OREGON BULLETIN

Supplements the 2016 *Oregon Administrative Rules Compilation*

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For November 16, 2015–December 15, 2015

Published by
JEANNE P. ATKINS
Secretary of State

INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the Oregon *Administrative Rules Compilation* and the online *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing complete text of Oregon Administrative Rules (OARs) filed through November 15 of the previous year. The *Oregon Bulletin* is a monthly online supplement that contains rule text adopted or amended after publication of the print Compilation, as well as Notices of Proposed Rulemaking and Rulemaking Hearing. The Bulletin also includes certain non-OAR items when they are submitted, such as Executive Orders of the Governor, Opinions of the Attorney General and Department of Environmental Quality cleanup notices.

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 assists agencies with the notification, filing and publication requirements of the administrative rulemaking process.

OAR Citations

Every Administrative Rule uses the same numbering sequence of a three-digit chapter number followed by a three-digit division number and a four-digit rule number (000-000-0000). For example, Oregon Administrative Rules, chapter 166, division 500, rule 0020 is cited as OAR 166-500-0020.

Understanding an Administrative Rule's "History"

State agencies operate in an environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track changes to individual rules and organize the original rule documents for permanent retention, the Administrative Rules Unit maintains history lines for each rule, located at the end of the rule text. OAR histories contain the rule's statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed chronologically in abbreviated form, with the most recent change listed last. In the history line "OSA 4-1993, f. & cert. ef. 11-10-93," for example, "OSA" is short for Oregon State Archives; "4-1993" indicates this was 4th administrative rule filing by the Archives in 1993; "f. & cert. ef. 11-10-93" means the rule was filed and certified effective on November 10, 1993.

Locating Current Versions of Administrative Rules

The online version of the OAR Compilation is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit by the 15th of the previous month. The annual printed OAR Compilation volumes contain text for all rules filed through November 15 of the previous year. Administrative Rules created or changed after publication in the print Compilation will appear in a subsequent edition of the online Bulletin. These are listed by rule number in the Bulletin's OAR Revision Cumulative Index, which is updated monthly. The listings specify each rule's effective date, rulemaking action, and the issue of the Bulletin that contains the full text of the adopted or amended rule.

Locating Administrative Rule Publications

Printed volumes of the Compilation are deposited in Oregon's Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the printed OAR Compilation may be ordered from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701.

Filing Adminstrative Rules and Notices

All hearing and rulemaking notices, and permanent and temporary rules, are filed through the Administrative Rules Unit's online filing system. To expedite the rulemaking process, agencies are encouraged to file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and to submit their filings early in the submission period. All notices and rules must be filed by the 15th of the month to be included in the next month's Bulletin and OAR Compilation postings. Filings must contain the date stamp from the deadline day or earlier to be published the following month.

Administratrative Rules Coordinators and Delegation of Signing Authority

Each agency that engages in rulemaking must appoint a rules coordinator and file an Appointment of Agency Rules Coordinator form with the Administrative Rules Unit. Agencies that delegate rulemaking authority to an officer or employee within the agency must also file a Delegation of Rulemaking Authority form. It is the agency's responsibility to monitor the rulemaking authority of selected employees and keep the forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process.

Publication Authority

The Oregon Bulletin is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701. The Archives Division charges for such copies.

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division. Any discrepancies with the published version are satisfied in favor of the Administrative Order.

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EXECUTIVE ORDER NO. 15 - 22

DETERMINATION OF STATE OF EMERGENCY IN DOUGLAS COUNTY DUE TO WILDLAND FIRES BEGINNING AUGUST 10, 2015

Pursuant to ORS 401.065, I find that severe wildland fire damage, which began July 30, 2015 and continued to September 5, 2105, created a threat to life, safety and property in Douglas County. The extensive wildland fire, exacerbated by heat, high winds, and drought, resulted in significant damage to the state roads on the federal-aid highway system. Damage may have also occurred on the local federal-aid roads within this county. The current estimate to the state highway system in this county totals $150,000.

NOW THEREFORE IT IS HEREBY ORDERED AND DIRECTED:

The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect repair and reconstruction of the federal aid highway system in Douglas County.

Done at Salem, Oregon, this 4th day of December, 2015.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR WASHWORLD FACILITY

COMMENTS DUE: 5 p.m., Monday, Feb. 1, 2016
PROJECT LOCATION: 2721-2731 SE Belmont St., Portland
PROPOSAL: DEQ seeks comments on a proposed consent order for a prospective purchaser agreement with Green Light, LLC concerning its acquisition of the former Washworld facility site for redevelopment.
HIGHLIGHTS: Washworld was a dry cleaning facility that operated from a storefront at the site from approximately 1968 to 2009. Investigations have identified "perc", a dry cleaning chemical, in soil gas and groundwater beneath the site. The building housing the former Washworld facility has been vacant since 2009.

Green Light, LLC is proposing to redevelop the site with a six-story apartment building. The building will be constructed with vapor controls, including a soil vapor extraction system, to remove the perc and prevent it from entering the building or migrating off-site.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent order will provide Green Light, LLC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide Green Light, LLC with third party liability protection.
HOW TO COMMENT: Email comments to DEQ Project Manager Kevin Dana or mail to Kevin Dana at 700 NE Multnomah Street, Suite 600, Portland, Oregon, 97232. For more information contact the project manager at 503-229-5369.

Find information about requesting a review of DEQ project files.

Find the file review application form.

Get site summary information and other documents from the DEQ Environmental Cleanup Site Information database. Click "Search complete ECSI database," then enter 5731 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5731 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at http://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=5731.

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed consent order. DEQ will issue a public notice of the final decision.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL FOR FLORAGON 16-ACRE SOUTHEAST CORNER

COMMENTS DUE: 5 p.m., Feb. 2, 2016
PROJECT LOCATION: Intersection of S. Molalla Forest Road and S. Molalla Ave., Molalla, Oregon
PROPOSAL: DEQ seeks public comments on the proposed conditional no further action determination for the 16-acre Southeast Corner portion of the Floragon Forest Products site. DEQ has determined that environmental contamination at the property does not present a risk to public health or the environment. An approximately one-acre paved area where dioxins are elevated must remain capped. This proposed determination meets the requirements of Oregon Administrative Rules Chapter 340, Division 122, and Chapter 340 Division 122, Sections 010 to 0140 for Cleanup Sites; and ORS 465.200 through 465.455.
HIGHLIGHTS: The 16-acre southeast corner represents only a portion of the 105-acre property. In 2013, DEQ issued a no further action determination for the 88-acre northern portion of the Floragon site, while investigation and cleanup activities are ongoing in the segment of Bear Creek located on-site, and the so-called dip tank area. Investigation indicates that soil and groundwater contamination are not present above DEQ risk screening values in the Southeast Corner, excluding a one-acre area where elevated dioxins are present in shallow soil.

In 2015, the one-acre was re-paved and a fence erected between it and the adjoining dip tank area where investigation and cleanup have not been completed. DEQ proposes a no further action determination for the 16-acre Southeast Corner, conditioned on maintenance of paving in the 1-acre area to prevent exposure to contaminated soil. DEQ's no further action determination would not apply to the area of the Southeast Corner that is occupied by Bear Creek.
HOW TO COMMENT: Send comments to DEQ Project Manager Dan Hafley at 700 NE Multnomah St., Ste. 600, Portland, Oregon or hafley.dan@deq.state.or.us. For more information contact the project manager at 503-229-5213.

Find information about requesting a review of DEQ project files at: http://www.deq.state.or.us/records/recordsRequestFAQ.htm

Find the File Review Application form at: http://www.deq.state.or.us/records/RecordsRequestForm.pdf

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to http://www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database", then enter ECSI#0009 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI#0009 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at: http://www.deq.state.or.us/lq/ECSI/ecsilist.asp?SiteID=1274&Bus_Name=&Address=&County=ALL&City=&Zip_Code=&LatitudeMin=&LatitudeMax=&LongitudeMin=&LongitudeMax=&Township=All&TownshipZone=N&Range=1&RangeZone=E&Section=All&ActionCode=All&Substance=None&Alias=None&Submit=Submit&listtype=lis.

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: Once the public comment period has closed DEQ will consider all comments before making a decision concerning the conditional No Further Action determination.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

PROPOSED CERTIFICATE OF COMPLETION FOR GOSHEN PROPERTIES LLC AT FORMER CONE LUMBER SITE IN GOSHEN

COMMENTS DUE: 5 p.m., Monday February 1, 2016
PROJECT LOCATION: 85810 Highway 99 South, Eugene, Oregon
PROPOSAL: DEQ is preparing to certify that all actions required have been satisfactorily completed. This project has resulted in both environmental and economic benefits.
HIGHLIGHTS: In February 2015 Goshen Properties LLC entered a Prospective Purchaser Agreement Consent Judgment with DEQ and agreed to complete a Scope of Work on the subject property, including removing contaminated soil and capping other areas of soil contamination.

DEQ reviewed the requirements of the PPA and the corresponding actions, and has made a preliminary determination that all obligations of the PPA have been satisfactorily performed and that a Certification of Completion should be issued.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The

prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The Certification of Completion confirms Goshen Properties LLC's release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The consent judgment and certification of completion also provide Goshen Properties LLC with third party liability protection.

HOW TO COMMENT: Send comments to DEQ Project Manager Don Hanson at 165 E. 7th Avenue, Suite 100, Eugene, OR 97401 or by email to hanson.don@deq.state.or.us. For more information contact the project manager at 541-687-7349.

Request DEQ project file review.

File review application form

Access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select "Search complete ECSI database," then enter 5754 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5754 in the Site ID/Info column.

If you do not have web access and want to review the project file contact the DEQ project manager.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the completion certification of the remedial actions taken at the site. A public notice of DEQ's final decision will be issued.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

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 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. Oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

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

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

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

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Board of Examiners for Engineering and Land Surveying
Chapter 820

Rule Caption: To amend rules related to registration and application for registration and to adopt one rule.
Stat. Auth.: ORS 670.310, 672.005 & 672.255
Stats. Implemented: ORS 672.002–672.325
Proposed Adoptions: 820-030-0005
Proposed Amendments: 820-010-0505, 820-015-0026, 820-020-0015, 820-020-0025, 820-020-0030, 820-020-0035, 820-040-0005
Last Date for Comment: 2-4-16, Close of Business
Summary: OAR 820-010-0505 and 820-015-0026 — Proposed amendments remove language related to requesting a grace period to complete the continuing educational requirements.

OAR 820-020-0015, 820-020-0025, 820-020-0030, and 820-020-0035 — Proposed language amends the rules to include applicants for registration or certification in the professional rules of conduct.

OAR 820-030-0005 and 820-040-0005 — Proposed language includes the definition of "professional service" as used in ORS 672.005.
Rules Coordinator: Jenn Gilbert
Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301
Telephone: (503) 934-2107

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Board of Optometry
Chapter 852

Rule Caption: Changing fees and penalties and attestation for CE and CPR.

Date:	Time:	Location:
1-28-16	9:30 a.m.	1500 Liberty St. SE Salem, OR 97302

Hearing Officer: Shelley Sneed
Stat. Auth.: ORS 683
Other Auth.: ORS 58, 63, 181, 182, 342, 408, 431, 646, 670, 676, 689
Stats. Implemented: ORS Chapter 683.010–340; 683.990; 58.367; 63.074; 181.534; 182.460; 182.462; 182.466; 183.341; 183.413; 292.250; 292.495; 342.195;408.450; 431.962; 431.972; 646.605; 670.350; 676.110; 676.150; 676.303; 676.306; 676.340; 676.345; 689.225
Proposed Adoptions: 852-070-0037, 852-070-0047
Proposed Amendments: 852-010-0080, 852-050-0006, 852-050-0014, 852-050-0018, 852-050-0025, 852-070-0010, 852-070-0020, 852-070-0035
Last Date for Comment: 1-28-16, 11 a.m.
Summary: Division 10 — update fees to reflect new late fees for renewal and lapse in CPR certification. Adds penalties for failure to meet CE audit requirements. Adds fees for conducting national background checks.

Division 50 — add option for online renewal, attestation for CE and CPR certification. Also adds requirement for fingerprints at reinstatement for national background check. Requests licensees to submit an official email address for Board communications.

Division 70 — Adds credit for publication of an article or paper when licensee is first or second author. Gives credit for teaching at a health care institution or accredited optometry school or university. Allows licensees to certify meeting the CE and CPR requirements and adds an audit requiring original documentation to verify CE completion. Defines how to request CE credit.
Rules Coordinator: Shelley Sneed
Address: Board of Optometry, 1500 Liberty St. SE, Suite 210, Salem, OR 97302
Telephone: (503) 399-0662, ext. 3

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Rule Caption: Adding background check fee to application requirements.
Stat. Auth.: 683
Other Auth.: ORS 58, 63, 181, 182, 342, 408, 431, 646, 670, 676, 689
Stats. Implemented: ORS 683.010–340; 683.990; 58.367; 63.074; 181.534; 182.460; 182.462; 182.466; 183.341; 183.413; 292.250; 292.495; 342.195; 408.450; 431.962; 431.972; 646.605; 670.350; 676.110; 676.150; 676.303; 676.306; 676.340; 676.345; 689.225
Proposed Amendments: 852-010-0015
Last Date for Comment: 1-28-16, 11 a.m.
Summary: This rule updates the license application process to include the requirement to pay the background fee along with the application fee.
Rules Coordinator: Shelley Sneed
Address: Board of Optometry, 1500 Liberty St. SE, Suite 210, Salem, OR 97302
Telephone: (503) 399-0662, ext. 3

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Continuing education qualifying programs.
Stat. Auth.: ORS 675.010–675.150
Stats. Implemented: ORS 675.110(14)
Proposed Amendments: 858-040-0035, 858-040-0055, 858-040-0065
Last Date for Comment: 1-22-16, 5 p.m.
Summary: The proposed rule amendment will allow licensed psychologists and psychologist associates to count a limited amount of reading books towards their continuing education requirements. It also clarifies required evidence of completion.
Rules Coordinator: LaRee' Felton
Address: Board of Psychologist Examiners, 3218 Pringle Rd. SE, Suite 130, Salem, OR 97302
Telephone: (503) 373-1196

Department of Agriculture
Chapter 603

Rule Caption: Increases penalties for some violations of pesticide laws.

Date:	Time:	Location:
1-26-16	1:30 p.m.	Oregon Dept. of Agriculture 3rd Floor Media Rm. 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Eric Edmunds
Stat. Auth.: ORS 634, HB 3549 (2015)
Stats. Implemented: ORS 634, HB 3549 (2015)
Proposed Amendments: 603-057-0502, 603-057-0530, 603-057-0532
Last Date for Comment: 1-26-16, 5 p.m.
Summary: The civil penalty provisions for violation of Oregon's pesticide laws have been in place since the 1970s with the exception of a penalty of $10,000 for gross negligence and willful misconduct. The current base pesticide civil penalty provisions have not been updated since 1970 and may no longer be effective at achieving the goals of enforcement including but not limited to providing a deterrent.

The 2015 Legislative Assembly increased the amount of civil penalties for violations of Oregon's pesticide laws by enacting section 11 of HB 3549 (2015). That section amends ORS 634.900(1) as of January 1, 2016, so that it will provide, in addition to any other liability or penalty provided by law, that the Director of Agriculture may impose a civil penalty on a person for violation of any of the provisions of this chapter relating to pesticide application, sale or labeling. The civil penalty for a first violation shall be not more than $2,000. For a subsequent violation, the director may impose a civil penalty of not more than $4,000.

This rulemaking will amend the rules that describe the maximum amount allowed and describe how to calculate the amount of a civil penalty that is not based on gross negligence or willful misconduct. This is necessary in order to implement the policy provided by the 2015 Legislative Assembly.
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: Maricopa County onion sets can ship in reusable plastic containers; changes language to Special Permits.

Date:	Time:	Location:
1-21-16	9 a.m.	309 NE Third Ave. Ontario, OR

Hearing Officer: Rodger Huffman
Stat. Auth.: ORS 561 & 570
Stats. Implemented: ORS 561.190, 561.510–561.600, 570.305, 570.405 & 570.410–570.415
Proposed Amendments: 603-052-0347
Last Date for Comment: 1-21-16, 5 p.m.
Summary: The proposed amendments to OAR 603-052-0347 would: 1) Allow shipment of onion sets from Maricopa County, AZ, in reusable plastic containers provided those containers are sanitized sufficiently after each use to eliminate any risk of contamination by onion white rot; and 2) Change the phrase Director's Exemption to the phrase Special Permit in Section (7), which matches the language used in the Oregon Department of Agriculture's statutory authority.
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: Harmonizes the Malheur County Bean Control Area with Idaho's rules for Phaseolus and non-Phaseolus beans.

Date:	Time:	Location:
1-21-16	8:30 a.m.	309 NE Third Ave. Ontario, OR

Hearing Officer: Rodger Huffman
Stat. Auth.: 561 & 570
Stats. Implemented: ORS 561.190, 561.510–561.600, 570.305, 570.405 & 570.410–570.415
Proposed Amendments: 603-052-0385
Last Date for Comment: 1-21-16, 5 p.m.
Summary: The proposed amendments to OAR 603-052-0385 would harmonize the regulatory language in Oregon's Malheur County Bean Control Area with Idaho's IDAPA 02.06.06 and IDAPA 02.06.25. The proposed amendments would: 1) harmonize the scientific names for the diseases of concern; 2) harmonize eradication methods by amending Section 4(b) to add "Seed harvested from any commercial or garden beans first found infected during windrow inspection shall not be eligible for certification for replanting"; 3) delete Section 5(a), as this control method was determined to be impractical; and 4) harmonize phytosanitary requirements for imported non-Phaseolus bean seed for planting by adding a soil tolerance.
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: Increases wholesale seed dealers license from $500 annually to $750.

Date:	Time:	Location:
1-28-16	9 a.m.	Oregon Dept. of Agriculture Conference Rm. D 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Josh Nelson
Stat. Auth.: ORS 561.190 & 633.700
Stats. Implemented: ORS 633.700
Proposed Amendments: 603-056-0095
Last Date for Comment: 2-5-16, 5 p.m.
Summary: The proposed amendments would cause a 50% increase in license fees for Wholesale Seed Dealers, raising fees from $500 to $750 annually. The Oregon Seed Association has requested an additional 0.5 FTE seed regulatory position to provide outreach and education services and random inspections of Oregon licensed Wholesale Seed Dealers. The current license fee does not support the requested level of oversight; Oregon Seed Association supports this fee increase.
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: Clarification of rules and fees regarding registration of animal remedies, veterinary biologics, and pharmaceuticals.

Date:	Time:	Location:
1-27-16	10 a.m.	Oregon Dept. of Agriculture 3rd Floor Conference Rm. 635 Capitol St. NE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 561.190, 596.020, 596.100 & 596.105
Stats. Implemented: ORS 596.020, 596.095, 596.100, 596.105 & 596.955
Proposed Adoptions: 603-012-0250
Proposed Amendments: 603-012-0210, 603-012-0220, 603-012-0230, 603-012-0240
Last Date for Comment: 1-29-16, 5 p.m.
Summary: During the 2015 Regular Session, the Oregon State Legislature passed Senate Bill 255 (SB 255), which was subsequently signed by Governor Kate Brown. SB 255 raised the statutory limit on fees for annual registration of animal remedy, veterinary biolog-

ic, or pharmaceutical from $75 per year to $150 per year. ORS 596.100(1) requires that the manufacturer of each brand of animal remedy, veterinary biologic, and pharmaceutical register its products with the Oregon Department of Agriculture (ODA) annually, unless otherwise exempt from registration. Applications and annual registration fees are made to ODA, which deposits all fees received in the Department of Agriculture Service Fund, and such fees are continuosly appropriated to ODA for the purpose of administering and enforcing ORS chapters 596 and 599.

This rulemaking will establish an annual registration fee of $100 per animal remedy, veterinary biologic, or pharmaceutical, and simplify the notification process for unregistered products. It also clarifies products that are exempt from registration and fees, and the definition of food. Additionally, the rules clarify enforcement procedures and provide guidelines regarding enforcement and civil penalties.

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

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Department of Agriculture,
Oregon Strawberry Commission
Chapter 668

Rule Caption: Change the assessment on strawberries from 1.25 percent to 1 percent.

Date:	Time:	Location:
1-25-16	2 p.m.	4845 B. SW Dresden Ave. Corvallis, OR 97333

Hearing Officer: Philip Gütt
Stat. Auth.: ORS 576.304
Stats. Implemented: ORS 576.325 & 576.335
Proposed Amendments: 668-010-0010
Last Date for Comment: 1-25-16, 5 p.m.
Summary: Amend OAR 668-010-0010(1) to decrease the assessment by .25%. The assessment was increased in 2013 in order to fund an endowment dedicated to a berry professorship at Oregon State University. Due to reductions in state funds to Oregon State University, continuance of a dedicated berry professorship is only guaranteed through industry support of an endowed professorship. The berry industry benefits from the research and education provided by a professor dedicated to berries.

This proposed rule change will allow the commodity commission to collect assessments of 1 percent of the gross value of the raw product, rather than 1.25 percent of the gross value of the raw product.

Rules Coordinator: Connie Gütt
Address: Department of Agriculture, Oregon Strawberry Commission, 4845 B SW Dresden Ave., Corvallis, OR 97333
Telephone: (541) 758-4043

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

Rule Caption: Clarifies the calculation of electrical permit fees and provision of inspection services

Date:	Time:	Location:
1-19-16	10:30 a.m.	1535 Edgewater Street NW Salem, OR 97304

Hearing Officer: Tyler Larson
Stat. Auth.: ORS 455.020, 455.030, 455.055, 455.720, 455.740, 479.560 & 479.870
Stats. Implemented: ORS 455.020, 455.030, 455.055, 455.083, 455.720, 455.740, 479.560 & 479.870
Proposed Adoptions: Rules in 918-309
Proposed Amendments: Rules in 918-309, 918-098-1900
Proposed Repeals: Rules in 918-309
Last Date for Comment: 1-22-16, 5 p.m.
Summary: These proposed rules clarify the calculation of specified electrical permit fees, the number of inspections to which a permittee is entitled, when a jurisdiction may stop work, and the citation which a jurisdiction must provide when ordering corrections or otherwise administering a building inspection program.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Rule Caption: Oregon Structural Specialty Code and Oregon Residential Specialty Code amendments

Date:	Time:	Location:
1-19-16	10 a.m.	1535 Edgewater Street NW Salem, OR 97304

Hearing Officer: Rex Turner
Stat. Auth.: ORS 447.231, 455.020, 455.030, 455.110, 455.496, 455.610 & 455.485
Stats. Implemented: ORS 455.110 & 455.610
Proposed Amendments: 918-460-0015, 918-480-0010
Last Date for Comment: 1-22-16, 5 p.m.
Summary: These proposed rules amend the Oregon Structural Specialty and Oregon Residential Specialty Code for low frequency single- and multiple-station smoke alarms and carbon monoxide alarms and underground gas pipe separation.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Rule Caption: Adopting current recreational vehicle minimum safety standards and making program changes

Date:	Time:	Location:
1-19-16	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Richard Baumann
Stat. Auth.: 446.003, 446.155, 446.160, 446.176, 446.185, 446.230, 446.240, 446.260, 455.030, 455.210, 455.220
Stats. Implemented: 183.335, 446.003, 446.155, 446.160, 446.170, 446.176, 446.185, 446.240, 446.260, 455.030, 455.210, 455.220
Proposed Adoptions: Rules in 918-525, 918-530
Proposed Amendments: Rules in 918-500, 918-525, 918-530
Proposed Repeals: Rules in 918-525, 918-530
Proposed Renumberings: Rules in 918-525, 918-530
Last Date for Comment: 1-22-16, 5 p.m.
Summary: These proposed rules make a variety of changes to the Division's Recreational Vehicle Program. These changes include, but are not limited to, clarifying regulations for park model structures, adopting current editions of the minimum safety standards for the construction of recreational vehicles and park models, eliminating the recreational vehicle repair program, changing plan review requirements for manufacturers, and clarifying the requirements for the manufacture and sale of recreational vehicles and park models in Oregon.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Department of Consumer and Business Services,
Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Technical fixes to the licensing rules for securities brokers and salespersons.
Stat. Auth.: ORS 59.165, 59.175, 59.185, 59.235 & 59.285
Stats. Implemented: ORS 59.135, 59.175, 59.205, 59.225, 59.235 & 59.720
Proposed Amendments: Rules in 441-175

Last Date for Comment: 1-26-16, 5 p.m.
Summary: This proposed rulemaking is meant to make technical fixes to the securities licensing rules. The proposed rulemaking does not make any substantive changes to the licensing rules. The proposed rules fix outdated references, update language, and generally clarify requirements. The proposed rules are consistent with the intent of Oregon Revised Statute Chapter 59 to ensure licensing of individuals engaged in brokering or selling securities to the public.
Rules Coordinator: Shelley Greiner
Address: Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter St. NE, Rm. 410, Salem, OR 97301
Telephone: (503) 947-7484

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Aligning health insurance rules to changes in applicable state and federal laws

Date:	Time:	Location:
1-28-16	1:30 p.m.	Labor & Industries Bldg., Rm. 260 350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244, 743.018, 743.019, 743.020, 743.499, 743.730, 743.731(4), 743.737, 743.745, 743.751, 743.754, 743.758, 743.769, 743.894, 743A.144, & 746.240
Other Auth.: 2014 OL Ch. 80, Sec. 5, section 1, chapter 575, Oregon Laws 2015
Stats. Implemented: ORS 742.003, 742.005, 742.007, 743.018, 743.019, 743.020, 743.499, 743.522, 743.730 et. seq., 743.731, 743.734, 743.736, 743.737, 743.745 & 743.766–743.769, 743.751–743.754, 743.767, 743.769, 743.894, 743A.144 & 746.240 and section 5, chapter 80, Oregon Laws 2014 and sections 1 and 3, chapter 575, Oregon Laws 2015
Proposed Adoptions: 836-053-0015, 836-053-1500, 836-053-1505, 836-053-1510
Proposed Amendments: 836-052-1000, 836-053-0010, 836-053-0021, 836-053-0030, 836-053-0050, 836-053-0066, 836-053-0230, 836-053-0410, 836-053-0431, 836-053-0510, 836-053-0825, 836-053-0830, 836-053-0835
Proposed Repeals: 836-053-0014(T), 836-053-0015(T), 836-053-1500(T), 836-053-1505(T), 836-053-1510(T), 836-009-0020, 836-009-0025, 836-009-0030, 836-009-0035, 836-009-0040
Last Date for Comment: 2-4-16, 5 p.m.
Summary: These proposed rules are necessary to reflect changes in state law that impact current rules and require new rules. The proposed rules include provisions defining "small employer" and establishing eligible employees and counting methodology to determine whether an employer is a small employer or a large employer. These proposed rules are necessary to implement requirements of Senate Bill 231 (2015 Session) to establish the definition of "prominent carrier" and to prescribe the primary care services for which costs must be reported to the Department of Consumer and Business Services (DCBS) by prominent carriers. These rules define "prominent carrier" based on annual premium income and clarify the data to be reported to DCBS.

Because federal legislation eliminates the need for expanded transitional plans for small employer groups that have 51-100 employees, these proposed rules also repeal a previously adopted temporary rule that allowed transitional plans and provided guidance to insurers who proposed to issue the transitional plans. The proposed rules also eliminate provisions related to individual transitional plans which end on December 31, 2015, because those provisions will no longer be necessary.

The rules specify the intent of the DCBS to not enforce provisions of a state mandate related to prosthetics and orthotics that sunset by operation of the state law. Other federal statutes may impose similar coverage requirements. The rules clarify that an insurer may not rescind a policy or certificate on the basis of statements related to pediatric dental coverage.

Rules relating to a 1 percent assessment on health insurers are repealed because the assessment is no longer imposed by Oregon statutes.

Finally, the proposed rules eliminate obsolete references to 2014 special enrollment periods, the Oregon Health Insurance Exchange Corporation and the use of health statements for underwriting purposes.
Rules Coordinator: Karen Winkel
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7694

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Rule Caption: Adoption of 2017 base benchmark health benefit plan and essential health benefits

Date:	Time:	Location:
1-26-16	1:30 p.m.	Rm. 260, Labor & Industries Bldg. 350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.097, 731.244, 743.566, 743.773, 743.822, 743.893 & 743A.168
Stats. Implemented: ORS 731.097, 742.005, 743.737, 743.754, 743.766, 743.804, 743.822, 743.893, 743A.066, 743A.080, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110 and 743A.120, 743A.168
Proposed Adoptions: 836-010-0155, 836-053-0004, 836-053-0012, 836-053-0013
Proposed Amendments: 836-053-0002, 836-053-0008, 836-053-0009, 836-053-1020, 836-053-1404, 836-053-1405
Proposed Repeals: 836-053-0004(T), 836-053-0012(T), 836-053-0013(T)
Proposed Renumberings: 836-053-0010 to 836-053-0019, 836-053-1406 to 836-053-1409
Last Date for Comment: 2-3-16, 5 p.m.
Summary: These proposed new and amended rules establish the Oregon benchmark health benefit plan and standard plans for plan years beginning on and after January 1, 2017. Because the plan selected is a 2014 plan, the plan alone does not reflect current state and federal minimum requirements. Therefore, the proposed rules also include provisions to supplement the selected plan so that the plan complies with state and federal law. The proposed rules clarify existing state and federal requirements adopted since 2014 and make conforming amendments to rules related to coverage of mental or nervous conditions.
Rules Coordinator: Karen Winkel
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7694

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Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2015
Stat. Auth.: ORS 731.244, 731.574, 733.210
Stats. Implemented: ORS 731.574, 733.210
Proposed Amendments: 836-011-0000
Last Date for Comment: 2-1-16, 5 p.m.
Summary: This rulemaking prescribes, for reporting year 2015, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.
Rules Coordinator: Karen Winkel
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7694

Department of Corrections
Chapter 291

Rule Caption: Eligibility for work and housing assignment levels for inmates in Department of Corrections facilities
Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Proposed Amendments: 291-082-0110
Last Date for Comment: 2-22-16, 4:30 p.m.
Summary: This rule amendment is necessary to add criteria to determine an inmate's eligibility for an on-site work assignment, which is an assignment outside the perimeter fence of the institution where the inmate is housed.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Earned discharge for offenders on probation or local control post-prison supervision
Stat. Auth.: ORS 137.633, 179.040, 423.020, 423.030, and 423.075
Other Auth.: 2015 Or Laws, Ch 140
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, and 423.075
Proposed Amendments: 291-209-0010, 291-209-0020, 291-209-0030, 291-209-0040, 291-209-0070
Proposed Repeals: 291-209-0050, 291-209-0060
Last Date for Comment: 2-22-16, 4:30 p.m.
Summary: These rule amendments are necessary to implement 2015 legislation (HB 3070). This revision clarifies that earned discharge applies to probation as well as local control post-prison supervision. The process for determining an offender's eligibility for earned discharge has been modified. Now earned discharge is determined by a one-time review of an offender's compliance with conditions of supervision. Previously time credits were used to calculate when an offender could by discharged.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Searches in Department of Corrections Facilities
Stat. Auth.: ORS 179.040, 423.020, 423.030 and 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 and 423.075
Proposed Amendments: 291-041-0010, 291-041-0015, 291-041-0016, 291-041-0018, 291-041-0020, 291-041-0030, 291-041-0035
Last Date for Comment: 2-22-16, 4:30 p.m.
Summary: These amendments are necessary to remove references to department policies that are internal management directives, and to reflect operational changes within the department.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Environmental Quality
Chapter 340

Rule Caption: Update Oregon's air quality rules to address federal regulations

Date:	**Time:**	**Location:**
1-21-16	5 p.m.	DEQ Headquarters. 811 SW Sixth Ave. Portland OR, 97204

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025 & 468A.040
Proposed Amendments: 340-238-0040, 340-238-0060, 340-244-0030
Last Date for Comment: 1-26-16, 4 p.m.
Summary: DEQ proposes rules to adopt new and amended federal air quality regulations. This includes adopting:

New federal standards for kraft pulp mills; and

Newly amended federal standards.

Brief history:

The federal Clean Air Act requires the U.S. Environmental Protection Agency to establish National Emission Standards for Hazardous Air Pollutants, known as NESHAPs, for both major and area sources of hazardous air pollutants. EPA finished establishing major source standards in 2004. EPA began establishing area source standards in 2006 and concluded in 2011. EPA may adopt additional NESHAPs in the future for new source categories.

The Clean Air Act also requires EPA to develop New Source Performance Standards for categories of sources that cause, or significantly contribute to, air pollution that may endanger public health or welfare. Such regulations apply to each new source within a category without regard to source location or existing air quality. When EPA establishes New Source Performance Standards for a category of sources, it may also establish emission guidelines for existing sources in the same category. States must develop rules and a state plan to implement Emission Guidelines or request delegation of the federal plan. State plans, called Section 111(d) plans, are subject to EPA review and approval.

EPA performs a residual risk analysis for major source NESHAPs and periodic technology reviews for New Source Performance Standards and NESHAPs. These reviews are ongoing and in some cases result in EPA updating the standards. EPA also revises NESHAPs to address errors, implementation issues and lawsuits.

Regulated parties

This rulemaking regulates facilities subject to new and modified NESHAPs and New Source Performance Standards outlined below.

DEQ proposes rules to:

1. Adopt new rules to incorporate by reference the new federal New Source Performance Standards for kraft pulp mills constructed, reconstructed, or modified after May 23, 2013.

2. Update existing rules to incorporate the following federal changes by reference (these updates are accomplished in the rules by updating the version of the Code of Federal Regulations in the definitions of that term in OAR chapter 340 divisions 238 and 244):

a. Amended federal area source NESHAP for:

- Polyvinyl chloride and copolymers production
- Electric arc furnaces steelmaking facilities (residual risk and technology review)

b. Amended federal major source NESHAP for:

- Amino and phenolic resin manufacturing (residual risk and technology review)
- Electric utility steam generating units
- Ferroalloys production: ferromanganese and silicomanganese
- Flexible polyurethane foam production (residual risk and technology review)
- Generic maximum achievable control technology (residual risk and technology review)
- Offsite waste and recovery (residual risk and technology review)
- Pesticide active ingredient production (residual risk and technology review)
- Polyether polyols production (residual risk and technology review)
- Polymer and resin production (residual risk and technology review)
- Secondary lead smelting

c. Amended federal major and area source NESHAP for:

- Chromium electroplating and anodizing

d. Amended federal New Source Performance Standards for:

- Crude oil and natural gas production, transmission and distribution

- Electric utility steam generating units
- Nitric acid plants
- Petroleum refineries

Rules Coordinator: Meyer Goldstein
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6478

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Rule Caption: SB 705 Asbestos Survey 2016

Date:	Time:	Location:
1-19-16	6 p.m.	DEQ Headquarters 811 SW 6th Ave., 10th Floor, Rm. EQC A Portland, OR 97204
1-19-16	6 p.m.	4026 Fairview Industrial Dr. SE Salem, OR
1-19-16	6 p.m.	221 Stewart Avenue, Suite 201 Medford, OR
1-19-16	6 p.m.	381 N Second St. Coos Bay, OR 97420
1-19-16	6 p.m.	475 NE Bellevue, Suite 110 Bend, OR 97701

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468 & 468A
Other Auth.: SB 705 (2015)
Stats. Implemented: ORS 468A.745
Proposed Amendments: 340-248-0250, 340-248-0270
Last Date for Comment: 1-29-16, 4 p.m.
Summary: The proposed rule amendments require an owner or operator to have an accredited inspector perform an asbestos survey before demolishing a residential building. The proposed rules will implement Senate Bill 705 and make permanent a temporary rulemaking that the Environmental Quality Commission approved on December 9, 2015.

In addition, the proposed rules contain exceptions to the survey requirement for residential buildings constructed after January 1, 2004, and for demolitions where the owner or operator treats the entire building as asbestos containing material. The proposed rules also allow DEQ to consider, on a case-by-case basis, a written request for a waiver from the survey requirement. Finally, the proposed rules require that the owner or operator submit the asbestos survey report to DEQ, upon DEQ's request.
Rules Coordinator: Meyer Goldstein
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6478

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

Rule Caption: Mandatory Reporters and Criminal Immunity for Reporting Abuse
Stat. Auth.: ORS 179.040 & 409.050
Stats. Implemented: ORS 430.735–430.765, 443.400–443.460 & 443.705–443.825, ORS 410.60 & Section 6, Chapter 179, Oregon Laws 2015
Proposed Amendments: 407-045-0260, 407-045-0350
Last Date for Comment: 1-22-16, 5 p.m.
Summary: The 2015 Oregon Legislature, SB 622, directed this rule making by adding new, mandatory reporters and immunity for criminal liability for good faith reporting of the abuse of adults with intellectual and/or developmental disabilities who are currently receiving or previously received services from the Department of Human Services. In addition, SB 622 amended the definition of mandatory reporter. These proposed rules implement the changes directed by SB 622.

Proposed rules are available on the DHS Website: http://www.oregon.gov/DHS/admin/dwssrules/index.shtml. For hardcopy requests, call: (503) 947-5250.
Rules Coordinator: Jennifer Bittel
Address: Department of Human Services, Administrative Services Division and Director's Office, 250 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-5250

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Department of Human Services,
Aging and People with Disabilities and
Developmental Disabilities
Chapter 411

Rule Caption: Payment Limitations in Community-Based Care Settings

Date:	Time:	Location:
1-19-16	3 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Proposed Adoptions: 411-027-0170
Proposed Amendments: 411-027-0005
Proposed Repeals: 411-027-0005(T), 411-027-0170(T)
Last Date for Comment: 1-21-16, 5 p.m.
Summary: The Department of Human Services (Department) is amending OAR 411-027 to make permanent temporary changes that became effective September 21, 2015 that add the home and community based care facility rates as a new rule to the division. Adding the rates in to the rule will allow the Department to provide a more public process for rate changes and allow the Department to pay providers of Medicaid services. In order to add these rates into the rule, OAR 411-027-0170 was added as a new rule with the current rate table information. Rules that were impacted by this change will also be amended.

Minor grammar, formatting, and housekeeping changes were done to align the rules with other current program rule and definition changes.
Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Human Services,
Child Welfare Programs
Chapter 413

Rule Caption: Amending child welfare rules

Date:	Time:	Location:
1-21-16	10 a.m.	500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050 & 418.005
Other Auth.: Preventing Sex Trafficking and Strengthening Families Act of 2014
Stats. Implemented: ORS 97.170, 109.319, 409.010, 409.050, 409.225, 411.141, 418.005, 418.015, 2015 OL Ch. 511
Proposed Amendments: Rules in 413-010, 413-030, 413-040, 413-070, 413-090
Proposed Repeals: 413-030-0400(T), 413-040-0010(T), 413-070-0551(T), 413-090-0410, 413-090-0420, 413-090-0430
Last Date for Comment: 1-25-16, 5 p.m.
Summary: The Department of Human Services, Office of Child Welfare Programs, requests public comment on proposed rule changes relating to the confidentiality of client records being made to comply with HB 2365 (Oregon Laws 2015, chapter 511). Specifically, a definition of "Department adoption records" is being added to OAR 413-010-0000 and OAR 413-010-0035 relating to prohibited disclosures is being amended to clarify that adoption records must be sealed in accordance with ORS 109.319 and that the county in which an adoption was finalized and the case number of the

adoption proceeding may be disclosed in accordance with ORS 109.329 as amended by Oregon Laws 2015, chapter 511.

