managing the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment.

(a) Candidates manage the organization. Candidates:

(A) Demonstrate the ability to optimize the learning environment for all students by applying appropriate models and principles of organizational development and management, including research and data driven decision-making with attention to indicators of equity, effectiveness, and efficiency;

(B) Develop plans of action for focusing on effective organization and management of fiscal, human and material resources, giving priority to student learning, safety, curriculum, and instruction; and

(C) Have knowledge of licensure rules and apply them properly to assignment of personnel.

(b) Candidates manage operations. Candidates:

(A) Demonstrate the ability to involve staff in conducting operations and setting priorities using appropriate and effective needs assessment,

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research-based data, and group process skills to build consensus, communicate, and resolve conflicts in order to align resources with the organizational vision; and

(B) Develop communications plans for staff to develop their family and community collaboration skills.

(c) Candidates manage resources. Candidates:

(A) Use problem-solving skills and knowledge of strategic, long-range, and operational planning (including applications of technology) in the effective, legal, and equitable use of fiscal, human, and material resource allocation and alignment that focuses on teaching and learning; and

(B) Creatively seek new resources to facilitate learning.

(4) Inclusive Practice: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by collaborating with families and other community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups.

(a) Candidates collaborate with families and other community members. Candidates:

(A) Demonstrate an ability to bring together, the resources of family members and the community to positively affect student learning;

(B) Demonstrate an ability to involve all families in the education of their children based on the belief that families have the best interests of their children in mind;

(C) Demonstrate the ability to-use public information and research-based knowledge of issues and trends to collaborate with families and community members;

(D) Apply an understanding of community relations models, marketing strategies and processes, data-based decision-making, and communications theory to create frameworks for school, family, business, community, government, and higher education partnerships;

(E) Develop various methods of outreach aimed at business, religious, political, and service organizations;

(F) Demonstrate the ability to involve families and other stakeholders in school decision-making processes, reflecting an understanding that schools are an integral part of the larger community;

(G) Demonstrate the ability to collaborate with community agencies to integrate health, social, and other services; and

(H) Develop a comprehensive program of community relations and demonstrate the ability to work with the media.

(b) Candidates respond to community interests and needs. Candidates:

(A) Demonstrate active involvement within the community, including interactions with individuals and groups with conflicting perspectives;

(B) Demonstrate the ability to use appropriate assessment strategies and research methods to understand and accommodate diverse school and community conditions and dynamics;

(C) Provide leadership to programs serving students with special and exceptional needs; and

(D) Demonstrate the ability to capitalize on the diversity (cultural, ethnic, racial, economic, and special interest groups) of the school community to improve school programs and meet the diverse needs of all students.

(c) Candidates mobilize community resources. Candidates:

(A) Demonstrate an understanding of and ability to use community resources, including youth services, to support student achievement, solve school problems, and achieve school goals;

(B) Demonstrate how to use school resources and social service agencies to serve the community; and

(C) Demonstrate an understanding of ways to use public resources and funds appropriately and effectively to encourage communities to provide new resources to address emerging student problems.

(5) Ethical Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by acting with integrity, fairly, and in an ethical manner.

(a) Candidates act with integrity. Candidates:

(A) Demonstrate a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions promote such respect; and

(B) Demonstrate behaviors that are honest and consistent.

(b) Candidates act fairly. Candidates:

(A) Demonstrate the ability to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others;

(B) Make decisions using an inclusive process; and

(C) Understand and avoid any conflict of interest and avoid the appearance of impropriety.

(c) Candidates act ethically. Candidates:

(A) Make and explain decisions based upon ethical and legal principles; and

(B) Demonstrate respect and diligence regarding the law and compliance with its requirements.

(6) Socio-Political Context: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(a) Candidates understand the larger context. Candidates:

(A) Act as informed consumers of educational theory and concepts appropriate to school context and can demonstrate the ability to apply appropriate research methods to a school context;

(B) Demonstrate the ability to explain how the legal and political systems and institutional framework of schools have shaped a school and community, as well as the opportunities available to children and families in a particular school;

(C) Demonstrate the ability to analyze the complex causes of poverty and other disadvantages and their effects on families, communities, children, and learning;

(D) Demonstrate an understanding of the policies, laws, and regulations enacted by local, state, and federal authorities that affect schools, especially those that might improve educational and social opportunities;

(E) Demonstrate the ability to describe the economic factors shaping a local community and the effects economic factors have on local schools;

(F) Demonstrate the ability to analyze and describe the cultural diversity in a school community;

(G) Can describe community norms and values and how they relate to the role of the school in promoting social justice; and

(H) Demonstrate the ability to explain various theories of change and conflict resolution and the appropriate application of those models to specific communities.

(b) Candidates respond to the larger context. Candidates:

(A) Demonstrate the ability to communicate with members of a school community concerning trends, issues, and potential changes in the environment in which the school operates, including maintenance of an ongoing dialogue with representatives of diverse community groups.

(c) Candidates influence the larger context. Candidates:

(A) Demonstrate the ability to engage students, parents, and other members of the community in advocating for adoption of improved policies and laws;

(B) Apply their understanding of the larger political, social, economic, legal, and cultural context to develop activities and policies that benefit students and their families; and

(C) Advocate for policies, programs and instructional strategies that promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability, or other individual characteristics.

(7) Practicum Experience: The practicum provides significant opportunities for candidates to synthesize and apply the knowledge and practice and develop the skills identified in Standards 1-6 through substantial, sustained, standards-based work in real settings, planned and guided cooperatively by the institution and school district personnel for graduate credit.

(a) The practicum will be substantial. Candidates:

(A) Demonstrate the ability to accept genuine responsibility for leading, facilitating, and making decisions typical of those made by educational leaders. The experience(s) should provide candidates with substantial responsibilities that increase overtime in amount and complexity and involve direct interaction and involvement with staff, students, parents, and community leaders; and

(B) Each candidate should have a minimum of six months (or equivalent, see note below) of full-time practicum experience.

(b) The practicum will be sustained. Candidates:

(A) Participate in planned practicum activities during the entire course of the program, including an extended period of time near the conclusion of the program to allow for candidate application of knowledge and skills on a full-time basis.

(c) The practicum will be standards-based. Candidates:

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(A) Apply skills and knowledge articulated in these standards as well as state and local standards for educational leaders; and

(B) Experiences are designed to accommodate candidates' individual needs.

(d) The practica will be in real settings. Candidates:

(A) Experiences occur in multiple that allow for the demonstration of a wide range of relevant knowledge and skills; and

(B) Experiences include work with appropriate community organizations such as service groups and local businesses.

(e) The practica will be planned and guided cooperatively. Candidates:

(A) Experiences are planned cooperatively by the individual, the site supervisor, and institution personnel to provide inclusion of appropriate opportunities to apply skills, knowledge, and research contained in the standards. These three individuals work together to meet candidate and program needs; and

(B) Mentors are provided training to guide the candidate during the practicum experience.

(f) The practicum will be for credit. Candidates:

(g) Earn graduate credit for their practicum experience.

(8) These rules are effective upon filing and shall apply to all new programs approved by the Commission after January 1, 2005. Existing approved administrator programs must implement these standards by no later than July 1, 2007.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 12-2006, f. & cert. ef. 11-16-06

584-017-0261

Knowledge, Skills and Abilities for Continuing Administrator License

(1) Visionary Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by facilitating the development, articulation, implementation, and stewardship of a school or district vision of learning supported by the school community.

(a) Candidates develop a vision. Candidates:

(A) Develop and demonstrate the skills needed to work with a board of education to facilitate the development of a vision of learning for a school district that promotes the success of all students;

(B) Base development of the vision on relevant knowledge and theories applicable to school-level leaders applied to a school district context;

(C) Use data-based research strategies to create a vision that takes into account the diversity of learners in a district; and

(D) Demonstrate knowledge of ways to use a district's vision to mobilize additional resources to support the vision.

(b) Candidates articulate a vision. Candidates:

(A) Demonstrate the ability to articulate the components of this vision for a district and the leadership processes necessary to implement and support the vision;

(B) Demonstrate the ability to use data-based research strategies and strategic planning processes that focus on student learning to develop a vision, drawing on relevant information sources such as student assessment results, student and family demographic data, and an analysis of community needs; and

(C) Demonstrate the ability to communicate the vision to school boards, staff, parents, students, and community members through the use of symbols, ceremonies, stories, and other activities

(c) Candidates implement a vision. Candidates:

(A) Demonstrate the ability to plan programs to motivate staff, students, and families to achieve a school district's vision; and

(B) Design research-based processes to effectively implement a district vision throughout an entire school district and community.

(d) Candidates steward a vision. Candidates:

(A) Demonstrate the ability to align and, as necessary, redesign administrative policies and practices required for full implementation of a district vision; and

(B) Understand the theory and research related to organizational and educational leadership and engage in the collection, organization, and analysis of a variety of information, including student performance data, required to assess progress toward a district's vision, mission, and goals.

(e) Candidates promote community involvement in the vision. Candidates:

(A) Demonstrate the ability to bring together and communicate effectively with stakeholders within the district and the larger community concerning implementation and realization of the vision.

(2) Instructional Improvement: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by promoting a positive school culture, providing an effective instructional program, applying best practice to student learning, and designing comprehensive professional growth plans for staff.

(a) Candidates promote positive school culture. Candidates:

(A) Develop a sustained approach to improve and maintain a positive district culture for learning that capitalizes on multiple aspects of diversity to meet the learning needs of all students.

(b) Candidates provide effective instructional program. Candidates:

(A) Demonstrate an understanding of a variety of instructional research methodologies and can analyze the comparable strengths and weaknesses of each method;

(B) Are able to use qualitative and quantitative data, appropriate research methods, technology, and information systems to develop a long-range plan for a district that assesses the district's improvement and accountability systems;

(C) Demonstrate the ability to use and promote technology and information systems to enrich district curriculum and instruction, monitor instructional practices, and provide assistance to administrators who have needs for improvement;

(D) Demonstrate the ability to allocate and justify resources to sustain the instructional program;

(E) Demonstrate the ability to use aggregated and disaggregated student achievement data to develop district instructional programs;

(F) Demonstrate the ability to use individual and group achievement data to develop district improvement plans; and

(G) Are able to use a variety of assessment tools and techniques to improve student achievement for all students.

(c) Candidates apply best practice to student learning. Candidates:

(A) Demonstrate the ability to facilitate and engage in activities that use best practices and sound educational research to improve instructional programs;

(B) Demonstrate an ability to assist school and district personnel in understanding and applying best practices for student learning;

(C) Understand and can apply human development theory, proven learning, and motivational theories, and concern for the diversity to the learning process; and

(D) Understand how to use appropriate research strategies to profile student performance in a district and analyze differences among subgroups.

(d) Candidates design comprehensive professional growth plans. Candidates:

(A) Demonstrate knowledge of adult learning strategies and the ability to apply technology and research to professional development design focusing on authentic problems and tasks, mentoring, coaching, conferencing, and other techniques that promote new knowledge and skills in the workplace;

(B) Demonstrate the ability to use strategies such as observations and collaborative reflection to help form comprehensive professional growth plans with district and school personnel; and

(C) Develop personal professional growth plans that reflect commitment to life-long learning and best practices.

(3) Effective Management: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by managing the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment.

(a) Candidates manage the organization. Candidates:

(A) Demonstrate the ability to use research-based knowledge of learning, teaching, student-development, organizational development, and data management to optimize learning for all students;

(B) Demonstrate an ability to manage time effectively and to deploy financial and human resources in a way that promotes student achievement;

(C) Demonstrate the ability to organize a district based on indicators of equity; effectiveness, and efficiency and can apply legal principles that promote educational equity; and

(D) Demonstrate an understanding of how to apply legal principles to promote educational equity and provide a safe, effective and efficient facility.

(b) Candidates manage operations. Candidates:

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(A) Demonstrate the ability to involve stakeholders in aligning resources and priorities to maximize ownership and accountability;

(B) Can use appropriate and effective needs assessment, research-based data, and group process skills to build consensus, communicate, and resolve conflicts in order to align resources with the district version;

(C) Develop staff communication plans for integrating district's schools and divisions; and

(D) Develop a plan to promote and support community collaboration among district personnel.

(c) Candidates manage resources. Candidates:

(A) Use problem-solving skills and knowledge of strategic, long-range, and operational planning (including applications of technology) in the effective, legal, and equitable use of fiscal, human, and material resource allocation that focuses on teaching and learning;

(B) Creatively seek new resources to facilitate learning;

(C) Apply an understanding of school district finance structures and models to ensure that adequate financial resources are allocated equitably for the district;

(D) Apply and assess current technologies for management, business procedures, and scheduling; and

(E) Apply licensure rules to ensure qualified staff are placed in all positions throughout the district.

(4) Inclusive Practice: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by collaborating with families and other community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups.

(a) Candidates collaborate with families and other community members. Candidates:

(A) Demonstrate the ability to facilitate the planning and implementation of programs and services that bring together the resources of families and the community to positively affect student learning;

(B) Demonstrate an ability to use public information and research-based knowledge of issues and trends to collaborate with community members and community organizations to have a positive affect on student learning;

(C) Apply an understanding of community relations models, marketing strategies and processes, data driven decision-making, and communication theory to craft frameworks for school, business, community, government, and higher education partnerships;

(D) Demonstrate an ability to develop and implement a plan for nurturing relationships with community leaders and reaching out to different business, religious, political, and service organizations to strengthen programs and support district goals;

(E) Demonstrate an ability to involve community members, groups, and other stakeholders in district decision-making, reflecting an understanding of strategies to capitalize on the, district's integral role in the larger community;

(F) Demonstrate the ability to collaborate with community agencies to integrate health, social, and other services in the schools to address student and family conditions that affect learning;

(G) Demonstrate the ability to conduct community relations that reflects knowledge of effective media relations and that models effective media relations practices; and

(H) Develop and implement strategies that support the involvement of families in the education of their children that reinforces for district staff a belief that families have the best interests of their children in mind.

(b) Candidates respond to community interests and needs. Candidates:

(A) Facilitate and engage in activities that reflect an ability to inform district decision-making by collecting and organizing formal and informal information from multiple stakeholders;

(B) Demonstrate the ability to promote maximum involvement with, and visibility within the community;

(C) Demonstrate the ability to interact effectively with individuals and groups that reflect conflicting perspectives;

(D) Demonstrate the ability to effectively and appropriately assess, research, and plan for diverse district and community conditions and dynamics and capitalize on the diversity of the community to improve district performance and student achievement; and

(E) Demonstrate the ability to advocate for students with special and exceptional needs.