The Department is also proposing to permanently adopt temporary rules that became effective November 24, 2015. The changes make language clarifications related to the implementation of the Preventing Sex Trafficking and Strengthening Families Act of 2014 and are needed to achieve state plan compliance. Specifically, "independent living" is being changed to "successful adulthood" in OAR 413-030-0400, 413-040-0010, and 413-070-0551.

The Department is also proposing changes to rules that describe when the Department may pay reasonable and appropriate funeral and burial expenses for a child or young adult who dies while in the care and custody of the Department. The primary change is to increase the allowable reimbursement for expenses from $2,500 to $4,500. Additional non-substantive edits are being made to consolidate the rules for improved clarity and readability. (OAR 413-090-0410, 413-090-0420, and 413-090-0430 are being repealed and consolidated into OAR 413-090-0400.)

Additional non-substantive edits may be made to these rules to make general updates and corrections to ensure accuracy and improve clarity and readability.

Rules Coordinator: Kris Skaro
Address: Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Department of Justice
Chapter 137

Rule Caption: Amends Attorney General Model Rule Providing for Immediate Review by Chief Administrative Law Judge.

Date:	Time:	Location:
1-25-16	9 a.m.	Robertson Bldg. Redwood Conference Rm. 1215 State St. NE Salem, OR

Hearing Officer: Amy Alpaugh
Stat. Auth.: ORS 183.341
Stats. Implemented: ORS 183.341, 183.413, 183.415 & 183.630
Proposed Amendments: 137-003-0640
Last Date for Comment: 1-25-16, 5 p.m.
Summary: Amends OAR 137-003-0640 to remove sunset and make permanent immediate review by Chief Administrative Law Judge of certain Administrative Law Judge rulings. Permits agencies to, by rule, elect to provide immediate review instead of Chief Administrative Law Judge. Removes agency authority to provide no immediate review process.
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 378-5987

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Rule Caption: Training guildelines for victim advocates to become certified advocates.

Date:	Time:	Location:
1-20-16	1:30 p.m.	4035 12th St. Cutoff SE Salem, OR 97302

Hearing Officer: Shannon Sivell
Stat. Auth.: HB 3476 2015 legislative session.
Stats. Implemented: HB 3476 2015 legislative session.
Proposed Adoptions: Rules in 137-085
Last Date for Comment: 1-20-16, 5 p.m.
Summary: These rules set out the guidelines for minimum training required of persons providing services to victims of domestic violence, sexual assault and stalking in order to be certified advocates for purposes of the evidentiary privilege and confidentiality requirements of HB 3476.
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 378-5987

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Clarifying HECC's Allotment Authority for Public University and OHSU Funds

Date:	Time:	Location:
1-19-16	1 p.m.	775 Court St. NE Small Conference Rm. Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 351.735(5)
Stats. Implemented: ORS 351.735(3)(iii)(f)
Proposed Amendments: 715-013-0005
Last Date for Comment: 1-26-16, 5 p.m.
Summary: This rule clarifies that the HECC has delegated the authority to its executive director or designee to distribute all relevant funds to Public Universities and Oregon Health Sciences Universities in the amounts and for the purposes specified by the Oregon Legislature. It makes no substantive change in any allocation formulas by which these funds are distributed and does not impact the net amount any institution will receive for any program in any way.
Rules Coordinator: Kelly Dickinson
Address: Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301
Telephone: (503) 947-2379

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Higher Education Coordinating Commission,
Office of Degree Authorization
Chapter 583

Rule Caption: Update rules to reflect 2015 legislation that amended duties and responsibilities.

Date:	Time:	Location:
1-20-16	1:30 p.m.	775 Court St. NE, Large Conference Rm. Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 351.735(5)
Other Auth.: SB 218 (2015 Oregon Legislative Assembly); HB 3516 (2015 Oregon Legislative Assembly); HB 2870 (2015 Oregon Legislative Assembly)
Stats. Implemented: ORS 348.080–348.612
Proposed Adoptions: 583-030-0051, 583-030-0052, 583-030-0053, 583-030-0054, 583-030-0056
Proposed Amendments: 583-001-0000, 583-001-0005, 583-001-0015, 583-030-0005, 583-030-0009, 583-030-0010, 583-030-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036, 583-030-0041, 583-030-0042, 583-030-0043, 583-030-0045, 583-030-0046, 583-030-0049, 583-050-0006, 583-050-0011, 583-050-0014, 583-050-0016, 583-050-0026, 583-050-0027, 583-050-0028, 583-050-0036, 583-050-0040
Proposed Repeals: 583-030-0011
Last Date for Comment: 1-27-16, 5 p.m.
Summary: The Commission is amending OAR 583-001-0000, 583-001-0005, 583-001-0015, 583-030-0016, 583-030-0020, 583-030-0025, 583-030-0030, 583-030-0032, 583-030-0035, 583-030-0036, 583-030-0041, 583-030-0046, 583-030-0049, 583-050-0006, 583-050-0011, 583-050-0014, 583-050-0016, 583-050-0027, 583-050-0028, 583-050-0036, 583-050-0040 for purposes of general clean-up and clarifying rule language.

The Commission's delegation of authority is clarified in OAR 583-001-0000.

The Commission is amending OAR 583-030-0005, 583-030-0009 and 583-030-0010 in order to repeal references to the exclusionary

rule per passage of Senate Bill 218 (2015 Oregon Legislative Assembly) which deleted this allowance. OAR 583-030-0015 is being amended to reflect the change in definitions after the repeal of the exclusionary rule and request for exemption. The Commission is amending 583-030-0015 to include the definition of probation per passage of House Bill 3516 (2015 Oregon Legislative Assembly).

The Commission is proposing to repeal OAR 583-030-0011 to reflect changes in federal guidelines referencing state authorization, 34 Code of Federal Regulations (CFR) 600.9. Suspending OAR 583-030-0011 will also reflect changes in House Bill 2870.

The Commission is amending 583-030-0035 for clean-up and clarifying language. This rule defines monetary compensation when referencing how teachers and administrators are paid at ODA schools. The rule is further amended to define the extent to which schools can contract with third party entities. The requirements of the school catalog are amended to included average total student loan debt students leave the school with. The Commission is amending 583-030-0035(12) to require schools submit a fact sheet for review by the Commission staff and to be available for students.

The Commission is proposing to amend 583-030-0042 for purposes of defining annual reporting in rule and what factors the Commission will request from schools on an on annual basis.

The Commission is proposing to amend 583-030-0043 and 583-030-0045 for purposes of addressing schools placed at risk, or on probation, suspension status and the requirements placed on them. The rule further identifies the Commission's authority to extend the probation, suspension or revocation.

The Commission is proposing to adopt 583-030-0056, 583-030-0051, 583-030-0052, 583-030-0053 and 583-030-0054 to produce administrative procedures in order to reflect House Bill 3516 (2015 Oregon Legislative Assembly) which amended ORS 348.606 to require surety bonds and letters of credit. HB 3516 also requires the Commission to define "probation" and outline regulatory steps for schools under probation.

The Commission is proposing to amend 583-050-0026 to clarify the Commission's authority over invalid degrees and issuing cease and desist letters for degree users. It also clarifies the Commission's authority to issue penalties and the administrative hearings.

Rules Coordinator: Kelly Dickinson
Address: Higher Education Coordinating Commission, Office of Degree Authorization, 775 Court St. NE, Salem, OR 97301
Telephone: (503) 947-2379

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Oregon Business Development Department
Chapter 123

Rule Caption: These rules relate to the Special Public Works Fund.
Stat. Auth.: ORS 285A.075, 285B.410 & 285B.419
Stats. Implemented: ORS 285B.410–285B.482
Proposed Amendments: Rules in 123-042
Proposed Repeals: 123-042-0020(T), 123-042-0026(T), 123-042-0036(T), 123-042-0038(T), 123-042-0045(T), 123-042-0055(T), 123-042-065(T), 123-042-0076(T), 123-042-0122(T), 123-042-0132(T), 123-042-0155(T), 123-042-0165(T), 123-042-0175(T), 123-042-0180(T), 123-042-0190(T)
Last Date for Comment: 1-21-16, Close of Business
Summary: Resulting from SB 306 in the 2015 Legislative session, the Special Public Works Fund (SPWF) rules are being amended to include definitions, criteria, project eligibility and funding related to levee projects.
Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

Oregon Department of Education
Chapter 581

Rule Caption: Minimum Pay for Substitute Teachers

Date:	Time:	Location:
2-22-16	11 a.m.	255 Capitol St. Salem OR

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 342.610
Stats. Implemented: ORS 342.610
Proposed Repeals: 581-005-0001
Last Date for Comment: 3-3-16, 9 a.m.
Summary: The minimum pay for a substitute teacher is set forth in state law. Substitutes shall not be paid less per day than 85% of the 1/190th of the salary of a beginning teacher who holds a bachelor's degree. This pay is based on the statewide average salary for beginning teachers who hold bachelor's degrees. The Department of Education does the calculation.

ODE originally sent districts this calculation each year by updating the administrative rule. The administrative rule process is lengthy and cumbersome, however. In about 2000, the department began sending the districts the information via numbered memo. In about 2010, the department switched to posting the salary information on its State School Fund web page, a site regularly consulted by districts. The administrative rule was never repealed. Repealing the rule is a housekeeping change that eliminates potentially conflicting information about substitute teacher salaries.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Provides exception for ban on use of Native American Mascots adopted by school districts
Stat. Auth.: ORS 326.051, 332.075, 659.850, 659.855
Stats. Implemented: ORS 326.051, 332.075, 338.115, 659.850, 659.855
Proposed Amendments: 581-021-0047
Last Date for Comment: 1-21-16, 2 p.m.
Summary: In 2012 the State Board adopted this rule which prohibited the use of Native American mascots beginning July 1, 2017. The 2014 Legislature adopted SB 1509 which requires an exception to this prohibition for public schools which enter into agreements with tribes for the use of a mascot. The rule amendments:

Lists the nine federal recognized Oregon Native American Tribes.

Allows an exception to the previous ban on the use of Native American mascots for public schools that enter into written agreements with the Native American Tribe that the mascot represents, is associated with or is significant to.

Specifies who must approve valid agreement.

Specifies minimum contents of agreements.

Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Tribal Attendance Pilot Project Grant
Stat. Auth.: ORS 327.800
Stats. Implemented: ORS 327.800
Proposed Adoptions: 581-017-0365, 581-017-0367, 581-017-0369, 581-017-0371, 581-017-0373, 581-017-0375
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Establishes Tribal Attendance Grant Program. School districts that partner with one of the nine Oregon tribes are eligible. Program is noncompetitive. Rules establish grant amounts, timing and expectations.
Rules Coordinator: Cindy Hunt

Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Essential skills for English Language Learner students
Stat. Auth.: ORS 326.051 & 329.075
Stats. Implemented: ORS 329.045, 329.075 & 329.485
Proposed Amendments: 581-022-0617
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Changes the criteria for demonstrating proficiency in reading and writing Essential Skills in the student's language of origin to allow students through end of high school to demonstrate English language skills. Changes the location for posting notifications of assessment options to the Essential Skills and Local Performance Assessment Manual. Removes requirement that assessment options are posted by March 1 of each year.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Interdistrict transfer agreements for K–12 students
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.133
Proposed Amendments: 581-021-0019
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Interdistrict transfer allows a student to request permission to enroll in a district in which the student does not reside. Both the sending district and the receiving district must consent to the transfer.

In 2015, the Legislature passed SB 709, which amended the state law on interdistrict transfer. The amendments in SB 709 impacted ODE's administrative rule on interdistrict transfer in two ways: (1) the information a district may request and consider prior to granting consent, and (2) when a transfer maybe granted in the event of hardship.

The rules implement SB 709.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Authorization of Department employee to appear on behalf of agency in certain hearings
Stat. Auth.: ORS 183.452
Stats. Implemented: ORS 183.452
Proposed Amendments: 581-001-0002
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Updates rule relating to employees appearing on behalf of Department of Education in administrative hearings to include hearings related to criminal background checks, bus driver certification and bus inspector certification.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Calculation of Extended Average Daily Membership for Charter Schools
Stat. Auth.: ORS 327.125 & 338.025
Stats. Implemented: ORS 327.013, 327.077, 338.155 & 338.165
Proposed Amendments: 581-023-0106
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Changes definition of extended ADMw for purposes of calculation of State School Fund. Removes requirement that charter school extended ADMw be calcuated separate from the non-charter schools in the district. Provides for additional funds to a district that has a charter school closure.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Amends human sexuality education rule that applies to K–12 students
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.455 & 336.455
Proposed Amendments: 581-022-1440
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Amends existing rule on human sexuality education to align with new child abuse instructional requirements in SB 856 (2015). SB 856 (Sex Abuse Prevention Instructional Program) became effective June 11, 2015. SB 856 requires each school district to provide 4 sessions annually of sexual abuse prevention instruction from kindergarten through grade 12. Updates are required to OAR 581-022-1440 (Human Sexuality Education) to reflect these new requirements.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Administration of Prescription and Nonprescription Medication to Students
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 339.870; 2015 OL Ch. 112, Section 2 (Enrolled HB 3149); 2015 OL 162, Section 1 (Enrolled HB 3041)
Proposed Amendments: 581-021-0037
Last Date for Comment: 1-21-16, 9 a.m.
Summary: Amends existing rule on the administration of prescription and nonprescription medication to align with three bills passed during 2015 legislative session.

SB 875, HB 3041, and HB 3149, all signed in to law during the 2015 legislative session, require modification to OAR 581-021-0037. SB 875 directs the State Board of Education to adopt rules under which school personnel may administer medications that treat adrenal insufficiency to students experiencing adrenal crises. HB 3041 directs school districts to allow the outdoor use, by students, of sun-protective clothing, including hats; the application of and use by students of nonprescription sunscreen without any documentation from a licensed health care professional. HB 3149 allows a registered nurse, employed by a public or private school, to accept an order from a physician licensed to practice medicine or osteopathy in another state or territory of the United States if the order is related to the care or treatment of a student who has been enrolled at the school for not more than 90 days.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Establishes guidelines for new CTE Summer Youth Engagement Program
Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stats. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Proposed Adoptions: 581-017-0465, 581-017-0469, 581-017-0473, 581-017-0477, 581-017-0481, 581-017-0485
Last Date for Comment: 1-21-16, 9 a.m.
Summary: HB 3072 (2015) is the CTE/STEM framework bill. Included in HB 3072 is a new grant to support summer programs in career and technical education.

The purpose of the program is to provide an intensive learning opportunity for middle and high school students, including access to

advanced equipment, post-secondary connections, and industry professionals.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Establishes guidelines for STEM Innovation Grant
Stat. Auth.: ORS 327.820 ; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stats. Implemented: ORS 327.820 ; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Proposed Amendments: 581-017-0321, 581-017-0324, 581-017-0327, 581-017-0330, 581-017-0333
Last Date for Comment: 1-21-16, 9 a.m.
Summary: HB 3072 (2015) is the CTE/STEM framework bill. Included in HB 3072 is a grant program for innovative education and professional development related to STEM.

The purpose of the STEM Innovation Grant Program is to award grants that expand the implementation of effective programs relating to science, technology, engineering, and mathematics, that:

(1) Propose innovative approaches to STEM-based education; or

(2) Provide professional development relating to science, technology, engineering, and mathematics.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Amends rules to reflect abolishment of Oregon Education Investment Board
Stat. Auth.: 326.051
Stats. Implemented: SB 215 (2015)
Proposed Amendments: 581-017-0010, 581-017-0020, 581-017-0215, 581-017-0301, 581-017-0312, 581-017-0318, 581-017-0333, 581-017-0335, 581-017-0347, 581-018-0010, 581-018-0020, 581-018-0110, 581-018-0125, 581-018-0215, 581-018-0265, 581-018-0325, 581-018-0336, 581-018-0509, 581-018-0529, 581-018-0575, 581-018-0584, 581-018-0590, 581-022-2130
Last Date for Comment: 1-21-16, 9 a.m.
Summary: SB 215 (2015) eliminated the Oregon Education Investment Board, maintained the position of Chief Education Officer, shifted a majority of OEIB duties to the Chief Education Office, and modified the purpose of the office to one of coordination. The bill also extended the sunset date to June 30, 2019 of the CEO and eliminated the requirements related to achievement compacts. Changes the term "Oregon Education Investment Board" to "Chief Education Office" in department administrative rules. Eliminates references to district achievement compacts.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Oregon Health Authority, Division of Medical Assistance Programs
Chapter 410

Rule Caption: Removing Prior Authorization (PA) Requirement on Deluxe Frames (V2025) and Removing Outdated Language

Date:	Time:	Location:
1-20-16	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.025, 414.065, 414.075, 683.010 & 743A.250
Proposed Amendments: 410-140-0020, 410-140-0040, 410-140-0050, 410-140-0080, 410-140-0120, 410-140-0140, 410-140-0160, 410-140-0200, 410-140-0260, 410-140-0280, 410-140-0300
Proposed Repeals: 410-140-0400
Last Date for Comment: 1-22-16, 5 p.m.
Summary: The Division needs to amend these rules to remove the prior authorization requirement on deluxe frames and remove outdated language.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: General Financial Reporting and Financial Solvency Matters; CCO Reporting Method

Date:	Time:	Location:
1-20-16	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635, 414.651
Stats. Implemented: ORS 414.610-414.685
Proposed Amendments: 410-141-3345
Proposed Repeals: 410-141-3345(T)
Last Date for Comment: 1-22-16, 5 p.m.
Summary: This rule requires CCOs to demonstrate they are able to provide coordinated care service efficiently, effectively, and economically. This rule also provides CCOs with the parameters for three alternative methods for a CCO's solvency plan and reporting requirements, depending on the status of the CCO, as described in rule.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Update Ostomy and Complex Rehabilitation Code Tables and Rule Language
Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-122-0186
Last Date for Comment: 1-22-16, 5 p.m.
Summary: Amending this rule to attach the correct tables for Ostomy and Complex Rehabilitation Codes to the rule on the Secretary of State website and update rule language.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Oregon Health Authority, Public Health Division
Chapter 333

Rule Caption: Limited marijuana retail sales

Date:	Time:	Location:
1-21-16	1 p.m.	Atrium Bldg., Sloat Rm. 99 W 10th Ave. Eugene, OR 97401
1-22-16	1 p.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1A Portland, OR 97232
1-25-16	1 p.m.	Deschutes Services Bldg. DeArmond Rm. 1300 NW Wall St. Bend, OR 97701
1-27-16	9:30 a.m.	Medford Public Library 205 South Central Ave. Medford, OR 97501

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 475.314 & 475.338, OL 2015, ch. 784 & sec. 21a, ch. 699, OL 2015
Stats. Implemented: ORS 475.314, OL 2015, ch. 784 & sec. 21a, ch. 699, OL 2015
Proposed Adoptions: 333-008-1500, 333-008-1501, 333-008-1505
Proposed Repeals: 333-008-1500(T), 333-008-1501(T)
Last Date for Comment: 1-29-16, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division is proposing to permanently adopt administrative rules in chapter 333, division 8 pertaining to limited marijuana retail sales due to the passage of SB 460 (Oregon Laws 2015, chapter 784).

The Oregon Health Authority is adopting OAR 333-008-1500 to allow for the retail sales of limited marijuana products; require warning posters and the provision of accompanying materials informing individuals of the potential health risks associated with the use of marijuana; apply a tax of 25 percent with the retail sale of marijuana starting on or after January 4, 2016; outline required documentation of marijuana retail products sold; and to require a dispensary to verify that the individual purchasing retail marijuana products is 21 years of age. OAR 333-008-1501 is being adopted to require dispensaries to post certain signs. OAR 333-008-1505 is being adopted to require the reporting of data to the Authority.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Rule Caption: Medical Marijuana Growers, Processors, Dispensaries and Cards

Date:	Time:	Location:
1-21-16	1 p.m.	Atrium Bldg., Sloat Rm. 99 W 10th Ave. Eugene, OR 97401
1-22-16	1 p.m.	Portland State Office Bldg. 800 NE Oregon St. Rm. 1A Portland, OR 97232
1-25-16	1 p.m.	Deschutes Services Bldg. DeArmond Rm. 1300 NW Wall St. Bend, OR 97701
1-27-16	9:30 a.m.	Medford Public Library 205 South Central Ave. Medford, OR 97501

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 475.300 to 475.346, and Sections 80-90g, chapter 614, OL 2015
Stats. Implemented: ORS 475.300 to 475.346, and Sections 80–90g, chapter 614, OL 2015
Proposed Adoptions: Rules in 333-008
Proposed Amendments: Rules in 333-008
Proposed Repeals: Rules in 333-008
Last Date for Comment: 1-29-16, 5 p.m.
Summary: The Oregon Health Authority (OHA), Public Health Division is proposing to permanently adopt, amend and repeal administrative rule in chapter 333, division 8 pertaining to medical marijuana growers, processors, dispensaries and cards due to the passage of HB 3400 (Oregon Laws 2015, chapter 614).

House Bill 3400, passed by the 2015 Oregon Legislature, made many changes to the Oregon Medical Marijuana Act, ORS 475.300 to 475.346 and gave the Oregon Health Authority the regulatory authority to inspect and regulate medical marijuana growers and to register and regulate processors, which were previously unregulated in Oregon.

Other major components of the rules include:

- Plant limits for medical marijuana grow site addresses. Plant limits vary depending on whether or not growers were producing at an address before January 1, 2015, and the location of the grow site.

- Changes in fees for medical marijuana grow site registration and new fees for processors.

- Required background checks for individuals who have a financial interest in a business entity that is the owner of a processing site or dispensary.

- Health and safety requirements for medical marijuana producers and processors.

- More specific requirements for registered processing sites and dispensaries for inventory tracking systems.

- Inventory and transfer transaction reporting requirements for growers, processing sites and dispensaries.

- Limitations on the form of marijuana that can be used at work by an OMMP patient who is also an employee of a registered processing site or dispensary.

- Ability to assess civil penalties on patient, caregivers, growers, processing sites and dispensaries and against individuals not complying with the registration requirements in ORS 475.300 to 475.346 and HB 3400.

- Advertising limitations for growers, processing sites and dispensaries.

Additional amendments to existing administrative rules related to medical marijuana cards and medical marijuana dispensaries are also included as necessary to conform with the other changes to administrative rule.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Adopts rules for the Wildfire Damage Housing Relief Account

Date:	Time:	Location:
1-21-16	11 a.m.	725 Summer St. NE, CR 124A Salem OR 97301

Hearing Officer: Alison McIntosh
Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 458.620, OL 2015 HB 3148
Proposed Adoptions: 813-330-0000, 813-330-0010, 813-330-0020, 813-330-0030, 813-330-0040, 813-330-0050, 813-330-0060
Proposed Repeals: 813-330-0000(T), 813-330-0010(T), 813-330-0020(T), 813-330-0030(T), 813-330-0040(T), 813-330-0050(T), 813-330-0060(T)
Last Date for Comment: 2-1-16, 5 p.m.
Summary: The 2015 Oregon Legislature allocated funds to be used to assist persons who have experienced a loss of housing due to wildfires. The rules will establish the criteria, application process and use of funds in the Wildfire Damage Housing Relief Account.
Rules Coordinator: Sandy McDonnell
Address: Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301
Telephone: (503) 986-2012

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Rule Caption: Expands fund use; amends maximum percentage of allowable credits and factors considered for approval

Date:	Time:	Location:
1-21-16	10 a.m.	725 Summer St.NE, CR 124A Salem OR 97301

Hearing Officer: Alison McIntosh
Stat. Auth.: ORS 456.555, 456.625 & 458.700
Stats. Implemented: ORS 458.670–458.700
Proposed Amendments: 813-300-0005, 813-300-0120, 813-300-0150
Proposed Repeals: 813-300-0150(T)
Last Date for Comment: 2-2-16, 5 p.m.
Summary: The Individual Development Accounts (IDA) program authorizes the creation of IDA's between lower income account

holders and authorized fiduciary organizations. The 2015 Legislative session expanded the purposes for which people can save and made changes to the contribution limits.
Rules Coordinator: Sandy McDonnell
Address: Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301
Telephone: (503) 986-2012

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Public Utility Commission,
Board of Maritime Pilots
Chapter 856

Rule Caption: Extends time for completing certain training requirements for Columbia River pilot trainees.
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115, 776.300 & 776.325
Proposed Amendments: 856-010-0012
Last Date for Comment: 2-3-16, Close of Business
Summary: Extends the time for completing two training requirements for Columbia River pilot trainees on graded (limited) licenses, due to recent changes in shipping patterns.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232
Telephone: (971) 673-1530

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Water Resources Department
Chapter 690

Rule Caption: Extending Reservations of Water for Economic Development for Burnt River Areas of the Powder Basin.

Date:	**Time:**	**Location:**
1-25-16	6 p.m.	Best Western Sunridge Inn Library/Marilyn's Rm. 1 Sunridge Lane Baker City, OR 97814
1-26-16	4 p.m.	North Mall Office Bldg., OWRD 725 Summer St. NE, Rm. 124b Salem, OR 97301

Hearing Officer: Commissioner Bruce Corn; Commissioner Bob Baumgartner
Stat. Auth.: ORS 536 & 537
Other Auth.: OAR 690-079-0160 (temporary rule)
Stats. Implemented: ORS 536.220, 536.310, 537.249, 537.356 & 537.358
Proposed Amendments: 690-509-0000, 690-509-0100
Last Date for Comment: 2-4-16, 5 p.m.
Summary: A reservation of water for future economic development sets aside a quantity of water for storage to meet future needs. The rules establishing the Burnt River reservations of water are set to expire on March 8, 2016, unless extended by rule by the Water Resources Commission. These rule amendments would extend reservations of water for future economic development for the South Fork Burnt River, North Fork Burnt River, and Burnt River Subbasins of the Powder River Basin for an additional 20 years, to 2036, and change reporting requirements. Without these rule amendments, the Burnt River area reservations will expire. In addition, the rules include corrections to clarify that the uses for the reservations are classified uses and address inconsistencies in terminology.
Rules Coordinator: Diana Enright
Address: Water Resources Department, 725 Summer St. NE, Salem, OR 97301
Telephone: (503) 986-0874

Board of Architect Examiners
Chapter 806

Rule Caption: Approved Architect Registration and Evaluation Programs, Registration by Examination and Registration by Reciprocity rules.
Adm. Order No.: BAE 4-2015
Filed with Sec. of State: 12-14-2015
Certified to be Effective: 12-14-15
Notice Publication Date: 11-1-2015
Rules Amended: 806-010-0010, 806-010-0020, 806-010-0035
Subject: To adopt a document outlining the experience requirement for registration and referencing its location. The experience requirement for registration is outlined within the adopted document.
Rules Coordinator: Maria Brown—(503) 763-0662

806-010-0010
Approved Architect Registration and Evaluation Programs

(1) An applicant is required to complete acceptable accredited education, experience, and examination before they may be considered for registration as an architect in Oregon.

(2) The Oregon State Board of Architect Examiners (Board) adopts the education standard adopted by the National Council of Architectural Registration Boards (NCARB), which is a professional degree in architecture from a program accredited by the National Architectural Accrediting Board (NAAB) or the Canadian Architectural Certification Board (CACB), or a professional degree in architecture, certified by the CACB from a Canadian University.

(3) The Board adopts the requirements in the document titled NCARB Intern Development Program Guidelines dated July 2015 for the Intern Development Program (IDP). This document is located at: www.orbae.com.

(4) The Board adopts the Architect Registration Examination (ARE) prepared by NCARB as the approved examination to test applicant qualifications for registration.

(5) A person may be considered as a candidate for registration by following:

(a) The rules for registration by examination in OAR 806-010-0020; or

(b) The rules for registration by reciprocity in OAR 806-010-0035; or

(c) By satisfactorily completing the Broadly Experienced Architect (BEA) program or the Broadly Experienced Foreign Architect (BEFA) program offered through NCARB.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 670 & 671
Stats. Implemented: ORS 671.060
Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 13, f. & ef. 4-2-76; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1983, f. & ef. 1-12-83; BAE 1-2008, f. & cert. ef. 2-28-08; BAE 5-2014, f. & cert. ef. 7-24-14; BAE 2-2015(Temp), f. & cert. ef. 6-26-15 thru 12-22-15; BAE 4-2015, f. & cert. ef. 12-14-15

806-010-0020
Registration by Examination

(1) To become registered by examination to practice architecture in Oregon, an individual must:

(a) Complete a professional degree in architecture meeting the education standard in OAR 806-010-0010(2); and

(b) Complete all the requirements of the IDP; and

(c) Receive a passing score in all sections of the ARE; and

(d) Receive a passing score on the Jurisprudence Examination (JE); and

(e) Attend an oral interview before the Board.

(2) To qualify to begin taking the ARE an individual must:

(a) Complete an Examination Application; and

(b) Pay the Examination Application Fee in OAR 806-010-0105(3); and

(c) Have NCARB records transmitted to the Board; and

(d) Receive written authorization from the Board to begin testing.

(3) All candidates for registration by examination must comply with all NCARB rules regulating the ARE and the IDP.

(4) An individual may use the title "Architectural Intern" only after:

(a) Completing a professional degree in architecture meeting the education standard in OAR 806-010-0010(2); and

(b) Establishing a record with NCARB and enrolling in IDP; and

(c) Receiving written authorization from the Board to begin taking the ARE.

(5) All candidates for registration by examination must:

(a) Submit a complete Examination Application; and

(b) Pay required fees; and

(c) Provide all required documentation.

(6) All candidates for registration must pass the JE.

(a) Individuals will have no longer than 60 minutes to complete the JE.

(b) The minimum passing score is 84%.

(c) Test results may not be challenged.

(d) An individual failing the JE must wait 30 days before retaking the exam.

(7) After passing the JE, a candidate for registration by examination must appear before the Board for an oral interview. Oral interviews are held on regularly scheduled Board meeting dates. The candidate will be notified in writing of their oral interview date.

(8) Upon successful completion of all requirements for registration by examination, the individual will be issued a certificate according to OAR 806-010-0040.

(9) No person may use the "Architect" title, except under the conditions outlined in OAR 806-010-0037 and ORS 671.065.

(10) No person may practice architecture in Oregon until the Board notifies the person in writing that registration is granted by the Board.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.050, 671.060, 671.065 & 671.085
Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 1-1980, f. & ef. 2-14-80; AE 2-1980, f. & ef. 10-3-80; AE 2-1981(Temp), f. & ef. 7-28-81; AE 2-1983, f. & ef. 1-12-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 2-1992, f. & cert. ef. 3-30-92; AE 5-1992(Temp), f. & cert. ef. 10-21-92; AE 1-1993, f. & cert. ef. 7-1-93; AE 1-1996, f. 1-23-96, f. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; Administrative correction, 6-17-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 5-2002 f. 8-14-02 cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2005, f. & cert. ef. 5-12-05; BAE 1-2008, f. & cert. ef. 2-28-08; BAE 4-2009, f. & cert. ef. 7-10-09; BAE 2-2010, f. 6-11-10, cert. ef. 10-3-10; BAE 5-2014, f. & cert. ef. 7-24-14; BAE 2-2015(Temp), f. & cert. ef. 6-26-15 thru 12-22-15; BAE 3-2015(Temp), f. & cert. ef. 9-14-15 thru 12-22-15; BAE 4-2015, f. & cert. ef. 12-14-15

806-010-0035
Registration by Reciprocity

(1) To become registered by reciprocity to practice architecture in Oregon, an individual must possess an active registration from another board-recognized jurisdiction, and

(a) Possess an active NCARB Certificate, or

(b) Possess documentary evidence of the following:

(A) A first professional degree in architecture from a NAAB-accredited program of architecture;

(B) Successful completion of all sections of the ARE;

(C) Completion of the NCARB IDP, or two years of consecutive and active practice in architecture in a board-recognized jurisdiction after initial registration;

(D) If an individual has not previously been examined for seismic and lateral forces knowledge through successful completion of an NCARB examination in 1965 or later, the individual must provide evidence of successfully completing the NCARB Division Structural Systems examination.

(2) All applicants for registration by reciprocity must:

(a) Complete the Reciprocity Application;

(b) Pay required fees;

(c) Provide all required documentation in section (1);

(d) Pass the Jurisprudence Exam according to 806-010-0020(6).

(3) The Board reserves the right to require an oral interview of any reciprocity applicant. Oral interviews are held on regularly scheduled Board meeting dates. If an oral interview is required, the applicant will be notified.

Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.050 & 671.065
Hist.: AE 5, f. 12-22-64; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 2-1980, f. & ef. 10-3-80; AE 1-1984, f. & ef. 8-22-84; AE 1-1987, f. & ef. 3-30-87; AE 1-1988, f. & cert. ef. 3-14-88; AE 1-1992, f. 1-9-92, cert. ef. 1-10-92; AE 3-1992, f. & cert. ef. 6-30-92; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2002, f. 8-14-02 cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2004, f. & cert. ef. 3-2-04; BAE 1-2008, f. & cert. ef. 2-28-08; BAE 2-2010, f. 6-11-10, cert. ef. 10-3-10; BAE 4-2013, f. 12-30-13, cert. ef. 1-1-14; BAE 2-2015(Temp), f. & cert. ef. 6-26-15 thru 12-22-15; BAE 3-2015(Temp), f. & cert. ef. 9-14-15 thru 12-22-15; BAE 4-2015, f. & cert. ef. 12-14-15

Board of Licensed Social Workers
Chapter 877

Rule Caption: Adoption of requirements for temporary clinical social work associate certificate.
Adm. Order No.: BLSW 2-2015
Filed with Sec. of State: 12-14-2015
Certified to be Effective: 12-15-15
Notice Publication Date: 10-1-2015
Rules Adopted: 877-020-0021
Rules Amended: 877-020-0005
Subject: New OAR 877-020-0021 establishes requirements necessary for the board to issue a temporary clinical social work associate certificate and sets limits on the temporary certificate.

Amendments to OAR 877-020-0005 include reference to the temporary clinical social work associate certificate.
Rules Coordinator: Randy Harnisch—(503) 373-1163

877-020-0005
Rules Applicable to Certification and Licensing

This division of rules contains:

(1) The requirements to obtain and renew a certificate of social work associate.

(2) The requirements to obtain and renew a clinical social work license.

(3) The rules regarding the surrender and reapplication for a new license.

(4) The rules regarding the surrender and reapplication for a new certificate.

(5) The process of de-activating and re-activating a clinical social work license.

(6) The process to obtain a temporary certificate of social work associate.

Stat. Auth.: ORS 675.510 - 675.600 & Enrolled HB 2473 (2015)
Stats. Implemented: ORS 675.537
Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2015(Temp), f. & cert. ef. 6-19-15 thru 12-15-15; BLSW 2-2015, f. 12-14-15, cert. ef. 12-15-15

877-020-0021
Requirements for Temporary Certificate of Clinical Social Work Associate

(1) To be eligible for a temporary certificate of clinical social work associate, a person must:

(a) Submit a complete and accurate application on a form provided by the board;

(b) Hold a master's degree in social work from a college or university accredited by a credentialing body recognized by the board. The Council on Social Work Education and the Canadian Association for Social Work Education are recognized by the Board. The Board accepts determinations of equivalency of foreign degrees by the Council on Social Work Education's International Social Work Degree Recognition and Evaluation Service. Submission of proof of foreign degree equivalency and cost of the foreign degree equivalency determination are the responsibility of the applicant;

(c) Meet the fitness requirements of OAR 877-020-0008(2); and

(d) Pass the examination administered by the board on the subjects listed in OAR 877-020-0008(5)(a) with a score of not less than 90 per cent.

(2) A temporary certificate of clinical social work associate issued by the board expires, if not earlier terminated, when the board approves or proposes to deny a plan of practice and supervision pursuant to OAR 877-020-0009 or 180 days after issuance, whichever is less.

(3) An individual holding a temporary certificate of clinical social work associate may not engage in the practice of clinical social work.

(4) An unrestricted certificate of clinical social work associate will be issued following the board's approval of a plan of practice and supervision that meets the requirements of OAR 877-020-0009(4).

(5) An individual holding a temporary certificate of clinical social work associate may not accrue practice or supervision hours.

Stat. Auth.: ORS 675.510 – 675.600 & 675.990 & Enrolled HB 2473 (2015)
Stats. Implemented: ORS 675.537 & Enrolled HB 2473 (2015)
Hist.: BLSW 1-2015(Temp), f. & cert. ef. 6-19-15 thru 12-15-15; BLSW 2-2015, f. 12-14-15, cert. ef. 12-15-15

Board of Nursing
Chapter 851

Rule Caption: Regarding continuing education requirement for renewal of Nurse Practitioner State Certification
Adm. Order No.: BN 5-2015(Temp)
Filed with Sec. of State: 11-24-2015
Certified to be Effective: 11-24-15 thru 4-30-16
Notice Publication Date:
Rules Amended: 851-050-0138
Subject: Clarifies the continuing education requirement for renewal of Nurse Practitioner State Certification.
Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-050-0138
Renewal of Nurse Practitioner State Certification

(1) Renewal of state certification shall be on the same schedule as the renewal system of the registered nurse license. The requirements for recertification are:

(a) Active license as a registered nurse in the state of Oregon.

(b) Submission of all required application fees. Fees are not refundable. An application that has not been completed during the current biennial renewal cycle shall be considered void.

(c) 45 structured contact hours of continuing education completed in the two years prior to renewal of their license. At least 15 of the completed CE hours must be in pharmacotherapeutic content at the NP level congruent with their specialty role.

(d) Persons initially certified on or after January 1, 2011 shall provide verification of current national Board certification in a role and population focus congruent with educational preparation and current Oregon nurse practitioner certification.

(e) Verification of practice hours which meet the practice requirement in OAR 851-050-0004.

(f) Verification of utilization of prescriptive authority which meets the requirements specified in OAR 851-056-0014 unless already certified as an Oregon Nurse Practitioner without prescriptive authority.

(2) An applicant for renewal who has graduated from the nurse practitioner program less than two years prior to his/her first renewal will not be required to document the full 100 clock hours of continuing education. The applicant's continuing education will be prorated on a monthly basis based on the length of time between graduation and the date of the first renewal.

(3) Nurse practitioners shall maintain accurate documentation and records of any claimed continuing education and practice hours for no less than five years from the date of submission to the Board.

(4) Renewal shall be denied if the applicant does not meet the practice, prescribing, or continuing education requirement for renewal.

(5) Applications for renewal up to 60 days past the expiration date shall meet all requirements for renewal and pay a delinquent fee.

(6) Any individual whose nurse practitioner certification is expired may not practice or represent themselves as a nurse practitioner in Oregon until certification is complete, subject to civil penalty.