(c) Candidates mobilize community resources. Candidates:

(A) Demonstrate an understanding of and ability to use community resources, including youth services that enhance student achievement, to solve district problems and accomplish district goals;

(B) Demonstrate how to use district resources to the community to solve issues of joint concern; and

(C) Demonstrate an understanding of ways to use public resources and funds appropriately and effectively to encourage communities to provide new resources to address emerging student problems.

(5) Ethical Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by acting with integrity, fairly, and in an ethical manner.

(a) Candidates act with integrity. Candidates:

(A) Demonstrate a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions promote such respect; and

(B) Demonstrate behaviors that are honest and consistent.

(b) Candidates act fairly. Candidates:

(A) Demonstrate the ability to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others;

(B) Make decisions using an inclusive process; and

(C) Understand and avoid any conflict of interest and avoid the appearance of impropriety.

(c) Candidates act ethically. Candidates:

(A) Make and explain decisions based upon ethical and legal principles; and

(B) Demonstrate respect and diligence regarding the law and compliance with its requirements.

(6) Socio-Political Context: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(a) Candidates understand the larger context. Candidates:

(A) Demonstrate the ability to use appropriate research methods, theories, and concepts to improve district operations;

(B) Demonstrate an understanding of the complex causes of poverty and other disadvantages and their effects on families, communities, children, and learning;

(C) Demonstrate an understanding of the policies, laws, and regulations enacted by local, state, and federal authorities affecting a specific district;

(D) Can explain the system for financing public schools and its effects on the equitable distribution of educational opportunities within a district;

(E) Demonstrate the ability to work with political leaders at the local, state, and national level;

(F) Can apply an understanding of how specific laws at the local, state, and federal level affect school districts and residents; and

(G) Espouse positions in response to proposed policy changes that would benefit or harm districts and explain how proposed policies and laws might improve educational and social opportunities for specific communities.

(b) Candidates respond to the larger context. Candidates:

(A) Demonstrate the ability to engage students, parents, members of the school board, and other community members in advocating for adoption of improved policies and laws;

(B) Apply their understanding of the larger political, social, economic, legal, and cultural context to develop activities and policies that benefit their district and its students; and

(C) Demonstrate the ability to communicate regularly with all segments of the district community concerning trends, issues, and policies affecting the district.

(c) Candidates influence the larger context. Candidates:

(A) Demonstrate an understanding of how to develop lines of communication with local, state, and federal authorities and actively advocate for improved policies, laws, and regulations, affecting a specific district, both directly and through organizations representing schools, educators, or others with similar interests; and

(B) Demonstrate the ability to advocate for policies, programs and instructional strategies that promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability, or other individual characteristics.

(7) Practicum Experience: The practicum provides significant opportunities for candidates to synthesize and apply the knowledge and practice

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and develop the skills identified in Standards 1-6 through substantial, sustained, standards-based work in real settings, planned and guided cooperatively by the institution and school district personnel for graduate credit.

(a) The practicum will be substantial. Candidates:

(A) Demonstrate the ability to accept genuine responsibility for leading, facilitating, and making decisions typical of those made by educational leaders. The experience(s) should provide practicum students with substantial responsibilities that increase overtime in amount and complexity and involve direct interaction and involvement with staff, students, parents, and community leaders; and

(B) Each candidate should have a minimum of six (6) months (or equivalent, see note below) of full-time practicum experience.

(b) The practicum will be sustained. Candidates:

(A) Participate in planned practicum activities during the entire course of the program, including an extended period of time near the conclusion of the program to allow for candidate application of knowledge and skills on a full-time basis.

(c) The practicum will be standards-based. Candidates:

(A) Apply skills and knowledge articulated in these standards as well as state and local standards for educational leaders; and

(B) Experiences are designed to accommodate candidates' individual needs.

(d) The practica will be in real settings. Candidates:

(A) Experiences occur in multiple district settings that allow for the demonstration of a wide range of relevant knowledge and skills; and

(B) Experiences include work with appropriate community organizations, parent groups and school boards.

(e) The practica will be planned and guided cooperatively.

Candidates:

(A) Experiences are planned cooperatively by the individual, the site supervisor, and institution personnel to provide inclusion of appropriate opportunities to apply skills, knowledge, and research contained in the standards. These three individuals work together to meet candidate and program needs; and

(B) Mentors are provided training to guide the candidate during the practicum experience.

(f) The practicum will be for credit. Candidates:

(g) Earn graduate credit for their practicum experience.

(8) These rules are effective upon filing and shall apply to all new programs approved by the Commission after January 1, 2005. Existing approved administrator programs must implement these standards by no later than July 1, 2007.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 12-2006, f. & cert. ef. 11-16-06

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Teacher Standards and Practices Commission Chapter 584

Rule Caption: Adopt, amend, and repeal rules regarding issuance, renewal, and reinstatement of educator's licenses.

Adm. Order No.: TSPC 13-2006

Filed with Sec. of State: 11-22-06

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Rules Adopted: 584-050-0016, 584-050-0018, 584-050-0019, 584-050-0043, 584-080-0012, 584-080-0022

Rules Amended: 584-017-0120, 584-017-0441, 584-017-0442, 584-017-0451, 584-017-0452, 584-038-0290, 584-038-0295, 584-038-0310, 584-038-0320, 584-038-0330, 584-038-0335, 584-038-0336, 584-040-0260, 584-040-0265, 584-040-0280, 584-040-0290, 584-040-0310, 584-040-0315, 584-048-0006, 584-048-0010, 584-048-0015, 584-048-0020, 584-048-0025, 584-048-0030, 584-048-0032, 584-048-0035, 584-048-0040, 584-048-0065, 584-048-0067, 584-048-0070, 584-048-0085, 584-048-0090, 584-048-0095, 584-048-0105, 584-048-0110, 584-048-0115, 584-048-0120, 584-050-0004, 584-050-0005, 584-050-0006, 584-050-0009, 584-050-0012, 584-050-0015, 584-050-0020, 584-050-0022, 584-050-0027, 584-050-0035, 584-050-0040, 584-050-0042, 584-060-0022, 584-060-0051, 584-060-0071, 584-080-0001, 584-080-0002, 584-080-0031, 584-100-0006

Rules Repealed: 584-048-0042, 584-050-0007, 584-050-0008, 584-050-0025, 584-080-0011, 584-080-0021

Subject: 584-017-0120 *Elementary Authorizations*: Expands special education elementary authorization to allow special ed teachers to be properly assigned in middle and junior high school.

584-017-0441 *Knowledge, Skills, and Abilities for Initial School Counselor*: This rule replaces the previous Division 17 "objectives" with the newly adopted "standards."

584-017-0442 *Objectives for Initial School Counselor License*: Adopted as Temporary rule on July 1, 2006 (previously 584-017-0440)

584-017-0451 *Knowledge, Skills, and Abilities for Continuing School Counselor*: The Counseling community proposed new standards for adoption relating to the Continuing School Counseling License. This rule replaces the previous Division 17 standards for program approval for Continuing School Counseling Programs

584-017-0452 *Objectives for Continuing School Counselor License*: Adopted as Temporary rule on July 1, 2006 (previously 584-017-0450).

584-038-0290 *Basic Exceptional Learner I*: Changes "Handicapped" term to "Exceptional Learner."

584-038-0295 *Basic Exceptional Learner II*: Changes "Handicapped" term to "Exceptional Learner."

584-038-0310 *Basic Severe Exceptional Needs Learner*: Changes terminology from "Severely Handicapped" to "Learners with Severe Disabilities."

584-038-0320 *Basic Speech Impaired*: Changes terminology to "Learners with Speech Impairments" and corrects numbering format.

584-038-0330 *Basic Visually Impaired*: Changes terminology to "Learners with Visual Impairments."

584-038-0335 *Basic Early Intervention and Special Education I*: Numbering format change and clarification.

584-038-0336 *Basic Early Intervention and Special Education II*: Numbering format change and clarification

584-040-0260 *Standard Exceptional Learner I*: Changes "Handicapped" to "Exceptional Learner."

584-040-0265 *Standard Exceptional Learner II*: Changes "Handicapped" to "Exceptional Learner."

584-040-0280 *Standard Severe Exceptional Needs Learner*: Changes "Severely Handicapped" to "Learners with Severe Disabilities."

584-040-0290 *Standard Speech Impaired*: Clarification of OAR that is referenced in (3).

584-040-0310 *Standard Early Intervention and Special Education I*: Clarifies purpose of license and numbering format.

584-040-0315 *Standard Early Intervention and Special Education II*: Clarifies purpose of license and numbering format.

584-048-0006 *Renewal of Pre-21st Century Educator Licenses*: Revision of outdated rule.

584-048-0010 *Renewal of Licenses Based Upon Continuous Licensed Employment*: Revision of outdated rule.

584-048-0015 *Experience Acceptable for Renewal of Licenses*: Clarification of rule requirements and change in number format.

584-048-0020 *Renewal of Teaching Licenses—Special Provisions*: Update of rule to include Initial, Standard or Continuing Licenses, corrects reference to current OARs and updates number format.

584-048-0025 *Ongoing Renewal of Basic Teaching Licenses for Use in Elementary, Middle, and Junior High Schools Only*: Clarifies experience and CPD requirements as well as number format changes.

584-048-0030 *Renewal of Basic Licenses for Use in Special Education in Preprimary through Grade Twelve*: Clarifies experience and CPD requirements and changes number format.

584-048-0032 *Renewal of Basic Licenses for Use in Grades Five through Twelve or in Preprimary through Grade Twelve*: Number format changes and clarifies requirement for 16 semester hours toward standard licensure for renewal.

584-048-0035 *Standard Teaching License Renewal*: Clarifies requirements for Standard Teaching License renewal.

584-048-0040 *Professional Technical Teaching License Renewal*: Upon expiration of the Three-year Professional Technical License the

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applicant must qualify for the Five-year Professional Technical License.

584-048-0065 *Basic Personnel Service License Renewal*: Changes number format and clarifies nine quarter or six semester hours of academic requirements leading to a Standard Personnel Service License.

584-048-0067 *Renewal of Personnel Service Licenses—Special Provisions*: Clarifies requirements for renewal of Personnel Service Licenses-Special Provisions and changes number format.

584-048-0070 *Standard Personnel Service License Renewal*: Updates rule regarding requirements for renewal of Standard Personnel Service License.

584-048-0085 *Renewal of a Basic Administrative License*: Clarifies experience or CPD requirements for renewal of a Basic Administrator License and changes number format.

584-048-0090 *Renewal of Administrative License—Special Provisions*: Clarifies experience or CPD requirements for renewal of an Administrator License—Special Provisions and change in number format.

584-048-0095 *Standard Administrative License Renewal*: Clarifies experience or CPD requirements for renewal of a Standard Administrative License.

584-048-0105 *Five-Year Teaching License Renewal*: Clarifies experience or CPD requirements for renewal of the Five-year Teaching License originally issued prior to October 15, 1965.

584-048-0110 *Administrative License Renewal*: Clarifies experience or CPD requirements for renewal of the Administrative License originally issued prior to October 15, 1965.

584-048-0115 *Reinstatement of Expired Licenses*: Number format change.

584-048-0120 *Special Provisions for a One-Year Extension to Basic and Standard Licenses*: Clarifies rule and adds language to include 12 quarter hours or 8 semester hours.

584-050-0004 *Procedure for Incomplete Application*: Clarifies procedures for incomplete application.

584-050-0005 *Criteria for Granting Licenses*: Clarifies procedures for granting a license when a conviction has occurred and numbering format changes.

584-050-0006 *Criteria for Denying Issuance or Reinstatement of Licenses*: Clarifies language for denying issuance or reinstatement of licenses. Number format change.

584-050-0009 *Procedures for Disciplinary Action in Certain Cases*: Clarifies the rule to include the Commission.

584-050-0012 *Criteria for Denial of Licensure Based on conviction for Crimes*: Clarifies requirement for denial of licensure based on a conviction and sites applicable OAR.

584-050-0015 *Reinstatement Of Suspended, Revoked, or Surrendered License or Registration*: Clarifies requirements for reinstatement of suspended, revoked or surrendered license. Adds language requiring a reinstatement fee in addition to the application fee. Removes provisions in the rule and creates rules 584-050-0016, 584-050-0018 & 584-050-0019.

584-050-0016 *Reinstatement of Suspended License, Registration, or Right to Apply for a license or Registration*: New rule stating requirements for reinstatement of suspended license, registration or right to apply for a license.

584-050-0018 *Reinstatement of Revoked License, Registration, or Right to Apply for a License or Registration*: New rule stating requirements for reinstatement of revoked license, registration or right to apply for a license.

584-050-0019 *Termination of Probation*: New rule requiring educator submit request for termination of probation with supporting documents.

584-050-0020 *Suspension for Resignation in Violation of Contract*: Cites OAR governing the reinstatement fee based on suspen-

sion for resignation in violation of contract and change in number format.

584-050-0022 *Suspension for Failure to Obtain Valid First Aid Card*: Clarifies rules regarding suspension for failure to obtain a valid first aid card per ORS 342.126.

584-050-0027 *Surrender of License or Registration*: Clarification of educators voluntarily surrendering their Oregon teaching license prior to its expiration if the Commission finds it in the best interest of the public.

584-050-0035 *Must be Licensed to Begin Employment*: Clarifies rule to state pursuant to ORS, Chapter 342, any person hired to fill a position in a SD or ESD must hold a valid license appropriate for the assignment on the date employment begins.

584-050-0040 *Expiration of Licenses and Continued Use of Expired Licenses*: Clarifies rule regarding license expiration.

584-050-0042 *Addresses and Uses of Addresses*: Clarifies requirement for license holder to report changes of address within 90 days of such change. Adds language stating TSPC will use the last know address on file with no responsibility if the educator has failed to notify TSPC of any new address.

584-050-0043 *Name Changes*: New rule stating requirements for notification of new married or assumed name change.

584-060-0022 *Continuing Teacher License Requirements*: Amends rule to accept the Washington Professional Certificate in lieu of a CTL program as partial Completion of the CTL requirements.

584-060-0051 *Teaching Authorization Levels*: Clarifies ECE, ELEM, and ML authorization levels with a multiple subject endorsement is not valid without the specialty endorsement. ELEM authorization in special ed is valid for assignments in grades three through eight in elementary, middle or junior high school

584-060-0071 *Endorsements Requiring Multiple Authorization Levels*: Clarifies that passage of the MSE may be necessary for new teachers with a special ed or an ESOL endorsement to meet the definition of Highly Qualified.

584-080-0001 *Purpose*: Rule establishes an administrator licensure program designed to strengthen Oregon education leadership. Numbering format change.

584-080-0002 *Definitions for Division 80*: Clarifies definitions for Division 80.

584-080-0012 *Initial Administrator License (IAL)*: New rule that replaces 584-080-0011 for Initial Administrator License.

584-080-0022 *Continuing Administrator License (CAL)*: New rule that replaces 584-080-0021 for Continuing Administrator License

584-080-0031 *Continuing Superintendent License*: Amends the current language to recognize work above and beyond the Continuing Administrator License.

584-100-0006 *Definitions*: Changes required credit hours for "Undergraduate Major or Coursework Equivalent to a Major"

584-048-0042 *Renewal of Supervisory Professional-Technical Licenses-REPEAL*

584-050-0007 *Criteria and Procedures for Denying Renewal of a License-REPEAL*

584-050-0008 *Procedures for Consideration of Other Cases-REPEAL*

584-050-0025 *Revocations and Suspensions for Other Than Violation of Contract or Failure to Obtain Card-REPEAL*

584-080-0011 *Initial Administrator License-REPEAL*

584-080-0021 *Continuing Administrator License-REPEAL*

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0120 Elementary Authorization

The unit assures that candidates for an Elementary Authorization demonstrate knowledge, skills, and competencies in an elementary setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in grades 3-8 within the cultural and community context of the teacher education institution and cooperating school districts.

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(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in elementary grades and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the Multiple Subjects Assessment for Teachers (MSAT).

(4) Candidates complete student teaching or internship with students in grades 3-8 in an elementary school or in a 5th or 6th grade self-contained classroom in a middle school. A practicum may substitute for student teaching if this is an additional authorization on an Initial or Continuing Teaching License.

(a) Special Education candidates may complete practica, student teaching or internships in grades three (3) through eight (8) in an elementary, middle or junior high school.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1998, f. 9-28-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06

584-017-0441

Knowledge, Skills and Abilities for Initial School Counselor

(1) School Counseling Program: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to develop and deliver a school counseling program that is comprehensive, demonstrates continuous improvement, and advances the mission of the school. Candidates:

(a) Know the history, philosophy, and current trends in school counseling and educational programs;

(b) Develop, design, implement, monitor, and evaluate a comprehensive developmental and inclusive school counseling program that integrates Oregon's four developmental domains: academic (learn to learn), personal/social (learn to live), career (learn to work), and community involvement (learn to contribute);

(c) Prepare action plans and school counseling calendars that reflect appropriate time commitments and priorities in a comprehensive developmental and inclusive school counseling program; and

(d) Align the school counseling program with the academic and student services program in the school.

(2) School Counseling and Student Competencies: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to apply deep and broad understanding of Oregon's four developmental domains. Candidates:

(a) Integrate a school counseling program into the total school curriculum by systematically providing information and skills training to assist pre K-12 students in maximizing their academic, career, and personal/social development, as well as their ability to make a positive contribution to their school or community;

(b) Identify student competencies related to the four domains and implement processes and activities to assist students in achieving these competencies;

(c) Have knowledge and understanding of community, environmental, and institutional factors that enhance, as well as barriers that impede, student success; and

(d) Develop constructive partnerships with parents, guardians, families, and communities in order to promote each student's success in the four developmental domains.

(3) Human Growth and Development: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to apply comprehensive, in-depth knowledge of human growth and development to improve student learning and well-being. Candidates:

(a) Develop coordination, collaboration, referral, and team-building efforts with teachers, parents, support personnel, and community resources to promote program objectives and facilitate the successful student development and achievement of all students;

(b) Implement strategies of leadership designed to enhance the educational success of all students; and

(c) Implement developmental approaches to assist all students and parents at points of educational transition (e.g., home to elementary school, elementary to middle to high school, high school to postsecondary education and career options).

(4) Counseling Theories and Techniques: Candidates who complete the program are professional school counselors and educational leaders

who have the knowledge, ability, skill, and cultural competence to demonstrate a comprehensive understanding of established and emerging counseling theories. They possess a thorough knowledge of techniques and processes that form the foundation for effective school counseling with a diverse population. Candidates:

(a) Develop and implement prevention and crisis plans and intervention strategies;

(b) Develop and implement individual and small-group counseling approaches that promote school success in each of the four domains;

(c) Develop and implement individual, group, and classroom guidance approaches systematically designed to assist all students in each of the four domains;

(d) Understand protective factors and implement programs that enhance student development (e.g. peer facilitation, including peer helper, peer tutor, and peer mediation programs);

(e) Understand the environmental risks that may affect student development (e.g.: abuse, violence, eating disorders, attention deficit hyperactivity disorder, childhood depression, poverty and suicide);

(f) Develop comprehensive school-wide plans and approaches to recognizing and assisting children and adolescents who may use alcohol or other drugs or who may reside in a home where substance abuse occurs; and

(g) Apply theories, models, and processes of consultation and change with teachers, administrators, other school personnel, parents, community groups, agencies, and students as appropriate.

(5) Equity, Fairness and Diversity: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to model and promote behavior appropriate in a diverse and global society by showing respect for and valuing all members of the community. They demonstrate fairness, equity, and sensitivity to every student, and they advocate for equitable access to instructional programs and activities. Candidates:

(a) Advocate for all students and for effective school counseling programs that serve all students;

(b) Understand the role of racial, ethnic, and cultural heritage, nationality, socioeconomic status, family structure, age, gender, sexual orientation, religious and spiritual beliefs, occupation, physical and mental status, and equity issues in school counseling; and

(c) Apply strategies and methods of working with parents, guardians, families, and communities to empower them to act on behalf of their children.

(6) School Climate: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to work to establish and foster an emotionally, socially, and physically safe learning environment for students, staffs, and families. Candidates:

(a) Promote and integrate the use of counseling and guidance programs and activities by the total school community to enhance a positive school climate;

(b) Understand the role, function, and professional identity of the school counselor in relation to the roles of other professional and support personnel in the school; and

(c) Demonstrate the ability to plan for and present school counseling-related educational programs to administrators, teachers, parents, and the community.

(7) Collaboration with Family and Community: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill and cultural competence to work collaboratively with families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community. Candidates:

(a) Are knowledgeable of the community and community resources, and they utilize available resources to make appropriate referrals based on the needs of students;

(b) Understand contextual dimensions of school counseling and the ecological relationships among and between community systems, family systems, and school systems, and how they interact to influence the students and affect each system; and

(c) Develop strategies to promote, develop, and enhance effective collaboration with families, and teamwork within the school and larger community.

(8) Informational Resources and Technology: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to be skilled in the selection and use of informational resources and technology

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and use them to facilitate the delivery of a comprehensive school counseling program that meets student needs. Candidates:

(a) Use technology and data in the design, implementation, monitoring, and evaluation of a comprehensive school counseling program; and

(b) Have knowledge and application of current and emerging technology in education and school counseling to assist students, families, and educators in using resources that promote informed academic, career, and personal/social choices.

(9) Student Assessment: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to understand the principles and purposes of assessment, and the collection and use of data. Candidates:

(a) Regularly monitor student progress and communicate the purposes, design, and results of assessments to appropriate audiences; and

(b) Use, analyze, manage, and present data from school-based information (e.g. standardized testing, grades, enrollment, attendance, retention, placement, college eligibility), surveys, interviews, focus groups, and needs assessments to improve student outcomes and program effectiveness.

(10) Leadership, Advocacy, and Professional Identity: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, and cultural competence to work as leaders and advocates in the promotion of student learning and achievement. Candidates:

(a) Adhere to ethical practices;

(b) Understand current issues, policies, laws, and legislation relevant to school counseling; and

(c) Engage in professional growth and development.

(11) Reflective Practice: Candidates who complete the program are professional school counselors and educational leaders who have the knowledge, ability, skill, and cultural competence to integrate their knowledge, skills, and life experience to respond effectively to new or unexpected critical events and situations. Candidates:

(a) Monitor and refine their work with continuous, in-depth reflection.

(12) These rules are effective immediately and apply to all programs adopted after July 1, 2007. Initial School Counselor Licensure programs adopted prior to July 1, 2007 must resubmit program proposals to the Commission that align with these standards by no later than July 1, 2008.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-017-0442

Objectives for Initial School Counselor License

The unit ensures that a candidate for Initial School Counselor License possess the knowledge, skills, and competencies required for a school counselor.

(1) Candidates develop and implement plans which promote social and emotional development.

(2) Candidates establish programs appropriate for group, individual, and family counseling.

(3) Candidates demonstrate interpersonal skills, working with others and communicating with community members.

(4) Candidates practice and promote group process, crisis resolution, anger management and violence prevention.

(5) Candidates demonstrate ethical standards and knowledge of legal frameworks unique to counseling.

(6) Candidates collaborate with social service agencies providing services to students and families.

(7) Candidates support school to work transition and career planning.

(8) Candidates assist with curriculum coordination as it relates to guidance activities.

(9) Candidates understand student assessment as it relates to academic, career counseling and personal/social development.

(10) Candidates assist with goal setting, learning skills and the development of self-directed learners.

(11) Candidates support and develop plans which respect difference and promote communication among diverse groups.

(12) Candidates collaborate with school staff, families, and community members to meet individual student needs.

(13) Candidates assist staff to understand the needs of all students.

(14) Candidates demonstrate effective counseling techniques for individuals and small groups.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-017-0451

Knowledge, Skills and Abilities for Continuing School Counselor License

(1) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to document and contribute to the professional literature or program development within their district. Candidates:

(a) Demonstrate an understanding of and ability to apply emerging research on counseling, learning, and school improvement to increase comprehensive counseling program effectiveness.

(2) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to implement research-based educational practices that assess perception, process, and results data emerging from programs. Candidates:

(a) Use analysis directed toward developing programs to improve students' ability to live, learn, work, and contribute to their communities; and

(b) Use practices that are sensitive to individual differences, and diverse cultural, ethnic and socioeconomic backgrounds.

(3) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to consult and collaborate with colleagues, staff, parents, and the public to enhance the student's performance, as well as advocate for changes in the program that benefit all students.

(4) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to demonstrate effective leadership in program development and communication with diverse and special interest organizations. Candidates seek and secure appropriate funding for program expansion.

(5) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to demonstrate an advanced understanding of ethics and laws applicable to professional school counselors.

(6) Candidates who complete the program are accomplished school counselors and educational leaders who have the knowledge, skill, ability, and cultural competence to demonstrate professional training and development as a supervisor of school counselors and school counselors in training.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-017-0452

Objectives for Continuing School Counselor License

The unit provides an approved program through which candidates document the advanced competencies required for a Continuing School Counselor License.

(1) The candidate is able to document an understanding of and ability to apply emerging research on counseling, learning, and school improvement to increase comprehensive counseling program effectiveness.

(2) The candidate is able to implement research-based educational practices that ensure student achievement and are sensitive to individual differences, diverse cultures, and ethnic backgrounds.

(3) The candidate is able to collaborate with colleagues, staff, parents, and the public to enhance the student's performance.

(4) The candidate is able to demonstrate effective leadership in communication with diverse and special interest organizations.

(5) The candidate is able to demonstrate an advanced understanding of laws applicable to counselors.

(6) The candidate completes an additional four hundred (400) clock hours of supervised practicum in a public school.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0290

Basic Exceptional Learner I

(1) Hold a Basic or Standard Teaching License with a subject matter endorsement.

(2) Completion of 27 quarter hours designed to develop competence in:

(a) Educating students with exceptional learning needs;

(b) Application of learning theory;

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- (c) Language development and language disabilities;
 - (d) Assessment and evaluation;
 - (e) Diagnostic and prescriptive techniques and materials;
 - (f) Classroom management and student discipline;
 - (g) Utilizing community resources;
 - (h) Alternative organizational patterns and curricula; and
 - (i) Communication and counseling.
- (3) Six quarter hours of student teaching or internship with exceptional learners.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0295

Basic Exceptional Learner II

(1) Forty-eight quarter semester hours designed to develop competence in special education, to include:

- (a) Educating students with exceptional learning needs;
 - (b) Application of learning theory;
 - (c) Language development and language disabilities;
 - (d) Assessment and evaluation;
 - (e) Diagnostic and prescriptive techniques and materials;
 - (f) Classroom management and student discipline;
 - (g) Utilizing community resources;
 - (h) Alternative organizational patterns and curricula; and
 - (i) Communication and counseling.
- (2) Student teaching or internship with exceptional learners.

(3) Valid for teaching all exceptional learners.
Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0310

Basic Severe Exceptional Needs Learner

(1) Forty-five quarter hours designed to develop competence in educating severely disabled learners, to include:

- (a) Educating students with exceptional needs;
- (b) Application of learning theory;
- (c) Language development and language disabilities;
- (d) Assessment and evaluation;
- (e) Diagnostic and prescriptive techniques and materials;
- (f) Behavior management;
- (g) Utilizing community resources;
- (h) Alternative organization patterns and curricula; and
- (i) Communication and counseling.

(2) Supervised teaching or internship with exceptional children with severe special needs.

(3) Valid only for teaching exceptional children with severe special needs.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0320

Basic Communications Disorders

(1) Complete an approved communications disorders program consisting of a minimum of 63 quarter hours or 42 semester hours in educating learners with communications disorders and culminating in a master's degree or 45 quarter hours or 30 semester hours of upper-division or graduate study beyond the bachelor's degree to include 15 graduate quarter hours or 10 graduate semester hours in language, speech, and hearing.

- (2) The program must include:
- (a) Anatomy and physiology of speech, language, and hearing;
 - (b) Phonetics;
 - (c) Normal language development;
 - (d) Education of exceptional children;
 - (e) Language and speech pathology;
 - (f) Behavior management;
 - (g) Audiology;
 - (h) Aural rehabilitation;
 - (i) Diagnostic and prescriptive techniques; and
 - (j) A minimum of 275 clock hours of supervised teaching, internship, and practicum with learners with communications disorders.

(3) One year of full time public school or regionally accredited private school experience as a speech pathologist will be substituted for this supervised teaching, internship, and practicum.