(7) Any individual initially licensed after January 1, 2011, whose nurse practitioner national certification is expired may not practice or represent themselves as a nurse practitioner in Oregon regardless of state certification subject to civil penalty.

Stat. Auth.: ORS 678.375 & 678.380
Stats. Implemented: ORS 678.380
Hist.: NER 34, f. & ef. 10-1-76; NER 5-1981, f. & ef. 11-24-81; NER 8-1985, f. & ef. 12-9-85; NB 3-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0310; NB 2-1992, f. & cert. ef. 2-13-92; NB 8-1993, f. & cert. ef. 8-23-93; NB 7-1996, f. & cert. ef. 10-29-96; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 7-2008, f. & cert. ef. 11-26-08; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2010(Temp), f. & cert. ef. 4-19-10 thru 10-15-10; BN 13-2010, f. & cert. ef. 9-30-10; BN 6-2013, f. 5-6-13, cert. ef. 6-1-13: BN 5-2015(Temp), f. & cert. ef. 11-24-15 thru 4-30-16

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Rule Caption: Regarding APRN authority to dispense for nurse practitioners and clinical nurse specialists.
Adm. Order No.: BN 6-2015(Temp)
Filed with Sec. of State: 11-30-2015
Certified to be Effective: 11-30-15 thru 4-30-16
Notice Publication Date:
Rules Amended: 851-056-0000, 851-056-0020
Subject: "Advanced Practice Registered Nurse Prescriptive and dispensing Authority in Oregon" (the "Handbook") has been updated

to the "Prescriptive and Dispensing Authority in Oregon: For Advanced Practice Registered Nurses". This Handbook has been approved by both the Oregon Board of Pharmacy and Board of Nursing regarding prescription drug dispensing program (pursuant to ORS 678.390(3)(a)).

Adoption of rule amendment allows for use of this Handbook for purposes of education and attestation of dispensing training program.
Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-056-0000
Definitions

(1) "Addiction" means a primary, chronic, neurobiological disease with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include one or more of the following: impaired control over drug use, compulsive use, continued use despite harm, and craving. Neither physical dependence nor tolerance alone, as defined by these rules, constitutes addiction.

(2) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject.

(3) "Advanced Practice Registered Nurse (APRN)" means a clinical nurse specialist, certified registered nurse anesthetist, or nurse practitioner licensed or state certified by the Board.

(4) "Assessment" means a process of collecting information regarding a client's health status including, but not limited to, illness, response to illness, health risks of individuals, families and groups, resources, strengths and weaknesses, coping behaviors, and the environment. The skills employed during the assessment process may include, but are not limited to, obtaining client histories, conducting physical examinations, and ordering, interpreting, and conducting a broad range of diagnostic procedures (e.g., laboratory studies, EKGs, and X-rays).

(5) "Client(s) or patient(s)" means a family, group or individual who has been assessed by and has a client or patient record established by the clinical nurse specialist or nurse practitioner.

(6) "Clinical education in patient management and pharmacotherapeutics" means a set of structured learning activities, including but not limited to, supervised clinical practice in the pharmacological management of individual clients, as well as other learning activities to promote understanding of pharmacological interventions congruent with the role and population sought for prescriptive authority.

(7) "Compounded Drug" means a combination preparation of the active ingredients of which are components of an FDA approved drug, or a drug which is still in common usage and predates the FDA approval process.

(8) "Diagnosis" means identification of actual or potential health problems or need for intervention based on analysis of the data collected.

(9) "Differential diagnosis" means the process of determining a medical diagnosis from among similar diseases and conditions based upon collection and analysis of clinical data.

(10) "Discrete pharmacology course" means an advanced pharmacology course with pharmacologically specific requirements, objectives, and content, which is offered for academic or continuing education credit, and is not integrated into other coursework.

(11) "Dispensing authority" means to prepare and deliver substances to the client provided the authority is exercised in compliance with applicable federal and state laws.

(12) "Distribute" means the delivery of a drug other than by administering or dispensing, such as prepackaged samples.

(13) "Functional impairment" means:

(a) Practicing nursing when unable or unfit to perform procedures and/or make decisions due to physical impairment as evidenced by documented deterioration of functioning in the practice setting and/or by assessment of a health care provider qualified to dagnose physical condition or status.

(b) Practicing nursing when unable or unfit to perform procedures and/or make decisions due to psychological or mental impairment as evidenced by documented deterioration of functioning in the practice setting, and/or by the assessment of a health care provider qualified to diagnose mental condition or status.

(c) Practicing nursing when physical or mental ability to practice is impaired by use of drugs, alcohol, or mind-altering substances.

(14) "Legend Drug" means:

(a) A drug which is required by federal law, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: federal law prohibits dispensing without a prescription" or

(b) A drug which is required by any applicable federal or state law or regulation to be dispensed by prescription only or restricted to use by practitioners only.

(15) "Non-Traditional Dispensing" means using automation, such as vending machines, dispensing drugs for therapies greater than 72 hour supply and providing refills at the point of care. This level of dispensing requires registration with the Oregon Board of Pharmacy. APRNs registered with the Oregon Board of Pharmacy will be subject to annual fees, inspections, and compliance standards.

(17) "Off Label" means the use of an FDA approved drug for other than FDA approved indications or dosing.

(18) "Orphan Drug" means a drug which has received orphan status from the US Food and Drug Administration because it targets a disease which affects less than 200,000 persons in the US.

(19) "Pain" means an unpleasant sensory and emotional experience related to adverse nociceptive or neuropathic stimuli. It may also be idiopathic in nature.

(a) "Acute pain" is brief and responds to timely intervention or subsides as healing takes place. Inadequate treatment may delay recovery. Such pain responds to anti-inflammatory and opioid medications, as well as to other approaches.

(b) "Chronic pain" is ongoing or frequently recurring and may become unresponsive to intervention over time.

(c) "Intractable pain" means a pain state in which the cause cannot be removed or otherwise treated and no relief or cure has been found after reasonable efforts.

(20) "Pharmacodynamics" means the study of the biochemical and physiologic effects of drugs and their mechanism of action.

(21) "Pharmacokinetics" means the action of drugs in the body over a period of time.

(22) "Pharmacotherapeutics" means the study of the uses of drugs in the treatment of disease.

(23) "Pharmacogenomics" means the study of the relationship between a specific person's genetic makeup and his or her response to drug treatment.

(24) "Physical dependence" means the physiologic adaptation to the presence of a medication characterized by withdrawal when its use is stopped abruptly.

(25) "Prescribe" means a written, verbal, or electronic legal directive to procure or designate for use legend drugs or controlled substances. Additionally, a prescription may be issued or required for use of over-the-counter medications.

(26) "Prescribing authority" means the legal permission to determine which drugs and controlled substances shall be used by or administered to a client.

(27) "Specialty" means the defined area of expertise such as that provided by academic education, clinical training, and may include additional legal or professional credentialing mechanisms.

(28) "Structured contact hours" means Continuing Medical Education (CME), or Continuing Education Unit (CEU) and other activities for which you receive academic or continuing education credit as evidenced by certificate or transcript.

(29) "Target audience" means a population for whom an educational program is designed.

(30) "Therapeutic device" means an instrument or an apparatus intended for use in diagnosis or treatment and in the prevention of disease or maintenance or restoration of health.

(31) "Traditional Dispensing" means the labeling and distribution of a medication to the client, which is pre-packaged by a manufacturer registered with the Oregon Board of Pharmacy or repackaged by a pharmacist licensed with the Oregon Board of Pharmacy.

(32) "Tolerance" means the physiologic adaptation to a controlled substance over time, resulting in the need to increase the dose to achieve the same effect, or in a reduction of response with repeated administration.

Stat. Auth.: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385, 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2011, f. & cert. ef. 10-6-11; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15; BN 6-2015(Temp), f. & cert. ef. 11-30-15 thru 4-30-16

851-056-0020
Dispensing Authority for Nurse Practitioners and Clinical Nurse Specialists

Dispensing authority is issued to Oregon state certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing. The certificate holder shall

show evidence of completion of a prescription drug dispensing training program by:

(1) Review and understanding of all contents within the most recent publication of Board of Nursing handbook "Prescriptive and Dispensing Authority in Oregon: For Advanced Practice Registered Nurses" and

(2) Attestation to the review and understanding of all information contained within the training document.

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

Stat. Auth.: ORS 678.390

Stats. Implemented: ORS 678.670, 678.375, 678.385 & 678.390

Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15; BN 6-2015(Temp), f. & cert. ef. 11-30-15 thru 4-30-16

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Rule Caption: Requirements for competency validation for new Nurse Emeritus type

Adm. Order No.: BN 7-2015

Filed with Sec. of State: 12-1-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 11-1-2015

Rules Amended: 851-031-0005, 851-031-0086

Subject: SB 547 requires the Oregon State Board of Nursing to adopt rules regarding qualifications and competency validation for the Nurse Emeritus license type.

Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-031-0005

Definitions

(1) "Address of Record" means the home address of a licensee, submitted on the initial application or by written notification of change.

(2) "Application" means a request for licensure including all information identified on a form supplied by the Board and payment of required fee.

(3) "Approved Nursing Program" means a pre-licensure educational program approved by the Board for registered or practical nurse scope of practice; or an educational program in another state or jurisdiction approved by the licensing board for nurses or other appropriate accrediting agency for that state.

(4) "Clinical Component" means a course or session in which a student obtains nursing knowledge but not in a direct client/patient interaction, or may relate to nursing practice directly with clients/patients.

(5) "Commission on Graduates of Foreign Nursing Schools (CGFNS)" is a credentials evaluation/testing service for graduates of schools outside the U.S.

(6) "Completed application" means an application and all supporting documents related to licensure requirements.

(7) "Competence or competency" means demonstrating specified levels of knowledge, technical skill, ethical principle, and clinical reasoning which are relevant to the practice role, prevailing standards, and client safety. This occurs at the entry in to practice and throughout one's career.

(8) "Comprehensive Nursing Assessment" is an extensive data collection addressing current health status and anticipated or emerging changes in that status; recognizing alterations in health status; integrating biological, psychological, spiritual, and social aspects of care; recognizing the need to communicate and consult with other healthcare providers; and using this broad analysis to plan, implement, and evaluate nursing care.

(9) "Credentials Evaluation" means an independent determination, by a Board approved service, through review of transcripts and other relevant material, whether an educational program is or is not equivalent to nursing education in the United States.

(10) "Delinquent Renewal" means late receipt of a renewal application and fee up to 60 days following license expiration.

(11) "English Language Proficiency" means the ability to use and comprehend spoken and written English at a level sufficient for safety within the scope of practice.

(12) "Examination" means the licensing examination endorsed by the National Council of State Boards of Nursing, Inc. which may be the State Board Test Pool Examination (SBTPE) or the NCLEX-RN® or -PN®.

(13) "Expired license" means that the license has lapsed and is void, the nurse has not renewed Oregon licensure or been granted Retired or Inactive status and is not authorized to practice nursing but may elect to return to active status by meeting the Board's standards.

(14) "Graduate" means to qualify in the field of nursing by completing an approved program from a university, college or school that offers an academic degree, a diploma, a certificate or a transcript denoting fulfillment of an approved program.

(15) "Inactive Nurse" status means that the nurse has applied for inactive status, is not currently authorized to practice nursing in Oregon but may elect to return to active practice by meeting the Board's standards.

(16) "Individualized Re-entry Plan" means a plan developed by the re-entry nurse to utilize formal course work and supervised clinical practice for the purpose of meeting requirements for re-entry.

(17) "International Nurse" means an individual who is credentialed to practice as a nurse in a country other than the United States or its jurisdictions.

(18) "Limited License" means a registered nurse or practical nurse license with conditions which specifically limit its duration or full use for practice.

(19) "Long Term Care Facility" means a licensed skilled nursing facility or intermediate care facility as those terms are used in ORS 442.015, an adult foster home as defined in ORS 443.705 that has residents over 60 years of age, a residential care facility as defined in ORS 443.400 or an assisted living facility.

(20) "Name Change" means establishing the legal basis through documentation for a change in the name of record.

(21) "Name of Record" means the name to which the applicant is legally entitled, submitted on the initial application, or changed at the written request of the applicant with documentation of the legal basis for the change.

(22) "Official Transcript" means a transcript received directly from the school, bearing the official seal or other designation the school identified, showing the date of graduation or program completion and the degree, diploma or certificate awarded, if applicable.

(23) "Nurse Emeritus" means the licensee retired from practice who has been granted Emeritus Licensure allowing the practice of nursing, practical nursing or registered nursing to occur in a volunteer or other non-compensatory basis.

(24) "Prelicensure Program" means a program of study in which achievement of the educational requirements for nursing licensure are achieved in the process of obtaining a higher degree (e.g., direct-entry master's or doctoral degree programs during which the requirements for a baccalaureate degree in nursing are achieved but the baccalaureate degree is not conferred; baccalaureate degree programs during which the requirements for an associate degree in nursing are met but the degree is not conferred).

(25) "Re-entry" is the process of licensing a nurse who does not meet the practice requirements at the time of application for licensure by examination, endorsement, reactivation, or reinstatement.

(26) "Reexamination" means subsequent examination(s) after one or more failures.

(27) "Reactivation" is the process of relicensing after the license is expired 61 or more days.

(28) "Reinstatement" is the process of relicensing when the license has been subject to disciplinary sanction by the Board.

(29) "Retired Nurse" is an honorary title given a nurse previously licensed in good standing in Oregon and does not authorize the nurse to practice nursing.

(30) "Self-Regulation" means the licensee takes personal responsibility and accountability for maintaining safe practice while adhering to legal, ethical, professional practice and performance standards.

(31) "United States" or "U.S." includes all states and jurisdictions of the United States.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.040, 678.050, 678.101, 678.150 & 678.410

Hist.: NB 4-1997, f. 3-6-97, cert. ef. 5-1-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 11-1999. f. & cert. ef. 12-1-99; BN 6-2000, f. & cert. ef. 4-24-00; BN 2-2002, f. & cert. ef. 3-5-02; BN 17-2002, f. & cert. ef. 10-18-02; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2006, f. & cert. ef. 10-5-06; BN 7-2015, f. 12-1-15, cert. ef. 1-1-16

851-031-0086

Retired Oregon Nurse Status and Nurse Emeritus License

(1) A nurse currently or previously licensed in good standing in Oregon is eligible to apply for Retired Nurse status if the nurse held an unencumbered Oregon nursing license.

(2) All licenses shall be retired simultaneously.

(3) To receive Retired Nurse status a nurse shall:

(a) Hold a current unencumbered license to practice nursing in Oregon; or

(b) Have been licensed in good standing in Oregon; and

(c) Indicate an intent to retire from nursing practice; and

(d) Apply using forms and instructions provided by the Board; and

(e) Sign a disclaimer acknowledging that Retired Nurse status is not an authorization to practice nursing; and

(4) A nurse with Retired Nurse Status must indicate "Retired" when using the title nurse. (e.g. RN, Retired, LPN, Retired, NP, Retired, CNS, Retired, CRNA, Retired). This requirement does not apply to the nurse granted Nurse Emeritus licensure as codified in 851-031-0086(5) through (10).

(5) The nurse granted Retired Nurse Status may apply for Nurse Emeritus licensure.

(6) An applicant for Nurse Emeritus licensure shall submit the following:

(a) Appropriate forms and fee including attestation of 10,000 lifetime practice hours;

(b) A professional practice competency plan that includes:

(A) Identification of one's volunteer practice role, and

(B) Identification of the setting where volunteer practice will occur, and

(C) Documentation that demonstrates how competency for the volunteer practice role has been attained, and

(D) A plan for continued independent or formal learning to maintain competency specific to one's volunteer practice role.

(7) A nurse holding Nurse Emeritus licensure must indicate such by using the title:

(a) RN, Emeritus, or

(b) LPN, Emeritus.

(8) A Nurse Emeritus license is valid for up to two years following the licensure calendar cycle set forth in ORS 678.101(1).

(9) The Nurse Emeritus licensee may re-apply for Nurse Emeritus licensure at any time.

(10) A fingerprint-based criminal records check per OAR 125 Division 7 is required when application for Nurse Emeritus license is made if an active license has not been held for greater than 60 days from the date of application.

Stat. Auth: ORS 678.031 – 678.050
Stats. Implemented: ORS 678.031 & 678.050
Hist.: BN 17-2002, f. & cert. ef. 10-18-02; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2010, f. & cert. ef. 6-25-10; BN 7-2015, f. 12-1-15, cert. ef. 1-1-16

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Adopt rules regarding mandatory provision of sick time.
Adm. Order No.: BLI 16-2015
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 839-007-0000, 839-007-0005, 839-007-0007, 839-007-0010, 839-007-0012, 839-007-0015, 839-007-0020, 839-007-0025, 839-007-0030, 839-007-0032, 839-007-0035, 839-007-0040, 839-007-0045, 839-007-0050, 839-007-0055, 839-007-0060, 839-007-0065, 839-007-0100, 839-007-0120
Subject: Implements OL Ch. 537, 2015 which requires all employers to allow all employees to accrue and use sick time. The rules create a new division of the administrative rules to clarify the provisions of the new law, including those addressing the accrual and use of sick time, payment of sick time, notice and posting requirements, employee documentation, calculation of the number of employees for determining whether sick time is paid or unpaid, retaliation protections, and civil penalties for noncompliance with sick time regulations.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-007-0000
Definitions

As used in OL Ch. 537, 2015 and these rules:

(1) "City with a population exceeding 500,000" means a city with a population exceeding 500,000 located within the state of Oregon.

(2) "Family member" means an employee's spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, stepparent, parent-in-law, a parent of an employee's same-gender domestic partner, an employee's grandparent or grandchild, or a person with whom the employee is or was in a relationship of in loco parentis. "Family member" also includes the biological, adopted, foster child or stepchild of an employee or the child of an employee's same-gender domestic partner. An employee's child in any of these categories may be either a minor or an adult at the time qualifying leave pursuant to these rules is taken.

(3) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed under ORS chapter 677;

(B) A dentist licensed under ORS 679.090;

(C) A psychologist licensed under ORS 675.030;

(D) An optometrist licensed under ORS 683.070;

(E) A naturopath licensed under ORS 685.080;

(F) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

(I) A direct entry midwife licensed under ORS 687.420;

(J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

(K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600;

(L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays; or

(M) A physician's assistant licensed under ORS 677.512.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(4) "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(11) as well as overtime hours worked.

(5) "Regular rate of pay" means the regular hourly rate that an employee earns for the workweek in which the employee uses paid sick time and which is no less than the applicable statutory minimum wage rate. An employer must apply a consistent methodology when calculating the regular rates of pay to similarly situated employees. An employee's regular rate of pay shall be determined as follows:

(a) For employees paid on the basis of a single hourly rate, the regular rate of pay means the same hourly rate the employee would have earned for the period of time in which sick time is used.

(b) For employees who are paid multiple hourly rates of pay, the regular rate of pay means either:

(A) The wages the employee would have been paid, if known, for the period of time in which sick time is used; or

(B) The weighted average of all regular rates of pay during the previous pay period.

(c) For employees paid a salary, the regular rate of pay means the employee's total wages earned during the pay period covered by the salary divided by the number of hours agreed to be worked in the pay period which the salary is intended to compensate. For example, if an employee is paid a weekly salary of $525 and it is understood that the salary is compensation for a regular work week of 35 hours, the employee's regular rate of pay is $15 per hour ($525 divided by 35 hours). For an employee paid a salary whose hours of work vary from work week to work week, for the purpose of calculating the regular rate of pay to be used for the payment of sick time, the employee is presumed to work 40 hours in each workweek.

(d) For employees paid on a commission basis, the regular rate of pay means the rate of pay agreed upon by the employer and the employee. In the absence of a previously established regular rate of pay, sick time shall be compensated at a rate of no less than the applicable statutory minimum wage.

(e) For employees paid on a piece-rate or fee-for-service basis, the regular rate of pay means the rate of pay agreed upon by the employer and the employee. In the absence of a previously established regular rate of pay, sick time shall be compensated at a rate no less than the applicable statutory minimum wage.

(f) The regular rate of pay does not include:

(A) Overtime, holiday pay, or other premium rates. However, where an employee's regular rate of pay includes a differential meant to compensate the employee for work performed under differing conditions (for example, a shift differential for working at night), such a differential rate is not considered to be a premium;

(B) Bonuses or other types of incentive pay; and

(C) Tips.

(6) "Spouse" includes:

(a) Individuals in a marriage recognized under state law in the state in which the marriage was entered into;

(b) Individuals in a marriage validly performed in a foreign jurisdiction;

(c) Individuals in a common law marriage that was entered into in a state that recognizes such marriages; and

(d) Individuals who have lawfully established a civil union, domestic partnership or similar relationship under the laws of any state. Individuals described in this subsection are not required to obtain a marriage license, establish a record of marriage or solemnize their relationship.

(7) "Undue hardship" means significant difficulty for an employer's business and includes consideration of the impracticability of permitting sick time to be taken in hourly increments. Factors to consider in determining whether the use of sick time in hourly increments imposes an undue hardship on the employer include, but are not limited to:

(a) The number of persons employed or working at the particular worksite and their qualifications or ability to timely relieve the employee using sick time, given the employer's operations; the total number of persons employed by the employer; the number, type and geographic separateness of the employer's worksites; and

(b) The effect of providing sick time in hourly increments on worksite operations involving: the startup or shutdown of machinery in continuous-operation industrial processes; intermittent and unpredictable workflow not in the control of the employer or employee; the perishable nature of materials used on the job; the perishable or live nature of products being harvested or processed; the time-sensitive or high-volume nature of the employer's operations, if such operations have a direct impact on the public; and the safety and health of other employees, patients, clients or the public.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0005
Jointly Employed Employees

(1) All joint employers are responsible, both individually and jointly, for ensuring compliance with the provisions of OL Ch. 537, 2015 and these rules. The bureau will be guided by joint employment standards found in Title 29, Code of Federal Regulations, Part 791, Section 2 and Part 825, Section 106.

(2) A determination of whether or not a joint employment relationship exists is not determined by the application of any single criterion, but rather the entire relationship is to be viewed in its totality.

(3) A type of company that is often called a Professional Employer Organization (PEO) contracts with client employers to perform administrative functions such as payroll, benefits, regulatory paperwork, and updating employment policies. The determination of whether a PEO is a joint employer also turns on the economic realities of the situation and must be based upon all the facts and circumstances. A PEO does not enter into a joint employment relationship with the employees of its client companies when it merely performs such administrative functions. On the other hand, if in a particular fact situation, a PEO has the right to hire, fire, assign, or direct and control the client's employees, or benefits from the work that the employees perform, such rights may lead to a determination that the PEO would be a joint employer with the client employer, depending upon the facts and circumstances.

(4) In joint employment relationships, the primary employer is responsible for giving required notices to its employees, providing sick time leave and other leave and maintenance of health benefits. Factors to be considered in determining which employer is the primary employer include but are not limited to: authority/responsibility to hire and fire, assign/place the employee, make payroll, and provide employment benefits. For employees of temporary placement agencies, for example, the placement agency most commonly would be the primary employer. Where a PEO is a joint employer, the client employer most commonly would be the primary employer.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0007
Front-loading Sick Time

(1) In lieu of awarding at least one hour of sick time for every 30 hours an employee works, an employer may satisfy its obligations under subsection (1) of OL Ch. 537, Sec. 3, 2015, and these rules, by front-loading at least 40 hours of sick time or time off at the beginning of each year used to calculate the accrual and usage of sick time or time off; or, if the employer invokes the "undue hardship" exception of subsection (1)(b) of OL Ch. 537, Sec. 7, 2015, and requires its employees to use sick time in minimum increments of more than 1 hour, by front-loading 56 hours of sick time or time off at the beginning of each year used to calculate the accrual and usage of sick time or time off.

(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and make available a certain number of hours of sick time to an employee as soon as the employee becomes eligible to use sick time and on the first day of the immediate subsequent year, without regard to an accrual rate.

(b) For employees employed by an employer for less than a full year, "front-load" means to assign and make available to an employee as soon as the employee becomes eligible to use sick time a number of hours of sick time that is the pro rata percentage of the hours to which the employee would be entitled for an entire year based on the number of hours the employee was actually employed by the employer for the year. For example, if an employer uses the calendar year to calculate usage of sick time or time off, and, on January 1 of each year, regularly front-loads 40 hours of sick time or time off for employees regularly scheduled to work 40 hours per week or more, then the employer, as soon as the employee becomes eligible to use sick time, would front-load 20 hours of sick time or time off to an employee whose first day of employment is July 1 and who is regularly scheduled to work 40 hours per week.

(2) An employer may award sick time on an accrual basis for certain classes of employees while front-loading sick time hours for other classes of employees, as long as any distinctions the employer makes in how it awards sick time to different classes of employees are based on customary employment classifications established by the employer for reasons unrelated to its obligation to provide sick time. For example, an employer may award sick time on an accrual basis for employees paid on an hourly wage basis, while front-loading sick time for employees paid on a salary basis, if it customarily maintains different employment classifications for hourly and salaried employees. Similarly, an employer may award sick time on an accrual basis for part-time or temporary employees, while front-loading sick time for full-time employees, if it customarily maintains different employment classifications for part-time, temporary, and full-time employees.

(3) An employer may adopt a system whereby it awards sick time or time off on an accrual basis for employees until they have worked for the employer for a designated length of time, while front-loading sick time or time off for all employees in similar job classifications once they have achieved that designated length of service. For example, an employer may adopt a system whereby hourly employees are awarded sick time or time off on an accrual basis from their start date until the beginning of the year that the employer uses to calculate the accrual and usage of sick time, or the first such year that follows the first anniversary of the employee's initial employment.

(a) When an employer converts an employee from an accrual-based system to a system in which it front-loads the employee's sick time or time off, and the employee has accrued less than 40 hours of sick time or time off on the date of the change (or less than 56 hours, if the employer requires sick time to be taken in minimum increments of more than one hour but no more than four hours under the undue hardship exception set forth in subsection 1(b) of OL Ch. 537, Sec. 7, 2015, the employer satisfies the requirements of subsection (1) of OL Ch. 537, Sec. 3, 2015, by front-loading the sum of: (a) the amount of hours the employee has accrued under the employee's accrual system; and (b) the difference between 40 hours (or 56 hours, if the employer requires sick time to be taken in minimum increments of four hours under the undue hardship exception set forth in subsection (1) of OL Ch. 537, Sec. 3, 2015) and that amount of accrued hours.

(b) If an employee has accrued more than 40 hours of sick time or time off on the date that an employer converts from an accrual system to a front-loading system for awarding the employee sick time or time off (or more than 56 hours, if the employer requires sick time to be taken in minimum increments of more than one hour but no more than four hours under the undue hardship exception set forth in subsection 1(b) of OL Ch. 537, Sec. 7, 2015), the employer may not front-load an amount of hours that is less than the amount of hours the employee has already accrued.

(4) An employer may front-load by paying employees for at least 40 hours of sick time at the beginning of the year and allowing the employee to take at least 40 hours of sick time during the year. Sick time taken after

the initial front-load payment does not have to be paid at the time sick time is taken.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0010
Determining the Number of Sick Time Hours Accrued for Employees for Whom Recording Hours Worked is not Required

(1) For purposes of determining the number of sick time hours accrued by an employee for whom recording the number of hours worked is not otherwise required by state and federal law, an employer may establish a reasonable method of calculating the number of hours worked by the employee.

(2) Except as provided in section (3) of this rule, a reasonable method for determining the number of hours worked by an employee for whom recording the number of hours worked is not otherwise required by state and federal law includes:

(a) The number of hours in a work schedule agreed upon by the employer and the employee;

(b) Billing hours; or

(c) Any other established practice which provides a reasonable approximation of the hours actually worked by the employee.

(3) An employee engaged in administrative, executive, professional, or outside sales work who is exempt from the minimum wage and overtime requirements is presumed to work 40 hours in each workweek unless the actual number of work hours is regularly less than 40, in which case the number of sick time hours will accrue on the basis of actual hours worked.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0012
Employees with Both Unpaid and Paid Sick Time

When the number of employees employed by an employer fluctuates from year to year, so that the employer's obligation to provide sick time alternates between paid sick time and unpaid sick time, an employee is entitled to use sick time in the manner that it was earned. For example, if an employer was required to provide paid sick time during the period of time in which an employee accrued such leave, the employee, when using sick time, is entitled to be paid for sick time accrued during this period even if the employer is no longer required to provide paid sick time. Conversely, sick time does not need to be paid when used if, at the time the employee accrued the sick time, the employer was only required to provide unpaid sick time. When an employee has available for use both paid sick time and unpaid sick time, the employee has the option of using either or both to cover the use of sick time.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0015
Calculating the Number of Employees Employed

(1) An employer shall count all employees who perform work for the employer in the state of Oregon for the purpose of determining the number of employees the employer employs, including full-time employees, part-time employees, and temporary employees.

(2) Employees jointly employed by two employers pursuant to OAR 839-007-0005 must be counted by both employers when determining the number of employees that each employer employs.

(3) The number of employees employed by an employer shall be calculated based on the average number of employees employed by the employer per day during each of at least 20 workweeks in the calendar or fiscal year in which an employee's sick time is to be taken, or in the year immediately preceding the year in which an employee's sick time is to be taken.

(4) The requirement to provide paid sick time shall apply to any employer employing an average of 10 or more employees per day in Oregon or an average of at least six employees per day in Oregon if the employer maintains a location in a city in Oregon with a population exceeding 500,000 during each of at least 20 workweeks in the calendar or fiscal year immediately preceding the year in which an employee's sick time is to be taken. For example, if during 20 or more workweeks in a calendar or fiscal year, an employer employed an average of 10 employees per day or an average of at least six employees per day if the employer maintains a location in a city in Oregon with a population exceeding 500,000 the employer will be required to provide paid sick time in the following year.

(5) An employer that has been in business for less than 20 weeks shall comply with the provisions of OAR 839-007-0032.

(6) Employees jointly employed by two employers must be counted by both employers, whether or not they are maintained on one of the employers' payroll, when determining employer coverage and employee eligibility.

(a) An employee on leave who is working for a secondary employer is considered employed by the secondary employer and must be counted for coverage and eligibility purposes, as long as the employer has a reasonable expectation that the employee will return to employment with that employer.

(b) In those cases in which a Professional Employer Organization (PEO) is determined to be a joint employer of a client employer's employees, the client employer is only required to count employees of the PEO (or employees of other clients of the PEO) if the client employer jointly employs those employees.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0020
Permissible Use of Sick Time

An employee may use sick time earned pursuant to OL Ch. 537, Sec. 6, 2015 and these rules for any of the following:

(1) For an employee's mental or physical illness, injury or health condition; need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or need for preventive medical care.

(2) For care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; or care of a family member who needs preventive medical care.

(3) For the following purposes specified in ORS 659A.159:

(a) To care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child older than 18 years of age if the child is incapable of self-care because of a mental or physical disability. Leave under this subsection must be completed within 12 months after birth or placement of the child, and an eligible employee is not entitled to any period of leave under this subsection after the expiration of 12 months after birth or placement of the child.

(b) To care for a family member with a serious health condition as defined in OAR 839-009-0210(20).

(c) To recover from or seek treatment for a serious health condition of the employee as defined in OAR 839-009-0210(20) that renders the employee unable to perform at least one of the essential functions of the employee's regular position.

(d) To care for a child of the employee who is suffering from an illness, injury or condition that is not a serious health condition as defined in OAR 839-009-0210(20), but that requires home care.

(e) To deal with the death of a family member within 60 days of the date on which the eligible employee receives notice of the death of a family member by:

(A) Attending the funeral or alternative to a funeral of the family member;

(B) Making arrangements necessitated by the death of the family member; or

(C) Grieving the death of the family member.

(4) For the following purposes specified in ORS 659A.272:

(a) To seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or the employee's minor child or dependent, including preparing for and participating in protective order proceedings or other civil or criminal legal proceedings related to domestic violence, harassment, sexual assault or stalking.

(b) To seek medical treatment for or to recover from injuries caused by domestic violence or sexual assault to or harassment or stalking of the eligible employee or the employee's minor child or dependent.

(c) To obtain, or to assist a minor child or dependent in obtaining, counseling from a licensed mental health professional related to an experience of domestic violence, harassment, sexual assault or stalking.

(d) To obtain services from a victim services provider for the eligible employee or the employee's minor child or dependent.

(e) To relocate, pursuant to OAR 839-009-0345, or take steps to secure an existing home to ensure the health and safety of the eligible employee or the employee's minor child or dependent.

(5) To donate accrued sick time to another employee if the other employee uses the donated sick time for a purpose specified in this rule and

the employer has a policy that allows an employee to donate sick time to a coworker for a purpose specified in this rule.

(6) In the event of a public health emergency, including, but not limited to:

(a) Closure of the employee's place of business, or the school or place of care of the employee's child, by order of a public official due to a public health emergency;

(b) A determination by a lawful public health authority or by a health care provider that the presence of the employee or the family member of the employee in the community would jeopardize the health of others, such that the employee must provide self-care or care for the family member; or

(c) The exclusion of the employee from the workplace under any law or rule that requires the employer to exclude the employee from the workplace for health reasons.

(7) Sick time provided pursuant to the Oregon Family Leave Act in ORS 659A.159 or ORS Domestic Violence Leave in 659A.272 runs concurrently with sick time provided pursuant to OL Ch. 537, 2015.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0025
Increments of Sick Time to Be Taken by Employee

(1) An employee shall use accrued sick time in hourly increments, unless the employer permits the employee to use sick time in increments of less than one hour.

(2) If an employer can demonstrate that to provide sick leave in hourly increments would pose an undue hardship on the employer as defined in OAR 839-007-0000(6), the employer may require an employee to use accrued sick time in increments of more than one hour but no more than four hours, provided the employer allows the employee to use at least 56 hours of paid sick leave per year.

(3) When an employer does not provide sick time to employees in hourly increments, and is able to make the required showing of undue hardship under section (2) of this rule, the employer shall first provide to each employee a notice provided by the Commissioner of the Bureau of Labor and Industries in the language used by the employer to communicate with the employee regarding what increments of sick leave will be used. The employer shall retain and keep available to the commissioner a copy of the notice for the duration of the employee's employment and for no less than six months after the termination date of the employee. Notices that comply with this subsection are available upon request from the bureau.

(4) If an employer fails to provide the undue hardship notice required in section (3) to an employee, the employer may not require the employee to take sick time in increments of more than one hour.

(5) An employer shall apply a consistent policy to all similarly situated employees related to increments of time in which sick time is required to be used.

(6) If an employer requires employees to take leave in increments of more than one hour and an employee lacks sufficient accrued sick time to cover the additional time away from work that the employer is requiring, the employer may not discipline the employee for taking the additional time or include the additional hours as violations of an absence control policy.

(7) An employer required by ORS 342.610 to pay a substitute teacher a salary based on one-half of the daily minimum salary or, if working for more than one-half day, a full day's salary, may require the substitute teacher to use accrued sick time in increments of no more than four hours

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0030
Payment of Sick Time

(1) Sick time must be paid no later than the payday for the next regular pay period after the sick time was used by the employee.

(2) An employer may not reduce an employee's benefits, including but not limited to health care benefits, because the employee uses accrued sick time to which the employee is entitled pursuant to OL Ch. 537, 2015 and these rules.

(3) If an employer has requested written documentation or verification of use of sick time pursuant to OL Ch. 537, Sec. 8, 2015 and OAR 839-007-0045, the employer is not required to pay sick time until the employee has provided such documentation or verification.

(4) If an employer chooses to require written documentation or verification of use of sick time pursuant to OL Ch. 537, 2015 and OAR 839-007-0045, such a requirement, as well as the employer's policy regarding any consequences resulting from an employee's failure or delay in providing such documentation or verification, must be included in the employer's written sick time policies.

(5) An employer who has not provided to an employee a copy of its written policy for providing notice of the need to use sick time may not deny sick time to the employee based on non-compliance with such a policy.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0032
Application of Sick Time Provisions to New Businesses

(1) An employer that has been in business for less than 20 workweeks shall allow employees to accrue sick leave pursuant to the provisions of subsection (3) of OL Ch. 537, Sec. 3, 2015.

(2) An employer that has been in business for less than 20 weeks shall calculate the number of employees employed pursuant to OAR 839-007-0015(1) after the employer has employed one or more employees for 90 calendar days.

(3) If, after employing one or more employees for 90 calendar days, the employer employs 10 or more employees in Oregon, or if the employer is located in a city with a population exceeding 500,000 and employs at least six employees in Oregon, the employer shall pay for sick time accrued and used by an employee, unless the employer has a good-faith belief that the employer will not employ an average of 10 or more employees in Oregon for each workday for at least 20 workweeks, or an average of at least six employees per day in Oregon if the employer maintains a location in a city in Oregon with a population exceeding 500,000, in which case the employer is not required to pay for sick time accrued and used.

(4) After 20 workweeks of operation, the employer shall calculate the number of employees employed pursuant to OL Ch. 537, Sec. 3, 2015 and OAR 839-007-0015.

(5) If the employer has employed an average of 10 or more employees in Oregon for each workday during the 20 workweeks of operation, or if the employer has employed an average of at least six employees per day in Oregon if the employer maintains a location in a city in Oregon with a population exceeding 500,000, for each workday during the 20 workweeks of operation, employees are required to be paid for sick leave accrued and taken thereafter unless the employer ceases to employ an average of 10 or more employees in Oregon, or if the employer maintains a location in a city in Oregon with a population exceeding 500,000 ceases to employ an average of at least six employees per day in Oregon for each workday for 20 workweeks in any year preceding the use of accrued sick leave by any employee.

(6) If, after 20 workweeks of operation, the employer has employed an average of 10 or more employees in Oregon for each workday during the 20 workweeks of operation, or if the employer employed an average of at least six employees per day in Oregon if the employer maintains a location in a city in Oregon with a population exceeding 500,000, for each workday during the 20 workweeks of operation, the employer shall pay any employee not paid for sick time accrued and taken during those 20 workweeks pursuant to OL Ch. 537, Sec. 3, 2015.

(7) An employer may not deduct or otherwise recover any sick time paid to an employee if the employer subsequently is not required to pay for accrued sick time.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0035
Sick Time for Shifts of Indeterminate Length or On-Call Shifts

(1) If an employee uses sick time for a shift of indeterminate length (for example, a shift that is defined by business needs rather than a specified number of hours), the employer may determine the amount of sick time used by the employee based on the number of hours worked by a replacement employee in the same shift or a similarly situated employee who works the same shift or who has worked a similar shift in the past.

(2) On-call employees are entitled to use sick time for hours they have been scheduled to work. Being "scheduled to work" does not include shifts for which an employee has been asked to be available or on-call, unless the employee is working while on-call as defined in OAR 839-020-0041(3). If, by agreement with the employer, an on-call employee is to be paid for a scheduled shift regardless of whether the employee actually works the shift, the employer must provide sick time.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0040
Employee Notice Policy and Procedures

(1) An employer may require an employee to comply with the employer's usual and customary written notice and procedure requirements for foreseeable absences for requesting time off if those requirements do not interfere with the ability of the employee to use sick time. Such requirements may include notice by a reasonable time and by reasonable means including but not limited to calling a designated telephone number, applying a uniform call-in procedure or by using another means of communication accessible to the employee.