(4) An applicant may demonstrate the knowledge of theory and practice about learners with communications disorders required by section (1) of this rule by presenting a minimum score as set by TSPC on the approved specialty area test for communications disorders and a current Certificate of Clinical Competence awarded by the American Speech and Hearing Association.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1992, f. 12-17-92, cert. ef. 1-15-93; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0330

Basic Visually Impaired

(1) Thirty quarter hours designed to develop competence in educating learners with visual impairments to include:

- (a) Structure and function of the eye;
- (b) Educational implications of subnormal vision and blindness;
- (c) Education of the exceptional child;
- (d) Curriculum and methods of teaching learners with visual impairments

(e) Reading, writing, and transcribing Braille as specified in ORS 342.153 and 343.565;

- (f) Classroom management and student discipline;
- (g) Orientation and mobility for the classroom teacher; and
- (h) Diagnostic and prescriptive techniques.

(2) Supervised teaching or internship with learners with visual impairments.

(3) Competence in Braille in subsection (1)(e) of this rule may be demonstrated by one of the following:

(a) Certificate of Competency issued by the National Library Service (NLS) for the Blind and Physically Handicapped of the Library of Congress; or

(b) Successful completion of courses or workshops in Grade I and Grade II Braille that are approved by TSPC and that are consistent with NLS standards.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 6-1989, f. & cert. ef. 10-6-89; TS 3-1994, f. 7-19-94, cert. ef. 9-1-94; TS 4-1995, f. & cert. ef. 11-9-95; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0335

Basic Early Intervention and Special Education I

(1) Hold a Basic or Standard Teaching License with an elementary or special education endorsement.

(2) Complete 21 quarter hours designed to develop competence in:

(a) Issues in early intervention and early childhood special education to include professional development, values, and ethics;

- (b) Typical and atypical child development;
- (c) Infant, toddler and preschool assessment and evaluation;
- (d) Family involvement in early intervention and early childhood special education;

(e) Intervention strategies to include design, implementation, and evaluation;

(f) Interdisciplinary and interagency collaboration to include case management and program management; and

(g) Research design and methods in early intervention and early childhood special education.

(3) Supervised practicum in early intervention and early childhood special education.

(4) Valid for teaching early intervention and early childhood special education from birth through kindergarten.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-038-0336

Basic Early Intervention and Special Education II

(1) Forty-five quarter hours designed to develop competence in early intervention and early childhood special education, to include:

(a) Issues in early intervention and early childhood special education to include professional development, values, and ethics;

- (b) Typical and atypical child development;

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- (c) Infant, toddler and preschool assessment and evaluation;
 - (d) Family involvement in early intervention and early childhood special education;
 - (e) Intervention strategies to include design, implementation, and evaluation;
 - (f) Interdisciplinary and interagency collaboration to include case management and program management; and
 - (g) Research design and methods in early intervention and early childhood special education.
- (2) Student teaching or internship with early childhood special education children.
- (3) Valid for teaching early intervention and early childhood special education from birth through kindergarten.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0260

Standard Handicapped Learner I

- (1) Fifteen quarter hours of graduate preparation in special education distributed to strengthen the applicant's background in the field.
- (2) Completion of a Standard Teaching License with a basic subject matter endorsement.
- (3) The professional preparation set forth in OAR 584-040-0008 is not required for this endorsement.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0265

Standard Handicapped Learner II

- (1) Fifteen quarter hours of graduate preparation in special education distributed to strengthen the applicant's background in the field and which is in addition to the preparation required by OAR 584-038-0295 for the Basic Exceptional Learner II endorsement.
- (2) A subject matter endorsement is not required for this endorsement nor is the professional preparation set forth in OAR 584-040-0008 required.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 5-1993, f. & cert. ef. 10-7-93; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0280

Standard Severe Exceptional Needs Learner

- (1) Fifteen quarter hours of graduate preparation in special education distributed to strengthen the applicant's background in the field and which is in addition to the preparation required by OAR 584-038-0310 for the Basic Severe Exceptional Needs Learner endorsement.
- (2) Satisfaction of requirements for the basic or standard subject matter endorsement is not required for the Standard Severe Exceptional Needs Learner endorsement, nor is the professional preparation set forth in OAR 585-040-0008 required.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0290

Standard Communications Disorders

- (1) Fifteen quarter hours of graduate level preparation in language, speech, and hearing distributed to strengthen the applicant's background in this field and which is in addition to the preparation required by OAR 584-038-0320 for the Basic Communications Disorders endorsement.
- (2) Satisfaction of requirements for a basic or standard subject matter endorsement is not required for the Standard Communications Disorders endorsement, nor is the professional preparation set forth in OAR 584-040-0008.
- (3) For teachers issued a Basic Teaching License with a Basic Communications Disorders endorsement, no additional preparation is required, only the three years of half-time or more experience as specified in OAR 584-040-0005.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1992, f. 12-17-92, cert. ef. 1-15-93; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0310

Standard Early Intervention and Special Education I

- (1) Fifteen quarter hours of graduate preparation in early intervention and early childhood special education distributed to strengthen the applicant's background in the field.
- (2) Completion of a Standard Teaching License program.
- (3) The professional preparation set forth in OAR 584-040-0008 is not required for this endorsement.
- (4) Valid for teaching early intervention and early childhood special education from birth through kindergarten.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-040-0315

Standard Early Intervention and Special Education II

- (1) Fifteen quarter hours of graduate preparation in early intervention and early childhood special education distributed to strengthen the applicant's background in the field and which is in addition to the preparation required by OAR 584-038-0336 for the Basic Early Intervention Special Education II endorsement.
- (2) A subject matter endorsement is not required, nor is the professional preparation outlined in OAR 584-040-0008.
- (3) Valid for teaching early intervention and early childhood special education from birth through kindergarten.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 6-1993, f. & cert. ef. 12-7-93; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0006

Renewal of Pre-21st Century Educator Licenses

- (1) Upon filing a timely, correct, and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted renewal of any license issued by Teacher Standards and Practices Commission as described in the following sections.
- (2) In all cases when academic preparation is substituted for required experience for renewal, the preparation shall be directly germane to at least one active license the educator holds. The Executive Director may deny credit that is deemed not germane to any active licenses held by the educator.

- (3) Renewal requirements must be completed during the life of any active license held by the educator.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0010

Renewal of Licenses Based Upon Continuous Licensed Employment

- (1) Educators are required to renew only the licenses valid for their current assignments.
- (2) A renewable license may be renewed or reinstated upon application and verification of continuous employment on any approved TSPC license.
- (3) A licensed educator working in a charter school may use any educational experience while employed at the charter school to renew any license held by the educator.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-29-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 2-1989, f. & cert. ef. 2-16-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0015

Experience Acceptable for Renewal of Licenses

- (1) For purposes of renewing licenses based upon verification of one year of full-time experience, the Commission accepts educational experience in:
- (a) Public schools and regionally accredited private schools in the United States;
 - (b) State and federal schools in Oregon;
 - (c) Registered private schools in Oregon;
 - (d) Special state-supported schools in Oregon;
 - (e) The Oregon Department of Education;
 - (f) The Teacher Standards and Practices Commission;
 - (g) The Oregon Department of Human Resources;
 - (h) Juvenile court schools in Oregon;
 - (i) Oregon Education Service Districts;
 - (j) Public schools in other governmental jurisdictions;
 - (k) Schools operated by the U.S. Department of Defense; or

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(1) Other experience approved by the Executive Director.

(2) Notwithstanding OAR 584-048-0010, the applicant must have been appropriately assigned. See OAR 584-005-0005 for definitions of "Appropriately Assigned," and "Year of Experience."

(3)(a) College instructors who teach at public or private higher education institutions or public community colleges may verify either one year of full-time teaching experience or the equivalent throughout the life of their license.

(b) The experience must be related to education or related to the license which they are seeking to renew.

(c) Verification of employment in private or public higher education or a community college or must be provided by the institution's registrar, designated personnel officer, or dean of the school or college.

(4) The Executive Director may accept for renewal of licenses teaching experience in an Oregon private professional technical school that is licensed by the Superintendent of Public Instruction if such experience is directly related to the endorsement(s) held by the applicant and to the curriculum offered in Oregon school districts.

(5) Where one full year of experience during the life of the license is required for renewal, the following equivalent combinations may be substituted:

(a) One hundred eighty days of teaching in Oregon schools or other states' schools if accepted by the Executive Director;

(b) Any combination of time .5 FTE or more that totals 180 days of experience during the life of the license will be accepted.

(c) Nine quarter or six semester hours of preparation completed in an approved institution; or

(d) A combination of experience and academic credit germane to the license may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days and one semester hour equals 30 days of experience.

Stat. Auth.: ORS 342

Stat. Implemented: ORS 342.120 - 342.200

Hist.: TS 15, f. 1-20-76, ef. 1-1-77; TS 17, 12-19-77, ef. 1-1-78; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 3-1988, f. & cert. ef. 4-7-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0020

Renewal of Teaching Licenses — Special Provisions

(1) Notwithstanding other rules for renewal in this division, an applicant for renewal of a Basic, Initial, Standard or Continuing License may be eligible for renewal based on experience other than teaching for at least one renewal.

(a) An eligible applicant with a license in subsection (1) above may submit verification of 12 months of service during the life of the current license in:

- (a) The Armed Forces;
- (b) The Peace Corps; or
- (c) VISTA.

(2) An applicant who qualifies under this rule is permitted one additional renewal of the Basic or Initial Teaching License before having to qualify for the Standard, the Initial II Teaching license or the Continuing Teaching License.

(3) An applicant who meets all requirements for the Standard Teaching License except teaching experience in Oregon schools will be granted a third Basic Teaching License without further preparation. Thereafter, if the experience requirement has not been met, the applicant may renew the Basic Teaching License upon verification of one full year of experience or equivalent pursuant to OAR 584-048-0015(5).

(4) An applicant for renewal of a Basic, Initial, Standard, Continuing, and Regular Teaching License may provide verification of volunteer experience or employment as an instructional assistant in Oregon schools in lieu of one year of full-time teaching experience in accordance with OAR 584-048-0015(5).

(a) A combination of volunteer experience or instructional assistant experience and credit may be submitted in accordance with the ratio set forth in subsection (3) of this rule. Volunteer experience or instructional assistant experience must meet the following criteria:

(A) A minimum of 120 hours of experience must be completed within a ten-week period. This amount of experience shall be accepted in lieu of three quarter hours of the additional preparation required for renewal of a license. Not more than three quarter hours of the renewal requirement may be met in any ten-week period through this option, but experiences

over a period of 30 weeks totaling 360 hours may be used to satisfy the entire credit requirement;

(B) Personnel must be assigned in accordance with the license and endorsement held and must work directly with students for at least one-half of the required hours of experience. The remainder of the time may be used for planned observations, development of lesson plans and instructional materials, and other experiences designed to acquaint the person with current curricula and practices in public schools;

(C) The volunteer must be under the direct supervision of the principal or a licensed educator designated by the principal. The instructional assistant must be under the direct supervision of a licensed teacher. The person shall, in consultation with the supervisor, develop a written professional improvement plan for the ten-week experience. The plan shall state goals and objectives which will form the basis for evaluation of the experience and performance. Verification of the experience must be provided by the district superintendent.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TSPC 6-1983, f. & ef. 10-18-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 3-1989, f. & cert. ef. 7-31-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0025

Ongoing Renewal of Basic Teaching Licenses for Use in Elementary, Middle, and Junior High Schools Only

(1) The Basic Teaching License with a subject matter endorsement may be renewed for a period of three years for use in an elementary, middle, or junior high school only.

(2) Authorizations to teach are for preprimary through grade nine or for grades five through nine as appropriate for the endorsement.

(3) Experience or preparation required by this rule may be met by verification of one full year of experience or equivalent pursuant to OAR 584-048-0015(5); and

(4) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-82; TSPC 6-1983, f. & ef. 10-18-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0030

Renewal of Basic Licenses for Use in Special Education in Preprimary through Grade Twelve

(1) The Basic Teaching License with a special education endorsement may be renewed for three years if the teacher has completed 24 quarter hours of upper-division or graduate credit toward completion of a Standard Teaching License program.

(2) Basic special education endorsements are renewable only once; thereafter, the teacher must qualify for a Standard Teaching License with a standard special education endorsement.

(3) Notwithstanding subsection (1) above, a Basic Teaching License with a Severe Exceptional Need Learner endorsement may be renewed upon verification of one of the following during the life of the current license:

(a) One full year of experience or equivalent pursuant to OAR 584-048-0015(5); and

(b) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 1-1996, f. & cert. ef. 1-29-96; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0032

Renewal of Basic Licenses for Use in Grades Five through Twelve or in Preprimary through Grade Twelve — Special Provisions

(1) The Basic Teaching License with a subject matter endorsement(s) may be renewed for a period of three years for use in grades five through twelve when the applicant has completed additional preparation applicable to a Standard Teaching License.

(2) Basic Teaching Licenses with endorsements in art, foreign language, health, home economics, technology education, library or educa-

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tional media, music, physical education or reading may also be renewed for use in preprimary through grade twelve under this rule.

(3) To retain authorization for teaching in a high school, holders of subject matter endorsements must complete 24 quarter or 16 semester hours toward standard licensure for renewal of the first Basic Teaching License and must qualify for a Standard Teaching License upon expiration of the second Basic Teaching License.

(4) Subject matter endorsements are valid only for teaching the subject in elementary, middle, or junior high schools through grade nine, if requirements leading to standard licensure are not met.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 3-1988, f. & cert. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0035

Standard Teaching License Renewal

A Standard Teaching License may be renewed upon verification of one of the following during the life of the current license:

(1) One full year of experience or equivalent pursuant to OAR 584-048-0015; and

(2) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TSPC 6-1983, f. & ef. 10-18-83; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 1-1996, f. & cert. ef. 1-29-96; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0040

Professional Technical Teaching License Renewal

(1) The Three-Year Professional Technical Teaching License is not renewable. To obtain further professional technical licensure, the applicant must qualify for the Five-Year Professional Technical Teaching License upon expiration of the Three-Year Professional Technical License. (See OAR 584-042-0008 for requirements for the Five-Year Professional Technical License.)

(2)(a) The Five-Year Professional Technical Teaching License may be renewed upon joint application of the employing school board or school superintendent and the instructor and upon completion, during the life of the license, of 125 clock hours or the equivalent of continuing professional development (CPD).

(b) CPD may include, but is not limited to, college and university courses, community college courses, established workshops, or planned experiences in business and industry.

(c) If formal credit is granted, one quarter hour of credit equals 20 clock hours and one semester hour equals 30 clock hours of CPD.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78 except section (2)(a), ef. 1-1-80; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0065

Basic Personnel Service License Renewal

(1)(a) A Basic Personnel Service License may be renewed once for three years on recommendation of an institution offering an approved program for personnel service specialists.

(b) The recommendation shall be contingent upon satisfactory completion of nine quarter or six semester hours of the program leading to a Standard Personnel Service License.

(c) The additional preparation must be completed subsequent to issuance of the current license unless completion of the academic requirements for the Standard Personnel Service License has been verified prior to application for renewal of the Basic Personnel Service License.

(2) This preparation must be completed in the institution or in an inservice training program offered by a school district and for which credit is given by the institution or by some combination of both in accordance with Commission rules.

(3) At the time the second Basic Personnel Service License expires, the educator must have completed academic requirements for the Standard Personnel Service License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0067

Renewal of Personnel Service Licenses — Special Provisions

(1) An applicant who completes all requirements for the Standard Personnel Service License except the experience in Oregon schools will be granted a third Basic Personnel Service License without further preparation.

(2) Thereafter, a Basic Personnel Service License may be renewed upon verification of one of the following:

(a) One full year of experience or equivalent pursuant to OAR 584-048-0015(5); and

(b) Continuing Professional Development as required in OAR 584 division 90.

(3) An applicant who meets all requirements for the Continuing School Counselor or Continuing School Psychologist License except for school counseling/school psychologist experience in Oregon schools and documentation of the advanced competencies for the Continuing School Counselor or Continuing School Psychologist License may renew the Initial License contingent upon recent educational experience. However, the applicant must acquire the Continuing License within three years after accepting a contracted position of half time or more in an Oregon school.

(4) An applicant for renewal of a Basic, Initial, Standard, or Continuing License may submit verification of 12 months of service in the Armed Forces, the Peace Corps, or VISTA during the life of the current Basic or Initial License. An applicant who qualifies under this section is permitted one additional renewal of the Basic or Initial License before having to qualify for the Standard or Continuing License or is permitted one renewal of the Standard or Continuing License on the basis of this experience.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-84; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0070

Standard Personnel Service License Renewal

A Standard Personnel Service License may be renewed upon verification of one of the following during the life of the current license:

(1) One full year of experience or equivalent pursuant to OAR 584-048-0015(5); and

(2) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0085

Renewal of a Basic Administrative License

(1)(a) The Basic Administrative License with the administrator endorsement may be renewed twice for a period of two years each time, on the recommendation of an institution offering an approved program for preparation of administrators. The recommendation shall be contingent upon completion of nine quarter or six semester hours applicable to a Standard Administrative License.

(b) The additional preparation must be completed subsequent to issuance of the current license unless completion of the academic requirements for the Standard Administrative License has been verified prior to application for renewal of the Basic Administrative License.

(c) Use of the license is limited to serving as a vice principal.

(2) Upon assuming a principal position, the educator must hold a basic or standard administrator endorsement.

(3)(a) The Basic Administrative License with the superintendent endorsement may be renewed twice, for a period of two years each time, on the recommendation of an institution offering an approved preparation program for superintendents.

(b) The recommendation shall be contingent upon satisfactory completion of 12 quarter or 8 semester hours of the program applicable to a Standard Administrative or Continuing Administrator License. The additional preparation must be completed subsequent to issuance of the current license.

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(4) A Basic Administrative License may be renewed upon verification of one of the following during the life of the current license:

(a) One full year of experience or equivalent pursuant to OAR 584-048-0015(5); and

(b) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 2-1986, f. 4-18-86, ef. 1-15-88; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0090

Renewal of Administrative License — Special Provisions

(1) An applicant may submit verification of 12 months service in the Armed Forces, Peace Corps, or VISTA during the validity of the Basic, Initial, Standard, or Continuing Administrative License.

(2) An applicant who qualifies under this section is permitted one additional renewal of the Basic or Initial Administrative License before having to qualify for the Standard or Continuing Administrative License or is permitted one renewal of the Standard or Continuing Administrative License on the basis of this experience.

(3) An applicant who meets all requirements for the Standard Administrative License except the requirement of three years of experience in Oregon schools will be granted a fourth Basic Administrative License without further preparation.

(4) Thereafter, if the experience requirement has not been met, the applicant may renew the Basic Administrative License upon verification of the following:

(a) One full year of experience or equivalent pursuant to OAR 584-048-0015; and

(b) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0095

Standard Administrative License Renewal

A Standard Administrative License may be renewed for five years upon completion of:

(1) One full year of experience or equivalent pursuant to OAR 584-048-0015; and

(2) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 2-1986, f. 4-18-86, ef. 1-15-88; TS 8-1986, f. 12-19-86, ef. 1-15-87; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 4-1989(Temp), f. & cert. ef. 7-31-89; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0105

Five-Year Teaching License Renewal

A Five-Year Teaching License originally issued prior to October 15, 1965, may be renewed on verification of one of the following:

(1) One full year of experience or equivalent pursuant to OAR 584-048-0015; and

(2) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TSPC 6-1983, f. & ef. 10-18-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0110

Administrative License Renewal

An Administrative License originally issued prior to October 15, 1965 may be renewed on verification of one of the following: during the life of the current license:

(1) One full year of experience or equivalent pursuant to OAR 584-048-0015; and

(2) Continuing Professional Development as required in OAR 584 division 90.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 200 & 342.400

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 1-1988, f. 1-14-88, ef. 1-15-88; TS 6-1989, f. & cert. ef. 10-6-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0115

Reinstatement of Expired Licenses

(1)(a) For one year after expiration a license may be reinstated, or upgraded if it would not have been renewable, upon payment of the regular and late application fee and satisfaction of applicable renewal or upgrading requirements.

(b) In each case, the proviso that renewal experience or education must be gained during the life of the license is waived, and the applicable time span becomes the most recent three years.

(2) Thereafter, a renewable expired license may be reinstated as if renewed upon completion of renewal requirements, including applicable experience or education within the last three years, and payment of [the regular and late application fee. In addition to types of experience listed as applicable to renewal of a particular license, experience applicable to reinstatement of any teaching license includes 180 days of service as a substitute teacher on any valid license, or as a teaching assistant, or as a school volunteer under conditions detailed in OAR 584-048-0020. Unlike renewal experience, however, reinstatement experience may not include that in military service, the Peace Corps, or VISTA.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 13-2006, f. & cert. ef. 11-22-06

584-048-0120

Special Provisions for a One-Year Extension to Basic and Standard Licenses

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a one-year extension of a Basic or Standard License will be granted. The joint application shall be submitted by the prospective educator and the school district who is seeking to employ the applicant. The extension is valid for one year and is not renewable.

(2) The applicant must submit verification that either of the following conditions in have been met:

(a) The applicant is within 12 quarter or 8 semester hours of qualifying for either a Basic or a Standard License with the applicable endorsement(s); or

(b) The applicant has completed all academic requirements for either a Basic or a Standard License with the exception of passing scores on the specialty area test, if required.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.200 & 342.400

Hist.: TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0004

Procedure for Incomplete Application

(1) The Commission shall not process an initial application or an application for renewal or reinstatement that is not on the currently prescribed application form.

(2) The applicant shall be allowed 90 days after the date the date the application is received at the TSPC office to correct any deficiencies or incomplete items in an application and to resubmit a complete application without incurring additional fees.

Stat. Auth.: ORS 181 & 342

Stats. Implemented: ORS 181.525, 342.120 - 200 & 342.400

Hist.: TSPC 4-1998, f. & cert. ef. 6-5-98; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0005

Criteria for Granting Licenses

(1) The Executive Director may issue licenses, grant reinstatements, and renew licenses when each of the following conditions exists:

(a) All requirements established by law and rules have been met; and

(b) The applicant has attained at least eighteen years of age and has furnished evidence satisfactory to TSPC of fitness to serve as an educator.

(c) The Executive Director deems that any conviction for a felony, misdemeanor, or major traffic offense which the applicant may have had does not adversely affect his or her ability to serve as an educator.

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(2) The Director may delay action when a conviction has occurred and refer the application to an investigator for further information. The results of the investigation will be reported to the Commission once the investigation is complete.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0006

Criteria for Denying Issuance or Reinstatement of Licenses

(1) The Executive Director may deny issuance of a license, renewal of a license; or reinstatement of a license that has not been subject to discipline. The Executive Director may not deny reinstatement of a license that has been revoked and is subject to OAR 584-050-0015.

(2) Notice of denial and right to a hearing may be issued when any of the following conditions exist:

(a) The applicant submits a falsified application.

(b) The applicant lacks the academic or experience requirements established by statutes or rules.

(c) The applicant has been convicted of any felony, misdemeanor, or major traffic offense.

(d) The applicant has been convicted of a crime listed in ORS 342.143(3)(a), or any substantially equivalent offense under the laws of another state.

(e) The Executive Director has evidence that the applicant may lack fitness to serve as an educator.

(f) The applicant refuses to consent to criminal records checks or refuses to be fingerprinted upon request of TSPC.

(3) In a case not covered by this rule, the Executive Director will refer the application to the Commission for action.

Stat. Auth.: ORS 181 & 342
Stat. Implemented: ORS 181.525, 342.120 - 200 & 342.400
Hist.: TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TS 6-1993, f. & cert. ef. 12-7-93; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1998, f. & cert. ef. 6-5-98; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0009

Procedures for Disciplinary Action in Certain Cases

(1) The Executive Director may issue a notice of hearing and statement of charges, on behalf of the Commission, against an educator who has been convicted of a crime listed in OAR 584-020-0040(1) or who has admitted in the course of judicial proceeding or criminal prosecution conduct constituting a crime listed in OAR 584-020-0040(1).

(2) The Executive Director may issue a notice of opportunity for hearing to an educator when the Executive Director has information that the educator has violated any term or condition of probation. Contested case hearings shall be held in accordance with OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1994, f. & cert. ef. 1-25-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0012

Criteria for Denial of Licensure Based on Conviction for Crimes

(1) An applicant for the initial Oregon license or for reinstatement of an Oregon license that has been lapsed for three years or more must submit to a fingerprint and criminal background check.

(2) If the applicant has been convicted of any of the crimes listed in ORS 342.143, the applicant shall be denied licensure pursuant to OAR 584-050-0009.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525 & 342.223
Hist.: TS 2-1994, f. & cert. ef. 7-19-94; TS 5-1996, f. & cert. ef. 9-24-96; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0015

Reinstatement of Suspended, Revoked, or Surrendered License or Registration Generally

(1) Notwithstanding OAR 584-050-0017(1), a suspended, revoked or surrendered license or charter school registration may be reinstated if the applicant is otherwise qualified, meets recent educational experience requirements in effect at the time of reinstatement, and complies with the other applicable provisions of rules in this division.

(2) Licenses or registrations that are revoked, suspended, or surrendered and eligible for reinstatement shall be reinstated for the same period

of time as an application for a new or renewed license or registration of that type.

(3) The fee to reinstate a license is in addition to the application fee required to issue a new license. See OAR 584-036-0055.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 3-1978, f. 7-24-78, ef. 1-1-79; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-2000, f. & cert. ef. 7-17-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0016

Reinstatement of Suspended License, Registration, or Right to Apply for a License or Registration

(1) Six weeks prior to the expiration of the period of suspension, an educator may apply to have a suspended license or registration reinstated. However, no reinstatement shall be effective until expiration of the period of suspension.

(2) An application for reinstatement of a suspended license, registration or suspension of right to apply for a license or registration must include:

(a) A C-1 application form;

(b) A fee pursuant to OAR 584-036-0055; and

(c) A personal notarized affidavit, together with requisite and additional documentation, sufficient to establish convincingly that all terms and conditions of the suspension have been met satisfactorily and fulfilled.

(3) If the Director is satisfied that the terms and conditions have been met successfully and fulfilled, the Director shall reinstate the suspended license, registration or right to apply for a license or registration.

(4) If the Director is not satisfied the terms and conditions have been met, the Director shall make a recommendation to the Commission in Executive Session to not reinstate the license.

(5) Before taking action on the Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in Executive Session. The decision to schedule or not to schedule an informal meeting is entirely discretionary.

(6) Following the Commission meeting if the Commission agrees with the Director's recommendation to deny the reinstatement, the Director shall mail a copy of the recommendation of denial to the educator and notice of right to a hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0018

Reinstatement of Revoked License, Registration, or Right to Apply for a License or Registration

(1) Any revocation for conviction for crimes listed in ORS 342.143(3) is permanent and the license or registration is not eligible for reinstatement. All other revocations of a license, registration or right to apply for a license or registration are eligible for application for reinstatement.

(2) Application for reinstatement of a license or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired for the license, registration or right to apply for a license or registration.

(3) The burden shall be on the educator to establish fitness for reinstatement.

(4) The application for reinstatement must include:

(a) A C-1 application form;

(b) A fee pursuant to OAR 584-036-0055;

(c) A personal notarized affidavit attesting that:

(A) All the conditions of the order for revocation have been met; and

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure; and

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for renewal or reinstatement of a license or registration of that type.

(5) All decisions to reinstate a revoked license will be made by the Commission in Executive Session.

(6) If the Director is satisfied that the terms and conditions have been met successfully and fulfilled, the Director shall recommend reinstatement of the revoked license, registration or right to apply for a license or registration.

(7) If the Director is not satisfied the terms and conditions have been met, the Director shall make a recommendation to the Commission in Executive Session to not reinstate the license.

(8) Before taking action on the Director's recommendation, the Commission may schedule an informal meeting between the educator and

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the Commission in Executive Session. The decision to schedule or not to schedule an informal meeting is entirely discretionary.

(9) Following the Commission meeting if the Commission agrees with the Director's recommendation to deny the reinstatement, the Director shall mail a copy of the recommendation of denial to the educator and notice of right to a hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0019

Termination of Probation

(1) Promptly after the full term of probation has been completed, the educator must submit to TSPC a personal affidavit, together with requisite and additional documentation, sufficient to establish convincingly that all terms and conditions of the probation have been met successfully and fulfilled.

(2) If the materials submitted for termination of probation are satisfactory, the Executive Director shall terminate the probation. If materials are incomplete or not found to be satisfactory, the Executive Director shall make a recommendation to the Commission in Executive Session at the next regularly scheduled Commission meeting.