(2) If the reason for sick time is a foreseeable absence, such as a prescheduled medical appointment, the employer may require employees to provide advance notice of their intention to use sick time, not to exceed 10 calendar days prior to the date the sick time is to begin or as soon as practicable, but in no case may an employee be required to provide such notice more than 10 calendar days prior to the date sick time is to begin.

(3) When an employee uses sick time for a foreseeable absence, the employee shall make a reasonable effort to schedule the sick time in a manner that does not unduly disrupt the operations of the employer. For example, the employee should make a reasonable attempt not to schedule medical appointments during peak business hours, when work is time-sensitive or when mandatory meetings are scheduled.

(4) The employee shall inform the employer of any change in the expected duration of the sick time as soon as is practicable.

(5) If the reason for sick time is unforeseeable, such as an emergency, accident, or sudden illness, the employee shall provide notice before the start of the employee's shift or, when circumstances prevent the employee from providing notice before the start of the employee's shift, as soon as is practicable. In all cases, whether and when an employee can practicably provide notice depends upon the individual facts and circumstances of the situation.

(6) An employer may discipline an employee for violating workplace policies and procedures if the employee fails to provide notice as required by these rules or if the employee fails to make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the employer as provided in section (3) of this rule. The employer may not discipline the employee for use of sick time.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0045
Verification and Certification for Sick Time Use

(1) If an employee uses sick time for more than three consecutive scheduled workdays:

(a) For a purpose provided in OL Ch. 537, Sec. 6 (1) or (2), 2015 or ORS 659A.159(1)(b)–(d) the employer may require the employee to provide verification within 15 calendar days from a health care provider of the need for the sick time.

(b) For purposes of OL Ch. 537, Sec. 6 (4), 2015 for use of sick time for a purpose specified in ORS 659A.272 relating to domestic violence, sexual assault, harassment or stalking, the employer may require the employee to provide certification of the need for leave as provided in ORS 659A.280 and subsection (3) of this rule.

(2) "Three consecutive scheduled workdays" means three consecutive scheduled workdays, not including scheduled days off. For example, if an employee is scheduled to work Monday, Wednesday, and Friday only, and the employee uses sick time for all three days, the employee has used sick time for three consecutive scheduled workdays.

(3) Pursuant to ORS 659A.280, for purposes of certification of the need for leave for purposes of ORS 659A.272 relating to domestic violence, sexual assault, harassment or stalking, any of the following constitutes sufficient certification:

(a) A copy of a police report indicating that the eligible employee or the employee's minor child or dependent was a victim of domestic violence, harassment, sexual assault or stalking;

(b) A copy of a protective order or other evidence from a court, administrative agency or attorney that the eligible employee appeared in or was preparing for a civil, criminal or administrative proceeding related to domestic violence, harassment, sexual assault or stalking; or

(c) Documentation from an attorney, law enforcement officer, health care professional, licensed mental health professional or counselor, member of the clergy or victim services provider that the eligible employee or the employee's minor child or dependent was undergoing treatment or counseling, obtaining services or relocating as a result of domestic violence, harassment, sexual assault or stalking.

(4) If an employee commences sick time without providing prior notice required by the employer under OAR 839-007-0040:

(a) Medical verification shall be provided to the employer within 15 calendar days after the employer requests the verification; or

(b) Certification as specified in ORS 659A.280 and subsection (3) of this rule for the purposes of ORS 659A.272 relating to domestic violence, sexual assault, harassment or stalking shall be provided to the employer within a reasonable time after the employee receives the request for certification.

(5) If the need for sick time is foreseeable and projected to last more than three scheduled workdays and an employee is required to provide notice under OL Ch. 537 sec. 7, 2015 and OAR 839-007-0040, the employer may require that verification or certification be provided before the sick time commences or as soon as otherwise practicable.

(6) An employer must pay any reasonable costs for providing any medical verification or certification required, including lost wages, that are not paid under a health benefit plan in which the employee is enrolled.

(7) An employer may not require that any verification or certification required explain the nature of the illness or details related to the domestic violence, sexual assault, harassment, or stalking that necessitates the use of sick time.

(8) If an employer obtains health information about an employee or an employee's family member, such information shall be treated as confidential to the extent provided by law.

(9) Pursuant to ORS 659A.280, all records and information kept by an employer regarding use of sick time for purposes related to domestic violence, harassment, sexual assault, or stalking, including the fact that the employee has requested or obtained use of sick time, are confidential and may not be released without the express permission of the employee, unless otherwise required by law.

(10) If an employee fails to provide verification or certification as required by OL Ch. 537, Sec. 8, 2015 and these rules, the employer is not required to pay for the use of sick time for the absence taken until the employee provides verification or certification verifying that the absence was for a qualifying reason as defined by OL Ch. 537, Sec. 6, 2015 and these rules. The employer may discipline the employee for violating policies and procedures but not for using sick time.

(11) If an employer reasonably suspects that an employee is abusing sick time, including engaging in a pattern of abuse, the employer may require verification from a health care provider of the need of the employee to use sick time, regardless of whether the employee has used sick time for more than three consecutive days. As used in this section, "pattern of abuse" includes, but is not limited to, repeated use of unscheduled sick time on or adjacent to weekends, holidays, vacation days or paydays.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0050
Required Employer Notices

(1) Employers are required to provide to each employee:

(a) Written notification at least quarterly of the amount of accrued and unused sick time available for use by the employee. Inclusion of this information on the statement required under ORS 652.610 meets the requirements of this subsection. If an employee has not worked during the previous quarter, the employer is not required to provide a quarterly notice.

(b) Written notice of the requirements of OL Ch. 537, 2015 and these rules.

(2) Employers may use notices provided by the Bureau of Labor and Industries to comply with the requirements of section (1) or may create their own written notice, as long as the notice includes all of the substantive information provided in the bureau's notice.

(3) The notices provided in this rule must be in the language the employer typically uses to communicate with the employee.

(4) Employers shall provide the written notice required in subsection (1)(b) no later than the end of the employer's first pay period after the effective date of OL Ch. 537, 2015 or, for employees hired after the effective date, the end of the first pay period for those employees.

(5) An employer may comply with the requirement to provide the written notice required in subsection (1)(b) by:

(a) Distributing the written notice to each employee personally, by regular mail or email, or by including it with a paycheck;

(b) Incorporating the written notice into a handbook or manual made available to employees, whether in a print or electronic format; or

(c) Posting the written notice in a conspicuous and accessible location in each workplace of the employer.

Stat. Auth: OL Ch. 537, 2015

Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0055
Substantial Equivalency

An employer's own sick leave, paid vacation, paid personal time off, or other paid time off policy is substantially equivalent to sick time required under OL Ch. 537, 2015 when such a policy provides for at least the same number of sick time hours an employee would earn under OL Ch. 537, Sec. 3, 2015 and complies with all other minimum requirements as listed in OL Ch. 537, Sections 2-16, 2015. These requirements include but are not limited to provisions related to when employees can use sick time; the rate of accrual; the regular rate of pay; qualifying absences; conditions of notice and documentation; and employment protections.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0060
Exemption for Certain Employees Covered by Collective Bargaining Agreements

(1) The provisions of OL Ch. 537, 2015 do not apply to an employee who meets all of the following requirements:

(a) Whose terms and conditions of employment are covered by a collective bargaining agreement;

(b) Who is employed through a hiring hall or similar referral system operated by the labor organization or third party; and

(c) Whose employment-related benefits are provided by a joint multi-employer-employee trust or benefit plan.

(2) The existence of a collective bargaining agreement alone is not sufficient to meet the requirements of this limited exemption.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0065
Unlawful Employment Practice

(1) It is an unlawful employment practice for an employer or any other person to deny, interfere with, restrain or fail to pay for sick time to which an employee is entitled.

(2) It is an unlawful employment practice for an employer or any other person to retaliate or in any way discriminate against an employee because the employee has:

(a) Inquired about the provisions of OL Ch. 537, 2015;

(b) Submitted a request for sick time;

(c) Taken sick time;

(d) Participated in any manner in an investigation, proceeding or hearing related to OL Chapter 537; or

(e) Invoked any provision of OL Ch. 537, 2015.

(3) It is an unlawful employment practice for an employer or any other person to apply an absence control policy that includes sick time absences covered under OL Ch. 537, 2015 as an absence that may lead to or result in an adverse employment action against the employee.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0100
Civil Penalties

(1) The Commissioner of the Bureau of Labor and Industries may assess a civil penalty for any of the following willful violations of OL Ch. 537, 2015 and these rules:

(a) Failure to permit any employee to make use of accrued sick time;

(b) Failure to pay any employee the full amount of paid sick time when the employee uses accrued sick time;

(c) Failure to provide written notice of the sick time requirements to any employee;

(d) Failure to provide written notification at least quarterly to each employee of the amount of accrued and unused sick time available for use by the employee; or,

(e) Reducing benefits for which an employee is eligible because the employee has used accrued sick time.

(2) The civil penalty for any one violation may not exceed $1000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-007-0120.

(3) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

839-007-0120
Criteria for Determining a Civil Penalty for Violation of OL Ch. 537, 2015

(1) The Commissioner of the Bureau of Labor and Industries may consider the following mitigating and aggravating circumstances when determining the amount of any civil penalty to be assessed and cite those the commissioner finds to be appropriate:

(a) The history of the employer in taking all necessary measures to prevent or correct violations of statutes or rules;

(b) Prior violations, if any, of statutes or rules;

(c) The magnitude and seriousness of the violation;

(d) Whether the employer knew or should have known of the violation;

(e) The opportunity and degree of difficulty to comply;

(f) Whether the employer's action or inaction has resulted in the loss of a substantive right of an employee.

(2) It shall be the responsibility of the employer to provide the commissioner any mitigating evidence concerning the amount of the civil penalty to be assessed.

(3) Notwithstanding any other section of this rule, the commissioner shall consider all mitigating circumstances presented by the employer for the purpose of reducing the amount of the civil penalty to be assessed.

Stat. Auth: OL Ch. 537, 2015
Stats. Implemented: OL Ch. 537, 2015
Hist.: BLI 16-2015, f. 12-9-15, cert. ef. 1-1-16

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Rule Caption: Amends the prevailing rates of wages for the period beginning January 1, 2016
Adm. Order No.: BLI 17-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 839-025-0700
Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2016.
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 the publication of the Bureau of Labor and Industries entitled Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 2016, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2016, and the effective dates of the applicable special wage determination and rates amendments:

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 2016, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060
Stats. Implemented: ORS.279C.815
Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-

28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09, BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef 1-19-10; BLI 4-2010, f. & cert. ef 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12; BLI 10-2012, f. 9-26-12, cert. ef. 10-1-12; BLI 13-2012, f. 12-28-12, cert. ef. 1-1-13; BLI 1-2013, f. & cert. ef. 3-25-13; BLI 2-2013, f. & cert. ef. 9-20-13; BLI 3-2013, f. 9-30-13, cert. ef. 10-1-13; BLI 5-2013, f. 12-16-13, cert. ef. 1-1-14; BLI 3-2014, f. & cert. ef. 4-2-14; BLI 8-2014, f. 6-13-14, cert. ef. 7-1-14; BLI 11-2014, f. 9-24-14, cert. ef. 10-1-14; BLI 15-2014, f. 12-9-14, cert. ef. 1-1-15; BLI 3-2015, f. 3-13-15, cert. ef. 4-1-15; BLI 7-2015, f. 6-15-15, cert. ef. 7-1-15; BLI 13-2015, f. 9-3-15, cert. ef. 10-1-15; BLI 17-2015, f. 12-10-15, cert. ef. 1-1-16

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Department of Agriculture
Chapter 603

Rule Caption: Establishes a 180-day emergency quarantine for Xylella fastidiosa in nine counties.
Adm. Order No.: DOA 11-2015(Temp)
Filed with Sec. of State: 11-18-2015
Certified to be Effective: 11-18-15 thru 5-15-16
Notice Publication Date:
Rules Adopted: 603-052-0052
Subject: On October 30, 2015, the Oregon Department of Agriculture detected the bacterium Xylella fastidiosa in Perry pear (Pyrus) plants grown near Corvallis, OR. This is the first officially confirmed detection of X. fastidosa in the State of Oregon. This pathogen is considered a quarantine pest because it cases Pierce's Disease on grapevines and blueberries, and infects many other plants grown in the state. This infestation poses a serious danger to Oregon's environment and wine grape, blueberry, black and raspberry, and nursery industries. The Department has determined that potentially infected Pyrus plant material was shipped to 22 locations in nine counties, including Benton, Hood River, Jackson, Lane, Linn, Marion, Multnomah, Washington and Yamhill. To date, infections have only been found in pear plants. This temporary rule immediately places under quarantine all pears grown in the nine counties listed. No pear plants or other propagative materials may be sold or shipped within or outside of the counties until one of the following conditions has been met: 1) an official survey within the county determines no infected plants have become established in the county, or 2) a nursery or growing location has been established as a pest-free place of production by the Department. On sites where the bacterium is detected, the Department shall work with the affected landowner to develop a response plan to eradicate the pathogen and to mitigate risk of further spread. Violations of this emergency quarantine may result in civil penalties of up to $10,000 as provided by ORS 570.995 and/or suspension or revocation of a nursery's license (ORS 571.125).
Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0052
Xylella fastidiosa Quarantine Order

(1) Area under quarantine. The counties of Benton, Hood River, Jackson, Lane, Linn, Marion, Multnomah, Washington and Yamhill.

(2) Commodities covered. All Pyrus plants and plant parts and any other plant, product, or article that an official inspector determines to present a risk of spreading Xylella fastidiosa. All life stages of X. fastidiosa.

(3) Prohibitions.

(a) Pyrus nursery stock and other propagative materials grown in the quarantined area are not eligible for sale or shipment unless the following conditions are met:

(A) An official delimitation survey has been conducted in the county and has determined that X. fastidiosa-infected plants have not become established in the county; OR,

(B) The nursery or growing location has been established as a Pest-Free Place of Production based on the international guidelines set forth in Decision 2015/789/EU, applicable May 18, 2015.

(b) On sites where X. fastidiosa is detected, the affected landowner shall work with the Department to develop a response plan to eradicate the pathogen and mitigate risk of further spread. This response plan may include some or all of the following requirements:

(A) Destruction of all Pyrus plants identified as infected by official survey; and,

(B) Conduction of a delimitation survey within all other host plants grown within 10-meters of known infected plants at the site;

(C) Destruction of all other plants found infected by X. fastidiosa;

(D) After final destruction of all known infected plant materials, continued monitoring of any remaining Pyrus and other host plants for a period not to exceed 90-days of active plant growth;

(E) Sanitation of all equipment and tools used for normal cultural practices within the site;

(F) Monitoring and, if necessary, treatment for known insect vectors of X. fastidiosa using appropriately labelled pesticides.

(4) Additional Quarantine Requirements. Sites on which X. fastidiosa has been detected and on which mitigation activities as described in Section (3)(b) have been implemented may be eligible to ship Pyrus plant materials intra- and interstate provided an official survey conducted after the 90-day hold period identifies no additional infected plants.

(5) Violation of Quarantine. Violation of this emergency quarantine may result in suspension or revocation of the nursery's licence (ORS 571.125) and/or civil penalties of up to $10,000 as provided by ORS 570.995.

Stat. Auth.: ORS 183, 561, 570, 571
Stats. Implemented: 183.355, 561.484, 561.560, 561.590, 561.595, 570.305, 571.125
Hist.: DOA 11-2015(Temp), f. & cert. ef. 11-18-15 thru 5-15-16

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Rule Caption: Adopts parts of the Code of Federal Regulations for food standards, processing, manufacture and distribution.
Adm. Order No.: DOA 12-2015
Filed with Sec. of State: 12-2-2015
Certified to be Effective: 12-2-15
Notice Publication Date: 9-1-2015
Rules Amended: 603-025-0190
Subject: Oregon Administrative Rule (OAR) 603-025-0190 currently adopts Title 21, Chapter 1, Parts 1, 7, 70, 73, 74, 81, 82 and 100 through 199 of the Code of Federal Regulations (2010). The proposed amendment updates the Code of Federal Regulations reference from the 2010 version to the 2015 version. This will ensure that Oregon maintains regulations that are current and consistent with neighboring states. The parts of the C.F.R. that were previously adopted are substantially similar in the 2015 version.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-025-0190
Standards of Identity, Additives, Pesticide Standards, Food Labeling, Good Manufacturing Practice, Low Acid Canned Foods, and Acidified Foods

As provided in ORS 616.230, 616.780, 621.060, 621.311, 621.405, 625.160, and 635.045, the rules governing food identity, food color additives, food additives, pesticide tolerances, and labeling of or in food adopted by the Food and Drug Administration of the U.S. Department of Health and Human Services, are hereby adopted as the rules governing this subject matter in Oregon. In addition the Good Manufacturing Practices, Fish and Fishery Products, Low Acid Canned Foods, Acidified Foods and other fed-

eral programs contained in the Code of Federal Regulations as specified below are adopted. The adopted federal programs and standards are those set forth in the 2015 version, Title 21, Chapter 1, Parts 1, 7, 70, 73, 74, 81, 82 and 100 through 199, of the Code of Federal Regulations.

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

Stat. Auth.: ORS 561.190, 561.605, 561.620 & 616.230

Stats. Implemented: ORS 561.605 - 561.620 & 616.230

Hist.: AD 2-1987, f. & ef. 1-30-87; AD 17-1993, f. & cert. ef. 11-26-93; AD 17-1997, f. & cert. ef. 10-23-97; DOA 13-1999, f. & cert. ef. 6-15-99; DOA 4-2000, f. & cert. ef. 1-18-00; Administrative correction 4-20-01; DOA 29-2002, f. 12-23-02, cert. ef. 1-1-03; DOA 6-2006, f. & cert. ef. 3-10-06; DOA 9-2013, f. & cert. ef. 9-4-13; DOA 12-2015, f. & cert. ef. 12-2-15

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Rule Caption: Creates an aerial pesticide applicator trainee and aerial pesticide applicator license.
Adm. Order No.: DOA 13-2015(Temp)
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 603-057-0107, 603-057-0155, 603-057-0157
Subject: As a result of HB 3549 (2015), the Oregon Department of Agriculture is legislatively obligated to create rules requiring the certification of aerial pesticide applicator trainees and aerial pesticide applicators for the year 2016. HB 3549 (2015) mandates that for 2016, there be an aerial pesticide applicator trainee and aerial pesticide applicator license.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-057-0107
Aerial Applications Generally

A person may not spray or otherwise apply a pesticide by aircraft unless:

(1) The person is an individual that holds a valid aerial pesticide applicator certificate which was issued by the Oregon Department of Agriculture; or

(2) The person is an individual that holds a valid aerial pesticide applicator trainee license which was issued by the Oregon Department of Agriculture and that is supervised as provided in OAR 603-057-0001.

Stat. Auth.: ORS 634.106, 634.112, 634.116, 634.122, 634.126 & 634

Stats. Implemented: ORS 634

Hist: DOA 13-2015(Temp), f. 12-15-15, cert. ef. 1-1-16 thru 6-28-16

603-057-0155
Aerial Pesticide Applicator Trainee

(1) There is herewith established a type of pesticide trainee license and public trainee license which shall bear the designation of aerial pesticide applicator trainee.

(2) An aerial pesticide applicator trainee license may only be issued to an individual upon receipt and approval by the department of:

(a) An appropriately completed license application form;

(b) Payment of the appropriate fee;

(c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the trainee in applying pesticides; and

(d) Proof that the individual holds a valid pesticide applicator, public applicator, or private applicator license or certificate.

(3) The annual fee for an aerial pesticide applicator trainee license shall be the same as the fee for pesticide applicators.

(4) An aerial pesticide applicator trainee that was licensed on the basis of a pesticide applicator or a public applicator license shall be limited to the categories of pesticide application authorized on their pesticide applicator or public applicator license. There are no category limits for an aerial pesticide applicator trainee that was licensed solely on the basis of a private applicator license.

(5) For calendar year 2016, the aerial applicator trainee shall always work under the supervision of a licensed pesticide applicator, a licensed public applicator, a certified private applicator, or a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft.

(6) After calendar year 2016, the aerial pesticide applicator trainee shall always work under the supervision of a certified aerial pesticide applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft.

(7) An aerial pesticide applicator trainee license may only be renewed two times consecutively.

(8) An aerial pesticide applicator trainee license shall expire on December 31 of the year of issuance.

(9) An aerial pesticide applicator trainee that was licensed solely on the basis of a public applicator license shall not spray or otherwise apply pesticides by aircraft to any lands beyond those lands that he is authorized to spray or otherwise apply pesticides to from the ground.

(10) The department shall suspend or revoke the aerial pesticide applicator trainee license if the trainee fails to maintain the valid pesticide applicator license, public applicator license or private applicator certificate that was the basis of obtaining the aerial pesticide applicator trainee license.

(11) As used in this rule, OAR 603-057-0155 or 603-057-0157, the terms "supervised" and "supervision" means that:

(a) The supervisor of the aerial pesticide applicator trainee has determined that the trainee has sufficient knowledge and ability to safely apply the particular pesticide according to its label directions and any other additional directions;

(b) The aerial pesticide applicator trainee is applying the particular pesticide under the instructions of their supervisor; and

(c) The aerial pesticide applicator trainee is applying the pesticide in such proximity to their supervisor that such supervisor is reasonably available for any needed consultation or further direction, even though such supervisor is not physically present at the time or place of the pesticide application.

Stat. Auth.: ORS 634.106, 634.112, 634.116, 634.122, 634.126 & 634

Stats. Implemented: ORS 634

Hist: DOA 13-2015(Temp), f. 12-15-15, cert. ef. 1-1-16 thru 6-28-16

603-057-0157
Aerial Pesticide Applicator

(1) An aerial pesticide applicator certificate is a type of license.

(2) An aerial pesticide applicator certificate may only be issued to an individual upon receipt and approval by the department of:

(a) An appropriately completed license application form;

(b) Payment of the appropriate fee;

(c) Proof that the individual holds a valid commercial pilot certificate for the type of aircraft to be used by the aerial pesticide applicator in applying pesticides;

(d) Proof that the individual holds a valid pesticide applicator, public applicator, or private applicator license or certificate;

(e) Proof, in the form of a sworn statement or a declaration that the individual has either:

(A) At least fifty (50) hours of experience as a licensed or certified pesticide applicator, public applicator or private applicator on flights conducted for the purpose of carrying out spraying or otherwise applying pesticides by aircraft; or

(B) At least fifty (50) hours of experience as an aerial pesticide applicator trainee under the supervision of a licensed or certified pesticide applicator, public applicator or private applicator, on flights conducted for the purpose of carrying out, or training to carry out, spraying or otherwise applying pesticides by aircraft; and

(f) Proof that the individual has demonstrated adequate knowledge as described in this rule.

(3) The annual fee for an aerial pesticide applicator certificate shall be the same as the fee for pesticide applicators.

(4) The department shall suspend or revoke the aerial pesticide applicator certificate if the certificate holder fails to maintain the valid pesticide applicator license, public applicator license or private applicator certificate that was the basis of obtaining the aerial pesticide applicator certificate.

(5) The certification period for an aerial pesticide applicator certificate issued for 2016 will expire on December 31, 2016. Aerial applicator training credits earned in 2016, may be applied to the following certification period.

(6) As of January 1, 2017, the certification period for an aerial pesticide applicator certificate shall not exceed five years.

(7) As of January 1, 2017, all individuals requesting a new or renewed aerial pesticide applicator certificate are required to demonstrate their knowledge as follows:

(a) Pass a national examination, or other examination approved by the department, testing the knowledge of the individual regarding proper spraying and other application of pesticides by aircraft; and

(b) Successfully complete during the preceding five years at least 10 credit hours in programs of instruction or educational courses satisfactory to the department and related to the spraying or other application of pesticides by aircraft.

(A) The department shall count any credit hours in satisfactory programs of instruction or educational courses as described above toward any instruction or education requirements imposed by the department for the

issuance or renewal of a pesticide applicator or a public pesticide applicator license.

(B) The department may not count any credit hours in satisfactory programs of instruction or educational courses described above toward any instruction or education requirements imposed by the department for the issuance or renewal of a private applicator's certificate.

(C) Programs of instruction or educational courses described above may qualify as core pesticide training as defined in OAR 603-057-0315.

(8) As of January 1, 2017, and for an individual, the certification period for their aerial pesticide applicator certificate may be aligned with the certification period of their pesticide applicator, public applicator or private applicator license or certificate.

(9) An aerial pesticide applicator that was licensed solely on the basis of a public applicator license shall not spray or otherwise apply pesticides by aircraft to any lands beyond those lands that he is authorized to spray or otherwise apply pesticides to from the ground.

Stat. Auth.: ORS 634.106, 634.112, 634.116, 634.122, 634.126 & 634
Stats. Implemented: ORS 634
Hist: DOA 13-2015(Temp), f. 12-15-15, cert. ef. 1-1-16 thru 6-28-16

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

Rule Caption: Clarifies mandatory electrical inspection requirements.
Adm. Order No.: BCD 10-2015
Filed with Sec. of State: 12-11-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Amended: 918-271-0040
Subject: In March of this year, the Division was notified by stakeholders about potential exposure to live electrical installations. The stakeholders were concerned that this rule, as currently written, did not provide sufficient flexibility to conduct mandatory electrical inspections in a safe and timely fashion.

The Division worked closely with these stakeholders to develop amendments to clarify the intent of the rule, and allow for the safe and timely inspection of electrical installations.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-271-0040
Mandatory Inspection Practices

(1) Electrical inspectors shall inspect and verify the appropriateness of the size, placement, protection and termination of the following electrical installations. Inspectors shall note discrepancies and require correction of code violations pursuant to OAR 918-098-1900. Physical contact is not required to inspect the electrical installations listed below.

(a) Service entrance conductors;
(b) Service equipment;
(c) Grounding electrode and grounding electrode conductor;
(d) Bonding;
(e) Overcurrent protection;
(f) Branch circuits;
(g) Feeders; and
(h) Underground installations.

(2) Electrical inspectors shall test ground-fault circuit interrupter devices (GFCI) and arc-fault circuit interrupter devices (AFCI) for functionality. Ground fault protection services (GFP) shall be performance tested in accordance with the Oregon Electrical Specialty Code.

(3) A final inspection shall be requested and provided to verify all mandatory items in sections (1) and (2) of this rule are in compliance.

(4) A final inspection shall be performed by the inspecting jurisdiction as soon as practicable, but not later than five working days following the date on which it is requested. Subject to the approval of the building official, the permit holder may schedule a final inspection prior to completion of the electrical installation in order to allow the permit holder to be present at the time of inspection and facilitate access to energized installations.

Stat. Auth: ORS 479.855
Stats. Implemented: ORS 455.160 & 479.855
Hist.: BCA 11-1988, f. & cert. ef. 7-20-88; BCD 19-1996, f. 9-17-96, cert. ef. 10-1-96, Renumbered from 918-302-0020; BCD 16-1997, f. 9-30-97, cert. ef. 10-1-97; BCD 23-2000, f. 9-29-00, cert. ef 10-1-00; BCD 10-2015, f. 12-11-15, cert. ef. 1-1-16

Rule Caption: Clarifies division policy for building inspection program operational requirements.
Adm. Order No.: BCD 11-2015
Filed with Sec. of State: 12-11-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 2-1-2015
Rules Amended: 918-020-0090
Rules Repealed: 918-020-0090(T)
Subject: This rule clarifies division policy to require a municipality that administers and enforces a building inspection program to execute a memorandum of agreement upon building inspection program renewal and return a data request form as provided by the division annually.
Rules Coordinator: Holly A. Tucker—(503) 378-5331

918-020-0090
Program Standards

Every municipality that administers and enforces an approved building inspection program must establish and maintain the minimum standards, policies, and procedures set forth in this section.

(1) Administrative Standards. A building inspection program must:

(a) Provide adequate funds, equipment, and other resources necessary to administer and enforce the building inspection program in conformance with an approved operating plan;

(b) Document in writing the authority and responsibilities of the building official, plan reviewers, and inspectors based on an ordinance or resolution that authorizes the building official on behalf of the municipality to administer and enforce a building inspection program;

(c) Establish a local process to review appeals of technical and scientific determinations made by the building official regarding any provision of the specialty codes the municipality administers and enforces, to include a method to identify the local building official or designee and notify the aggrieved persons of the provisions of ORS 455.475;

(d) Account for all revenues collected and expenditures made relating to administration and enforcement of the building inspection program, and account for the electrical program revenues and expenditures separately when administered by the municipality.

(A) Prepare income and expense projections for each code program it will administer and enforce during the reporting period; and

(B) Describe how general administrative overhead costs and losses or surpluses, if any, will be allocated.

(e) Establish policies and procedures for the retention and retrieval of records relating to the administration and enforcement of the specialty codes it administers and enforces;

(f) Make its operating plan available to the public;

(g) Establish a process to receive public inquiries, comments, and complaints;

(h) Adopt a process to receive and respond to customers' questions regarding permitting, plan review, and inspections;

(i) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will receive and respond to customers' questions;

(j) Post its jurisdictional boundary, types of permits sold and hours of operation at each permit office it operates;

(k) Identify all persons in addition to the building official to whom notices issued pursuant to these rules should be sent;

(l) Return a completed data request form to and as provided by the division annually; and

(m) Execute a memorandum of agreement with and as approved by the division for initial building inspection program approval and assumption, for building program expansion approval and assumption, and thereafter when seeking approval to renew a program under OAR 918-020-0105.

(2) Permitting Standards. A building inspection program must:

(a) Provide at least one office within its jurisdictional boundary where permits may be purchased;

(b) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will make permits available for purchase;

(c) Establish policies and procedures for receiving permit applications, determining whether permit applications are complete and notifying applicants what information, if any, is required to complete an application;

(d) Set reasonable time periods within which the municipality will:

(A) Advise permit applicants whether an application is complete or requires additional information; and

(B) Generally issue a permit after an application has been submitted and approved.

(e) Establish policies and procedure for issuing permits not requiring plan review, emergency permits, temporary permits, master permits, and minor labels;

(f) Provide a means to receive permit applications via facsimile; and

(g) Require proof of licensing, registration, and certification of any person who proposes to engage in any activity regulated by ORS chapters 446, 447, 455, 479, 693, and 701 prior to issuing any permit.

(3) Plan Review Standards. A building inspection program must:

(a) Establish policies and procedures for its plan review process to:

(A) Assure compliance with the specialty codes it is responsible for administering and enforcing, including any current interpretive rulings adopted pursuant to ORS 455.060 or 455.475;

(B) Make available checklists or other materials at each permitting office it operates that reasonably apprises persons of the information required to constitute a complete permit application or set of plans;

(C) Inform applicants within three working days of receiving an application, whether or not the application is complete and if it is for a simple residential plan. For the purposes of this rule and ORS 455.467, a "complete application" is defined by the division, taking into consideration the regional procedures in OAR chapter 918, division 50. If deemed a simple residential plan, the jurisdiction must also inform the applicant of the time period in which the plan review will generally be completed;

(D) Establish a process that includes phased permitting and deferred submittals for plan review of commercial projects for all assumed specialty codes, taking into consideration the regional procedures in OAR chapter 918, division 50. The process may not allow a project to proceed beyond the level of approval authorized by the building official. The process must:

(i) Require the building official to issue permits in accordance with the state building code as defined in ORS 455.010 provided that adequate information and detailed statements have been submitted and approved with pertinent requirements of the appropriate code. Permits may include, but not be limited to: excavation, shoring, grading and site utilities, construction of foundations, structural frame, shell, or any other part of a building or structure.

(ii) Allow deferred submittals to be permitted within each phase with the approval of the building official; and

(iii) Require the applicant to be notified of the estimated timelines for phased plan reviews and that the applicant is proceeding without assurance that a permit for the entire structure will be granted when a phased permit is issued.

(E) Verify that all plans have been stamped by a registered design professional and licensed plan reviewer where required;

(F) Verify for those architects and engineers requesting the use of alternative one and two family dwelling plan review program that all plans have been stamped by a registered professional who is also a residential plans examiner. This process must require the building official to:

(i) Establish policies and procedures in their operating plan for this process;

(ii) Waive building inspection program plan review requirements for conventional light frame construction for detached one and two family dwellings; and

(iii) Establish an appropriate fee for processing plans submitted under this rule.

(G) Establish a process for plan review if non-certified individuals review permit applications under OAR 918-098-1010.

(b) Employ or contract with a person licensed, registered, or certified to provide consultation and advice on plan reviews as deemed necessary by the building official based on the complexity and scope of its customers' needs;

(c) Maintain a list of all persons it employs or contracts with to provide plan review services including licenses, registrations, and certifications held by each plan reviewer and evidence of compliance with all applicable statutory or professional continuing education requirements;

(d) Designate at least three licensed plan reviewers from whom the municipality will accept plan reviews when the time periods in subsection (e) of this section cannot be met; and

(e) Allow an applicant to use a plan reviewer licensed under OAR 918-090-0210 and approved by the building official when the time period for review of "simple one- or two-family dwelling plans" exceeds 10 days where the population served is less than 300,000, or 15 days where the population served is 300,000 or greater.

(4) For the purposes of these rules, "simple one- or two-family dwelling plans" must:

(a) Comply with the requirements for prescriptive construction under the Oregon Residential Specialty Code; or

(b) Comply with the Oregon Manufactured Dwelling Installation Specialty Code and the requirements in OAR chapter 918, division 500; and

(c) Be a structure of three stories or less with an enclosed total floor space of 4,500 square feet or less, inclusive of multiple stories and garage(s).

(5) "Simple one- or two-family dwelling plans" may:

(a) Include pre-engineered systems listed and approved by nationally accredited agencies in accordance with the appropriate specialty code, or by state interpretive rulings approved by the appropriate specialty board, that require no additional analysis; and

(b) Be designed by an architect or engineer and be considered a simple one- and two-family dwelling if all other criteria in this rule are met.

(6) The following are considered "simple one- or two-family dwelling plans":

(a) Master plans approved by the division or municipality or under ORS 455.685, which require no additional analysis; and

(b) Plans that include an engineering soil report if the report allows prescriptive building construction and requires no special systems or additional analysis.

(7) A plan that does not meet the definition of "simple" in this rule is deemed "complex". In order to provide timely customer service, a building official may accept a plan review performed by a licensed plan reviewer for a complex one- or two-family dwelling.

(8) Inspection Standards. A building inspection program must:

(a) Set reasonable time periods between 7 a.m. and 6 p.m. on days its permit office is open, weekends and holidays excluded, when it will provide inspection services or alternative inspection schedules agreed to by the municipality and permittee;

(b) Unless otherwise specified by statute or specialty code, establish reasonable time periods when inspection services will be provided following requests for inspections;

(c) Establish policies and procedures for inspection services;

(d) Leave a written copy of the inspection report on site;

(e) Make available any inspection checklists;

(f) Maintain a list of all persons it employs or contracts with to provide inspection services including licenses, registrations, and certifications held by persons performing inspection services and evidence of compliance with all applicable statutory or professional continuing education requirements;

(g) Vest the building official with authority to issue stop work orders for failure to comply with the specialty codes the municipality is responsible for administering and enforcing; and

(h) Require inspectors to perform license enforcement inspections as part of routine installation inspections.

(i) Where a municipality investigates and enforces violations under ORS 455.156 or in accordance with the municipality's local compliance program, the municipality's inspectors must require proof of compliance with the licensing, permitting, registration, and certification requirements of persons engaged in any activity regulated by ORS Chapters 446, 447, 455, 479, 693, and 701. Inspectors must report any violation of a licensing, permitting, registration, or certification requirement to the appropriate enforcement agency.

(9) Compliance Programs. A municipality administering a building inspection program may enact local regulations to create its own enforcement program with local procedures and penalties; utilize the division's compliance program by submitting compliance reports to the division; elect to act as an agent of a division board pursuant to ORS 455.156; or develop a program that may include, but not be limited to, a combination thereof. A building inspection program must establish in its operating plan:

(a) Procedures to respond to public complaints regarding work performed without a license or permit or in violation of the specialty codes the municipality is responsible for administering and enforcing;

(b) Procedures requiring proof of licensure for work being performed under the state building code utilizing the approved citation process and procedures in OAR 918-020-0091.

(c) Policies and procedures to implement their compliance program;

(d) Policies and procedures regarding investigation of complaints, where the municipality chooses to investigate and enforce violations pursuant to ORS 455.156; and

(e) Policies and procedures regarding issuance of notices of proposed assessments of civil penalties, where the municipality chooses to act as an agent of a board pursuant to ORS 455.156. Penalties under such a program are subject to the limitations set in 455.156 and 455.895.

(10) Electrical Programs. Municipalities that administer and enforce an electrical program must demonstrate compliance with all applicable electrical rules adopted pursuant to ORS 479.855.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.355, 455.030, 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469
Stats. Implemented: ORS 455.062, 455.148, 455.150, 455.156, 455.467 & 455.469
Hist.: BCD 9-1996, f. 7-1-96, cert. ef. 10-1-96; BCD 14-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 11-2000, f. 6-23-00, cert. ef. 7-1-00; BCD 10-2002(Temp), f. 5-14-02, cert. ef. 5-15-02 thru 11-10-02; BCD 16-2002, f. & cert. ef. 7-1-02; BCD 27-2002, f. & cert. ef. 10-1-02; BCD 6-2004, f. 5-21-04, cert. ef. 7-1-04; BCD 11-2004, f. 8-13-04, cert. ef. 10-1-04; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 7-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; BCD 9-2013, f. 12-16-13, cert. ef. 1-1-14; BCD 13-2014(Temp), f. & cert. ef. 11-14-14 thru 5-12-15; BCD 4-2015(Temp), f. & cert. ef. 5-12-15 thru 11-1-15; BCD 9-2015(Temp), f. 10-30-15, cert. ef. 11-1-15 thru 1-1-16; BCD 11-2015, f. 12-11-15, cert. ef. 1-1-16

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Department of Consumer and Business Services, Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Exempts owner of certain limited liability companies from licensing as a mortgage loan originator.
Adm. Order No.: FCS 9-2015
Filed with Sec. of State: 12-14-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 441-855-0114
Subject: In the 2013 session, the Legislature enacted House Bill 2856. That Act provided for a limited exemption from the mortgage loan originator statutes for individuals making loans on properties they owned for investment purposes. The intent of HB 2856 was to facilitate lending by individuals not necessarily in the business of making mortgage loans, but that extended credit as part a more diversified, personal investment portfolio. The 2013 Act did not make accommodations for the individual to own the properties through limited liability companies (LLCs). In the 2015 session, the Legislature passed SB 879 to allow members of limited liability companies the ability to make loans on homes owned by the LLC without a mortgage loan originator license. This authorization raised concerns that the LLCs would need a license as a mortgage banker or mortgage broker in order to operate. This rulemaking activity clarifies that certain LLCs are exempt from the business licensing side of the Oregon Mortgage Lender Law (ORS 86A.100-86A.198), as long as certain conditions are met.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-855-0114
Limited Liability Companies Holding Mortgages, Deeds of Trust or Other Consensual Security Interests

(1) A limited liability company whose member claims an exemption from licensing as a mortgage loan originator under ORS 86A.203(2)(d) is exempt from licensing with the Director of the Department of Consumer and Business Services as a mortgage banker or mortgage broker, if the limited liability company:

(a) Limits membership in the limited liability company to the individual or of the individual and the individual's spouse, children, siblings, parents, grandparents, grandchildren or other relatives who are related to the individual by law, marriage or legal adoption.

(b) Treats any mortgages, deeds of trust or equivalent consensual security interests secured by properties owned by the limited liability company or any of its members as included when determining if the limited liability complies with this rule, or if the individual complies with ORS 86A.203(2)(d). In no case may a limited liability company exempt under this rule, or individual members collectively, hold more than eight mortgages, deeds of trust or equivalent consensual security interests secured by properties the limited liability company owns while claiming the exemption in this rule.

(c)(A) Discloses to the Director of the Department of Consumer and Business Services all members of the limited liability company, all the interests the members hold in other limited liability companies that are exempt under this rule, and all the properties owned by the limited liability company securing mortgages, deeds of trust or other consensual security interests made by the limited liability company or by its members.

(B) The limited liability company shall submit an updated disclosure within 30 days of a change of control or ownership of the limited liability company.

(C) The director may request mortgage loan documents in order to assist the director in making a determination under this section.

(d) Certifies that all of the members subject to subsection (c) of this section otherwise meet the requisite findings as a mortgage loan originator under ORS 86A.212(b), (c) and (d).

(e) Does not advertise or otherwise hold itself out as being engaged in the activities of a mortgage banker or mortgage broker.

(2)(a) The exemption in this rule may not be claimed unless the limited liability company requests the exemption on a form supplied by the director and provides the information required to be submitted in section (1) of this rule.

(b) The director must make a determination as to whether to approve, deny or condition an exemption under this rule within 30 days of receipt of the form and information. If the director does not act within 30 days upon an exemption application under this rule, the limited liability company may rely on the exemption.

(c) Notwithstanding subsection (a) of this section, the exemption described by this rule may not be claimed if any individual member has engaged in, is engaged in or is about to engage in conduct prohibited under ORS 86A.224 or 896A.236.

Stat. Auth.: ORS 86A.100
Stats. Implemented: ORS 86A.100, 86A.203, 2015 OL Ch 677, § 1 (Enrolled SB 879)
Hist.: FCS 9-2015, f. 12-14-15, cert. ef. 1-1-16

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Rule Caption: Updates mortgage lending rules to comply with Federal mortgage disclosure requirements.
Adm. Order No.: FCS 10-2015
Filed with Sec. of State: 12-14-2015
Certified to be Effective: 12-14-15
Notice Publication Date: 11-1-2015
Rules Amended: 441-865-0060
Subject: Under Oregon law, licensed mortgage bankers and mortgage brokers must maintain certain records created as part of the loan application process. The purpose of the existing recordkeeping rule is to preserve records of loan transactions to assist the department in performing full and fair examinations of licensed mortgage bankers and mortgage brokers. In addition to applications, correspondence, credit reports and fee agreements, Oregon rules specified that the lender or broker keep a copy of completed federally-mandated disclosures (e.g., the Truth in Lending Disclosure Statement). But since 2011, federal law has mandated that the Consumer Financial Protection Bureau (Bureau) establish a single disclosure scheme for use by lenders or creditors in complying with the disclosure requirements of both the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA). The Bureau issued its final rule combining the disclosures on November 20, 2013, effective October 3, 2015. This rulemaking simply updates the recordkeeping requirement to accommodate the changes to federally-mandated disclosures.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-865-0060
Residential Borrower Files

(1) In addition to the books and records required under the provisions of OAR 441-865-0010 to 441-865-0090, a mortgage banker or mortgage broker that takes an application for a residential mortgage transaction must prepare and maintain the following:

(a) A copy of each executed loan application form, including the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan, which must have both the signatures of the borrower and mortgage loan originator;

(b) A copy of each executed fee agreement, if prepared;

(c) In the case of residential or single family loans, a borrower acknowledged statement that a loan interest rate will float or a copy of the executed lock agreement. The lock agreement shall specify at a minimum the:

(A) Date of the agreement;

(B) File identification, and property address;

(C) Lock-in rate and expiration date;

(D) Disclosure that the lock may be subject to change if any of the loan factors change and disclosure that if the lock expires, the rate and points are subject to change; and

(E) The term of the loan.

(d) A copy of all correspondence with the borrower in writing or in a format easily converted to writing;

(e) A copy of any documents noting approval or denial of a borrower's mortgage loan application;

(f) A copy of all documents submitted by a borrower to the mortgage banker or mortgage broker in connection with the loan application;

(g) If required to be prepared for the residential mortgage transaction, a copy of the good faith estimate required by Regulation X, 12 C.F.R. Part 1024, and translated as applicable to comply with 86A.198;

(h) A copy of the executed Authorization to Release Credit Information Form;

(i) Copies of every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(j) If required to be prepared for the residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 1026 and translated as applicable to comply with ORS 86A.198, including, but not limited to, the Truth in Lending disclosure statement, the Loan Estimate and the Closing Disclosure Statement. A copy of the completed, translated Loan Estimate and Closing Disclosure provided to the borrower as required by Regulation Z, 12 C.F.R. Part 1026 and maintained in the borrower file will comply with the requirement in ORS 86A.198 to provide a translated good faith estimate and Truth in Lending Disclosure; and

(k) If required to be prepared for the residential mortgage transaction, a copy of the final HUD-1 settlement statement required by 12 C.F.R. Part 1024.

(2) In addition to the books and records required under the provisions of section (1) of this rule and OAR 441-865-0010 to 441-865-0090, a mortgage banker that funds a residential mortgage transaction must also prepare and maintain the following in the loan file:

(a) A summary of information on the loan funding program parameters required for the loan's key terms;

(b) A copy of each executed loan application form, including on the form the unique identifier of the mortgage loan originator that took the residential mortgage loan application and offered to negotiate or negotiated the terms of the loan, which must have both the signatures of the borrower and mortgage loan originator;

(c) A copy of all documentation relied upon in making the loan decision;

(d) A copy of the borrower executed note and executed trust deed;

(e) If required to be prepared for the residential mortgage transaction, a copy of the good faith estimate prepared under Regulation X, 12 C.F.R. Part 1024 and translated as applicable to comply with ORS 86A.198;

(f) A copy of the every credit report accessed by the mortgage banker or mortgage broker in connection with the transaction;

(g) If required to be prepared for the residential mortgage transaction, a copy of any disclosure required by Regulation Z, 12 C.F.R. Part 1026 and translated as applicable to comply with ORS 86A.198, including, but not limited to, the Truth in Lending disclosure statement, the Loan Estimate and the Closing Disclosure Statement. A copy of the completed, translated Loan Estimate and Closing Disclosure provided to the borrower as required by Regulation Z, 12 C.F.R. Part 1026 and maintained in the borrower file will comply with the requirement in ORS 86A.198 to provide a translated good faith estimate and Truth in Lending Disclosure;

(h) If required to be prepared for the residential mortgage transaction, a copy of the final HUD-1 settlement statement required by 12 C.F.R. Part 1024; and

(i) A copy of the statement that notifies the borrower that loan documents associated with the transaction will be in English and that advises the borrower to obtain appropriate assistance, with any necessary translations as required by ORS 86A.198.

(3) A mortgage broker that closes a residential mortgage loan in the name of the broker shall retain the records required in Sections (1) and (2) of this rule.

(4) If the loan is funded by an investor other than persons enumerated in ORS 59.035(4) or (5), the mortgage banker or mortgage broker must comply with the records requirements under OAR 441-865-0080.

Stat. Auth.: ORS 86A.112 & 86A.136

Stats. Implemented: ORS 86A.112

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 7-2001, f. & cert. ef. 8-1-01; FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef 8-1-12; FCS 10-2015, f. & cert. ef. 12-14-15

Department of Consumer and Business Services, Workers' Compensation Division
Chapter 436

Rule Caption: New medical billing codes and maximum allowable reimbursements for 2016
Adm. Order No.: WCD 8-2015(Temp)
Filed with Sec. of State: 12-8-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 436-009-0004, 436-009-0010
Subject: These temporary rules adopt, by reference, new medical billing codes for 2016 and related references:

The American Medical Association (AMA) Current Procedural Terminology (CPT® 2016);

The AMA CPT® Assistant through Volume 25, Issue 12, 2015;

The Healthcare Common Procedure Coding System (HCPCS 2016); and

The American Dental Association's CDT 2016 Dental Procedure Codes.

These temporary rules set maximum allowable reimbursement amounts for new medical codes for services provided in 2016.
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0004
Adoption of Standards

(1) The director adopts, by reference, the American Society of Anesthesiologists ASA, Relative Value Guide 2015 as a supplementary fee schedule for those anesthesia codes not found in Appendix B. To get a copy of the ASA Relative Value Guide 2015, contact the American Society of Anesthesiologists, 520 N. Northwest Highway, Park Ridge, IL 60068-2573, 847-825-5586, or on the Web at: http://www.asahq.org.

(2) The director adopts, by reference, the American Medical Association's (AMA) Current Procedural Terminology (CPT® 2015 and CPT® 2016), Fourth Edition Revised, 2014 and 2015, for billing by medical providers. The definitions, descriptions, and guidelines found in CPT® must be used as guides governing the descriptions of services, except as otherwise provided in these rules. The guidelines are adopted as the basis for determining level of service.

(3) The director adopts, by reference, the AMA's CPT® Assistant, Volume 0, Issue 04 1990 through Volume 25, Issue 12, 2015. If there is a conflict between the CPT® manual and CPT® Assistant, the CPT® manual is the controlling resource.

(4) To get a copy of the CPT® 2015 or CPT® 2016 or the CPT® Assistant, contact the American Medical Association, 515 North State Street, Chicago, IL60610, 800-621-8335, or on the Web at: http://www.ama-assn.org.

(5) The director adopts, by reference, only the alphanumeric codes from the CMS Healthcare Common Procedure Coding System (HCPCS). These codes are to be used when billing for services, but only to identify products, supplies, and services that are not described by CPT® codes or that provide more detail than a CPT® code.

(a) Except as otherwise provided in these rules, the director does not adopt the HCPCS edits, processes, exclusions, color-coding and associated instructions, age and sex edits, notes, status indicators, or other policies of CMS.

(b) To get a copy of the HCPCS, contact the National Technical Information Service, Springfield, VA 22161, 800-621-8335 or on the Web at: www.cms.gov/Medicare/Coding/HCPCSReleaseCodeSets/Alpha-Numeric-HCPCS.html.

(6) The director adopts, by reference, CDT 2015 and CDT 2016: Dental Procedure Codes, to be used when billing for dental services. To get a copy, contact the American Dental Association at American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678, or on the Web at: www.ada.org.

(7) The director adopts, by reference, the 02/12 1500 Claim Form and Version 1.1 06/13 (for the 02/12 form) 1500 Health Insurance Claim Form Reference Manual published by the National Uniform Claim Committee (NUCC). To get copies, contact the NUCC, American Medical Association, 515 N. State St., Chicago, IL 60654, or on the Web at: www.nucc.org.

(8) The director adopts, by reference, the Official UB-04 Data Specifications Manual 2015 Edition, published by National Uniform Billing Committee (NUBC). To get a copy, contact the NUBC, American

Hospital Association, One North Franklin, 29th Floor, Chicago, IL 60606, 312-422-3390, or on the Web at: www.nubc.org.

(9) The director adopts, by reference, the NCPDP Manual Claim Forms Reference Implementation Guide Version 1.3 and the NCPDP Workers' Compensation/Property & Casualty Universal Claim Form (WC/PC UCF) Version 1.1 — 5/2009. To get a copy, contact the National Council for Prescription Drug Programs (NCPDP), 9240 East Raintree Drive, Scottsdale, AZ 85260-7518, 480-477-1000, or on the Web at: www.ncpdp.org.

(10) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 control over any conflicting provision in ASA Relative Value Guide 2015, CPT® 2015, CPT® 2016, CPT® Assistant, HCPCS 2015, HCPCS 2016, CDT 2015, CDT 2016, Dental Procedure Codes, 1500 Health Insurance Claim Form Reference Instruction Manual, Official UB-04 Data Specifications Manual, or NCPDP Manual Claim Forms Reference Implementation Guide.

(11) Copies of the standards referenced in this rule are also available for review during regular business hours at the Workers' Compensation Division, Medical Resolution Team, 350 Winter Street NE, Salem OR 97301, 503-947-7606.

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

Stat. Auth.: ORS 656.248 & 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 7-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 8-2015(Temp), f. 12-8-15, cert. ef. 1-1-16 thru 6-28-16

436-009-0010
Medical Billing and Payment

(1) General.

(a) Only treatment that falls within the scope and field of the medical provider's license to practice will be paid under a workers' compensation claim. Except for emergency services or as otherwise provided for by statute or these rules, treatments and medical services are only payable if approved by the worker's attending physician or authorized nurse practitioner. Fees for services by more than one physician at the same time are payable only when the services are sufficiently different that separate medical skills are needed for proper care.

(b) All billings must include the patient's full name, date of injury, and the employer's name. If available, billings must also include the insurer's claim number and the provider's NPI. If the provider does not have an NPI, then the provider must provide its license number and the billing provider's FEIN. For provider types not licensed by the state, "99999" must be used in place of the state license number. Bills must not contain a combination of ICD-9 and ICD-10 codes.

(c) The medical provider must bill their usual fee charged to the general public. The submission of the bill by the medical provider is a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department may require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law that require providers to bill other than their usual fee.

(d) Medical providers must not submit false or fraudulent billings, including billing for services not provided. As used in this section, "false or fraudulent" means an intentional deception or misrepresentation with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. A request for pre-payment for a deposition is not considered false or fraudulent.

(e) When a provider treats a patient with two or more compensable claims, the provider must bill individual medical services for each claim separately.

(f) When rebilling, medical providers must indicate that the charges have been previously billed.

(g) If a patient requests copies of medical bills in writing, medical providers must provide copies within 30 days of the request, and provide any copies of future bills during the regular billing cycle.

(2) Billing Timelines. (For payment timelines see OAR 436-009-0030.)

(a) Medical providers must bill within:

(A) 60 days of the date of service;

(B) 60 days after the medical provider has received notice or knowledge of the responsible workers' compensation insurer or processing agent; or

(C) 60 days after any litigation affecting the compensability of the service is final, if the provider receives written notice of the final litigation from the insurer.

(b) If the provider bills past the timelines outlined in subsection (a) of this section, the provider may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(c) When submitting a bill later than outlined in subsection (a) of this section, a medical provider must establish good cause. Good cause may include, but is not limited to, such issues as extenuating circumstances or circumstances considered outside the control of the provider.

(d) When a provider submits a bill within 12 months of the date of service, the insurer may not reduce payment due to late billing.

(e) When a provider submits a bill more than 12 months after the date of service, the bill is not payable, except when a provision of subsection (2)(a) is the reason the billing was submitted after 12 months.

(3) Billing Forms.

(a) All medical providers must submit bills to the insurer unless a contract directs the provider to bill the managed care organization (MCO).

(b) Medical providers must submit bills on a completed current UB-04 (CMS 1450) or

CMS 1500 except for:

(A) Dental billings, which must be submitted on American Dental Association dental claim forms;

(B) Pharmacy billings, which must be submitted on a current National Council for Prescription Drug Programs (NCPDP) form; or

(C) Electronic billing transmissions of medical bills (see OAR 436-008).

(c) Notwithstanding subsection (3)(a) of this rule, a medical service provider doing an IME may submit a bill in the form or format agreed to by the insurer and medical service provider.

(d) Medical providers may use computer-generated reproductions of the appropriate forms.

(e) Unless different instructions are provided in the table below, the provider should use the instructions provided in the National Uniform Claim Committee 1500 Claim Form Reference Instruction Manual. [Table not included. See ED. NOTE.]

(4) Billing Codes.

(a) When billing for medical services, a medical provider must use codes listed in CPT® 2015, CPT® 2016, or Oregon specific codes (OSC) listed in OAR 436-009-0060 that accurately describe the service. If there is no specific CPT® code or OSC, a medical provider must use the appropriate HCPCS or dental code, if available, to identify the medical supply or service. If there is no specific code for the medical service, the medical provider must use the unlisted code at the end of each medical service section of CPT® 2015, CPT® 2016, or the appropriate unlisted HCPCS code, and provide a description of the service provided. A medical provider must include the National Drug Code (NDC) to identify the drug or biological when billing for pharmaceuticals.

(b) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(5) Modifiers.

(a) When billing, unless otherwise provided by these rules, medical providers must use the appropriate modifiers found in CPT® 2015, CPT® 2016, HCPCS' level II national modifiers, or anesthesia modifiers, when applicable.

(b) Modifier 22 identifies a service provided by a medical service provider that requires significantly greater effort than typically required. Modifier 22 may only be reported with surgical procedure codes with a global period of 0, 10, or 90 days as listed in Appendix B. The bill must include documentation describing the additional work. It is not sufficient to simply document the extent of the patient's comorbid condition that caused the additional work. When a medical service provider appropriately bills for an eligible procedure with modifier 22, the payment rate is 125% of the fee published in Appendix B, or the fee billed, whichever is less. For all services identified by modifier 22, two or more of the following factors must be present:

(A) Unusually lengthy procedure;

(B) Excessive blood loss during the procedure;

(C) Presence of an excessively large surgical specimen (especially in abdominal surgery);

(D) Trauma extensive enough to complicate the procedure and not billed as separate procedure codes;

(E) Other pathologies, tumors, malformations (genetic, traumatic, or surgical) that directly interfere with the procedure but are not billed as separate procedure codes; or

(F) The services rendered are significantly more complex than described for the submitted CPT®.

(6) Physician Assistants and Nurse Practitioners. Physician assistants and nurse practitioners must document in the chart notes that they provided the medical service. If physician assistants or nurse practitioners provide services as surgical assistants during surgery, they must bill using modifier "81."

(7) Chart Notes.

(a) All original medical provider billings must be accompanied by legible chart notes. The chart notes must document the services that have been billed and identify the person performing the service.

(b) Chart notes must not be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(c) When processing electronic bills, the insurer may waive the requirement that bills be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. Medical providers may submit their chart notes separately or at regular intervals as agreed with the insurer.

(8) Challenging the Provider's Bill. For services where the fee schedule does not establish a fixed dollar amount, an insurer may challenge the reasonableness of a provider's bill on a case by case basis by asking the director to review the bill under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one of, but not limited to, the following: reasonableness, the usual fees of similar providers, fees for similar services in similar geographic regions, or any extenuating circumstances.

(9) Billing the Patient / Patient Liability.

(a) A patient is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer according to OAR chapter 436. However, the patient may be liable, and the provider may bill the patient:

(A) If the patient seeks treatment for conditions not related to the accepted compensable injury or illness;

(B) If the patient seeks treatment for a service that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but is not limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 180-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(C) If the insurer notifies the patient that he or she is medically stationary and the patient seeks palliative care that is not authorized by the insurer or the director under OAR 436-010-0290;

(D) If an MCO-enrolled patient seeks treatment from the provider outside the provisions of a governing MCO contract; or

(E) If the patient seeks treatment listed in section (12) of this rule after the patient has been notified that such treatment is unscientific, unproven, outmoded, or experimental.

(b) If the director issues an order declaring an already rendered medical service or treatment inappropriate, or otherwise in violation of the statute or administrative rules, the worker is not liable for such services.

(10) Disputed Claim Settlement (DCS). The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a DCS were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except, if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(11) Payment Limitations.

(a) Insurers do not have to pay providers for the following:

(A) Completing forms 827 and 4909;

(B) Providing chart notes with the original bill;

(C) Preparing a written treatment plan;

(D) Supplying progress notes that document the services billed;

(E) Completing a work release form or completion of a PCE form, when no tests are performed;

(F) A missed appointment "no show" (see exceptions below under section (13) Missed Appointment "No Show"); or

(G) More than three mechanical muscle testing sessions per treatment program or when not prescribed and approved by the attending physician or authorized nurse practitioner.

(b) Mechanical muscle testing includes a copy of the computer printout from the machine, written interpretation of the results, and documentation of time spent with the patient. Additional mechanical muscle testing may be paid for only when authorized in writing by the insurer prior to the testing.

(c) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the patient.

(d) Vitamin B-12 injections are not reimbursable unless necessary for a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(12) Excluded Treatment. The following medical treatments (or treatment of side effects) are not compensable and insurers do not have to pay for:

(a) Dimethyl sulfoxide (DMSO), except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface electromyography (EMG) tests;

(d) Rolfing;

(e) Prolotherapy;

(f) Thermography;

(g) Lumbar artificial disc replacement, unless it is a single level replacement with an unconstrained or semi-constrained metal on polymer device and:

(A) The single level artificial disc replacement is between L3 and S1;

(B) The patient is 16 to 60 years old;

(C) The patient underwent a minimum of six months unsuccessful exercise based rehabilitation; and

(D) The procedure is not found inappropriate under OAR 436-010-0230; and

(h) Cervical artificial disc replacement, unless it is a single level replacement with a semi-constrained metal on polymer or a semi-constrained metal on metal device and:

(A) The single level artificial disc replacement is between C3 and C7;

(B) The patient is 16 to 60 years old;

(C) The patient underwent unsuccessful conservative treatment;

(D) There is intraoperative visualization of the surgical implant level; and

(E) The procedure is not found inappropriate under OAR 436-010-0230.

(13) Missed Appointment (No Show). In general, the insurer does not have to pay for "no show" appointments. However, insurers must pay for "no show" appointments for arbiter exams, director required medical exams, independent medical exams, worker requested medical exams, and closing exams. If the patient does not give 48 hours notice, the insurer must pay the provider 50 percent of the exam or testing fee and 100 percent for any review of the file that was completed prior to cancellation or missed appointment.

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

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

Stat. Auth.: ORS 656.245, 656.252, 656.254

Stats. Implemented: ORS 656.245, 656.252, 656.254

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 1-2009, f. 5-22-09, cert. ef. 7-1-09; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 1-2012, f. 2-16-12, cert. ef. 4-1-12; WCD 2-2013, f. 3-11-13, cert. ef. 4-1-13; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 4-2014(Temp), f. & cert. ef. 4-15-14 thru 10-11-14; WCD 6-2014, f. 6-13-14, cert. ef. 7-1-14; WCD 3-2015, f. 3-12-15, cert. ef. 4-1-15; WCD 8-2015(Temp), f. 12-8-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Procedures on refunds and hearing requests; attorney fees; implementation of House Bill 2764 (2015)
Adm. Order No.: WCD 9-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 436-001-0435, 436-001-0500

Rules Amended: 436-001-0003, 436-001-0004, 436-001-0009, 436-001-0019, 436-001-0027, 436-001-0030, 436-001-0170, 436-001-0240, 436-001-0246, 436-001-0259, 436-001-0410, 436-001-0420
Subject: The agency has amended OAR 436-001, "Procedural Rules, Rulemaking, Hearings, and Attorney Fees," to:

Remove definitions of terms that are no longer used in OAR 436-001;

Require that if a worker sends a written request for hearing or administrative review to an employer or insurer, and the request should have been sent to the division, the employer or insurer must promptly forward the request to the division;

Provide that, when moneys are received in excess of the amounts due and payable to the director, or when moneys have been received to which the director has no legal interest, the director will refund or credit the excess amount; but for amounts less than $20, when moneys are received for an assessment or a civil penalty, the director will refund the excess amount only upon receipt of a written request from the party entitled to the refund or credit;

Implement House Bill 2764 (2015) by:

- Explaining that the director must consider the proportionate benefit to the worker when determining the amount of an attorney fee awarded under ORS 656.262(11); and

- Establishing criteria for determining a reasonable attorney fee under ORS 656.277(1).

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-001-0003
Applicability and Purpose of these Rules

(1) OAR 436-001-0005 through 436-001-0009 establish supplemental procedures for rulemaking under ORS Chapter 183 and apply to all division rulemaking on or after Jan. 1, 2010.

(2) OAR 436-001-0019 through 436-001-0300 establish supplemental procedures for hearings on matters within the director's jurisdiction.

(a) In general, the rules of the Workers' Compensation Board in OAR chapter 438 apply to the conduct of hearings, unless these rules provide otherwise.

(b) These rules do not apply to hearings requested under ORS 656.740.

(c) These rules apply to hearings held on or after Jan. 1, 2016.

(3) OAR 436-001-0400 through 436-001-0440 apply to attorney fees awarded by the director under ORS 656.262, 656.277, and 656.386, and to attorney fees awarded by the director or administrative law judge under ORS 656.385(1).

(a) These rules apply to orders issued and attorney fees incurred on or after Jan. 1, 2016, regardless of the date on which the claim was filed.

(b) For attorney fees that are ordered to be paid in reconsideration proceedings under ORS 656.268(6), OAR 436-030-0175 applies.

(4) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

(5) OAR 436-001-0500 applies to any refund or credit processed by the director on or after Jan. 1, 2016, regardless of the date on which the payment was received.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704 & 183
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2006, f. 1-13-06, cert. ef. 1-17-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2012(Temp), f. 6-13-12, cert. ef. 7-1-12 thru 12-27-12; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0004
Definitions

(1) The following definitions apply to these rules, unless the context requires otherwise.

(a) "Administrative law judge" means an administrative law judge appointed by the Workers' Compensation Board, as defined in OAR 438-005-0040.

(b) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(c) "Delivered" means physical delivery to the division's Salem office during regular business hours.

(d) "Director" means the director of the Department of Consumer and Business Services or the director's designee.

(e) "Division" means the Workers' Compensation Division.

(f) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.

(g) "Final order" means a final, written action of the director.

(h) "Mailed" means addressed to the last known address, with sufficient postage and placed in the custody of the U.S. Postal Service.

(i) "Party" may include, but is not limited to, a worker, an employer, an insurer, a self-insured employer, a managed care organization, a medical provider, or the division.

(j) "Proposed and final order" means an order subject to revision by the director that becomes final unless exceptions are timely filed or the director issues a notice of intent to review the proposed and final order.

(2) Other words and phrases have the same meaning as given in ORS 183.310, where applicable.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704, 183
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0009
Notice of Division Rulemaking

(1) Except when adopting a temporary rule, the division will give prior public notice of the proposed adoption, amendment, or repeal of any rule by:

(a) Publishing notice of the proposed rulemaking action in the Secretary of State's Oregon Bulletin at least 21 days before the effective date of the rule;

(b) Notifying interested people and organizations on the division's notification lists of proposed rulemaking actions under ORS 183.335; and

(c) Providing notice to legislators as required by ORS 183.335(15).

(2) A person or organization may elect to receive email or hard-copy notification of proposed rulemaking actions conducted by the division.

(a) A person or organization may elect to subscribe to the division's e-mail notification service at: https://service.govdelivery.com/accounts/ORDCBS/subscriber/new.

(b) A person or organization may elect to receive hard-copy notification by sending a request in writing, including the person or organization's full name and mailing address, to the following address:

Rules Coordinator, Operations Section/Policy Team
Workers' Compensation Division
350 Winter Street NE, PO Box 14480
Salem OR 97309-0405
Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 183.335 & 84.022
Hist.: WCB 16-1975, f. & ef. 10-20-75; WCD 4-1977(Admin)(Temp), f. & ef. 11-7-77; WCD 4-1978(Admin), f. & ef. 3-6-78; Renumbered from 436-090-0505, 5-1-85; WCD 3-1986, f. & ef. 5-15-86; WCD 9-1992, f. & cert. ef. 5-22-92; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0000, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0019
Requests for Hearing

(1) A request for hearing on a matter within the director's jurisdiction must be filed with the division no later than the filing deadline. Filing deadlines will not be extended except as provided in section (7) of this rule.

(2) A request for hearing must be in writing. A party may use the division's Form 2839. A request for hearing must include the following information, as applicable:

(a) The name, address, and phone number of the party making the request;

(b) Whether the party making the request is the worker, insurer, medical provider, employer, any other party, or an attorney on behalf of a party;

(c) The number of the administrative order being appealed;

(d) The worker's name, address, and phone number;

(e) The name, address, and phone number of the worker's attorney, if any;

(f) The date of injury;

(g) The insurer's or self-insured employer's claim number;

(h) The division's file number; and

(i) The reason for requesting a hearing.

(3) Requests for hearing may be filed in any of the following ways:

(a) By mail, to the following address:

Hearings Coordinator, Operations Section/Policy Team
Workers' Compensation Division
350 Winter Street NE, PO Box 14480
Salem OR 97309-0405

(b) By hand-delivery, to the following address:

Hearings Coordinator, Operations Section/Policy Team

Workers' Compensation Division
350 Winter Street NE, 2nd floor
Salem OR 97301

(c) By fax, to 503-947-7514, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(d) By e-mail, to wcd.hearings@oregon.gov. If the request for hearing is an attachment to the e-mail, it must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(e) By using the online form, available on the division's website.

(4) The requesting party must send a copy of the request to all known parties and their legal representatives, if any.

(5) Timeliness of requests for hearing will be determined under OAR 436-001-0027.

(6) The director will refer timely requests for hearing to the board for a hearing before an administrative law judge. The director may withdraw a matter that has been referred if the request for hearing is premature, if the issues in dispute become moot, or if the director otherwise determines that the matter is not appropriate for hearing at that time.

(7) The director will deny requests for hearing that are filed after the filing deadline. The party may request a limited hearing on the denial of the request for hearing within 30 days after the mailing date of the denial. The request must be filed with the division. At the limited hearing, the administrative law judge may consider only whether:

(a) The denied request for hearing was filed timely; or

(b) Good cause existed that prevented the party from timely requesting a hearing on the merits. For the purpose of this rule, "good cause" includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect.

Stat. Auth.: ORS 656.726(4) & 84.013
Stats. Implemented: ORS 656.704
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0155, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0027
Timeliness; Calculation of Time

(1) Timeliness of any document required by these rules to be filed or submitted to the division is determined as follows:

(a) If a document is mailed, it will be considered filed on the date it is postmarked.

(b) If a document is faxed or e-mailed, it must be received by the division by 11:59 p.m. Pacific time to be considered filed on that date.

(c) If a document is delivered, it must be delivered during regular business hours to be considered filed on that date.

(2) The date and time of receipt for electronic filings is determined under ORS 84.043.

(3) Time periods allowed for a filing or submission to the division are calculated in calendar days. The first day is not included. The last day is included unless it is a Saturday, Sunday, or legal holiday. In that case, the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. Legal holidays are those listed in ORS 187.010 and 187.020.

(4) If an employer or insurer receives a written request for hearing or administrative review from a worker, and the request should have been filed with the division, the employer or insurer must promptly forward the request to the division.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0030
Role of the Workers' Compensation Division

(1) In any hearing, the director may request to:

(a) Receive notice of all matters;

(b) Receive copies of all documents; and

(c) Present evidence, testimony, and argument.

(2) The director may appear in a matter by filing an entry of appearance. The director may be represented by an agency representative, assistant attorney general, or special assistant attorney general as authorized by the Department of Justice. If the director enters an appearance, all notices and documents in the hearing must be provided to the director's representative. An agency representative may represent the director in the following categories of hearings:

(a) Hearings held before the administrative law judges of the Workers' Compensation Board to determine the correctness of:

(A) An order under ORS 656.052 declaring a person, as defined in ORS 656.005(23), to be a noncomplying employer ("NCE Orders");

(B) A nonsubjectivity determination under ORS 656.052 declaring either that a person, as defined in OR5 656.005(23), is not a subject employer or is not a subject worker ("NSD Orders");

(C) An order assessing a civil penalty under ORS 656.735, 656.740, 656.745(2), or 656.750;

(D) An order under ORS 656.745(1) assessing a civil penalty against an employer or insurer with prior written consent of the Attorney-in-Charge of the Business Activities Section of the Department of Justice; and

(E) An order under ORS 656.254(2) imposing sanctions to enforce medical reporting requirements.

(b) In cases assigned to lay representatives in accordance with subsection (a), above:

(A) Lay representatives are authorized to handle all settlement negotiations related to proposed NCE Orders, NSD Orders, and civil penalty or forfeiture orders. All settlement documents will be reviewed for legal sufficiency by the Department of Justice unless they conform to a form settlement document approved by the Attorney-in-Charge of the Business Activities Section. All settlement documents submitted to the Department of Justice will be accompanied by the original proposed order and any subsequent orders issued by the division.

(B) If the division issues a worker nonsubjectivity denial instead of referring the claim to the assigned claims agent, the division's lay representative(s) may handle settlement negotiations resulting from that worker nonsubjectivity denial. Once a request for hearing has been filed contesting that worker nonsubjectivity denial, the lay representative(s) have seven calendar days within which to finalize any pending settlement negotiations and must coordinate settlement discussions with the assigned assistant attorney general or special assistant attorney general, who will assume representation on the case. The assistant attorney general or special assistant attorney general assigned to the case may extend the seven-day time period by authorizing the lay representative(s) to continue settlement negotiations. All settlement documents will be reviewed for legal sufficiency by the attorney assigned to the case before submission to an administrative law judge.

(c) Notwithstanding subsections (a) or (b) above, and under ORS 656.704, the Department of Justice will represent the division in all matters pertaining to a claim.

(3) The administrative law judge must not allow an agency representative appearing under section (2) of this rule to present legal argument as defined by this rule.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses, or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge must provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

(5) An agency representative appearing under section (2) must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings dated June 1, 2011, as amended October 1, 2011, which is maintained by the Oregon Department of Justice and available on its website at: http://www.doj.state.or.us/help/pdf/code_of_conduct_oah_contested.pdf.

Stat. Auth.: ORS 183.452, 656.704, 656.726(4)

Stats. Implemented: ORS 180.220(2), 180.235, 183.452, 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98 ; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 2-2014, f. 3-10-14, cert. ef. 3-28-14; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0170
Duties and Powers of the Administrative Law Judge

(1) The administrative law judge may conduct the hearing in any manner, consistent with these rules, that will achieve substantial justice.

(2) Unless provided otherwise by statute or rule and except as stated in section (3) of this rule, any order issued by an administrative law judge regarding a matter within the director's jurisdiction is a proposed and final order subject to review by the director under OAR 436-001-0246.

(3) When appropriate, the administrative law judge may issue an interim order. An interim order is not subject to review by the director under OAR 436-001-0246.

(4) The administrative law judge may dismiss requests for hearing as provided in OAR 436-001-0296.

(5) When appropriate, the administrative law judge may remand a dispute to the director for further administrative action.

(6) The administrative law judge may consolidate matters in which there are common parties or common issues of law or fact.

(7) The administrative law judge may separate matters to promote efficient disposition of the matters.

(8) Consolidation of matters under section (6) of this rule or under ORS 656.704(3)(c) is only for the purpose of hearing. The administrative law judge must issue a separate order for matters other than those concerning a claim.

(9) On the motion of a party, the division, or the administrative law judge, the administrative law judge may continue a hearing to allow the presentation of oral or written legal argument by the Department of Justice.

(10) The administrative law judge may send the division a written question regarding which rules or statutes apply to a matter, or regarding the division's interpretation of the rules and statutes. If the administrative law judge sends such a question, the administrative law judge must provide a written summary of the context in which the question arises, provide a reasonable time for the division to respond, and send a copy to all parties.

(11) The administrative law judge may conduct a hearing by telephone if all parties agree.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0240
Exhibits and Evidence

(1) Within 21 days after referral of the request for hearing to the board, the division will provide the parties and the administrative law judge copies of all documents that were relied upon in the underlying action or order, with an index.

(2) Not less than 28 days before the hearing, or within seven days of receipt of the division's document index and documents, whichever is later, the petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and include a supplemental index, numbered to coincide in chronological order with the division's exhibits and exhibit list. For example, an exhibit that is chronologically between the division's exhibits 5 and 6 would be marked as "Exhibit 5a" or "Ex. 5a."

(3) Not less than 14 days before the hearing, the respondent(s) and cross-petitioner(s) must provide copies of any additional exhibits they will offer at hearing to the other parties, the administrative law judge, and the director's representative, if the director has filed an entry of appearance. The exhibits must be marked and indexed in the same manner as provided in section (2).

(4) Unless withdrawn, all exhibits offered will be included in the hearing file, whether or not they are admitted into the evidentiary record.

(5) At the discretion of the administrative law judge, an accurate description or photograph of an object or real evidence may be substituted for the object or real evidence. The party offering the evidence is responsible for providing the description or photograph, and for retaining custody of the object until the case is closed.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 9-1992, f. & cert. ef. 5-22-92; WCD 6-1995(Temp), f. & cert. ef. 7-14-95; Suspended by WCD 17-1995(Temp), f. & cert. ef. 11-2-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0246
Proposed and Final Orders — Exceptions, Correction, Director Review

(1) Under ORS 656.704(2)(a), a party must seek director review of a proposed and final order before petitioning for judicial review under ORS 183.482.

(2) The parties or the division may initiate director review of a proposed and final order by filing exceptions as follows:

(a) Written exceptions, including any argument, must be filed with the division within 30 days of the mailing date of the proposed and final order.

(b) A written response to the exceptions must be filed within 20 days of the date the exceptions were filed.

(c) A written reply to the response, if any, must be filed within 10 days of the date the response was filed.

(d) Exceptions, responses, and replies may be filed in any of the following ways:

(A) By mail, to the following address:
Hearings Coordinator, Operations Section/Policy Team
Workers' Compensation Division
350 Winter Street NE, PO Box 14480
Salem OR 97309-0405

(B) By hand-delivery, to the following address:
Hearings Coordinator, Operations Section/Policy Team
Workers' Compensation Division
350 Winter Street NE, 2nd floor
Salem OR 97301

(C) By fax, to 503-947-7514, if the document transmitted indicates that it has been delivered by fax, is sent to the correct fax number, and indicates the date the document was sent.

(D) By e-mail, to wcd.hearings@oregon.gov. If the exception, response, or reply is in an attachment to the e-mail, the attachment must be in a format that Microsoft Word 2010® (.docx, .doc, .txt, .rtf) or Adobe Reader® (.pdf) can open. Image formats that can be viewed in Internet Explorer® (.tif, .jpg) are also acceptable.

(3) The director may extend the time periods in section (2) upon a party's written request that explains the need for the delay, or on the director's own motion.

(4) If exceptions are timely filed, the director may issue a final order or an amended proposed and final order, request the administrative law judge to hold further hearing, or remand the matter for further administrative action.

(5) Within 30 days of the mailing date of the proposed and final order, the director may issue a notice of intent to review the proposed and final order, even if no exceptions are filed.

(6) All proposed and final orders must contain language notifying the parties of their right to file exceptions, how to file, and the timeframes.

(7) The administrative law judge may withdraw a proposed and final order for correction of errors within 10 calendar days of the mailing date of the order. The time for filing exceptions begins on the date the corrected proposed and final order is mailed.