(3) Before taking action on the Director's recommendation, the Commission may schedule an informal meeting between the educator and the Commission in Executive Session. The decision to schedule or not to schedule an informal meeting is entirely discretionary.

(4) If the Commission does not terminate the probation, the educator shall be entitled to a contested case hearing pursuant to ORS 342.175 and OAR 584-019-0002.

(5) The Executive Director may issue a charge and notice of opportunity for hearing to an educator on probation when the Director has information that any term or condition of probation may have been violated. If the educator is unwilling to accept disciplinary action proposed by the Executive Director and approved by the Commission, the educator shall be entitled to a contested case hearing under ORS 342.175 and OAR 584-019-0002.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0020

Suspension for Resignation in Violation of Contract

(1) If a school board charges a teacher with violation of a contract under ORS 342.553, for failure to provide sixty days' notice prior to resignation, the Board must submit all of the following documents:

(a) A copy of the Board's resolution containing the teacher's notice of resignation and the Board's request for suspension of licensure;

(b) A copy of the teacher's contract;

(c) A copy of the applicable collective bargaining agreement; and

(d) A statement from the superintendent describing the provisions of the agreement for resignations.

(2) Upon receipt of the information specified in section (1) of this rule, the Executive Director will notify the teacher of suspension of his or her license. This notice of suspension contains the following statement: "You may appeal this action in writing within twenty days after the date of this notice. If an appeal is made to the Commission, suspension of your teaching license shall be stayed until the Commission reaches its decision."

(3) If the Commission decides that the charge has been proven and the justification for violating the contract is not satisfactory, the Commission will suspend the teacher's license for the remainder of the school year. The decision of the Commission is final.

(4) A license which has been suspended for violation of contract may be reinstated after the period of suspension upon application and payment of the fee to reinstate a suspended license under OAR 584-036-0055.

Stat. Auth.: ORS 342
Stat. Implemented: ORS 342.553
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 1-2000(Temp), f. & cert. ef. 1-18-00 thru 7-11-00; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0022

Suspension for Failure to Obtain Valid First Aid Card

(1) After a person receives the first license in Oregon, he or she must secure a recognized first aid card within 90 days. Cardiopulmonary resuscitation (CPR) training alone does not meet this requirement. Failure to hold a current first aid card within this period of time constitutes grounds for suspension of the license.

(2) First aid cards recognized by TSPC include, but are not limited to, the following: Standard First Aid and Convalescent Patient Aid Cards issued by American Red Cross; First Aid, First Responder, and Medical Self Help Cards issued by the U.S. Bureau of Mines; U.S. Department of Defense; U.S. Department of Human Resources; U.S. Department of Interior; U.S. Department of Labor; Medic First Aid, Pediatric Medic First Aid, and First Aid Cards issued in Oregon by Childhood Emergencies Workshops; any Oregon Fire District; CPR Lifeline Emergency Life Support; Emergency Medical Planning; any accredited community college, college or university.

(3) Programs wishing to seek approval to have their first aid card recognized by the Commission shall submit documentation of the program and verification that the program is recognized by the American Red Cross to the Coordinator of Teacher Licensure. The Coordinator will notify the program whether they have been accepted to issue first aid cards for the purposes of this rule.

(4) A current Emergency Medical Technician, Nursing, or Nursing Assistant license issued by Oregon or another state may be submitted as evidence of recognized first aid training instead of a first aid card.

(5) A person with a physical limitation or disability may submit a statement signed by an approved first aid instructor verifying that the person completed a first aid course, but was unable to meet the competencies required by the course due to the physical limitation or disability. The statement constitutes a valid card for purposes of this rule and ORS 342.126.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.126
Hist.: TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 3-1989, f. & cert. ef. 7-31-89; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0027

Surrender of License or Registration

(1) An educator may voluntarily surrender an Oregon license, charter school registration, or endorsement prior to its expiration date if the Commission finds that such action is in the best interest of the public.

(2) The surrender of a license will not stay an investigation or possible future commission action against the license, charter school registration or the educator.

(3) Where the Commission has grounds for disciplinary action against an educator under ORS 342.175 through 342.180 and the educator offers to surrender the license or charter school registration, the Executive shall require the educator to stipulate to pertinent facts and to the revocation or suspension of the license or charter school registration as a condition of the Commission's acceptance of the surrender of the license or charter school registration. All stipulated settlement agreements are subject to the Commission's approval.

(4) If the Commission and the educator cannot agree on a stipulation, the Commission will proceed with disciplinary proceedings.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200
Hist.: TS 6-1980, f. & ef. 12-23-80; TS 1-1982, f. & ef. 1-5-82; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0035

Must be Licensed to Begin Employment

In all cases, any person hired to fill a position in a school district, or education service district, for which a license is required pursuant to ORS Chapter 342, must hold a valid license appropriate for the assignment on the date the employment begins. An expedited emergency license may be valid in lieu of a regular license, but the license must be issued prior to beginning employment.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 200 & 342.400
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 1-1980, f. & ef. 3-19-80; TS 1-1982, f. & ef. 1-5-82; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0040

Expiration of Licenses and Continued Use of Expired Licenses

(1) A license expires on the date posted on the license unless an application for renewal is received by TSPC prior to that date. If a license expires, reinstatement requirements, including possible late fees must be met for further licensure.

(2) In spite of the expiration date, a license continues to be valid for 120 days after the date of expiration for purposes of ORS 342.173 (forfeiture for non-licensed personnel).

(3) Unless an application for renewal and fee are received prior to the expiration date on the license, the educator is not eligible to continue employment under the license.

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Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0042

Addresses and Uses of Addresses

(1) A license holder must report changes of residential and email addresses to the Commission within 90 days of such change.

(2) Changes of address may be made by telephone, in writing, or email notification. Changes of address must include the educator's name, social security number, and old and new residence and email addresses.

(3) All licenses, correspondence or notices sent by the Commission will be sent to the last known residential address on file for the educator. The Commission is not responsible if the educator has moved and has failed to notify the Commission of any new address and that failure to notify resulted in the educator's failure to receive important licensure or discipline-related information.

(4) The Commission may send notice for opportunity for a hearing pursuant to ORS 342.175 to an educator at the address the educator provides in writing to the Commission. The Commission may complete service of notice under ORS 342.143(4) or 342.176(5), by mailing the notice through certified mail addressed to the educator's address on file with the Commission and such mailing shall be deemed conclusive evidence of service.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TS 2-1990, f. 6-1-90, cert. ef. 6-14-90; TS 1-1992, f. & cert. ef. 1-15-92; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 13-2006, f. & cert. ef. 11-22-06

584-050-0043

Name Changes

(1) Notification of a new married or assumed name must be made within 90 days of the change and must be in writing. The notice must include the educator's old and new names, social security number, and one of the following documents:

(a) Employing superintendent's signature on the Professional Educational Experience Report Form verifying the change of name; or

(b) Photocopy of the marriage certificate or court order establishing the change of name; or

(c) Any other legal document indicating the name change including but not limited to: a driver's license, credit card, social security card; or

(d) Any other credible evidence acceptable to the Commission.

(2) If the educator reverts to a name previously established with the Commission, the notification must be in writing and must include the educator's old and new names and social security number. Documentation from a court is not required, but other evidence that the educator is using the former name must be supplied.

(3) If a new license is requested bearing the new name, an application and duplicate license fee are required.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.200 & 342.400
Hist.: TSPC 13-2006, f. & cert. ef. 11-22-06

584-060-0022

Continuing Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Teaching License.

(2) This license is issued for five years and is renewable repeatedly under conditions specified below.

(3) This license is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Teaching License an applicant must:

(a) Meet or complete all requirements of the Initial Teaching License; and

(b) Hold a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; and

(c) Have taught five years of at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0160 by completing one of the following:

(A) A TSPC approved Continuing Teaching License program offered by a college or university; or

(B) A doctorate degree in education from a regionally accredited institution; or

(C) Certification by the National Boards of Professional Teaching Standards; or

(D) Certificate of Clinical Competence awarded by the American Speech and Hearing Association for those holding a communication disorders endorsement; or

(E) A commission-approved school district program; or

(F) Any commission-approved professional assessment.

(G) A Professional Certificate issued by the State of Washington.

(5) The Continuing Teaching License may be renewed for five years upon completion of:

(a) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience; or

(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(b) A professional development plan in accordance with OAR 584-090.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.165, 342.125 & 342.138
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 13-2006, f. & cert. ef. 11-22-06

584-060-0051

Teaching Authorization Levels

(1) Teachers must prepare for one or more authorization levels at the early childhood, elementary, middle or high school levels in addition to satisfying the Objectives for Initial Teaching License in OAR 584-017-0100.

(2) Demonstrated competency at these developmental levels indicates the teacher knows, understands and can apply developmental psychology and learning theory appropriate to student age and grade within cultural and community contexts, and can apply an articulated philosophy of education capable of ensuring that students at a particular authorization level will learn to think critically and integrate knowledge across disciplines.

(3) A first Transitional or Initial Teaching License is authorized for levels on the basis of professional education, experience, previous licensure, and specialized academic course work.

(4) Early Childhood Education (ECE) Authorization: The early childhood education (ECE) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in preprimary through grade four (4) in a school designated as a pre-primary school, a primary school, or an elementary school. (See, OAR 584-017-0110 for ECE authorization competencies and OAR 584-017-0175 for adding an authorization level to a license.)

(a) The ECE authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in preprimary through grade four (4) in a school designated as a preprimary school, a primary school, or an elementary school.

(b) The ECE authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(5) Elementary (ELEM) Authorization: The Elementary (ELEM) authorization level requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades three (3) through eight (8) in an elementary classroom or in a self-contained 5th or 6th grade classroom in a middle school. (See, OAR 584-017-0120 for ELEM authorization competencies and OAR 584-017-0175 for adding an authorization level to a license.)

(a) The ELEM authorization level is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades three (3) through eight (8) in a school designated as an elementary school

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with the Oregon Department of Education; or in a self-contained 5th or 6th grade classroom in a middle school.

(b) The ELEM authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(c) The ELEM authorization is valid for assignments in special education in grades three (3) through eight (8) in a school designated as an elementary school; middle school; or junior high school.

(6) The Middle-Level (ML) Authorization: The Middle-Level (ML) authorization level for candidates seeking multiple subjects endorsement requires completion of an approved program including passing the commission-approved multiple subjects examination (MSE) together with completion of a practicum experience with students in one or more grades between grades five (5) through eight (8). Additionally, the ML authorization requires in-depth knowledge of one subject-matter or specialty endorsement appropriate to middle-level teaching assignments. (See, OAR 584-017-0130 for further ML authorization requirements; 584-060-0062 for ML endorsements; and 584-017-0175 for adding an authorization level to a license.)

(a) The ML authorization is valid for any multiple subjects teaching assignment, except assignments in subsection (b) below, in grades five (5) through eight (8) of a school designated as an elementary, middle, or junior high school.

(b) The ML authorization level with a multiple subjects endorsement is not valid for assignments requiring specialization endorsement such as art, music, ESOL, ESOL/bilingual, physical education, adaptive physical education, or special education under OAR 584-060-0071 without the accompanying specialty endorsement on the license.

(7) The high school authorization level requires completion of an approved program and qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the required Commission-approved test or tests of subject mastery in the endorsement area, together with completion of a practicum experience with students in one or more grades between grades nine (9) through twelve (12). The high school (HS) authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed, in grades seven (7) through twelve (12) of a school designated as a high school. (See OAR 584-017-0140 for HS authorization requirements; 584-060-0062 for HS endorsements; and 584-017-0175 for adding an authorization level to a license.)

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06

584-060-0071

Endorsements Requiring Multiple Authorization Levels

(1) There are several specialties in which endorsement of a teaching license must apply to more than one level of authorization.

(a) Multiple-subject endorsement is not required at any level for these specialties, meaning that a subject mastery test is required, but the Multiple Subjects Examination (MSE) is not. However, passage of the MSE alone, will not qualify an applicant for addition of the multiple subjects endorsement on licenses endorsed in specialty areas provided for under this rule.

(b) Passage of the MSE may be necessary in order for a newly hired teacher with a special education or an ESOL endorsement to meet the definition of highly qualified under the federal No Child Left Behind Act (NCLBA) or under the Individuals with Disabilities Education Improvement Act (IDEIA) in the position in which they are hired.

(2)(a) Teachers of the following specialty areas must qualify, through approved academic preparation in the desired authorization levels and through supervised work experience or student teaching, for authorization at any of the following two levels: early childhood and elementary; or elementary and middle-level; or middle-level and high school:

- (A) Art;
- (B) Bilingual education with English for speakers of other languages (ESOL);
- (C) ESOL;
- (D) Music;
- (E) Physical education;
- (F) Adaptive physical education;
- (G) Reading; and
- (H) Special education.

(b) Candidates completing a practica experience at either early childhood or elementary and at either middle or high school level shall qualify for authorization for pre-primary through grade twelve.

(c) Teachers of special education must complete preparation in the full continuum of disabilities: mild, moderate, and severe.

(3) Educational media specialists must qualify, through approved academic preparation and through supervised work experience or student teaching, for authorization at all four levels: early childhood, elementary, middle-level, and high school.

(4)(a) Endorsements in the following areas must qualify, through approved academic preparation and through supervised work experience or student teaching, for authorization at all four levels: early childhood, elementary, middle-level, and high school:

- (A) Communication disorders;
- (B) Hearing impairments; or
- (C) Visual impairments.

(b) Teachers for the visually impaired must demonstrate proficiency in reading and writing Braille by obtaining a certificate of competency from the National Library Service for the Blind and Physically Handicapped or an equivalent certificate currently approved by the commission.

(c) Teachers for students with communication disorders may obtain authorization at all four levels by earning a certificate of clinical competence from the American Speech and Hearing Association or successor approved by the commission.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 13-2006, f. & cert. ef. 11-22-06

584-080-0001

Purpose

(1) These rules establish an administrator licensure program that is designed to strengthen Oregon educational leadership. Specifically, Oregon licensed administrators will be instructional leaders with the knowledge, skills and abilities to close the achievement gap, implement visionary literacy programs and demonstrate exemplary instructional leadership. Oregon administrators will be leaders in demonstrating culturally competent strategies to ensure an equitable education for every Oregon student. Oregon-approved programs and licensure have the following characteristics:

(2) The administrator licensure standards are designed to recognize the developmental levels of students;

(3) The Initial Administrator License requires at least three years of properly assigned licensed experience in public schools, regionally accredited private schools, registered private schools or other federal or state-regulated schools. Additionally, programs for the Initial Administrator License will emphasize a school-level context.