(8) If no exceptions are timely filed or if no notice of intent to review is issued, the proposed and final order will become final 30 days after the mailing date of the order.

(9) Any requests for review or requests for reconsideration of a proposed and final order filed with the board or administrative law judge within 30 days of the mailing date of the order will be forwarded to the director and treated as timely exceptions under this rule.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.704
Hist.: WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; Renumbered from 436-001-0275, WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0259
Ex Parte Communication

An ex parte communication is an oral or written communication to the director during director review of the matter not made in the presence of all parties to the dispute, concerning a fact in issue, but does not include communication from division staff or the Department of Justice about legal issues or facts in the record. Ex parte communications received during director review will be promptly disclosed to all parties, and the parties will be allowed a reasonable opportunity to respond.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.704 & OL 2005, Ch. 26
Hist.: WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0410
Attorney Fees Awarded under ORS 656.385(1)

(1) In cases in which the director or administrative law judge awards a fee under ORS 656.385(1):

(a) The fee must fall within the ranges of the matrix in subsection (1)(d), unless extraordinary circumstances are shown or the parties otherwise agree.

(b) Extraordinary circumstances are not established merely by exceeding eight hours or a benefit of $6,000.

(c) The matrix in subsection (1)(d) shows the maximum fee and fee ranges as percentages of the maximum fee under ORS 656.385(1), as adjusted annually by the same percentage increase, if any, to the average weekly wage defined in ORS 656.211. Before July 1 of each year the director will publish, in Bulletin 356 (available on the division's website), the matrix showing the maximum fee and fee ranges as dollar amounts after the annual adjustment to the statutory maximum fee. Dollar amounts will be rounded to the nearest whole dollar. If the average weekly wage does not change or decreases, the maximum attorney fee awarded under ORS 656.385(1) will not be adjusted for that year.

(d) [Table not included. See ED. NOTE.]

(2) For purposes of applying the matrix in medical disputes under ORS 656.245, 656.247, 656.260, and 656.327, the following may be considered in determining the value of the results achieved or the benefit to the worker:

(a) The fee allowed by the medical fee schedule in OAR 436-009 for the medical service at issue.

(b) The overall cost of the medical service at issue.

(3) For purposes of applying the matrix in vocational disputes under ORS 656.340, the value of vocational assistance or a training plan, unless determined to be otherwise, falls within the highest range of the matrix for "benefit achieved." In addition, the following may be considered in determining the value of the results achieved or the benefit to the worker:

(a) The actual or projected cost of the service at issue.

(b) The maximum spending limit in the fee schedule for vocational assistance costs in OAR 436-120-0720 for the service at issue.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 656.385(1) & 656.726(4)
Stats. Implemented: ORS 656.262, 656.385, 656.388, 656.704 & 2015 OL, ch. 521, sec. 6
Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 7-2005, f. 10-20-05, cert. ef. 1-2-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; Renumbered from 436-001-0265, WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 3-2012(Temp), f. 6-13-12, cert. ef. 7-1-12 thru 12-27-12; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0420
Attorney Fees Awarded under ORS 656.262(11)

In cases in which the director awards a fee under ORS 656.262(11):

(1) OAR 438-015-0110 applies.

(2) The director may use the matrix in OAR 436-001-0410 as a guide in determining the amount of the fee.

(3) The director must consider the proportionate benefit to the worker when determining the amount of the fee.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.262 & 2015 OL, ch. 521, sec. 2
Hist.: WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 7-2012, f. 11-16-12, cert. ef. 12-28-12; WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0435
Attorney Fees Awarded under ORS 656.277(1)

(1) Attorney fees assessed under ORS 656.277(1) will be based on a reasonable hourly rate multiplied by the time devoted by the attorney to obtaining the reclassification order.

(2) The director will determine a reasonable hourly rate of no less than $150 per hour and no more than $400 per hour.

(3) When determining the time devoted by the attorney to obtaining the reclassification order, the director may consider time devoted by the attorney to requesting reclassification from the insurer or self-insured employer and investigating issues related to the classification of the worker's claim.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.277(1); 2015 OL, ch. 521, sec. 3
Hist.: WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

436-001-0500
Refund of Overpayments

When the director receives a payment in excess of the amount legally due and payable to the director, the director will refund or credit the excess amount. However, when the excess amount is less than $20 and the payment was for an assessment or civil penalty issued under ORS Chapter 436 or 656, the director will refund or credit the excess amount only if a written request for refund or credit is received within two years of the date that the excess amount was received by the director.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.506, 656.612, 656.614, 656.735, 656.745, 656.750, 656.780 & 293.445
Hist.: WCD 9-2015, f. 12-10-15, cert. ef. 1-1-16

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Department of Environmental Quality
Chapter 340

Rule Caption: SB 705 Asbestos Survey Temporary Rules
Adm. Order No.: DEQ 11-2015(Temp)
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 340-248-0250, 340-248-0270
Subject: DEQ is adopting these rules under the legislature's direction as expressed in Senate Bill 705 (2015). DEQ is adopting rule changes that will require an owner of a residential building or a person proposing a demolition of a residential building to have an accredited inspector perform an asbestos survey before demolishing that building. In addition, the rule changes require the owner of the residential building or the person performing a demolition of a residential building to submit to DEQ, upon DEQ's request, a copy of the asbestos survey report.

The rule changes offer three exemptions to the pre-demolition survey requirement. First, if the residential building was built after January 1, 2004, no pre-demolition survey is required. Second, if all of the material in the subject residential building is managed as asbestos-containing material, no pre-demolition survey is required. And third, DEQ may approve, on a case-by-case basis, a written request to waive the pre-demolition survey requirement. The written request must include supporting documentation that demonstrates, to DEQ's satisfaction, that a survey is not required. Under this exemption, no demolition may occur until DEQ has approved, in writing, the request for a pre-demolition survey waiver.
Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-248-0250
Asbestos Abatement Project Exemptions

(1) Any person who conducts or provides for the conduct of an asbestos abatement project must comply with the provisions of OAR 340 division 248 except as provided in this rule.

(2) The following asbestos abatement projects are exempt from certain provisions of this Division as listed in this Section:

(a) Asbestos abatement conducted inside a single private residence is exempt from OAR 340-248-0110 through 340-248-0180, 340-248-0210 through 340-248-0240 and 340-248-0260 through 340-248-0270 if the residence is occupied by the owner and the owner occupant is performing the asbestos abatement work.

(b) Asbestos abatement conducted outside of a single private residence by the owner is exempt from the notification requirements contained in OAR 340-248-0260, if the residence is not a rental property, a commercial business, or intended to be demolished.

(c) Renovation activities at residential buildings with four or fewer dwelling units are exempt from the provisions of OAR 340-248-0270(1).

(d) Demolition activities at residential buildings with four or fewer dwelling units, that were constructed after January 1, 2004, are exempt from the provisions of OAR 340-248-0270(1).

(e) Demolition activities at residential buildings with four or fewer dwelling units are exempt from the provisions of OAR 340-248-0270(1) if all of the materials at the affected facility are treated, removed, handled, managed, transported and disposed of as asbestos-containing material.

(f) Projects involving the removal of mastics and roofing products that are fully encapsulated with a petroleum-based binder and are not hard, dry, or brittle are exempt from OAR 340-248-0110 through 340-248-0280 provided the materials are not made friable.

(g) Projects involving the removal of less than three square feet or three linear feet of asbestos-containing material are exempt from OAR 340-248-0110 through 340-248-0180 and the notification requirements in 340-248-0260 provided that the removal of asbestos is not the primary objective, is part of a needed repair operation, and the methods of removal comply with OAR 437 division 3 "Construction" Subsection Z and 29 C.F.R. § 1926.1101(g) (1998). Asbestos abatement projects may not be subdivided into smaller sized units in order to qualify for this exemption.

(h) Projects involving the removal of asbestos-containing materials that are sealed from the atmosphere by a rigid casing are exempt from OAR 340-248-0110 through 340-248-0280, provided the casing is not broken or otherwise altered such that asbestos fibers could be released during removal, handling, and transport to an authorized disposal site.

(3) Any person who removes non-friable asbestos-containing material not exempted under OAR 340-248-0250(2) must comply with the following:

(a) Submit asbestos removal notification and the appropriate fee to the Department Business Office on a Department form in accordance with OAR 340-248-0260.

(b) Remove nonfriable asbestos materials in a manner that ensures the material remains nonfriable.

(c) A nonfriable asbestos abatement project is exempt from the asbestos licensing and certification requirements under OAR 340-248-0100 through 340-248-0180. The exemption ends whenever the asbestos-containing material becomes friable.

(4) Emergency fire fighting is not subject to this division.

(5) Asbestos containing waste material that is handled and disposed of in compliance with a solid waste permit issued pursuant to ORS 459 is not subject to OAR 340-248-0205(1).

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.745

Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88 (and corrected 6-3-88), ef. 6-1-88; DEQ 4-1990, f. & cert. ef. 2-7-90 (and corrected 5-21-90 & 7-8-91); DEQ 8-1990, f. 3-13-90, cert. ef. 4-23-90; DEQ 18-1991, f. & cert. ef. 10-7-91, Section (1)(a) - (d) renumbered from 340-025-0465(4)(a) - (d); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93, Renumbered from 340-025-0466; DEQ 19-1994, f. 9-6-94, cert. ef. 10-1-94; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5620; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03; DEQ 9-2003, f. 5-21-03, cert. ef. 6-21-03; DEQ 11-2015(Temp), f. 12-10-15, cert. ef. 1-1-16 thru 6-28-16

340-248-0270

Asbestos Abatement Work Practices and Procedures

(1) Except as OAR 340-248-0250 provides, prior to performing a demolition or renovation activity on a facility, the owner or operator of a facility must have an accredited inspector thoroughly survey the affected facility, or part of the facility where the demolition or renovation operation will occur, for the presence of asbestos-containing material, including non-friable asbestos material.

(2) The owner or operator of a facility that requires a survey under OAR 340-248-0270(1) must send a copy of the survey report to the department upon request by the department and keep a copy of the survey report onsite at the facility during any demolition or renovation activity.

(3) For demolitions of residential buildings, the department may approve, on a case-by-case basis, requests to waive the asbestos survey requirement of OAR 340-248-0270(1). The owner or operator of the residential building must submit a written request to the department, along with supporting documentation that demonstrates to the department's satisfaction that a survey is not warranted. The owner or operator of the residential building must obtain the department's written approval waiving the asbestos survey requirement prior to any demolition activity. The owner or operator of the residential building must maintain as readily available at the demolition site a copy of the department's written approval under this rule.

(4) Except as OAR 340-248-0250 provides, any person who conducts or provides for the conduct of an asbestos abatement project must employ the following procedures:

(a) Remove all asbestos-containing materials before any activity begins that would break up, dislodge, or disturb the materials or preclude access to the materials for subsequent removal. Asbestos-containing materials need not be removed if:

(A) They are on a facility component that is encased in concrete or other similar material and are adequately wetted whenever exposed during demolition;

(B) They were not discovered before demolition and cannot be removed because of unsafe conditions as a result of the demolition.

(b) Upon discovery of asbestos-containing materials found during demolition the owner or operator performing the demolition must:

(A) Stop demolition work immediately;

(B) Notify the Department immediately of the occurrence;

(C) Keep the exposed asbestos-containing materials and any asbestos-contaminated waste material adequately wet at all times until a licensed asbestos abatement contractor begins removal activities;

(D) Have the licensed asbestos abatement contractor remove and dispose of the asbestos-containing waste material.

(c) Asbestos-containing materials must be adequately wetted when they are being removed. In renovation, maintenance, repair, and construction operations, where wetting would unavoidably damage equipment or is incompatible with specialized work practices, or presents a safety hazard, adequate wetting is not required if the owner or operator:

(A) Obtains prior written approval from the Department for dry removal of asbestos-containing material;

(B) Keeps a copy of the Department's written approval available for inspection at the work site;

(C) Adequately wraps or encloses any asbestos-containing material during handling to avoid releasing fibers;

(D) Uses a local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the asbestos abatement project.

(d) When a facility component covered or coated with asbestos-containing materials is being taken out of the facility as units or in sections:

(A) Adequately wet any asbestos-containing materials exposed during cutting or disjointing operation;

(B) Carefully lower the units or sections to ground level, not dropping them or throwing them;

(C) Asbestos-containing materials do not need to be removed from large facility components such as reactor vessels, large tanks, steam generators, but excluding beams if the following requirements are met:

(i) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging the regulated asbestos-containing material; and

(ii) The component is encased in leak-tight wrapping; and

(iii) The leak-tight wrapping is labeled according to OAR 340-248-0280(2)(b) during all loading and unloading operations and during storage.

(e) For friable asbestos materials being removed or stripped:

(A) Adequately wet the materials to ensure that they remain wet until they are disposed of in accordance with OAR 340-248-0280;

(B) Carefully lower the materials to the floor, not dropping or throwing them;

(C) With prior written approval from the Department, transport the materials to the ground via dust-tight chutes or containers if they have been removed or stripped above ground level and were not removed as units or in sections.

(D) Enclose the area where friable asbestos materials are to be removed with a negative pressure enclosure prior to abatement unless written approval for an alternative is granted by the Department.

(E) A minimum of one viewing window will be installed in all enclosures, including negative pressure enclosures, in accordance with the following:

(i) Each viewing window must be a minimum of two feet by two feet and be made of a material that will allow a clear view inside the enclosure.

(ii) For large enclosures, including negative pressure enclosures, install one viewing window for every 5,000 square feet of area when spatially feasible.

(f) Any person that demolishes a facility under an order of the State of Oregon or a local governmental agency, issued because the facility is structurally unsound and in danger of imminent collapse must comply with the following:

(A) Obtain written approval from the Department for an ordered demolition procedure before that demolition takes place; and

(B) Send a copy of the order and an asbestos abatement project notification (as described in OAR 340-248-0260) to the Department before commencing demolition work; and

(C) Keep a copy of the order, Department's approval, and the notification form at the demolition site during all phases of demolition until final disposal of the project waste at an authorized landfill; and

(D) Keep asbestos-containing materials and asbestos contaminated debris adequately wet during demolition and comply with the disposal requirements set forth in OAR 340-248-0280 or 340-248-0290.

(g) Persons performing asbestos abatement outside full negative pressure containment must obtain written approval from the Department before using mechanical equipment to remove asbestos-containing material.

(h) Before a facility is demolished by intentional burning, all asbestos-containing material must be removed and disposed of in accordance with OAR 340-248-0010 through 340-248-0290.

(i) None of the operations in section (1) through (4) of this rule may cause any visible emissions. Any local exhaust ventilation and collection system or vacuuming equipment used during an asbestos abatement project, must be equipped with a HEPA filter or other filter of equal or greater collection efficiency.

(j) The Director may approve, on a case-by-case basis, requests to use an alternative to the requirements contained in this rule. The contractor or facility owner or operator must submit a written description of the proposed alternative and demonstrate to the Director's satisfaction that the proposed alternative provides public health protection equivalent to the protection that would be provided by the specific requirement, or that such level of protection cannot be obtained for the asbestos abatement project.

(k) Final Air Clearance Sampling Requirements apply to projects involving more than 160 square feet or 260 linear feet of asbestos-containing material. Before containment around such an area is removed, the person performing the abatement must have at least one air sample collected that documents that the air inside the containment has no more than 0.01 fibers per cubic centimeter of air. The air sample(s) collected may not exceed 0.01 fibers per cubic centimeter of air. The Department may grant a waiver to this section or exceptions to the following requirements upon receiving an advanced written request:

(A) The air clearance samples must be performed and analyzed by a party who is National Institute of Occupational Safety and Health (NIOSH) 582 certified and financially independent from the person(s) conducting the asbestos abatement project;

(B) Before final air clearance sampling is performed the following must be completed:

(i) All visible asbestos-containing material and asbestos-containing waste material must be removed according to the requirements of this section;

(ii) The air and surfaces within the containment must be sprayed with an encapsulant;

(iii) Air sampling may commence when the encapsulant has settled sufficiently so that the filter of the sample is not clogged by airborne encapsulant;

(iv) Air filtration units must remain on during the air-monitoring period.

(C) Air clearance sampling inside containment areas must be aggressive and comply with the following procedures:

(i) Immediately before starting the sampling pumps, direct exhaust from a minimum one horse power forced air blower against all walls, ceilings, floors, ledges, and other surfaces in the containment;

(ii) Then place stationary fans in locations that will not interfere with air monitoring equipment and then directed toward the ceiling. Use one fan per 10,000 cubic feet of room space;

(iii) Start sampling pumps and sample an adequate volume of air to detect concentrations of 0.01 fibers of asbestos per cubic centimeter according to NIOSH 7400 method;

(iv) When sampling is completed turn off the pump and then the fan(s);

(v) As an alternative to meeting the requirements of paragraphs (A) through (D) of this subsection, air clearance sample analysis may be performed according to Transmission Electron Microscopy Analytical Methods prescribed by 40 CFR 763, Appendix A to Subpart E (Interim Transmission Electron Microscopy Analytical Methods).

(D) The person performing asbestos abatement projects requiring air clearance sampling must submit the clearance results to the Department on a Department form. The clearance results must be received by the Department within 30 days after the completion date of the asbestos abatement project.

Stat. Auth.: ORS 468 & 468A
Stats. Implemented: ORS 468A.745
Hist.: DEQ 96, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 9-1988, f. 5-19-88. ef. 6-1-88 (and corrected 6-3-88); DEQ 18-1991, f. & cert. ef. 10-7-91, Renumbered from 340-025-0465(6) - (12); DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 18-1993, f. & cert. ef. 11-4-93, Renumbered from 340-025-0468; DEQ 15-1995, f. & cert. ef. 6-16-95; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5640; DEQ 1-2002, f. & cert. ef. 2-4-02; DEQ 19-2002(Temp), f. & cert. ef. 12-23-02 thru 6-21-03; DEQ 9-2003, f. 5-21-03, cert. ef. 6-21-03; DEQ 11-2015(Temp), f. 12-10-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Greenhouse Gas Reporting Program Update
Adm. Order No.: DEQ 12-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 12-10-15
Notice Publication Date: 9-1-2015
Rules Amended: 340-215-0010, 340-215-0020, 340-215-0030, 340-215-0040, 340-215-0060
Subject: The Environmental Quality Commission adopted changes to rules requiring certain businesses to report greenhouse gas emissions.

The adopted revisions will:

Reduce the reporting burden for sources who meet the requirements for exemption;

Provide clarity and uniformity related to greenhouse gas reporting methods and emission factors;

Incorporate reporting protocols, including necessary data elements and quantification requirements, into rule;

Update Oregon's list of greenhouse gases subject to reporting to ensure consistency with federal greenhouse gas reporting rules; and

Improve the rules' clarity rules by following plain language standards where possible.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-215-0010
Purpose and Scope

(1) This division establishes requirements and procedures for annually registering and reporting greenhouse gas emissions to DEQ.

(2) Subject to the requirements in this division and OAR 340-200-0010(3), the EQC designates LRAPA to implement the rules in this division within its area of jurisdiction.

Stat. Auth.: RS 468.020, 468A.050 & 468A.280
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 13-2008, f. & cert. ef. 10-31-08; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2015, f. & cert. ef. 12-10-15

340-215-0020
Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Biomass" means non-fossilized and biodegradable organic material originating from plants, animals, and micro-organisms, including products, byproducts, residues and waste from agriculture, forestry, and related industries, as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic matter.

(2) "C.F.R." means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2015 edition.

(3) "Consumer-owned utility" means a people's utility district organized under ORS Chapter 261, a municipal utility organized under ORS Chapter 225 or an electric cooperative organized under ORS Chapter 62.

(4) "Direct emissions" means emissions from an air contamination source, including but not limited to fuel combustion activities, process related emissions, and fugitive emissions.

(5) "Electricity service supplier" has the meaning given that term in ORS 757.600.

(6) "Fluorinated greenhouse gas" or "fluorinated GHG" means:

(a) Sulfur hexafluoride (SF6), nitrogen trifluoride (NF3), and,

(b) Any fluorocarbon, except for:

(A) Controlled substances as defined at 40 C.F.R. part 82, subpart A and,

(B) Substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C, including without limitation any hydrofluorocarbon, any perfluorocarbon, any fully fluorinated linear, branched or cyclic alkane, ether, tertiary amine or aminoether, any perfluoropolyether, and any hydrofluoropolyether.

(c) However, "fluorinated greenhouse gas" or "fluorinated GHG" does not include: fully fluorinated GHGs; saturated hydrofluorocarbons with 2 or fewer carbon-hydrogen bonds; saturated hydrofluorocarbons with 3 or more carbon-hydrogen bonds; saturated hydrofluoroethers and hydrochlorofluoroethers with 1 carbon-hydrogen bond; saturated hydrofluoroethers and hydrochlorofluoroethers with 2 carbon-hydrogen bonds; saturated hydrofluoroethers and hydrochlorofluoroethers with 3 or more carbon-hydrogen bonds; fluorinated formates; fluorinated acetates, carbonofluoridates, and fluorinated alcohols other than fluorotelomer alcohols; unsaturated PFCs, unsaturated HFCs, unsaturated HCFCs, unsaturated halogenated ethers, unsaturated halogenated esters, fluorinated aldehydes,

and fluorinated ketones; fluorotelomer alcohols; or fluorinated GHGs with carbon-iodine bonds.

(7) "Greenhouse gas or GHG" means carbon dioxide (CO2), methane (CH4), nitrous oxide (N20) and fluorinated greenhouse gases as defined in this section.

(8) "Hydrofluorocarbons" (HFCs) means gaseous chemical compounds containing only hydrogen, carbon and fluorine atoms.

(9) To "Import" means owning electricity or fuel from locations outside of Oregon at the time electricity is brought into this state through transmission equipment or at the time fuel is brought into this state by any means of transport, other than fuel brought into this state in the fuel tank of a vehicle used to propel the vehicle.

(10) "Investor-owned utility" means a utility that sells electricity and that a corporation with shareholders operates.

(11) "Metric ton, tonne, or metric tonne" means one metric tonne (1000 kilograms) or 2204.62 pounds.

(12) "Perfluorocarbons" (PFCs) means gaseous chemical compounds containing only carbon and fluorine atoms.

(13) "Year" means calendar year.

Stat. Auth.: ORS 468A.050 & 468A.280
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 13-2008, f. & cert. ef. 10-31-08; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2015, f. & cert. ef. 12-10-15

340-215-0030
Applicability

(1) The greenhouse gases defined in OAR 340-215-0020 are subject to OAR 340-215-0030 through 340-215-0060.

(2) Air contamination sources. Any owner or operator of a source listed in subsections (a) through (c) must register and report greenhouse gases directly emitted during the previous year, if the source's direct emissions of carbon dioxide equivalent of greenhouse gases meet or exceed 2,500 metric tons during the previous year. Once a source's direct emissions of carbon dioxide equivalent of greenhouse gases meet or exceed 2,500 metric tons during a year, the owner or operator must annually register and report in each subsequent year, regardless of the amount of the source's direct emissions of greenhouse gases in future years, except as provided in sections (7) and (8).

(a) Any source required to obtain a Title V Operating Permit, including those issued under OAR chapter 340, division 218.

(b) Any source required to obtain an Air Contaminant Discharge Permit, including those issued under OAR chapter 340, division 216.

(c) The following sources not otherwise listed in subsection (a) or (b):

(A) Solid waste disposal facilities required to obtain a permit issued under OAR chapter 340, divisions 93 through 96, excluding facilities that did not accept waste during the previous year and that 40 CFR part 98 does not require the facility to report greenhouse gas emissions to the EPA.

(B) Wastewater treatment facilities required to obtain an individual National Pollutant Discharge Elimination System permit issued under OAR chapter 340, division 45.

(3) Gasoline, diesel and aircraft fuel dealers. Any person listed in this section that imports, sells or distributes gasoline, diesel or aircraft fuel for use in the state must register and report as OAR 340-215-0040(2) requires:

(a) Any dealer, as that term is defined in ORS 319.010, that is subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax under OAR chapter 735, division 170;

(b) Any seller, as that term is defined in ORS 319.520, that is subject to the Oregon Use Fuel Tax under OAR chapter 735, division 176; and

(c) Any person that imports, sells or distributes at least 5,500 gallons of gasoline, diesel or aircraft fuel during a year for use in the state and that is not subject to the Oregon Motor Vehicle and Aircraft Fuel Dealer License Tax or the Oregon Use Fuel Tax under OAR chapter 735, divisions 170 and 176.

(d) Persons listed in sections OAR 340-215-0030(3)(b) and (c) are not required to register and report gasoline, diesel or aircraft fuel reported under this division by dealers described in OAR 340-215-0030(3)(a).

(4) Natural gas suppliers. Any person that imports, sells or distributes natural gas to end users in the state must register and report in accordance with OAR 340-215-0040(3).

(5) Propane importers.

(a) Any person that imports, sells or distributes propane for use in the state must register and report in accordance with OAR 340-215-0040(4).

(b) Persons that import propane for use in the state are not subject to subsection (5)(a) if:

(A) All imports are brought into the state by delivery trucks with a maximum capacity of 3,500 gallons of propane or less; or

(B) All imports consist of propane in canisters of 5 gallons or less.

(6) Electricity suppliers. All investor-owned utilities, electricity service suppliers, consumer-owned utilities, and other persons that import, sell, allocate or distribute electricity to end users in the state must register and report as OAR 340-215-0040(5) through (6) require.

(7) General deferrals and exemptions. DEQ may defer or exempt specific processes or categories of sources, or specific types of greenhouse gas emissions, from this division's requirements if DEQ determines that adequate protocols are not available or that other extenuating circumstances make reporting unfeasible.

(8) Exemptions for air contamination sources.

(a) An owner or operator is no longer subject to section (2) if the owner or operator retains records under subsection (8)(b), and:

(A) The source's direct emissions are less than 2,500 metric tons of carbon dioxide equivalent of greenhouse gases per year for three consecutive years; or

(B) The source ceases all operations that lead to direct emissions of greenhouse gases throughout the entire year, such as if the source closes permanently prior to the beginning of the year. This paragraph does not apply to seasonal or other temporary cessation of operations, and does not apply to solid waste disposal facilities that 40 CFR part 98 requires to report greenhouse gas emissions to the EPA.

(b) An owner or operator that, under paragraph (8)(a)(A) is no longer subject to section (2), must retain, for five years following the last year that they were subject to section (2), all production information, fuel use records, emission calculations and other records used to document direct greenhouse gas emissions for each of the three consecutive years that the source does not meet or exceed the emission threshold.

(c) Notwithstanding subsections (8)(a) and (8)(b), section (2) becomes applicable to the owner or operator again if annual direct emissions equal or exceed 2,500 metric tons of carbon dioxide equivalent of greenhouse gases in any future year.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468A.050 & 468A.280
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 13-2008, f. & cert. ef. 10-31-08; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2015, f. & cert. ef. 12-10-15

340-215-0040
Greenhouse Gas Registration and Reporting Requirements

(1) Air contamination sources. Any owner or operator required to register and report under OAR 340-215-0030(2) must:

(a) Report direct emissions of greenhouse gases from stationary fuel combustion during the previous year as follows, excluding emissions from categorically insignificant activities as defined in OAR 340-200-0020:

(A) Report fuel type and quantity used for stationary fuel combustion during the previous year; or

(B) Report greenhouse gas emissions from stationary fuel combustion utilizing emission quantification methodology prescribed in 40 C.F.R. part 98 subpart C tier 4; or

(C) Facilities required to monitor and report to EPA CO2 mass emissions year-round according to 40 C.F.R. part 75 may report greenhouse gas emissions utilizing emission quantification methodology prescribed in 40 CFR part 98 subpart D.

(b) Report direct emissions of greenhouse gases from industrial processes during the previous year utilizing EPA emission quantification methodologies as prescribed in 40 C.F.R. part 98 subparts E through UU, excluding emissions from categorically insignificant activities as defined in OAR 340-200-0020;

(c) Report emissions of CO2 that originate from biomass separately from other greenhouse gas emissions; and

(d) Submit an annual greenhouse gas emissions registration and report to DEQ under section (7) by the due date for the annual report for non-greenhouse gas emissions specified in the source's Title V Operating Permit or Air Contaminant Discharge Permit, or by March 31 of each year, whichever is later.

(2) Gasoline, diesel and aircraft fuel dealers. Any person required to register and report under OAR 340-215-0030(3) must:

(a) Report the fuel type and quantity of gasoline, diesel or aircraft fuel imported, sold or distributed for use in this state during the previous year as follows:

(A) Report individual fuel type as defined in 40 C.F.R. part 98 subpart MM for suppliers of petroleum products, including the type of gasoline, diesel or aircraft fuel in each renewable fuel mixture and the ethanol or biodiesel content as a percent of that mixture; and

(B) Report net fuel quantities by fuel type.

(b) Submit annual reports to DEQ by March 31 of each year, as follows:

(A) An annual greenhouse gas emissions registration and report pursuant to section (7); or

(B) Copies of the person's fuel tax reports filed with the Oregon Department of Transportation under OAR chapter 735, divisions 170 and 176 for fuel imported, sold or distributed during the previous year. DEQ may require the person to submit additional information if the reports submitted to the Oregon Department of Transportation are not sufficient to determine greenhouse gas emissions and related information that this division requires.

(3) Natural gas suppliers. Any person subject to OAR 340-215-0030(4) must submit an annual greenhouse gas emissions registration and report including the type and quantity of the natural gas imported, sold or distributed for use in the state during the previous year to DEQ under section (7) by March 31 of each year.

(4) Propane wholesalers. Any person subject to OAR 340-215-0030(5) must submit an annual greenhouse gas emissions registration and report including type and quantity of propane imported, sold or distributed for use in the state during the previous year to DEQ under section (7) by March 31 of each year.

(5) All investor-owned utilities, electricity service suppliers and other electricity suppliers (except consumer-owned utilities) required to register and report under OAR 340-215-0030(6) must:

(a) Report greenhouse gas emissions from the generation of the electricity that was imported, sold, allocated or distributed to end users in this state during the previous year, regardless of whether the electricity was generated in this state or imported, as follows:

(A) For electricity generated by a facility owned or operated by the investor-owned utility, electricity service supplier or other electricity supplier, report the number of megawatt-hours of electricity distributed to end users in the state during the previous year, the generating facility's fuel type or types and a facility specific emission factor expressed as metric tons carbon dioxide equivalent per megawatt-hour of generation. For electricity not measured at the busbar of the generating facility a 2% transmission loss correction factor must be used when determining emission factors;

(B) Report the total sulfur hexafluoride (SF6) emissions from all transmission and distribution equipment owned or operated by the person reporting utilizing the quantification methods in 40 C.F.R. part 98 subpart DD multiplied by the ratio of the amount of electricity the utility supplied to end users in the state compared to the total electricity the utility supplied within its jurisdiction;

(C) For purchased electricity, report the number of megawatt-hours of electricity purchased and distributed to end users in the state during the previous year, including, if known, identifying information on the seller of the electricity, the generating facility fuel type or types and a facility specific emission factor expressed as metric tons of carbon dioxide equivalent per megawatt-hour of generation. For electricity not measured at the busbar of the generating facility a 2% transmission loss correction factor must be used when determining emission factors;

(D) Report the number of megawatt-hours of electricity purchased for which a renewable energy certificate under ORS 469A.130 has been issued but subsequently transferred or sold to a person other than the person reporting; and

(E) A multijurisdictional entity reporting under this section may rely upon a cost allocation methodology approved by the Public Utility Commission for reporting emissions allocated in this state.

(b) Submit an annual greenhouse gas emissions registration and report to DEQ under section (7) by June 1 of each year.

(6) Consumer-owned utilities. All consumer-owned utilities required to register and report under OAR 340-215-0030(6) must:

(a) Report greenhouse gas emissions from the generation of the electricity that was imported, sold, allocated or distributed to end users in this state during the previous year, regardless of whether the electricity was generated in this state or imported, as follows:

(A) For electricity purchased from the Bonneville Power Administration, report the number of megawatt-hours of electricity purchased by the utility from the Bonneville Power Administration, segregated by the types of contracts the utility entered into with the Bonneville Power Administration, and, if known, the percentage of each fuel or energy type used to produce electricity purchased under each type of contract;

(B) For electricity generated by a facility owned or operated by the consumer-owned utility, report the number of megawatt-hours of electricity distributed to end users in the state during the previous year, the generating facility fuel type or types and a facility specific emission factor expressed as metric tons of carbon dioxide equivalent per megawatt-hour of generation. For electricity not measured at the busbar of the generating facility a 2% transmission loss correction factor must be used when determining emission factors; and

(C) For electricity the consumer-owned utility purchased from an entity other than the Bonneville Power Administration, report the number of megawatt-hours of electricity purchased and distributed to end users in the state during the previous year including information, if known, on the seller of the electricity to the consumer-owned utility, the original generating facility fuel type or types and a facility specific emission factor expressed as metric tons of carbon dioxide equivalent per megawatt-hour of generation.

(b) Submit an annual greenhouse gas emissions registration and report to DEQ under section (7) by June 1 of each year. A third party may submit the registration and report on behalf of a consumer-owned utility, and the report may include information for more than one consumer-owned utility, provided that the report contains all information required for each individual consumer-owned utility.

(7) Except as provided in section (8), the reporter must submit registration and reports on paper or electronic forms (or both) issued by DEQ, and include the following information:

(a) Source information such as source name, address, contact person, phone number, and permit number, if applicable;

(b) Information as required by OAR 340-215-0040(1) through (6), including but not limited to fuel volume and type, estimated annual emissions, activity data, emission factors, conversion factors, and the calculation methods used to determine emissions; and

(c) A signed statement certifying that the report is accurate to the best of the certifying individual's knowledge.

(8) Any person required to report greenhouse gases emitted during a year to the EPA under 40 C.F.R. part 98 may submit a copy of that report to DEQ instead of the registration and report required in section (7) for greenhouse gases emitted during the same year. DEQ may require the submission of additional information if the copy of the report submitted to the EPA is not sufficient to determine greenhouse gas emissions and related information. The purpose of this section is to eliminate duplicative reporting where possible, but to retain DEQ's authority to require reporting information this division requires that was not submitted in the EPA report.

(9) Any person required to report under this division must retain all production information, fuel use records, and emission calculations used to prepare the greenhouse gas annual report. These records and greenhouse gas annual reports must be retained for a minimum of 5 years.

Stat. Auth.: ORS 468A.050
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 13-2008, f. & cert. ef. 10-31-08; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2015, f. & cert. ef. 12-10-15

340-215-0060
Greenhouse Gas Reporting Fees

(1) Any person required to register and report under OAR 340-215-0030(2)(a) must submit greenhouse gas reporting fees to DEQ as specified in OAR 340-220-0050(3) and 340-220-0110(6).

(2) Any person required to register and report under OAR 340-215-0030(2)(b) must submit greenhouse gas reporting fees to DEQ as specified in OAR 340-216-8020 part 2.

Stat. Auth.: ORS 468.020 & 468A.050
Stats. Implemented: ORS 468 & 468A
Hist.: DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 14-2011, f, & cert. ef. 7-21-11; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 12-2015, f. & cert. ef. 12-10-15

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Rule Caption: Clean Fuels Program 2015 Updates
Adm. Order No.: DEQ 13-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 340-253-8080, 340-253-8070, 340-253-8060, 340-253-8050, 340-253-8040, 340-253-8030, 340-253-8020, 340-253-8010, 340-253-2200, 340-253-2100, 340-253-2000, 340-253-1050, 340-253-1030, 340-253-1020, 340-253-1010, 340-253-1000, 340-253-0650, 340-253-0630, 340-253-0620, 340-253-0600, 340-253-0500, 340-253-0450, 340-253-0400, 340-253-0340, 340-253-0330, 340-253-0320, 340-253-0310, 340-253-0250, 340-253-0200, 340-253-0100, 340-253-0060, 340-253-0040, 340-253-0000, 340-012-0140, 340-012-0135, 340-012-0054

Subject: DEQ is amending Oregon Clean Fuels Program rules under division 253 of chapter 340 of the Oregon Administrative Rules. The changes will:

Implement Senate Bill 324 (2015) by:

- Exempting fuels that are used in watercraft, locomotives and construction equipment;

- Amending the fuel specification for biodiesel and biodiesel blends; and

- Clarifying that a small importer, defined as a company that imports less than 500,000 gallons of transportation fuel per year, is exempt from having to meet the clean fuel standards.

Update the version of the models used to calculate carbon intensity.

Incorporate values to quantify the greenhouse gas emissions from indirect land use change.

Establish the 2015 baseline for the program and the annual clean fuel standards for 2016 through 2025.

Streamline the process to obtain DEQ approval of a carbon intensity for a fuel to be used in the Oregon Clean Fuels Program.

DEQ also will conduct another rulemaking in 2016 that will focus on developing new and more effective cost containment provisions. That process will involve establishing an advisory committee of subject experts to inform the design of one or more new cost containment mechanisms appropriate for use in Oregon.

DEQ also amended rules under Division 12 of Chapter 340 of the Oregon Administrative rules to establish enforcement criteria for violations of the Oregon Clean Fuels Program.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-012-0054

Air Quality Classification of Violations

(1) **Class I**:

(a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;

(c) Exceeding a Plant Site Emission Limit (PSEL);

(d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Failing to comply with an Emergency Action Plan;

(g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD);

(h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;

(i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;

(j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonably Available Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emission Rate (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

(k) Causing emissions that are a hazard to public safety;

(l) Violating a work practice requirement for asbestos abatement projects;

(m) Improperly storing or openly accumulating friable asbestos material or asbestos-containing waste material;

(n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;

(o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;

(p) Failing to hire a licensed contractor to conduct an asbestos abatement project;

(q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1);

(r) Failing to install certified vapor recovery equipment;

(s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257;

(u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257;

(v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257;

(w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257; or

(x) Failing to comply with any of the clean fuel standards set forth in OAR 340-253-0100(6), OAR 340-253-8010 (Table 1) and OAR 340-253-8020 (Table 2).

(2) **Class II**:

(a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) or registration without first obtaining such permit or registration, unless otherwise classified;

(b) Violating the terms or conditions of a permit or license, unless otherwise classified;

(c) Modifying a source in such a way as to require a permit modification from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Exceeding an opacity limit, unless otherwise classified;

(e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

(f) Failing to timely submit a complete ACDP annual report;

(g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

(h) Failing to timely submit a complete permit application or permit renewal application;

(i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;

(j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).

(k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;

(l) Failing to provide timely, accurate or complete notification of an asbestos abatement project;

(m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;

(n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620; or

(o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257;

(p) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is a producer or importer of blendstocks, as those terms are defined in OAR 340-253-0040;

(q) Failing to submit a broker designation form under OAR 340-253-0100(3) and (4)(c);

(r) Failing to keep records under OAR 340-253-0600 when the records relate to obtaining a carbon intensity under OAR 340-253-0450; or

(s) Failing to keep records related to obtaining a carbon intensity under OAR 340-253-0450; or

(t) Failing to submit an annual compliance report under OAR 340-253-0100(8).