(4) The Continuing Administrator License requires demonstrated competency in a broad spectrum of Oregon-specific administrator skills and experience at both the building and district levels. Additionally, programs for the Continuing Administrator License will emphasize a district level context.

(5) Continuing professional development is integral to continuous administrator licensure.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-080-0002

Definitions for Division 80

(1) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license. A copy of the C-1 can be found on TSPC's Web page at: www.tspc.state.or.us.

(2) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. See OAR 584-036-0081.

(3) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005.

(4) "Approved Programs:" An Oregon program of educator preparation leading to licensure approved by TSPC and offered by a regionally

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accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(5) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(6) "Out of State Licenses or Certificates:" A license or certificate valid for full-time employment which is at least equivalent to the Oregon license being requested and is issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(7) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(8) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(9) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license. See OAR 584 division 48.

(10) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(11) "Year of Experience:" A period of at least eight (8) consecutive months of full-time work or two (2) consecutive years of one-half time or more while holding a license valid for the assignment.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232
Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-080-0012

Initial Administrator License (IAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Administrator License.

(2) The Initial Administrator License is valid for three (3) years and may be renewed under the conditions set forth in subsections below.

(3) The Initial Administrator License is valid for school administration at all age or grade levels in any administrative position. This license is also valid for substitute teaching at any level in any specialty. (See OAR 584-060-0181 for explanation of Substitute Teaching.)

(4) To be eligible for an Initial Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Licensed Experience: Have three (3) academic years of experience as a full-time licensed educator on any license appropriate for the assignment in:

(A) A public school or regionally accredited private school in any state or other U.S. jurisdiction; or

(B) In one or more of the following schools in Oregon:

(i) An education service district school;

(ii) A state-operated or state-supported school;

(iii) A federal school;

(iv) A private elementary or secondary school registered by the state Department of Education; or

(v) A private proprietary career school licensed by the superintendent of public instruction.

(c) Master's Degree: Hold a master's or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree;

(d) Approved Administrator Program: Complete, as part of the master's degree or separately, an initial graduate program in school administration at an institution approved for administrator education;

(A) A candidate for initial licensure who has completed an administrator preparation program outside the state of Oregon must:

(i) Have completed at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit in school administration or educational leadership; and

(ii) Receive a passing score on tests of knowledge of Oregon school law and finance at the conclusion of or in lieu of a course or courses approved by the commission.

(e) Civil Rights: A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission. If the applicant is making first application for the Initial Administrator License from out-of-state, an applicant may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement.

(f) Fingerprints: Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(g) First Aid Card: Hold a valid first aid card. An emergency license will be issued to the educator for up to ninety (90) days until the applicant has demonstrated possession of a valid first aid card; and

(h) Recency: Satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(A) Completion of an approved administrator education program; or

(B) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one (1) academic year as a full-time licensed educator or two (2) consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(C) Receipt of six (6) semester hours or nine (9) quarter hours of academic credit, germane to administrator licensure, from a regionally accredited college or university.

(5) Renewal: The Initial Administrator License may be renewed up to two (2) times if the applicant makes progress toward completion of the Continuing Administrator License by completing at least six (6) semester hours or nine (9) quarter hours of academic credit in an approved Continuing Administrator License Program upon each renewal. A transcript of the completed coursework is required for renewal. (See OAR 584-048-0090 for additional "Special Provisions" which may apply to renewing an Initial Administrator License.)

(6) Reinstatement for Administrator Experience: An applicant may reinstate an expired Initial Administrator License for one (1) three-year period for the purposes of completing the administrative experience requirements for the Continuing Administrator License under the following conditions:

(a) The applicant has completed all requirements for the CAL except for the administrative experience required;

(b) The application includes a request from a district for reinstatement; and

(c) The applicant demonstrates educational recency within the three (3) years prior to the application for reinstatement of the license.

(7) Incomplete CAL Programs: Initial Administrator License holders who are unable to complete the academic requirements for the Continuing Administrator License within nine (9) years after the Initial Administrator License was first granted may only take an administrator position upon joint application with an employing district requesting a Restricted Transitional Administrator License.

(8) Licenses issued prior to October 13, 2003: All Initial Administrator Licenses for positions other than a Superintendent issued after January 1, 1999 and prior to and including October 13, 2003 have ten (10) years to complete the requirements of the Continuing Administrator License. Initial Administrator Licenses issued after October 13, 2003, with the exception of Superintendents subject to subsection (9) below, have nine (9) years, or two (2) renewal cycles to complete the requirements of the Continuing Administrator License.

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(9) Superintendency on the Initial Administrative License: The Continuing Administrator Licensure program must be completed within the three (3) years following the next renewal of the Initial Administrator License if the holder of an Initial Administrator License takes a position as a Superintendent at any time within the life of the Initial Administrator License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120, 342.147, 342.165
Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-080-0022

Continuing Administrator License (CAL)

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Administrator License.

(2) The Continuing Administrator License is issued for five (5) years and is renewable repeatedly under conditions specified below.

(3) The Continuing Administrator License is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Administrator License, an applicant must satisfy all of the following provisions within this subsection. The applicant must:

(a) Educator Fitness: Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Master's Degree: Hold a master's degree or higher;

(c) Program of Advanced Competency: Complete beyond both the master's degree and beyond the initial graduate program in school administration, an advanced program in administrative competencies consisting of at least eighteen (18) semester hours or twenty-seven (27) quarter hours of graduate credit or the equivalent.

(A) Advanced Program Waiver: Exceptionally, the applicant may qualify for waiver of the advanced institutional program or the assessment of advanced competencies by having a regionally accredited doctor's degree in school administration or educational leadership;

(B) Out-of-State Advanced Program:

(i) If the eighteen (18) semester hours or twenty-seven (27) quarter hours beyond the master's degree, required in subsection (c) above, was completed out-of-state, no additional validation will be required so long as the applicant also has five (5) years of administrative experience on any unrestricted out-of-state administrator license.

(ii) The out-of-state experience may be cumulative and need not be continuous in one state.

(iii) If the applicant does not have five (5) years of administrative experience, the advanced program will be evaluated by the Commission to determine equivalency. The evaluation will be based upon an established rubric representing the equivalent programs offered by Oregon approved administrator preparation programs.

(iv) After TSPC evaluation, additional coursework may be required to acquire the Continuing Administrator License.

(d) First Aid Card: Hold a valid first aid card. An emergency license will be issued to the educator for up to ninety (90) days until the applicant has demonstrated possession of a valid first aid card; and

(e) Fingerprints: Furnish fingerprints in the manner prescribed by the commission; and (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(f) Civil Rights: A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission. If the applicant is making first application for the Initial Administrator License from out-of-state, an applicant may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. An emergency license will be issued for ninety (90) days during which time the applicant must complete the civil rights requirement;

(g) Professional Knowledge Test: A passing score on a test of professional administrator knowledge or completion of alternative assessment pursuant to OAR 584-052-0030 et seq. approved by the Commission.

(h) Experience on an Administrative License: Have three (3) years of one-half time or more experience on any administrator license appropriate for the assignment in a public or accredited private school setting.

(5) The Continuing Administrator License may be renewed for five (5) years upon completion of experience and professional development under the following circumstances:

(a) Completion of licensed education experience during the life of the license under any of the following conditions:

(A) One (1) academic year as a full-time licensed educator on any valid Oregon license appropriate for the assignment;

(B) Two (2) consecutive years as a half-time licensed educator; or

(C) 180 days of substitution in administration or teaching, on any license appropriate for the assignment, in any K-12 public or private school or district registered or licensed by the Oregon Department of Education; and

(b) Completion of continuing professional development requirements in accordance with OAR 584-090-0001 et seq.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147, 342.165

Hist.: TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-080-0031

Continuing Superintendent License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Superintendent License.

(2) The Continuing Superintendent License is issued for five years and is renewable repeatedly under conditions specified below.

(3) The Continuing Superintendent License is voluntary and is valid for school administration at all age or grade levels in any position and for substitute teaching at any level in any specialty.

(4) To be eligible for a Continuing Superintendent License, an applicant must have:

(a) Completed, beyond the advanced administrator program specified in OAR 584-080-0022 an advanced education leadership or school administration program consisting of at least 12 semester hours or 18 quarter hours of graduate credit or the equivalent; or in the alternative, hold a regionally accredited doctor's degree in school administration or educational leadership.

(A) Completion of the advanced program must be verified by the institution offering the program or through official transcripts.

(B) Doctorates in programs other than school administration or educational leadership do not qualify for this license.

(b) Three years of half time or more experience on a transitional, initial, continuing, or out-of-state administrative license valid for the assignment functioning as a superintendent in a public school district, education service district, or regionally accredited private school system.

(5) The Continuing Superintendent License may be renewed for five years upon completion of experience and professional development under the following circumstances:

(a) Completion of licensed education experience during the life of the license under any of the following conditions:

(A) One academic year as a full-time licensed educator on any valid Oregon license appropriate for the assignment;

(B) Two consecutive years as a half-time licensed educator; or

(C) 180 days of substitution in administration or teaching, on any license appropriate for the assignment, in any K-12 public or private school or district registered or licensed by the Oregon Department of Education; and

(b) Completion of continuing professional development requirements in accordance with OAR 584-090-0001 et seq.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 10-2006(Temp), f. 6-15-06, cert. ef. 7-1-06 thru 12-27-06; TSPC 13-2006, f. & cert. ef. 11-22-06

584-100-0006

Definitions

These definitions apply only to division 100.

(1) "Advanced Credential or Advanced Certification" for teachers holding middle level or secondary authorization levels:

(a) A Continuing Teaching License; or

(b) A Standard Teaching License with a Standard endorsement in the core academic subject; or

(c) A certificate from the National Board for Professional Teaching Standards in the core academic subject area.

(2) "Bachelor's Degree":

(a) A degree obtained from a regionally accredited institution in the United States; or

(b) A degree from a foreign institution that is appropriately accredited as affirmed through the Oregon Office of Degree Authorization; or

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(c) A higher degree in the arts or sciences or an advanced degree in the professions from a regionally-accredited institution may validate a non-regionally accredited bachelor's degree.

(3) "Complete School Year": Any related teaching assignment for 135 instructional days in a school year. Exceptions may be appealed to the Executive Director pursuant to OAR 584-052-0027.

(4) "Core Academic Subjects":

- (a) English (Language Arts);
- (b) Reading or Language Arts (Reading or Language Arts)
- (c) Mathematics (Basic or Advanced Mathematics);
- (d) Science (Integrated Science, Biology, Chemistry, or Physics);
- (e) Foreign Languages (Spanish, French, German, Russian, Japanese, or Latin);

- (f) Civics and Government (Social Studies);
- (g) Economics (Social Studies);
- (h) Arts (Art, Music, or Drama);
- (i) History (Social Studies);
- (j) Geography (Social Studies).

(5) "Elementary Classroom": Any combination of self-contained classrooms in grades preprimary through eight in any school identified as an elementary school pursuant to OAR 581-022-0102(25).

(6) "Elementary Teacher": An educator teaching in a self-contained classroom grades preprimary through eight.

(7) "Middle-level Classroom": Any classrooms in grades seven or eight organized departmentally by subject matter.

(8) "New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or regionally accredited private school less than three complete school years. (See definition of "Complete School Year" above.)

(9) "Newly Hired Teacher": A teacher hired after the first day of the 2002-2003 school year in a Title IA program or Title IA school-wide program. The teacher is not considered "newly hired" if the teacher is already employed in the district and transferred into a Title IA program or Title IA school-wide program.

(10) "Not New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or private school for a total of three or more complete school years. (See definition of "Complete School Year" above.)

(11) "Rigorous State Test":

- (a) The Multiple Subjects Assessment for Teachers (MSAT) test for elementary or middle level; the ORELA Multiple Subjects Examination; or
- (b) The appropriate Praxis II or NTE Subject-matter test for middle-level and high school; or

(c) Satisfaction of the TSPC alternative assessment procedure, pursuant to OAR 584-052 0030 et seq.; or

(d) Another state's subject-matter licensure exam designated as a "rigorous state test."

(12) "Secondary School or high school":

(a) A combination of grades ten through twelve in districts providing a junior high school containing grade nine; or

(b) Any combination of grades nine through twelve organized as a separate unit; or

(c) Grades nine through twelve housed with grades preprimary through twelve.

(13) "Self-contained Classroom": An assignment for teaching in grades preprimary through eight in which the teacher has full responsibility for the curriculum.

(14) "Subject-matter competency": Subject matter competency may be demonstrated through any one of the following:

(a) Passing the appropriate "rigorous state test;" or

(b) Having a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(c) Having coursework equivalent to a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(d) Having a graduate degree in the subject matter area (does not apply to elementary endorsements or authorizations); or

(e) Satisfying the Highly Objective Uniform State Standard of Evaluation (HOUSSE) requirements set forth in these rules if have taught three complete years or more.

(15) "Undergraduate Major or Coursework Equivalent to a Major": Thirty-four (34) quarter hours or twenty-three (23) semester hours of undergraduate or graduate coursework in core academic subject matter numbered 100 level or above, from a regionally accredited college or university. (See definition of "Bachelor's Degree" for undergraduate credits obtained from an unaccredited college or university.)

Stat. Auth. ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 13-2006, f. & cert. ef. 11-22-06

Travel Information Council Chapter 733

Rule Caption: Adopt process to notify and involve businesses and interested parties in annual review of fees.

Adm. Order No.: TIC 3-2006

Filed with Sec. of State: 11-24-2006

Certified to be Effective: 11-24-06

Notice Publication Date: 10-1-06

Rules Amended: 733-030-0065, 733-030-0135, 733-030-0350

Subject: The Travel Information Council held a quarterly meeting on August 24, 2006. The council proposed rule changes to adopt a clear process for notifying and involving motorist service businesses and interested parties in an annual review of proposed Schedule of Fees. A notice of fee changes will be sent to each business with sign permits and interested parties followed by a 30 day comment period and a scheduled public hearing. Having reviewed written comments and holding a public hearing, the Council voted to adopt the changes at the November 17, 2006 meeting.

Rules Coordinator: Angela Willhite—(503) 378-4508

733-030-0065

Fees and Installation

(1) The Council may request the Department to furnish, erect and maintain sign panels, supplemental sign panels and trailblazers at locations specified by the Council.