(3) **Class III**:

(a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;

(c) Modifying a source in such a way as to require construction approval from DEQ without first obtaining such approval from DEQ, unless otherwise classified;

(d) Failing to revise a notification of an asbestos abatement project when necessary, unless otherwise classified;

(e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or

(f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257;

(g) Failing to register as a regulated party in the Oregon Clean Fuels Program under OAR 340-253-0100(1) and (4), when the person is an importer of finished fuels, as those terms are defined in OAR 340-253-0040;

(h) Failing to keep records under OAR 340-253-0600, except as provided in subsection (2)(r); or

(i) Failing to submit quarterly progress reports under OAR 340-253-0100(7).

[Ed. Note: Tables and Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows:

(a) Opacity limit violations:

(A) Major — Opacity measurements or readings of 20 percent opacity or more over the applicable limit, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate — Opacity measurements or readings greater than 10 percent opacity and less than 20 percent opacity over the applicable limit; or

(C) Minor — Opacity measurements or readings of 10 percent opacity or less over the applicable limit.

(b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major — if a Lowest Achievable Emission Rate (LAER) or Best Achievable Control Technology (BACT) analysis shows that additional controls or offsets are or were needed, otherwise apply OAR 340-012-0130.

(c) Exceeding an emission limit established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD): Major — if exceeded the emission limit by more than 50 percent of the limit, otherwise apply OAR 340-012-0130.

(d) Exceeding an emission limit established pursuant to federal National Emission Standards for Hazardous Air Pollutants (NESHAPs): Major — if exceeded the Maximum Achievable Control Technology (MACT) standard emission limit for a directly-measured hazardous air pollutant (HAP), otherwise apply OAR 340-012-0130.

(e) Air contaminant emission limit violations for selected air pollutants: Magnitude determinations under this subsection will be made based upon significant emission rate (SER) amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual emission limit as established by permit, rule or order by more than the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by more than the applicable short-term SER.

(B) Moderate:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the annual SER; or

(ii) Exceeding the short-term (less than one-year) emission limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the applicable short-term SER.

(C) Minor:

(i) Exceeding the annual emission limit as established by permit, rule or order by an amount less than 50 percent of the annual SER; or

(ii) Exceeding the short-term (less than one year) emission limit as established by permit, rule or order by an amount less than 50 percent of the applicable short-term SER.

(f) Violations of Emergency Action Plans: Major — Major magnitude in all cases.

(g) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor — Refinishing 10 or fewer on road motor vehicles per year.

(h) Asbestos violations — These selected magnitudes apply unless the violation does not cause the potential for human exposure to asbestos fibers:

(A) Major — More than 260 linear feet or more than 160 square feet of asbestos-containing material or asbestos-containing waste material;

(B) Moderate — From 40 linear feet up to and including 260 linear feet or from 80 square feet up to and including 160 square feet of asbestos-containing material or asbestos-containing waste material; or

(C) Minor — Less than 40 linear feet or 80 square feet of asbestos-containing material or asbestos-containing waste material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(i) Open burning violations:

(A) Major — Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate — Initiating or allowing the initiation of open burning of 10 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if DEQ lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor — Initiating or allowing the initiation of open burning of less than 10 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if DEQ finds that one or more of the following are true, or decreased one level if DEQ finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(j) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major — Exceeding the limit by more than 10 percent; or

(B) Moderate — Exceeding the limit by 10 percent or less.

(k) Oregon Clean Fuels Program violations:

(A) Exceeding the clean fuel standards set forth in OAR 340-253-0100(6), 340-253-8010 (Table 1) and 340-253-8020 (Table 2) by:

(i) Major — more than 15 percent;

(ii) Moderate — more than 10 percent but less than 15 percent;

(iii) Minor — 10 percent or less.

(B) Failing to register under OAR 340-253-0100(1) and (4): Minor — producers and importers of blendstocks;

(C) Failing to submit broker designation form under OAR 340-253-0100(3) and (4)(c): Minor; or

(D) Failing to keep records as set forth in OAR 340-253-0600, when the records relate to obtaining a carbon intensity under OAR 340-253-04500600: Minor; or

(E) Failing to submit annual compliance reports under OAR 340-253-0100(8): Moderate.

(2) Magnitudes for selected Water Quality violations will be determined as follows:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: D = ((QR /4) + QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CAcute, where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CAcute is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: (BOD5)/D is more than 10, where BOD5 is the concentration of the five-day Biochemcial Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: D = ((QR /4)+ QI)/ QI, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: D = ((QR/4) + QI)/ QI, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxic pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one or more levels if the violation:

(A) Occurred in a water body that is water quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(B) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(C) Violated a bacteria standard either in shellfish growing waters or during the period from June 1 through September 30; or

(D) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected Solid Waste violations will be determined as follows:

(a) Operating a solid waste disposal facility without a permit or disposing of solid waste at an unpermitted site:

(A) Major — The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor — The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major — The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate — The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor — The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected Hazardous Waste violations will be determined as follows:

(a) Failure to make a hazardous waste determination;

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams; or

(C) Minor — Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment, storage and disposal violations of OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment, storage, or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment, storage, or disposal of at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment, storage, or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment, storage, or disposal of less than one quart or 2.2 pounds of acutely hazardous waste.

(c) Hazardous waste management violations classified in OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), (s) and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving at least one quart or 2.2 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving less than one quart or 2.2 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows:

(a) Used Oil violations set forth in OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (h):

(A) Major — Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate — Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor — Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations set forth in OAR 340-012-0072(1)(a) through (e), (g) and (k).

(A) Major — A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate — A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor — A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

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

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and as provided in OAR 340-012-0155, the base penalty (BP) is determined by applying the class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) $12,000 Penalty Matrix:

(a) The $12,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of OAR 340-264-0060(3) committed by an industrial facility operating under an air quality permit.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of ORS 468B.025(1)(a) or (1)(b), or of 468B.050(1)(a) by a person without a National Pollutant Discharge Elimination System (NPDES) permit, unless otherwise classified.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a Tier 1 industrial source NPDES or WPCF permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(v) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres.

(F) Any violation of the ballast water statute in ORS Chapter 783 or ballast water management rule in OAR 340, division 143.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification by a 100 megawatt or more hydroelectric facility.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a dredge and fill project except for Tier 1, 2A or 2B projects.

(I) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by DEQ to perform tank services.

(J) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by DEQ to perform heating oil tank services.

(K) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(L) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(M) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(N) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a covered vessel or facility as defined in ORS 468B.300 or by a person who is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

(O) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(P) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(Q) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(R) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as an importer of blendstocks.

(b) The base penalty values for the $12,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $12,000;

(ii) Moderate — $6,000;

(iii) Minor — $3,000.

(B) Class II:

(i) Major — $6,000;

(ii) Moderate — $3,000;

(iii) Minor — $1,500.

(C) Class III: $1,000.

(3) $8,000 Penalty Matrix:

(a) The $8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits, unless listed under another penalty matrix.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) committed by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a Tier 2 industrial source NPDES or WPCF Permit.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of less than five acres in size or 20 or more acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage or geothermal fluids.

(F) Any violation of a Clean Water Act Section 401 Water Quality Certification by a less than 100 megawatt hydroelectric facility.

(G) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 2A or Tier 2B dredge and fill project.

(H) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(I) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(J) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person other than a person listed in OAR 340-012-0140(2)(a)(N) occurring during a commercial activity or involving a derelict vessel over 35 feet in length.

(L) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as a credit generator.

(b) The base penalty values for the $8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $8,000.

(ii) Moderate — $4,000.

(iii) Minor — $2,000.

(B) Class II:

(i) Major — $4,000.

(ii) Moderate — $2,000.

(iii) Minor — $1,000.

(C) Class III: $ 700.

(4) $3,000 Penalty Matrix:

(a) The $3,000 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Basic ACDP or an ACDP or registration only because the person is subject to Area Source NESHAP regulations.

(D) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(E) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(F) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater, sewage or geothermal fluids.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(vii) Any violation of a water quality statute, rule, permit or related order committed by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for suction dredges.

(G) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by a residential owner-occupant.

(H) Any violation of a Clean Water Act Section 401 Water Quality Certification for a Tier 1 dredge and fill project.

(I) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(J) Any violation of a used oil statute, rule, permit or related order, except a violation related to a spill or release, committed by a person that is a used oil generator.

(K) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator, unless listed under another penalty matrix.

(L) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(M) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(N) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(O) Any violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by non-residential uses of property disturbing less than one acre in size.

(P) Any violation of an oil and hazardous material spill and release statute, rule, or related order committed by a person not listed under another matrix.

(Q) Any violation of the Oregon Clean Fuels Program under OAR 340 division 253 by a person registered as an importer of finished fuels.

(b) The base penalty values for the $3,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $3,000;

(ii) Moderate — $1,500;

(iii) Minor — $750.

(B) Class II:

(i) Major — $1,500;

(ii) Moderate — $750;

(iii) Minor — $375.

(C) Class III: $250.

(5) $1,000 Penalty Matrix:

(a) The $1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of OAR chapter 340, division 124 or ORS 465.505 by a dry cleaning owner or operator, dry store owner or operator, or supplier of perchloroethylene.

(H) Any violation of ORS Chapter 459 or other solid waste statute, rule or related order committed by a residential owner-occupant.

(I) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(J) Any violation of a statute, rule or order relating to the opportunity to recycle.

(K) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(L) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater, sewage or geothermal fluids.

(M) Any Violation of ORS 468B.025(1)(a) or (b) resulting from turbid discharges to waters of the state caused by residential use of property disturbing less than one acre in size.

(b) The base penalty values for the $1,000 penalty matrix are as follows:

(A) Class I:

(i) Major — $1,000;

(ii) Moderate — $500;

(iii) Minor — $250.

(B) Class II:
(i) Major — $500;
(ii) Moderate — $250;
(iii) Minor — $125.
(C) Class III: $100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140
Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0000
Overview

(1) Context. The Oregon Legislature found that climate change poses a serious threat to the economic well-being, public health, natural resources and environment of Oregon. Section 1, chapter 907, Oregon Laws 2007. The Oregon Clean Fuels Program will reduce Oregon's contribution to the global levels of greenhouse gas emissions and the impacts of those emissions in Oregon in concert with other greenhouse gas reduction policies and actions by local governments, other states and the federal government.

(2) Purpose. The purpose of the Oregon Clean Fuels Program is to reduce the amount of lifecycle greenhouse gas emissions per unit of energy by a minimum of 10 percent below 2010 levels by 2025. This reduction goal applies to the average of all transportation fuels used in Oregon, not to individual fuels. A fuel user does not violate the standard by possessing fuel that has higher carbon content than the clean fuel standard allows.

(3) Background. The 2009 Oregon Legislature adopted House Bill 2186 enacted as chapter 754 of Oregon Laws 2009. The law authorizes the Environmental Quality Commission to adopt low carbon fuel standards for gasoline, diesel fuel and fuels used as substitutes for gasoline or diesel fuel. Sections 6 to 9 of chapter 754, Oregon Laws 2009 is printed as a note following ORS 468A.270 in the 2011 Edition. The 2015 Oregon Legislature amended those provisions when it adopted Senate Bill 324 (chapter 4, Oregon Laws 2015). OAR division 253 of chapter 340 implements the law.

(4) Program Review. EQC expects DEQ to periodically review and assess the Oregon Clean Fuels Program and make recommendations to EQC for improvement. DEQ will conduct two periodic reviews between 2016 and 2025. Review and assessment may include:

(a) The program's progress towards meeting its targets;

(b) Adjustments to the compliance schedule, if needed;

(c) The costs and benefits that complying with Clean Fuels Program rules cause for regulated parties and credit generators;

(d) The costs and benefits that complying with Clean Fuels Program rules cause for Oregon fuel consumers and Oregon's economy;

(e) The rate of climate change and the costs of environmental and economic damage due to climate change;

(f) The current and projected availability of clean fuels;

(g) The progress and adoption rates of clean fuels, clean fuel infrastructure and clean fuel vehicles;

(h) Identifying hurdles or barriers to implementing the Clean Fuels Program (e.g., permitting issues, infrastructure adequacy, research funds) and recommendations for addressing such hurdles or barriers;

(i) The mechanisms to provide exemptions and deferrals necessary to mitigate the cost of complying with the program;

(j) The methods to quantify lifecycle direct and indirect emissions from transportation fuels including land use change and other indirect effects;

(k) The latest information on low carbon fuel policies and related legal issues;

(l) The status of federal, state and regional programs that address the carbon content of transportation fuel; and

(m) Whether there are the necessary resources to implement the program.

(5) LRAPA. Notwithstanding Lane Regional Air Pollution Agency authorization in OAR 340-200-0010(3), DEQ administers this division in all areas of the State of Oregon.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0040
Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If this rule and 340-200-0020 define the same term, the definition in this rule applies to this division.

(1) "Actual PADD 5" means Petroleum Administration for Defense District 5, which includes Oregon, Washington, Arizona, Nevada, Hawaii, California and Alaska.

(2) "Aggregation indicator" means an identifier for reported transactions that are a result of an aggregation or summing of more than one transaction. An entry of "True" indicates that multiple transactions have been aggregated and are reported with a single transaction number. An entry of "False" indicates that the record reports a single fuel transaction.

(3) "Application" means the type of vehicle where the fuel is consumed, shown as either LDV/MDV or HDV.

(4) "B5" means diesel fuel containing 5 percent biodiesel.

(5) "Battery electric vehicle" or "BEV" means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

(6) "Bill of lading" means a document issued that lists goods being shipped and specifies the terms of their transport.

(7) "Bio-based" means a fuel produced from non-petroleum, biological renewable resources.

(8) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from non-petroleum sourced oils or fats, designated B100 and conforming to the specifications of ASTM D6751-15a, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

(10) "Biodiesel blend" means a blend of biodiesel with petroleum-based diesel fuel containing at least 6 percent and not more than 20 percent biodiesel by volume, designated BXX where XX represents the volume percentage of biodiesel fuel in the blend, and conforming to the specifications of ASTM D7467-13, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)."

(11) "Biogas" means gas, consisting primarily of methane and carbon dioxide, produced by the anaerobic decomposition of organic matter. Biogas cannot be directly injected into natural gas pipelines or combusted in most natural gas-fueled vehicles unless first upgraded to biomethane.

(12) "Biomethane" means refined biogas that has been upgraded to a near-pure methane content product. Biomethane can be directly injected into natural gas pipelines or combusted in natural gas-fueled vehicles.

(13) "Blendstock" means a fuel component that is either used alone or is blended with one or more other components to produce a finished fuel used in a motor vehicle. A blendstock that is used directly as a transportation fuel in a vehicle is considered a finished fuel.

(14) "Broker" means a person who is not a regulated party or a credit generator and who voluntarily registers to participate in the clean fuels program, described in OAR 340-253-0100(3), to facilitate credit generation and to trade credits with regulated parties, credit generators and other brokers.

(15) "Broker designation form" means a DEQ-approved document that specifies that a regulated party or a credit generator has designated a broker to act on its behalf for specified transactions.

(16) "Business partner" refers to the second party that participates in a specific transaction involving the regulated party. This can either be the buyer or seller of fuel, whichever applies to the specific transaction.

(17) "Carbon intensity" or "CI" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO2e/MJ).

(18) "Carryback credits" means a credit that a regulated party acquires between January 1st and March 31st to meet its compliance obligation for the prior compliance period and that was generated during or before the prior compliance period. Credits generated between January 1st and March 31st may not be used as carryback credits to meet a regulated party's compliance obligation for the prior compliance period.

(19) "CFP Online System" means the interactive, secured, internet web-based, electronic data tracking, reporting and compliance system that DEQ develops, manages and operates to support the Clean Fuels Program.

(20) "CFP Online System reporting deadlines" means the quarterly and annual reporting dates in OAR 340-253-0630 and in 340-253-0650.

(21) "Clean fuel" means a transportation fuel whose carbon intensity is lower than the applicable clean fuel standard for gasoline and gasoline

substitutes listed in Table 1 under OAR 340-253-8010 or for diesel and diesel substitutes listed in Table 2 under OAR 340-253-8020.

(22) "Clean fuel standard" means the annual average carbon intensity a regulated party must comply with, as listed in Table 1 under OAR 340-253-8010 for gasoline and gasoline substitutes and in Table 2 under 340-253-8020 for diesel fuel and diesel substitutes.

(23) "Clear gasoline" means gasoline derived from crude oil that has not been blended with a renewable fuel.

(24) "Clear diesel" means a light middle or middle distillate grade diesel fuel derived from crude oil that has not been blended with a renewable fuel.

(25) "Compliance period" means the period of time within which regulated parties must demonstrate compliance under OAR 340-253-0100. The initial compliance period is for two calendar years, 2016 and 2017, and subsequent compliance periods are each for single calendar year.

(26) "Compressed natural gas" or "CNG" means natural gas stored inside a pressure vessel at a pressure greater than the ambient atmospheric pressure outside of the vessel.

(27) "Credit" means a unit of measure that is generated when the carbon intensity of a fuel that is produced, imported, dispensed or used in Oregon is less than the clean fuel standard. Credits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under OAR 340-253-1020.

(28) "Credit facilitator" means a person a regulated party designates, in the CFP Online System, to initiate and complete credit transfers on behalf of the regulated party.

(29) "Credit generator" means a person eligible to generate credits by providing clean fuels for use in Oregon and who voluntarily registers to participate in the Clean Fuels Program, described in OAR 340-253-0100(2), and specified by fuel type under OAR 340-253-0320 through 340-253-0340.

(30) "Crude oil" means any naturally occurring flammable mixture of hydrocarbons found in geologic formations.

(31) "Deficit" means a unit of measure that is generated when the carbon intensity of a fuel that is produced, imported, dispensed or used in Oregon exceeds the clean fuel standard. Deficits are expressed in units of metric tons of carbon dioxide equivalent and are calculated under OAR 340-253-1020.

(32) "Denatured fuel ethanol" means fuel ethanol made unfit for beverage use by the addition of denaturants under formula(s) approved by the applicable regulatory agency to prevent the imposition of beverage alcohol tax and conforming to the specifications of ASTM D4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel" commonly identified as "E100."

(33) "Diesel fuel" or "diesel" means either:

(a) A light middle distillate or middle distillate fuel suitable for compression ignition engines blended with not more than 5 volume percent biodiesel and conforming to the specifications of ASTM D975-15b, "Standard Specification for Diesel Fuel Oils" or;

(b) A light middle distillate or middle distillate fuel blended with at least 6 and not more than 20 volume percent biodiesel suitable for compression ignition engines conforming to the specifications of ASTMD7467-15b, "Standard Specifications for Diesel Fuel Oil, Biodiesel Blend (B6-B20)."

(34) "Diesel substitute" means a liquid fuel, other than diesel fuel, suitable for use as a compression-ignition piston engine fuel.

(35) "E10" means gasoline containing 10 volume percent fuel ethanol.

(36) "Energy economy ratio" or "EER" means the dimensionless value that represents the efficiency of a fuel as used in a powertrain as compared to a reference fuel, as listed in Table 7 under OAR 340-253-8070 for gasoline and gasoline substitutes and in Table 8 under 340-253-8080 for diesel fuel and diesel substitutes.

(37) "Ethanol" means ethyl alcohol, the chemical compound C2H5OH.

(38) "Export" means to have ownership title to transportation fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle. Fuel exported from Oregon does not carry any obligation except for recordkeeping under OAR 340-253-0600.

(39) "Finished fuel" means a transportation fuel used directly in a motor vehicle without requiring additional chemical or physical processing.

(40) "Fossil" means any naturally-occurring flammable mixture of hydrocarbons found in geologic formations such as rock or strata.

(41) "Fuel ethanol" means undenatured ethanol with other components common to its production that do not affect the use of the product as a blending component for automotive spark-ignition engine fuels.

(42) "Fuel pathway" means a detailed description of all stages of fuel production and use for any particular transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer. The fuel pathway is used to calculate the carbon intensity of each transportation fuel.

(43) "Fuel pathway code" or "FPC" means the identifier used in the CFP Online System that applies to a specific fuel pathway as approved under OAR 340-253-0500(3).

(44) "Fuel transport mode" means the applicable combination of actual fuel delivery methods, such as truck routes, rail lines, pipelines and any other fuel distribution methods through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities and ending in Oregon.

(45) "Gasoline" means a spark ignition engine fuel conforming to the specifications of ASTM D4814-15a, "Standard Specification for Automotive Spark-Ignition Fuel."

(46) "Gasoline substitute" means a liquid fuel, other than gasoline, suitable for use as a spark-ignition engine fuel.

(47) "Heavy duty motor vehicle" or "HDV" means any motor vehicle rated at more than 10,000 pounds gross vehicle weight.

(48) "Hybrid electric vehicle" or "HEV" means any vehicle that can draw propulsion energy from both of the following on-vehicle sources of stored energy:

(a) A consumable fuel and

(b) An energy storage device such as a battery, capacitor or flywheel.

(49) "Illegitimate credits" means credits that were not generated in compliance with this division.

(50) "Import" means to have ownership title to transportation fuel from locations outside of Oregon at the time it is brought into Oregon by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(51) "Importer" means:

(a) With respect to any liquid fuel, the person who imports the fuel; or

(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Oregon or injected into a pipeline located outside of Oregon and delivered for use in Oregon.

(52) "Indirect land use change" means the average lifecycle greenhouse gas emissions caused by an increase in land area used to grow crops that is caused by increased use of crop-based transportation fuels, and expressed as grams of carbon dioxide equivalent per megajoule of energy provided (gCO2e/MJ). Indirect land use change for fuel made from corn feedstocks is calculated using the protocol developed by the Argonne National Laboratory. Indirect land use change for fuel made from sugarcane, sorghum, soybean, canola and palm feedstocks is calculated using the protocol developed by CARB.

(53) "Invoice" means the receipt or other record of a sale transaction, specifying the price and terms of sale, that describes an itemized list of goods shipped.

(54) "Large importer of finished fuels" means any person who imports into Oregon more than 500,000 gallons of finished fuels in a given calendar year.

(55) "Light-duty motor vehicle" or "LDV" means any motor vehicle rated at 8,500 pounds gross vehicle weight or less.

(56) "Lifecycle greenhouse gas emissions" are:

(a) The aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels;

(b) Measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer; and

(c) Stated in terms of mass values for all greenhouse gases as adjusted to CO2e to account for the relative global warming potential of each gas.

(57) "Liquefied compressed natural gas" or "L-CNG" means natural gas that has been liquefied and transported to a dispensing station where it was then re-gasified and compressed to a pressure greater than ambient pressure.

(58) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied.

(59) "Liquefied petroleum gas" or "propane" or "LPG" means a petroleum product composed predominantly of any of the hydrocarbons, or mixture thereof; propane, propylene, butanes and butylenes maintained in the liquid state.

(60) "Medium duty vehicle" or "MDV" means any motor vehicle rated between 8,501 pounds and 10,000 pounds gross vehicle weight.

(61) "Motor vehicle" means any vehicle, vessel, watercraft, engine, machine, or mechanical contrivance that is propelled by internal combustion engine or motor.

(62) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds with at least 80 percent methane by volume.

(63) "OR-GREET" means the Greenhouse gases, Regulated Emissions, and Energy in Transportation (GREET) Argonne National Laboratory model that DEQ develops and maintains for use in Oregon. The most current version is OR-GREET 2.0. DEQ will provide a copy of OR-GREET 2.0 upon request.

(64) "Plug-In Hybrid Electric Vehicle" or "PHEV" means a hybrid vehicle with the capability to charge a battery from an off-vehicle electric energy source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.

(65) "Producer" means:

(a) With respect to any liquid fuel, the person who makes the fuel in Oregon; or

(b) With respect to any biomethane, the person who refines, treats or otherwise processes biogas into biomethane in Oregon.

(66) "Product transfer document" or "PTD" means a document, or combination of documents, that authenticates the transfer of ownership of fuel between parties and must include all information identified in OAR 340-253-0600(2). A PTD may include bills of lading, invoices, contracts, meter tickets, rail inventory sheets or RFS product transfer documents.

(67) "Regulated fuel" means a transportation fuel identified under OAR 340-253-0200(2).

(68) "Regulated party" means a person responsible for compliance with requirements listed under OAR 340-253-0100(1).

(69) "Renewable hydrocarbon diesel" means a hydrocarbon oil conforming to the specifications of ASTM D975-15b, "Standard Specification for Diesel Fuel Oils" produced from renewable resources.

(70) "Renewable gasoline" means a spark ignition engine fuel conforming to the specifications of ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" produced from renewable resources.

(71) "Small importer of finished fuels" means any person who imports into Oregon 500,000 gallons or less of finished fuels in a given calendar year. Any fuel imported by persons that are related or share common ownership or control shall be aggregated together to determine whether a person meets this definition.

(72) "Statutory PADD 5" means the Petroleum Administration for Defense District 5 states: Oregon, Washington, Arizona and Nevada.

(73) "Tier 1 calculator" or "OR-GREET 2.0 Tier 1 calculator" means the tool used to calculate lifecycle emissions for common conventionally produced first-generation fuels (starch- and sugar-based ethanol, biodiesel, renewable diesel, CNG and LNG).

(74) "Tier 2 calculator" or "OR-GREET 2.0 Tier 2 calculator" means the tool used to calculate lifecycle emissions for next-generation fuels, including, but not limited to, cellulosic alcohols, hydrogen, drop-in fuels, or first-generation fuels produced using innovative production processes.

(75) "Transaction date" means the title transfer date as shown on the PTD.

(76) "Transaction quantity" means the amount of fuel reported in a transaction.

(77) "Transaction type" means the nature of the fuel transaction as defined below:

(a) "Production for use in Oregon" means the transportation fuel was designated for use only in Oregon at production and acquired a compliance obligation under Clean Fuels Program regardless of production inside or outside of Oregon;

(b) "Purchased with obligation" means the transportation fuel was purchased with the compliance obligation passing to the purchaser;

(c) "Purchased without obligation" means the transportation fuel was purchased with the compliance obligation retained by the seller;

(d) "Sold with obligation" means the transportation fuel was sold with the compliance obligation passing to the purchaser;

(e) "Sold without obligation" means the transportation fuel was sold with the compliance obligation retained by the seller;

(f) "Export" means a transportation fuel was reported with compliance obligation under the Clean Fuels Program but was later exported outside of Oregon;

(g) "Loss of inventory" means the fuel was produced in or imported into Oregon but was not used in Oregon due to volume loss such as through evaporation or due to different temperatures or pressurization;

(h) "Gain of inventory" means the fuel entered the Oregon fuel pool due to a volume gain, such as through different temperatures or pressurization;

(i) "Not used for transportation" means a transportation fuel was reported with compliance obligation under the Clean Fuels Program but was later not used for transportation purposes in Oregon or otherwise determined to be exempt under OAR 340-253-0250;

(j) "EV charging" means providing electricity to recharge EVs including BEVs and PHEVs;

(k) "LPGV fueling" means the dispensing of liquefied petroleum gas at a fueling station designed for fueling liquefied petroleum gas vehicles; or

(l) "NGV fueling" means the dispensing of natural gas at a fueling station designed for fueling natural gas vehicles.

(78) "Transmix" means a mixture of refined products that forms at the interface between batches of dissimilar liquid products when transported through pipelines. This mixture is typically a combination of gasoline, diesel or jet fuel.

(79) "Transportation fuel" means gasoline, diesel, any other flammable or combustible gas or liquid and electricity that can be used as a fuel for the operation of a motor vehicle. Transportation fuel does not mean unrefined petroleum products.

(80) "Unit of fuel" means fuel quantities expressed to the largest whole unit of measure, with any remainder expressed in decimal fractions of the largest whole unit.

(81) "Unit of measure" means either:

(a) The International System of Units defined in NIST Special Publication 811 (2008) commonly called the metric system;

(b) US Customer Units defined in terms of their metric conversion factors in NIST Special Publications 811 (2008); or

(c) Commodity Specific Units defined in either:

(A) The NIST Handbook 130 (2015), Method of Sale Regulation;

(B) OAR chapter 603 division 027; or

(C) OAR chapter 340 division 340.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec.
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0060
Acronyms

The following acronyms apply to this division:

(1) "ASTM" means ASTM International (formerly American Society for Testing and Materials).

(2) "BEV" means battery electric vehicle.

(3) "CARB" means the California Air Resources Board.

(4) "CFP" means the Clean Fuels Program established under OAR chapter 340, division 253.

(5) "CNG" means compressed natural gas.

(6) "CO2e" means carbon dioxide equivalents.

(7) "DEQ" means Oregon Department of Environmental Quality.

(8) "EER" means energy economy ratio.

(9) "EQC" means Oregon Environmental Quality Commission.

(10) "EV" means electric vehicle.

(11) "FEIN" means federal employer identification number.

(12) "FFV" means flex fuel vehicle.

(13) "FPC" means fuel pathway code.

(14) "gCO2e/MJ" means grams of carbon dioxide equivalent per megajoule of energy.

(15) "HDV" means heavy-duty vehicle.

(16) "HDV-CIE" means a heavy-duty vehicle compression ignition engine.

(17) "HDV-SIE" means a heavy-duty vehicle spark ignition engine.

(18) "HEV" means hybrid electric vehicle.

(19) "L-CNG" means liquefied-compressed natural gas.

(20) "LDV" means light-duty vehicle.

(21) "LNG" means liquefied natural gas.

(22) "LPG" means liquefied petroleum gas.

(23) "LPGV" means liquefied petroleum gas vehicle.

(24) "MDV" means medium-duty vehicle.

(25) "mmBtu" means million British Thermal Units.

(26) "NGV" means natural gas vehicle.

(27) "PHEV" means partial hybrid electric vehicle.

(28) "PTD" means product transfer document.

(29) "RFS" means the US Environmental Protection Agency Renewable Fuel Standard.

(30) "scf" means standard cubic feet.

(31) "ULSD" means ultra low sulfur diesel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0100
Oregon Clean Fuels Program Applicability and Requirements

(1) Regulated parties. All persons that produce in Oregon, or import into Oregon, any regulated fuel must comply with the rules in this division. The regulated parties for regulated fuels are designated under OAR 340-253-0310.

(a) Regulated parties must comply with sections (4) through (8) below; except that:

(b) Small importers of finished fuels are exempt from sections (6) and (7) below.

(2) Credit generators.

(a) The following rules designate persons eligible to generate credits for each fuel type:

(A) OAR 340-253-0320 for compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas and renewable diesel;

(B) OAR 340-253-0330 for electricity; and

(C) OAR 340-253-0340 for hydrogen fuel or a hydrogen blend.

(b) Any person eligible to be a credit generator, and that is not a regulated party, is not required to participate in the program. Any persons who chooses voluntarily to participate in the program to generate credits must comply with sections (4), (5), (7) and (8) below.

(3) Brokers.

(a) Brokers must comply with this section and sections (4), (5), (7) and (8) below.

(b) Brokers may hold and trade credits. A broker also may generate credits and facilitate credit generation and credit trading if a regulated party or a credit generator authorizes a broker to act on its behalf by submitting a Broker Designation Form.

(4) Registration.

(a) A regulated party must submit a complete registration application to DEQ under OAR 340-253-0500 for each fuel type on or before the date upon which that party begins producing the fuel in Oregon or importing the fuel into Oregon. The registration application must be submitted using DEQ approved forms.

(b) A credit generator must submit a complete registration to DEQ under OAR 340-253-0500 for each fuel type before it may generate credits for fuel produced, imported, dispensed or used in Oregon. DEQ will not recognize credits allegedly generated by any person that does not have an approved, accurate and current registration.

(c) A broker must submit a complete registration to DEQ under OAR 340-253-0500 and a broker designation form each time it enters into a new contract with a regulated party or credit generator, before trading credits or facilitating credit generation or trading by a regulated party or credit generator. DEQ will not recognize the transfer of credits by a broker that does not have a DEQ-approved, accurate and current registration and a DEQ-approved broker designation form.

(5) Records. Regulated parties, credit generators and brokers must develop and retain all records OAR 340-253-0600 requires.

(6) Clean fuel standards. Each regulated party must comply with the following standards for all transportation fuel it produces in Oregon or imports into Oregon in each compliance period. Regulated parties may demonstrate compliance in each compliance period either by producing or importing fuel that in the aggregate meets the standard or by obtaining sufficient credits to offset deficits for such fuel produced or imported into Oregon. The initial compliance period is for two years, 2016 and 2017.

(a) Table 1 under OAR 340-253-8010 establishes the Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes; and

(b) Table 2 under OAR 340-253-8020 establishes the Oregon Clean Fuel Standard for Diesel and Diesel Substitutes.

(7) Quarterly progress report. Unless exempt under subsection (1)(b), regulated parties, credit generators and brokers must submit quarterly progress reports under OAR 340-253-0630.

(8) Annual compliance report. Regulated parties, credit generators and brokers must submit annual compliance reports under OAR 340-253-0650. Regulated parties must submit an annual compliance report for 2016 notwithstanding that the initial two-year compliance period is for 2016 and 2017.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0200
Regulated and Clean Fuels

(1) Applicability. Producers and importers of transportation fuels listed in this rule, unless exempt under OAR 340-253-0250, are subject to division 253.

(2) Regulated fuels. Regulated fuels means:

(a) Gasoline;

(b) Diesel;

(c) Ethanol,

(d) Biodiesel;

(e) E10;

(f) B5 and (g) Any other liquid or non-liquid transportation fuel not listed in section (3) or exempted under OAR 340-253-0250.

(3) Clean fuels. Clean fuels means a transportation fuel with a carbon intensity lower than the clean fuel standard for gasoline and their substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and their substitutes listed in Table 2 under OAR 340-253-8020, as applicable, for that calendar year, such as:

(a) Bio-CNG;

(b) Bio-L-CNG;

(c) Bio-LNG;

(d) Electricity;

(e) Fossil CNG;

(f) Fossil L-CNG;

(g) Fossil LNG;

(h) Hydrogen or a hydrogen blend;

(i) LPG; and

(j) Renewable diesel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0250
Exemptions

(1) Exempt fuels. The following fuels are exempt from the list of regulated fuels under OAR 340-253-0200(2):

(a) Fuels used in small volumes. A transportation fuel supplied for use in Oregon if the producer or importer documents that all providers supply an aggregate volume of less than 360,000 gallons of liquid fuel per year.

(b) Small volume fuel producer. A transportation fuel supplied for use in Oregon if the producer documents that:

(A) The producer has an annual production volume of less than 10,000 gallons of liquid fuel per year; or

(B) The producer uses the entire volume of fuel produced in motor vehicles used by the producer directly and has an annual production volume of less than 50,000 gallons of liquid fuel; or

(C) The producer is a research, development or demonstration facility defined under OAR 330-090-0100.

(c) Fuels that are exported for use outside of Oregon.

(2) Exempt fuel uses.

(a) Transportation fuels supplied for use in any of the following motor vehicles are exempt from the definition of regulated fuels under OAR 340-253-0200:

(A) Aircraft;

(B) Racing activity vehicles defined in ORS 801.404;

(C) Military tactical vehicles and tactical support equipment;

(D) Locomotives;

(E) Watercraft;

(F) Motor vehicles registered as farm vehicles as provided in ORS 805.300;

(G) Farm tractors defined in ORS 801.265;

(H) Implements of husbandry defined in ORS 801.310;

(I) Motor trucks defined in ORS 801.355 if used primarily to transport logs; and

(J) Motor vehicles that are not designed primarily to transport persons or property, that are operated on highways only incidentally and that are used primarily for construction work.

(b) To be exempt, the regulated party must document that the fuel was supplied for use in a motor vehicle listed in subsection (2)(a). The documentation must:

(A) Establish that the fuel was sold through a dedicated source to use in one of the specified motor vehicles; or

(B) Be on a fuel transaction basis if the fuel is not sold through a dedicated source.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0310
Regulated Parties: Gasoline, E10, Diesel Fuel, B5, Ethanol and Biodiesel

(1) Regulated party. The regulated party is the producer or importer of the regulated fuel.

(2) Recipient notification requirement. If a regulated party intends to transfer ownership of fuel, it is the recipient's responsibility to notify the transferor whether the recipient is a producer, an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels or not an importer. The notification does not have to be in writing.

(3) Recipient is an importer of blendstocks or a large importer of finished fuels. If a regulated party transfers the fuel to an importer of blendstocks or a large importer of finished fuels, the transferor and the recipient have the options and responsibilities under this section.

(a) Unless the transferor elects to remain the regulated party under (3)(b):

(A) The recipient is now the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for the fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the recipient is now the regulated party.

(C) The transferor is no longer the regulated party for such fuel, except for maintaining the product transfer documentation under OAR 340-253-0600.

(b) The transferor may elect to remain the regulated party for the transferred fuel. If the transferor elects to remain the regulated party:

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the transferor remains the regulated party.

(C) The recipient is not the regulated party.

(4) Recipient is a producer, a small importer of finished fuels or is not an importer. If a regulated party transfers the fuel to a producer, a small importer of finished fuels or a person who is not an importer, the transferor and the recipient have the options and responsibilities under this section.

(a) Unless the recipient and the transferor agree the recipient is the regulated party under subsection (4)(b):

(A) The transferor remains the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the transferor remains the regulated party.

(C) The recipient is not the regulated party.

(b) The recipient may elect to be the regulated party for the transferred fuel. If the recipient elects to be the regulated party:

(A) The recipient is the regulated party who:

(i) Must comply with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel;

(ii) Is responsible for compliance with the clean fuel standard for such fuel for such fuel under OAR 340-253-0100(6); and

(iii) Is eligible to generate credits for the fuel, as applicable.

(B) The transferor must provide the recipient a product transfer document by the time of transfer. The product transfer document must prominently indicate that the recipient is now the regulated party.

(C) The transferor is not the regulated party, except for maintaining the product transfer documentation under OAR 340-253-0600.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0320
Credit Generators: Compressed Natural Gas, Liquefied Natural Gas, Liquefied Compressed Natural Gas, Liquefied Petroleum Gas and Renewable Diesel

(1) Applicability. This rule applies to providers of compressed natural gas, liquefied natural gas, liquefied compressed natural gas, liquefied petroleum gas and renewable diesel for use as a transportation fuel in Oregon.

(2) Compressed natural gas. For CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil CNG. For fuel that is solely fossil CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based CNG. For fuel that is solely bio-based CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil CNG and bio-based CNG. For fuel that is a blend of fossil CNG and bio-based CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil CNG and bio-based CNG in the blend.

(3) Liquefied natural gas. For LNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil LNG. For fuel that is solely fossil LNG, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based LNG. For fuel that is solely bio-based LNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil LNG and bio-based LNG. For fuel that is a blend of fossil LNG and bio-based LNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil LNG and bio-based LNG in the blend.

(4) Liquefied compressed natural gas. For L-CNG used as a transportation fuel, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Fossil L-CNG. For fuel that is solely fossil L-CNG, the person that is eligible to generate credits is the owner of the compressor at the facility where the fuel is dispensed for use in a motor vehicle.