(2) Upon the approval of an application for a logo or logos to be affixed to a sign panel, the Council shall request and authorize installation of sign panels from ODOT, the TIC sign crew or a TIC contractor as determined appropriate by TIC staff. The Council shall provide the installer with all necessary information to erect the sign panels, supplemental sign panels, trailblazers or install the logo.

(3) The Council shall notify applicant promptly when a permit application has been approved to allow the applicant sufficient time to furnish the necessary number of logos. If the Council is notified that a qualified motorist service business has failed to furnish its logos by the specified date given by the Council, or that the logo signs furnished are not in compliance with specifications provided by the Council it may cancel the permit and refund the amount paid in advance by the applicant.

(4) Fees. The annual permit fee for each logo placed on a sign panel shall be based on the traffic volume and population density of the area where the highway is located. Fees will be reviewed and established annually by the Council pursuant to ORS 377.825.

(5) Fees will be charged according to the Council's current Schedule of Fees. When fees are reviewed for potential changes, the Council will send a notice of fee changes to each business with a Logo sign permit and to all interested parties requesting the information. Businesses and interested parties will have 30 days to respond in writing and/or attend a public hearing scheduled after the 30 day time period. The Schedule of Fees will also be available on the Council web site for personal download or by mail upon request.

(6) In accordance with OAR 733-030-0055(10), permit fees are payable with the contract and the permit shall be automatically renewed upon receipt of the entirety of the appropriate annual fee on or before the payment due date stated in the Council's invoice.

(7) Permit fees for FOOD facilities that display the logos of two distinct brand FOOD services on one FOOD logo plaque shall be 1 1/3 fee for a regular FOOD logo charged in that area. Permit fees for GAS facilities that include a FOOD facility on their logo plaque, shall be 1 1/3 the fee for a regular GAS logo charged in that area. Payment of fees is the responsibility of the GAS facility, which will be designated as the primary facility.

(8) Permit fees for Dual Services signing shall be 1 1/3 the fee for one service logo charged in that area.

(9) The Council may charge a fee when a facility desires to replace their logo plaques due to a redesign of the logo design, color or a change in the registered business name of \$75 per plaque per location. If a facility desires to move their logo plaque from their current position on a primary sign panel to a vacant position on the same panel, the Council may charge a relocation fee of \$150 per plaque per location. When a vacancy occurs on a primary sign panel, the Council will give written notification to all businesses with logo plaques on that panel to respond within seven (7) days of

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any preference they may have for relocating their logo to a vacant position on that panel. If two or more businesses indicate preference for the same vacant space, the business with longest seniority on that panel will be offered the first option to relocate their logo plaque.

(10) Nonpayment of annual fees will result in the removal of signs, and the sign location will be offered to the next qualified motorist service business desiring that sign location. Should the signs be reinstalled after removal due to nonpayment of fees, the Council shall charge a maintenance fee of \$200 per sign reinstalled, along with annual fees due.

(11) In case of removal of a sign panel or supplemental sign panel, the permit fee for any months or major portion (16 days or more) of a month remaining to the anniversary of the date of placement of the logo shall be refunded. There shall be no refund of annual permit fees due to temporary or seasonal closure.

(12) If a qualified TOURIST ATTRACTION facility is publicly owned and operated or not-for profit as determined by the Federal Internal Revenue Service, the annual permit fee shall be set at the non-profit Logo fee schedule.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 1-1979(Temp), f. & ef. 7-26-79; TIC 2-1979, f. & ef. 9-28-79; TIC 1-1980, f. & ef. 5-5-80; TIC 3-1984 (Temp), f. & ef. 10-29-84; TIC 2-1985, f. & ef. 6-4-85; TIC 1-1986, f. & ef. 5-28-86; TIC 2-1986, f. & ef. 9-19-86; TIC 1-1996, f. & cert. ef. 1-8-96; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 3-1996, f. & cert. ef. 10-16-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-1998, f. 6-8-98, cert. ef. 7-1-98; TIC 2-1998, f. & cert. ef. 11-13-98; TIC 1-2000, f. 4-14-00, cert. ef. 5-1-00; TIC 3-2000, f. 12-14-00, cert. ef. 12-15-00; TIC 1-2001, f. 5-11-01, cert. ef. 5-15-01; TIC 2-2002, f. & cert. ef. 10-30-02; TIC 1-2004(Temp), f. & cert. ef. 7-20-04 thru 1-15-05; TIC 2-2004, f. & cert. ef. 11-12-04; TIC 1-2006, f. & cert. ef. 3-2-06; TIC 3-2006, f. & cert. ef. 11-24-06

733-030-0135

Fees and Installations

(1) The Council may request the Department to furnish, erect and maintain tourist oriented directional signs, as required.

(2) Upon approval of an application for a tourist oriented directional sign the council shall request and authorize installation of sign panels from ODOT, the TIC sign crew or a TIC contractor as determined appropriate by TIC staff.

(3) Fees. The annual permit fee for each advance and intersection tourist oriented directional sign shall be based on the traffic volume and population density in the area in which the highway is located and payable with the application and any renewal application. Fees will be reviewed and established annually by the Council pursuant to ORS 377.825. Fees will be charged according to the Council's current Schedule of Fees. When fees are reviewed for potential changes, the Council will send a notice of fee changes to each business with a tourist oriented directional sign permit and to all interested parties requesting the information. Businesses and interested parties will have 30 days to respond in writing and/or attend a public hearing scheduled after the 30 day time period. The Schedule of Fees will also be available on the Council web site for personal download or by mail upon request.

(4) In accordance with OAR 733-030-0125, permit fees are payable with the contract and the permit shall be automatically renewed upon receipt of the entirety of the appropriate annual fee on or before the payment due date stated in the Council's invoice.

(5) Nonpayment of annual fees will result in the removal of signs, and the sign location will be offered to other qualified motorist businesses desiring that sign location. Should the signs be reinstalled after removal due to nonpayment of fees, the Council shall charge a maintenance fee of \$200 per sign reinstalled, along with all annual fees due.

(6) In case of removal of a tourist oriented directional sign, the rental fee for any months or major portion (16 days or more) or a month remaining to anniversary of the date of the placement of the sign shall be refunded. There shall be no refund of annual permit fees due to temporary or seasonal closure.

(7) If a Qualified Cultural or Historical Feature is publicly owned and operated or not-for-profit as determined by the Federal Internal Revenue Service, the annual permit fee shall be set to the same fee schedule for Museum and Historic Site signs.

(8) Sign revision fees of \$100 per tourist oriented directional sign will be assessed when the facility changes the registered business name resulting in the manufacture and installation of new tourist oriented directional signs.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 2-1983(Temp), f. & ef. 6-30-83; TIC 4-1983, f. & ef. 8-26-83; TIC 6-1988, f. & cert. ef. 12-23-88; TIC 4-1989, f. & cert. ef. 10-27-89; TIC 1-1996, f. & cert. ef. 1-8-96; TIC 2-1996, f. & cert. ef. 7-12-96; TIC 1-1997, f. & cert. ef. 2-13-97; TIC 1-1998, f. 6-8-98, cert. ef. 7-1-98; TIC 3-2000, f. 12-14-00, cert. ef. 12-15-00; TIC 1-2001, f. 5-11-01, cert. ef. 5-15-01; TIC 2-2002, f. & cert. ef. 10-30-02; TIC 3-2006, f. & cert. ef. 11-24-06

733-030-0350

Fees and Installations

(1) Upon approval of a properly completed application for a Museum or Historic Site sign, the Travel Information Council may furnish, erect and maintain the signs, as required.

(2) The Travel Information Council shall notify the applicant promptly when an application has been approved.

(3) Fees. Fees will be reviewed and established annually by the Council pursuant to ORS 377.825. Fees will be charged according to the Council's current Schedule of Fees. When fees are reviewed for potential changes, the Council will send a notice of fee changes to each business with a museum or historical site sign permit and to all interested parties requesting the information. Businesses and interested parties will have 30 days to respond in writing and/or attend a public hearing scheduled after the 30 day time period. The Schedule of Fees will also be available on the Council web site for personal download or by mail upon request.

(4) In case of removal of a Museum or Historic Site sign, the annual fee for any months or major portion (16 days or more) or a month remaining to anniversary of the date of the placement of the sign shall be refunded. There shall be no refund of annual fees due to temporary or seasonal closure.

(5) Should the signs be reinstalled after removal due to nonpayment of annual fees, the Travel Information Council shall charge a reinstallation fee of \$200 per sign reinstalled, along with all annual fees due.

(6) Sign revision fees of \$100 per Museum or Historic Site sign will be assessed if the facility changes the registered business name resulting in the manufacture and installation of new Museum or Historic Site signs.

Stat. Auth.: ORS 377.700 - 377.840

Stats. Implemented: ORS 183.310 - 183.550

Hist.: TIC 2-1997, f. & cert. ef. 11-3-97; TIC 1-2002, f. & cert. ef. 4-19-02; TIC 1-2003, f. & cert. ef. 9-11-03; TIC 3-2006, f. & cert. ef. 11-24-06

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410-122-0500	1-1-07	Amend	1-1-07	471-040-0010	12-3-06	Amend	1-1-07
410-122-0510	1-1-07	Amend	1-1-07	471-040-0040	12-3-06	Amend	1-1-07
410-122-0530	1-1-07	Repeal	1-1-07	471-040-0041	12-3-06	Adopt	1-1-07
410-122-0580	1-1-07	Amend	1-1-07	580-023-0005	11-29-06	Adopt	1-1-07
410-122-0600	1-1-07	Amend	1-1-07	580-023-0010	11-29-06	Adopt	1-1-07
410-122-0620	1-1-07	Amend	1-1-07	580-023-0015	11-29-06	Adopt	1-1-07
410-122-0660	1-1-07	Amend	1-1-07	580-023-0020	11-29-06	Adopt	1-1-07
410-122-0678	1-1-07	Amend	1-1-07	580-023-0025	11-29-06	Adopt	1-1-07
410-122-0700	1-1-07	Amend	1-1-07	580-023-0030	11-29-06	Adopt	1-1-07
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410-125-0146	1-1-07	Amend	1-1-07	580-023-0040	11-29-06	Adopt	1-1-07
410-125-0195	1-1-07	Amend	1-1-07	580-023-0045	11-29-06	Adopt	1-1-07
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410-129-0080	1-1-07	Amend	1-1-07	580-023-0055	11-29-06	Adopt	1-1-07
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410-141-0080	1-1-07	Amend	1-1-07	581-021-0062	12-12-06	Adopt	1-1-07
410-141-0220	1-1-07	Amend	1-1-07	581-022-1130	12-12-06	Amend	1-1-07
410-141-0480	1-1-07	Amend	1-1-07	581-045-0001	1-1-07	Amend	1-1-07
410-141-0520	1-1-07	Amend	1-1-07	581-045-0006	1-1-07	Amend	1-1-07
410-142-0225	1-1-07	Adopt	1-1-07	581-045-0012	1-1-07	Amend	1-1-07
410-147-0120	1-1-07	Amend	1-1-07	581-045-0014	1-1-07	Amend	1-1-07

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581-045-0023	1-1-07	Amend	1-1-07	584-050-0008	11-22-06	Repeal	1-1-07
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581-045-0062	1-1-07	Amend	1-1-07	584-050-0022	11-22-06	Amend	1-1-07
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584-017-0120	11-22-06	Amend	1-1-07	584-050-0040	11-22-06	Amend	1-1-07
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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
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584-048-0006	11-22-06	Amend	1-1-07	603-110-0400	11-20-06	Adopt	1-1-07
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584-048-0015	11-22-06	Amend	1-1-07	603-110-0600	11-20-06	Adopt	1-1-07
584-048-0020	11-22-06	Amend	1-1-07	603-110-0700	11-20-06	Adopt	1-1-07
584-048-0025	11-22-06	Amend	1-1-07	603-110-0800	11-20-06	Adopt	1-1-07
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584-048-0067	11-22-06	Amend	1-1-07	629-021-0400	11-21-06	Adopt	1-1-07
584-048-0070	11-22-06	Amend	1-1-07	629-021-0500	11-21-06	Adopt	1-1-07
584-048-0085	11-22-06	Amend	1-1-07	629-021-0600	11-21-06	Adopt	1-1-07
584-048-0090	11-22-06	Amend	1-1-07	629-021-0700	11-21-06	Adopt	1-1-07
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629-606-0400	11-21-06	Repeal	1-1-07	735-040-0030	11-17-06	Amend	1-1-07
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629-606-0700	11-21-06	Repeal	1-1-07	735-062-0140	12-13-06	Amend	1-1-07
629-606-0800	11-21-06	Repeal	1-1-07	735-062-0140(T)	12-13-06	Repeal	1-1-07
629-606-0900	11-21-06	Repeal	1-1-07	735-064-0005	11-17-06	Amend	1-1-07
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635-060-0000	1-1-07	Amend	1-1-07	736-017-0000	12-15-06	Adopt	1-1-07
635-060-0046	1-1-07	Amend	1-1-07	736-017-0005	12-15-06	Adopt	1-1-07
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635-065-0625	1-1-07	Amend	1-1-07	736-017-0025	12-15-06	Adopt	1-1-07
635-065-0635	1-1-07	Amend	1-1-07	736-017-0030	12-15-06	Adopt	1-1-07
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812-008-0074	1-1-06	Amend	1-1-07	820-010-0605	11-21-06	Amend	1-1-07
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812-009-0050	1-1-07	Amend	1-1-07	820-010-0620	12-5-06	Amend(T)	1-1-07
812-009-0070	1-1-07	Amend	1-1-07	820-010-0621	12-5-06	Adopt(T)	1-1-07
812-009-0090	1-1-07	Amend	1-1-07	820-010-0622	11-21-06	Amend	1-1-07
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812-009-0140	1-1-07	Amend	1-1-07	820-015-0010	11-21-06	Amend	1-1-07
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812-009-0220	1-1-07	Amend	1-1-07	820-020-0010	11-21-06	Repeal	1-1-07
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837-012-1260	12-1-06	Amend	1-1-07	850-060-0226	12-11-06	Amend	1-1-07
837-012-1270	12-1-06	Amend	1-1-07	851-002-0020	11-29-06	Amend	1-1-07
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837-012-1300	12-1-06	Amend	1-1-07	851-062-0016	11-29-06	Amend	1-1-07
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