(b) Bio-based L-CNG. For fuel that is solely bio-based L-CNG, the person that is eligible to generate credits is the producer or importer of the fuel.

(c) Blend of fossil L-CNG and bio-based L-CNG. For fuel that is a blend of fossil L-CNG and bio-based L-CNG, the generated credits will be split between the persons eligible to generate credits under subsections (a) and (b) to give each credits based on the actual amount of fossil L-CNG and bio-based L-CNG in the blend.

(5) Liquefied petroleum gas. For propane used as a transportation fuel, the person that is eligible to generate credits is the owner of the fueling equipment at the facility where the liquefied petroleum gas is dispensed for use in a motor vehicle.

(6) Renewable diesel. For renewable diesel used as a transportation fuel, the person that is eligible to generate credits is the producer or importer of the fuel.

(7) Responsibilities to generate credits. Any person specified in sections (2) through (6) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0330
Credit Generators: Electricity

(1) Applicability. This rule applies to providers of electricity used as a transportation fuel.

(2) For residential charging. For electricity used to charge a motor vehicle in a residence, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Electric Utility. By October 1 of the current year, an electric utility that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 may generate credits for the following calendar year.

(b) Broker. If an electric utility does not register as the credit generator under subsection (a), then a broker may register to generate credits.

(c) Owner of electric-charging equipment. If an electric utility or a broker does not register as the credit generator under subsection (a) or (b), then the owner of the electric-charging equipment may register to generate credits.

(3) For non-residential charging. For electricity used to charge a motor vehicle in non-residential settings, such as at publicly available charging stations, for a fleet, or at a workplace, subsections (a) through (c) determine the person who is eligible to generate credits.

(a) Owner or operator of electric-charging equipment. The owner or operator of the electric-charging equipment that is registered or has submitted a complete registration to DEQ under OAR 340-253-0500 by September 1 of the current year may generate credits for the following calendar year.

(b) Electric utility. If the owner or operator of the electric-charging equipment does not register as the credit generator under subsection (a), then an electric utility may generate credits if, by October 1, the electric utility has registered or has submitted a complete registration to DEQ under OAR 340-253-0500.

(c) Broker. If the owner or operator of the electric-charging equipment and the electric utility do not register as the credit generator under subsections (a) or (b), then a broker may generate credits if it has provided documentation to DEQ that it has an agreement with the owner or operator of the electric-charging equipment where electric vehicles are charged with transportation fuel.

(4) Responsibilities to generate credits. Any person specified under sections (2) or (3) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0340
Credit Generators: Hydrogen Fuel or a Hydrogen Blend

(1) Applicability. This rule applies to providers of hydrogen fuel and a hydrogen blend for use as a transportation fuel in Oregon.

(2) Credit generation. For a hydrogen fuel or a hydrogen blend, the person who owns the finished hydrogen fuel where the fuel is dispensed for use into a motor vehicle is eligible to generate credits.

(3) Responsibilities to generate credits. Any person specified in section (2) may generate clean fuel credits by complying with the registration, recordkeeping and reporting requirements under OAR 340-253-0500, 340-253-0600, 340-253-0620, 340-253-0630 and 340-253-0650 for the fuel.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0400
Carbon Intensities

(1) OR-GREET. Regulated parties, credit generators and brokers must calculate all carbon intensities using OR-GREET 2.0 or a model DEQ approves.

(2) DEQ review of carbon intensities. Every three years, or sooner if DEQ determines that new information becomes available that warrants an earlier review, DEQ will review the carbon intensities used in the Clean Fuels Program and must consider, at a minimum, changes to:

(a) The sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions and energy sources;

(b) The sources of natural gas and associated factors that affect emissions such as extraction technologies, capture of fugitive emissions and energy sources;

(c) The statewide mix of electricity used in Oregon;

(d) Fuel economy standards and energy economy ratios;

(e) GREET, OR-GREET, CA-GREET, GTAP, AEZ-EF or OPGEE;

(f) Methods to calculate lifecycle greenhouse gas emissions;

(g) Methods to quantify indirect land use change; and

(h) Methods to quantify other indirect effects.

(3) Statewide carbon intensities.

(a) Regulated parties, credit generators and brokers must use the statewide average carbon intensities listed in Tables 3 and 4 under OAR 340-253-8030 and -8040 for the following fuels:

(A) Gasoline;

(B) E10;

(C) Diesel fuel;

(D) B5;

(E) Fossil CNG;

(F) Fossil LNG;

(G) LPG; and

(H) Electricity, unless an electricity provider meets the conditions under subsection (1)(b) and chooses to obtain a different carbon intensity.

(b) For electricity, credit generators and brokers may obtain a carbon intensity different from the statewide average if the electricity provider:

(A) Is exempt from the definition of public utility under ORS 757.005 (1)(b)(H), and is not regulated by the Oregon Public Utility Commission; or

(B) Generates lower carbon electricity at the same location as it is dispensed into a vehicle.

(4) Carbon intensities for established fuel pathways. Except as provided in sections (3) or (5), regulated parties, credit generators and brokers can use a carbon intensity that:

(a) The California Air Resources Board has certified for use in the California Low Carbon Fuel Standards program, adjusted for indirect land use change and approved by DEQ as being consistent with OR-GREET 2.0; or

(b) Matches the description of a fuel pathway listed in Table 3 or 4 under OAR 340-253-8030 or -8040.

(5) Primary alternative fuel pathway classifications. If it is not possible to identify an applicable carbon intensity under either section (3) or (4), then the regulated party, credit generator or broker has the option to develop a primary alternative fuel pathway. Fuel pathways shall fall into one of two tiers:

(a) Tier 1. Conventionally-produced alternative fuels of a type that has been in full commercial production for at least three years; produced using grid electricity, natural gas and/or coal for process energy; and do not include innovative methods. Tier 1 fuels include:

(A) Starch- and sugar-based ethanol;

(B) Biodiesel produced from conventional feedstocks (plant oils, tallow and related animal wastes and used cooking oil);

(C) Renewable diesel produced from conventional feedstocks (plant oils, tallow and related animal wastes and used cooking oil);

(D) Natural Gas; and

(E) Biomethane from landfill gas.

(b) Tier 2. All fuels not included in Tier 1 including:

(A) Cellulosic alcohols;

(B) Biomethane from sources other than landfill gas;

(C) Hydrogen;

(D) Renewable hydrocarbons other than renewable diesel produced from conventional feedstocks; and

(E) Tier 1 fuels using innovative methods.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0450
Obtaining a Carbon Intensity

(1) Out-of-state producers that are not a regulated party, credit generator or broker can apply to obtain a carbon intensity by following the approval process to use a carbon intensity listed in OAR 340-253-0500(3).

(2) Applicants seeking approval to use a carbon intensity that is approved by the California Air Resources Board must submit a link to the CARB-approved fuel pathway.

(3) If it is not possible to identify an applicable carbon intensity under section (2) or (4), then an applicant can seek approval to use a carbon intensity that is listed in Table 3 or 4 under OAR 340-253-8030 or -8040. An applicant must propose to use the carbon intensity with the fuel pathway description that best meets the fuel pathway for the fuel.

(4) Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit the following information:

(a) Company name and full mailing address.

(b) Company contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address and website URL.

(c) Facility name (or names if more than one facility is covered by the application).

(d) Facility address (or addresses if more than one facility is covered by the application).

(e) Facility ID for facilities covered by the RFS program.

(f) Facility geographical coordinates (for each facility covered by the application).

(g) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number and email address.

(h) Facility nameplate production capacity in million gallons per year (for each facility covered by the application).

(i) Consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address and website URL.

(j) Declaration whether the applicant is applying for a carbon intensity using either the Tier 1 or Tier 2 calculator.

(5) In addition to the items in section (4), applicants seeking to obtain a carbon intensity using the Tier 1 calculator must submit the following:

(a) The Tier 1 calculator with the "T1 Calculator" tab completed;

(b) A summary of invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases and all co-products sold for the previous two years; and

(c) RFS third party engineering report, if available.

(6) In addition to the items in section (4), applicants seeking to obtain a carbon intensity using the Tier 2 calculator must submit the following:

(a) A summary of invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases and all co-products sold for the previous two years;

(b) The geographical coordinates of the fuel production facility;

(c) A copy of the Tier 2 spreadsheet;

(d) Process flow diagrams that depict the complete fuel production process;

(e) Applicable air permits issued for the facility;

(f) A copy of the RFS third party engineering report, if available;

(g) A copy of the RFS fuel producer co-products report; and

(h) A lifecycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report shall contain sufficient detail to allow staff to replicate the carbon intensity the applicant calculated. The applicant must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(7) Applicants seeking a provisional carbon intensity.

(a) Applicants that are seeking to obtain a carbon intensity for a fuel production facility that has not been in full commercial operation for two years may seek a provisional carbon intensity. Applicants may request a provisional carbon intensity for Tier 1 and Tier 2 facilities provided they have been in full commercial production for at least one full calendar quarter. The applicant shall submit operating records covering all prior periods of full commercial operation, provided those records cover at least one full calendar quarter. DEQ will use the approval process described in sections (1) through (6) of this rule.

(b) After DEQ approves the provisional carbon intensity, the applicants shall submit copies of receipts for all energy purchases each calendar quarter until two full calendar years of commercial production receipts are submitted. Based on timely reports, the applicant may generate provisional credits. At any time during the two year period, DEQ may revise as appropriate the operational carbon intensity based on the receipts submitted.

(c) If, after a plant has been in full commercial production for more than two years, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, DEQ will replace the certified carbon intensity with the operational carbon intensity in the CFP Online System and adjust the credit balance accordingly.

(d) If the facility's operational carbon intensity appears to be lower than the certified carbon intensity, DEQ will take no action. The applicant may, however, petition DEQ for a provisional carbon intensity reduction to reflect operational data. In support of such a petition, the applicant must submit a revised application packet that fully documents the requested reduction.

(8) Recertified CARB fuel pathways. Beginning on January 1, 2016, CARB will recalculate carbon intensities as it transitions from CA-GREET 1.8 to CA-GREET 2.0.

(a) For applicants that rely on CARB-approved fuel pathways to be used in Oregon, no additional information will be required. DEQ will confirm that the CARB fuel pathways are consistent with OR-GREET 2.0 after they are recertified by CARB and will update the CFP Online System to reflect the updated fuel pathways. The effective dates for the recertified fuel pathways will be identical to those approved by CARB, once approved by DEQ.

(b) Fuel pathways that are not recertified or that are not approved by DEQ will be removed from the CFP Online System on December 31, 2016.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0500
Registration

(1) Registration information. To register, regulated parties, credit generators and brokers must submit a registration application containing the following information to DEQ:

(a) Company identification, including physical and mailing addresses, phone numbers, e-mail addresses, and contact names;

(b) The status of the registrant as a producer, importer of blendstocks, small importer of finished fuels, large importer of finished fuels, credit generator or broker;

(c) For each transportation fuel that will be produced, imported, dispensed or used in Oregon:

(A) If the fuel has a statewide carbon intensity under OAR 340-253-0400(3) or has a CARB-approved fuel pathway, no fuel-specific information is required.

(B) If the fuel does not have a CARB-approved fuel pathway, the proposed carbon intensity, the documentation for the proposal (Tier 1 or Tier 2 calculator, OR_GREET 2.0 or default value from OAR 340-253-8030 or -8040) and the physical transport mode.

(d) Other information requested by DEQ related to registration.

(2) Completeness determination process.

(a) For applications using carbon intensities that are either (i) CARB-approved fuel pathways, (ii) listed in Table 3 or 4 under OAR 340-253-8030 or -8040, or (iii) calculated using the Tier 1 calculator, DEQ will determine whether the proposal is complete within 14 calendar days after receiving a registration application.

(b) If DEQ determines the proposal is complete, DEQ will notify the applicant in writing of the completeness determination.

(c) If DEQ determines the proposal is incomplete, DEQ will notify the applicant of the deficiencies. The applicant has 30 calendar days to address the deficiencies or DEQ will deny the application.

(d) If the applicant submits supplemental information, DEQ has 30 calendar days to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies. This process may repeat until the application is deemed complete or 180 calendar days have elapsed from the date that the applicant first submitted the registration application.

(3) Approval process to use carbon intensities.

(a) For applications proposing to use CARB-approved fuel pathways, DEQ will confirm that CARB approved the proposed fuel pathway and that it is consistent with OR-GREET 2.0. DEQ shall approve the registration application within 14 calendar days after the completeness determination.

(b) For applications proposing to use a carbon intensity listed in Table 3 or 4 under OAR 340-253-8030 or -8040, DEQ will confirm that the fuel's proposed fuel pathway meets the general description of the fuel pathway in the tables and is within 5 gCO2e/MJ or 10 percent of the listed carbon intensity. DEQ shall approve the registration application within 14 calendar days after the completeness determination.

(c) For applications proposing to use the Tier 1 calculator, DEQ will confirm that the Tier 1 calculator and the supporting documentation are

accurate. DEQ shall approve the registration application within 14 calendar days after the completeness determination.

(d) For applications proposing to use the Tier 2 calculator, DEQ will review the proposed carbon intensity as follows:

(A) Once a proposal is deemed complete, DEQ will determine whether the requirements for approval have been met according to the following criteria:

(i) Replication of the Tier 2 calculator outputs, using the modifications contained in the application;

(ii) Verification of the energy consumption inputs; and

(iii) Evaluation of the validity of the remaining inputs.

(B) Once DEQ has approved the carbon intensity, DEQ will notify the applicant of its determination. DEQ will confirm the determination through the registration approval process.

(C) If DEQ determines the proposal for the carbon intensity has not met the criteria in subsection (A), DEQ will notify the applicant that the proposal is denied and identify the basis for the denial.

(4) Registering as a user in the CFP Online System. After DEQ provides written approval of the registration application, the regulated party, credit generator or broker must establish an account in the CFP Online System.

(5) Modifications to the registration.

(a) The registrant must submit an amended registration to DEQ within 30 days of any change occurring to information described in section (1).

(b) DEQ may require a registrant to submit an amended registration based on new information DEQ receives.

(c) If a registrant amends its registration under this section, the registrant must also update the registrant's account in the CFP Online System to accurately reflect the amended information, as appropriate.

(6) Cancellation of the registration.

(a) If a regulated party no longer meets the applicability of the program under OAR 340-253-0100(1), then it must notify DEQ of such change.

(b) If a credit generator or broker wishes to voluntarily opt-out of the Clean Fuels Program, the credit generator or broker must provide a 90-day notice of intent to opt out of the Clean Fuels Program and a proposed effective date for the completion of the opt-out process.

(c) The regulated party, credit generator or broker must submit any outstanding quarterly progress reports and an annual compliance report. Any credits that remain shall be forfeited and the account in the CFP Online System shall be closed.

(d) Once DEQ determines that the above actions are complete, DEQ will notify the registrant in writing of the cancellation of its registration.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0600
Records

(1) Records Retention. Regulated parties, credit generators and brokers must retain the following records for at least 5 years:

(a) Product transfer documents as described in section (2);

(b) Records related to obtaining a carbon intensity described in OAR 340-253-0450;

(c) Copies of all data and reports submitted to DEQ;

(d) Records related to each fuel transaction; and

(e) Records used for compliance or credit calculations.

(2) Documenting Fuel Transactions. A product transfer document must prominently state the information specified below.

(a) Transferor company name, address and contact information;

(b) Recipient company name, address and contact information;

(c) Transaction date;

(d) Fuel pathway code;

(e) Carbon intensity;

(f) Volume/amount;

(g) A statement identifying whether the transferor or the recipient has the compliance obligation; and

(h) The EPA fuel production company ID and facility ID as registered with the RFS program.

(3) Review. All data, records, and calculations used by a regulated party, a credit generator or a broker to comply with the Oregon Clean Fuels Program are subject to verification by DEQ. Regulated parties, credit generators and brokers must provide records retained under section (1) within 60 calendar days after the date DEQ requests a review of the records, unless DEQ specifies otherwise.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0620
CFP Online System

(1) Online reporting.

(a) Except as provided in subsection (b), regulated parties, credit generators and brokers must use the CFP Online System to submit all required reports, including quarterly progress reports under OAR 340-253-0630 and annual compliance reports under OAR 340-253-0650.

(b) Small importers of finished fuels may submit annual compliance reports using the EZ-Fuels Online Reporting Tool for Fuel Distributors in lieu of using the CFP Online System.

(2) Credit transactions. Regulated parties, credit generators and brokers must use the CFP Online System to transact credits.

(3) Establishing an account. After DEQ approves a registration application, the regulated party, credit generator or broker must establish an account in the CFP Online System and must include the following information to register as a user in the CFP Online System:

(a) Business name, address, state and county, date and place of incorporation and FEIN;

(b) The name of the person who will be the primary contact, and that person's business and mobile phone numbers, email address, CFP Online System username and password;

(c) Name and title of a person who will act as the Administrator for the account;

(d) Name and title of one or more persons who will be Contributors on the account, optional;

(e) Name and title of one or more persons who will be Reviewers on the account, optional; and

(f) Any other information DEQ may require in the CFP Online System.

(4) Account management roles.

(a) Administrator:

(A) Authorized to sign for the account;

(B) Responsible for submitting quarterly progress and annual compliance reports;

(C) Makes changes to the company profile; and

(D) May designate other persons who can review and upload data, but not submit reports.

(b) Contributor:

(A) Authorized to submit quarterly progress and annual compliance reports, if given signature authority; but

(B) Cannot make changes to the account profile.

(c) Reviewer:

(A) Provided read-only access; but

(B) Cannot submit quarterly progress and annual compliance reports.

(5) Signature. The Administrator or a Contributor authorized to sign reports must sign each report to certify that the submitted information is true, accurate and complete.

(6) Information exempt from disclosure. Pursuant to the provisions of ORS 192.410 to 192.505, all information submitted to DEQ is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Oregon public records law, ORS 192.410 through 192.505 or other applicable Oregon law.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0630
Quarterly Progress Reports

(1) Quarterly progress reports. Except for persons exempt from this requirement under OAR 340-253-0100, regulated parties, credit generators and brokers must submit a quarterly progress report using the CFP Online System by:

(a) June 30 — for January through March of each year;

(b) September 30 — for April through June of each year;

(c) December 31 — for July through September of each year; and

(d) March 31 — for October through December of each previous year.

(2) General reporting requirements for quarterly progress reports.

(a) Quarterly progress reports must contain the information specified in Table 5 under OAR 340-253-8050 for each transportation fuel subject to the Clean Fuels Program.

(b) Reporters must upload the data for the quarterly reports in the CFP Online System within the first 45 days after the end of the quarter.

(c) During the second 45 days, reporters must work with each other to resolve any fuel transaction discrepancies between different reporters' reported transactions.

(3) Any reporter that generated credits by importing or producing natural gas (including CNG, LNG and L-CNG) must report:

(a) For CNG and L-CNG, the amount of fuel (in scf) dispensed per compliance period for all LDV and MDV, HDV-CIE and HDV-SIE. To convert pounds OF CNG to SCF use the formula below:

100 lbs CNG x SCF20.4 gramsx453.59 gramslb=22.23 SCF

(b) For LNG, the amount of fuel dispensed (in gal) per compliance period for all LDV and MDV, HDV-CIE and HDV-SIE.

(c) For CNG, L-CNG and LNG, the carbon intensity as listed in Table 3 or 4 under OAR 340-253-8030 or -8040.

(d) For bio-CNG, bio-LNG and bio-L-CNG, the carbon intensity as approved under OAR 340-253-0500 and the EPA production company ID and facility ID.

(4) Any reporter that generated credits by providing electricity used as a transportation fuel must report the following:

(a) The information specified for electricity in Table 5 under OAR 340-253-8050;

(b) The carbon intensity of the electricity as listed in Table 3 or 4 under OAR 340-253-8030 or -8040 or as approved under OAR 340-253-0500; and

(c) For residential charging stations, the total electricity dispensed (in kWh) to vehicles, measured by:

(A) The use of direct metering (either sub-metering or separate metering) to measure the electricity directly dispensed to all vehicles at each residence; or

(B) For residences where direct metering has not been installed, the credit generator or broker may report the total electricity dispensed as a transportation fuel using an alternative method that the credit generator or broker demonstrates is substantially similar to the use of direct metering, as approved by DEQ.

(d) For each public access charging facility, fleet charging facility and workplace private access charging facility, the amount of electricity dispensed (in kWh).

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-0650
Annual Compliance Reports

(1) Annual compliance reports.

(a) Except as providing in subsection (b), regulated parties, credit generators and brokers must use the CFP Online System to submit an annual compliance report to DEQ not later than April 30 for the compliance period ending on December 31 of the previous year.

(b) Small importers of finished fuels may submit annual compliance reports using the EZ-Fuels Online Reporting Tool for Fuel Distributors under OAR 340 division 215, in lieu of using the CFP Online System, not later than March 31 for the compliance period ending on December 31 of the previous year.

(2) General reporting requirements for annual compliance reports. Regulated parties, credit generators and brokers must submit annual compliance reports that meet, at minimum, the general and specific requirements for quarterly progress reports and include the following information:

(a) The total credits and deficits generated by the regulated party, credit generator or broker in the current compliance period, calculated in the CFP Online System as per equations in OAR 340-253-1020;

(b) Any credits carried over from the previous compliance period;

(c) Any deficits carried over from the previous compliance period;

(d) The total credits acquired from other regulated parties, credit generators and brokers;

(e) The total credits sold or otherwise transferred; and

(f) The total credits retired within the CFP Online System to meet the compliance obligation.

(3) All pending credit transfers initiated during a compliance period must be completed prior to submittal of the annual compliance report.

(4) Correcting a previously submitted report. A regulated party, credit generator or broker may ask DEQ to re-open a previously submitted quarterly progress or annual compliance report for corrective edits and re-submittal. The requestor must submit an "Unlock Report Request Form" using the CFP Online System. The requestor is required to provide justification for the report corrections and must indicate the specific corrections to be made to the report. Each submitted request is subject to DEQ approval. DEQ approval of a corrected report does not preclude DEQ enforcement based on misreporting.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-1000
Credit and Deficit Basics

(1) Carbon intensities.

(a) Except as provided in subsections (b) or (c), when calculating carbon intensities, regulated parties, credit generators and brokers must:

(A) Use a carbon intensity approved by DEQ under OAR 340-253-0500(3); and

(B) Express the carbon intensity to the same number of significant figures as shown in Table 3 or 4 under OAR 340-253-8030 or -8040.

(b) If a regulated party, credit generator or broker has an approved provisional carbon intensity approved under OAR 340-253-0450(8), the regulated party, credit generator or broker must use the provisional carbon intensity DEQ approved.

(2) Fuel quantities. Regulated parties, credit generators and brokers must express fuel quantities in the unit of fuel for each fuel.

(3) Compliance period. The annual compliance period is January 1 through December 31 of each year, except that the initial compliance period is January 1, 2016, through December 31, 2017.

(4) Metric tons of CO2 equivalent. Regulated parties, credit generators and brokers must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(5) Deficit and credit generation.

(a) Credit generation. A clean fuel credit is generated when fuel is produced, imported, dispensed or used in Oregon, as applicable, and the carbon intensity of the fuel approved under OAR 340-253-0500(3) is less than the clean fuel standard for gasoline and gasoline substitutes in Table 1 under OAR 340-253-8010 or for diesel fuel and diesel substitutes in Table 2 under 340-253-8020.

(b) Deficit generation. A clean fuel deficit is generated when fuel is produced, imported, dispensed or used in Oregon, as applicable, and the carbon intensity of the fuel approved under OAR 340-253-0500(3) is more than the clean fuel standard for gasoline and gasoline substitutes in Table 1 under OAR 340-253-8010 or for diesel fuel and diesel substitutes in Table 2 under 340-253-8020.

(c) Banking deficits and credits. Upon submission and acceptance of a timely quarterly progress report, the total number of deficits and credits generated will be placed in the CFP Online System account of the regulated party, credit generator or broker.

(d) Once banked, regulated parties, credit generators and brokers may retain credits indefinitely, retire them to meet a compliance obligation or transfer them to another regulated party, credit generator or broker.

(e) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-1010
Fuels to Include in Credit and Deficit Calculation

(1) Fuels included. Credits and deficits must be calculated for all regulated fuels and clean fuels except that:

(a) Credits may be generated only for biodiesel blends (B6 through B20) that can comply with an oxidation stability induction period of not less than 20 hours as determined by the test method described in the European standard EN 15751;

(b) Credits may be generated only for B100 that can comply with an oxidation stability induction period of not less than 8 hours as determined by the test method described in the European standard EN 15751; and

(c) Biodiesel blends and biodiesel that do not comply with subsections (a) or (b) can still be imported into Oregon but cannot generate credits for the Clean Fuels Program.

(2) Fuels exempted. Except as provided in section (3), credits and deficits may not be calculated for fuels:

(a) Exported outside Oregon; or

(b) Exempt under OAR 340-253-0250.

(3) Voluntary inclusion. A regulated party, credit generator or broker may choose to include in its credits and deficits calculations fuel that is exempt under OAR 340-253-0250(1) and fuel that is sold to an exempt user under 340-253-0250(2) provided that the credit and deficit calculation includes all fuel listed on the same delivery invoice.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-1020
Calculating Credits and Deficits

Regulated parties, credit generators and brokers must calculate credits or deficits for each fuel included under 340-253-1010 by:

(1) Using credit and deficit basics as directed in OAR 340-253-1000;

(2) Calculating energy in megajoules by multiplying the amount of fuel by the energy density of the fuel in Table 6 under OAR 340-253-8060;

(3) Calculating the adjusted energy in megajoules by multiplying the energy in megajoules from section (2) by the energy economy ratio of the fuel listed in Table 7 or 8 under OAR 340-253-8070 or -8080, as applicable;

(4) Calculating the carbon intensity difference by subtracting the fuel's carbon intensity as approved under OAR 340-253-0500(3) from the clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under OAR 340-253-8010 or diesel fuel and diesel substitutes listed in Table 2 under OAR 340-253-8020, as applicable;

(5) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in megajoules in section (3) by the carbon intensity difference in section (4);

(6) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent in section (5) by 1,000,000; and

(7) Determining under OAR 340-253-1000(5) whether credits or deficits are generated.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-1030
Demonstrating Compliance

(1) Compliance demonstration. Each regulated party must meet its compliance obligation for the compliance period by demonstrating via its annual compliance report that it possessed and has retired a number of credits from its credit account that is equal to its compliance obligation calculated under section (2).

(2) Calculation of compliance obligation. A regulated party's compliance obligation is the sum of deficits generated in the compliance period plus deficits carried over from the prior compliance period, represented in the following equation:

Compliance Obligation = Deficits Generated + Deficits Carried Over

(3) Calculation of credit balance.

(a) Definitions. For the purpose of this section:

(A) *Deficits Generated* are the total deficits generated by the regulated party for the current compliance period;

(B) *Deficits Carried Over* are the total deficits carried over by the regulated party from the previous compliance period;

(C) *Credits Generated* are the total credits generated by the regulated party in the current compliance period;

(D) *Credits Acquired* are the total credits acquired by the regulated party in the current compliance period from other regulated parties, credit generators and brokers, including carryback credits;

(E) *Credits Carried Over* are the total credits carried over by the regulated party from the previous compliance period;

(F) *Credits Retired* are the total credits retired by the regulated party within the CFP Online System for the current compliance period;

(G) *Credits Sold* are the total credits sold by, or otherwise transferred from, the regulated party in the current compliance period to other regulated parties, credit generators and brokers; and

(H) *Credits on Hold* are the total credits placed on hold due to enforcement or an administrative action. While on hold, these credits cannot be used for meeting the regulated party's compliance obligation.

(b) A regulated party's credit balance is calculated using the following equation:

Credit Balance = (Credits Gen + Credits Acquired + Credits Carried Over) – (Credits Retired + Credits Sold + Credits on Hold)

(4) Small deficits. At the end of a compliance period, a regulated party that has a net deficit balance may carry forward a small deficit to the next compliance period without penalty if the regulated party does not have any credits to offset its deficits. A small deficit exists if the amount of credits the regulated party needs to meet its compliance obligation is 10 percent or less than the total amount of deficits the regulated party generated for the compliance period.

(5) Extended credit acquisition period. A regulated party may acquire carryback credits between January 1st and March 31st to be used for meeting its compliance obligation for the prior compliance period. A regulated party must initiate all carryback credit transfers in the CFP Online System by March 31st and complete them by April 15th to be valid for meeting the compliance obligation for the prior compliance period.

(6) Extended compliance period for large importers of finished fuels. If a large importer of finished fuels cannot meet its compliance obligation for a compliance period, it can choose to carry over its deficit balance to the following compliance period. Deficits accrued in 2016 and 2017 may be carried over to 2018 when compliance with the aggregate deficit balance must be met.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-1050
Credit Basics

(1) General.

(a) Credits are a regulatory instrument and do not constitute personal property, instruments, securities or any other form of property.

(b) Regulated parties, credit generators and brokers may:

(A) Retain credits without expiration for use within the Clean Fuels Program in compliance with this division; and

(B) Acquire or transfer credits from or to other regulated parties, credit generators and brokers that are registered under OAR 340-253-0500.

(c) Regulated parties, credit generators and brokers may not:

(A) Use credits that have not been generated in compliance with this division; or

(B) Borrow or use anticipated credits from future projected or planned carbon intensity reductions.

(2) Mandatory retirement of credits. At the end of a compliance period, a regulated party that possesses credits must retire a sufficient number of credits so that:

(a) Enough credits are retired to completely meet the regulated party's compliance obligation for that compliance period, or

(b) If the total number of the regulated party's credits is less than the total number of the regulated party's deficits, the regulated party must retire all of its credits.

(3) Credit Retirement Hierarchy. The CFP Online System will use the following default hierarchy to retire credits for the purposes of meeting a compliance obligation:

(a) The System will retire credits acquired or generated in a previous compliance period prior to credits generated or acquired in the current compliance period;

(b) The System will retire credits with an earlier completed transfer "recording date" before credits with a later completed transfer "recording date;"

(c) The System will retire credits generated in an earlier quarter before credits generated in a later quarter.

(4) Credit transfers between parties.

(a) "Credit seller," as used in this rule, means a regulated party, credit generator or broker who wishes to sell or transfer credits.

(b) "Credit buyer," as used in this rule, means a regulated party, credit generator or broker who wishes to acquire credits.

(c) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(d) A credit seller may only transfer credits up to the number of credits in the credit seller's CFP Online System account on the date of transfer.

(5) Credit seller requirements. When a credit transfer agreement has been reached, within 10 businesses days, the credit seller must initiate an online "Credit Transfer Form" provided in the CFP Online System and must include the following:

(a) Date on which the credit buyer and credit seller reached agreement;

(b) Names and FEINs of the credit seller and credit buyer;

(c) First and last names and contact information of the persons who performed the transaction on behalf of the credit seller and credit buyer;

(d) The number of credits proposed to be transferred; and

(e) The price or equivalent value of the consideration (in US dollars) to be paid per credit proposed for transfer, excluding any fees.

(6) Credit buyer requirements. Within 10 days of receiving the "Credit Transfer Form" from the credit seller, the credit buyer must confirm the accuracy of the information therein by signing and dating the form using the CFP Online System.

(7) If the credit buyer and credit seller have not fulfilled the requirements of sections (5) and (6) within 20 days of reaching an agreement, the transaction will be voided. If a transaction has been voided, the credit buyer and credit seller may reinitiate the process to confirm the transaction, but the date of transfer that will be approved will in no event be earlier than ten days before the date that the credit seller initiates the online Credit Transfer Form.

(8) Broker. A broker may only act as a credit seller or credit buyer if that broker:

(a) Has an approved and active registration under OAR 340-253-0500;

(b) Has an account in the CFP Online System; and

(c) Has an approved Broker Designation Form from a regulated party or credit generator for whom the broker is acting in any given transaction.

(9) Illegitimate credits.

(a) A credit generator violates these rules if it submits information into the CFP Online System indicating that one or more credits have been generated when such an assertion is inconsistent with the requirements of OAR 340-253-1000 through 340-253-1020. If DEQ determines that one or more credits a credit generator claims to have generated are illegitimate credits, then the credit generator:

(A) Must provide an approved credit to replace each credit that was not properly generated, if available; and

(B) Is also subject to enforcement for the violation.

(b) A regulated party, credit generator or broker that has acquired one or more illegitimate credits is subject to enforcement unless DEQ determines:

(A) The credits were acquired from a registered regulated party, credit generator or broker; and

(B) The carbon intensity of the fuel for which the credits were generated matches the carbon intensity listed in the CFP Online System for that producer.

(10) Public disclosure.

(a) List of DEQ-approved registered parties. DEQ will maintain a current list of regulated parties, credit generators and brokers whose registrations DEQ has approved under OAR 340-253-0500 and will make that list publicly available electronically on its website. The list will include, at a minimum, the name of the party and whether the regulated party is an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels, a producer, a credit generator or a broker.

(b) Quarterly data summary. DEQ will publish at least quarterly:

(A) An aggregate data summary of credit and deficit generation for the:

(i) Most recent quarter,

(ii) Previous quarters of the current compliance period, and

(iii) Previous compliance periods; and

(B) Information on the contribution of credit generation by different fuel types.

(c) Credit trading activity report. DEQ will publish at least monthly:

(A) A credit trading activity report that summarizes the aggregate credit transfer information for the:

(i) Most recent month,

(ii) Previous three months,

(iii) previous three quarters, and

(iv) Previous compliance periods; and

(B) Information on the credits transferred during the most recent month including the total number of credits transferred, the number of transfers and the number of parties making transfers. If more than three transfers have occurred during the month, the report will also include the monthly average credit price for transfers.

(d) DEQ will base its reports on information submitted into the CFP Online System.

(e) DEQ reports will represent information aggregated for all fuel transacted within the state; not by individual parties.

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-2000
Emergency Deferral Due to Clean Fuel Supply

(1) Determining whether to issue an emergency deferral. DEQ will issue an order declaring an emergency deferral from the clean fuel standard, if DEQ determines:

(a) There is a shortage of fuel that is needed for regulated parties to comply with the clean fuel standard, due to:

(A) A natural disaster; or

(B) An unanticipated disruption in production or transportation of clean fuels used for compliance, except disruptions for routine maintenance of a fuel production facility or fuel transmission system; and

(b) The magnitude of the shortage is greater than the equivalent of five percent of the total credits generated by all regulated parties and providers of clean fuels under OAR 340-253-1020 in the previous compliance period. To determine the magnitude of the shortage, DEQ will consider the following:

(A) The volume and carbon intensity of the fuel determined to be not available under subsection (1)(a);

(B) The estimated duration of the shortage;

(C) Whether one of the following options could mitigate compliance with the clean fuel standard:

(i) The same fuel from other sources is available;

(ii) Substitutes for the affected fuel and the carbon intensities of those substitutes are available; or

(iii) Banked clean fuel credits are available; and

(D) Any other information DEQ may need to determine the magnitude of the shortage.

(2) Content of an emergency deferral. If DEQ determines under section (1) that it must issue a deferral, then DEQ will determine:

(a) The start date and end date of the emergency deferral period, which may not exceed one year (but which may be renewed if DEQ makes a subsequent determination under section (1);

(b) The fuel deferred from complying with the clean fuel standard; and

(c) Which of the following methods DEQ selects to defer compliance with the clean fuel standard during the temporary deferral period:

(A) Allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6); or

(B) Suspending deficit accrual during the emergency deferral period.

(d) Credits will accrue during the emergency deferral period.

(3) Issuing an emergency deferral. An emergency deferral order DEQ issues under this rule must notify the affected parties and must contain at least the following information:

(a) DEQ's determination under section (1);

(b) The deferral period as established under section (2);

(c) The fuel deferred as established under section (2); and

(d) The method selected by DEQ to comply as established under section (2).

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-2100
Forecasted Deferral Due to Clean Fuel Supply

(1) DEQ forecast. DEQ will use available data under section (2) to develop a fuel supply forecast for the next calendar year that includes:

(a) The potential volumes of gasoline substitutes and diesel fuel substitutes available in Oregon;

(b) The estimated total aggregate credits available;

(c) The estimated credits needed to meet the clean fuel standard; and

(d) A comparison of the estimates under subsections (1)(a) and (b) with (1)(c) to indicate the availability of fuel needed for compliance.

(2) Available data. DEQ will consider available data to develop the forecast including:

(a) Past Oregon fuel consumption volumes and trends;

(b) Oregon and nationwide trends in alternative fuel use;

(c) Information on numbers of alternative-fueled vehicles in Oregon;

(d) Banked clean fuel credits;

(e) Projected total transportation fuel consumption volumes in Oregon, including gasoline and diesel fuel;

(f) Planned projects in or near Oregon such as electric vehicle charging or natural gas fueling stations;

(g) The status of existing and planned clean fuel production facilities nationwide;

(h) Applicable updates to the carbon intensities of fuels;

(i) Nationwide volumes for fuels required under the federal renewable fuel standard; and

(j) Any other information DEQ may need to develop the forecast.

(3) Determining whether to issue a forecasted deferral. If DEQ forecasts a shortfall in clean fuel credits under subsection (1)(d), and the shortfall is greater than the equivalent of five percent of the credits needed under (1)(c) to comply with the clean fuel standard, then DEQ will determine whether a forecasted deferral is needed by considering the following:

(a) Timing of fuel availability;

(b) Timing, duration and magnitude of the estimated clean fuel shortfall;

(c) Information in addition to material considered under section (2), on potential and current gasoline substitutes and diesel fuel substitutes, including:

(A) Production nationwide;

(B) Use in Oregon; and

(C) Clean fuel infrastructure development in Oregon; and

(d) Any other information DEQ may need in the analysis.

(4) Content of a forecasted deferral. If DEQ determines under section (3) that it must issue a forecasted deferral, DEQ will determine:

(a) The start date and end date of the forecasted deferral period, which may not exceed one year except that DEQ may renew that period if DEQ makes a subsequent determination under section (3);

(b) The fuel deferred from complying with the clean fuel standard; and

(c) Which of the following methods DEQ will use to defer compliance with the clean fuel standard during the forecasted deferral period:

(A) Defer the requirement to comply with the clean fuel standard for up to one year, and allow credits to accrue during the deferral period; or

(B) Propose that EQC revise the Clean Fuels Program through a rulemaking to:

(i) Amend the clean fuel standard;

(ii) Amend the clean fuel standard to extend beyond 2025, the year when Oregon must meet the lowest average carbon intensities to allow for less stringent annual reductions while still reaching the same average carbon intensity at the end of the period; or

(iii) Otherwise amend the Clean Fuels Program to address the forecasted fuel supply shortage, such as by adopting a multi-year deferral.

(5) Issuing a forecasted deferral. DEQ will issue a forecasted deferral order to the affected parties with the following information:

(a) DEQ's determination under section (3);

(b) The deferral period as established under section (4);

(c) The fuel deferred as established under section (4); and

(d) The method selected by DEQ to comply as established under section (4).

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-2200
Monthly Fuel Price Deferral

(1) Definitions. As used in this rule:

(a) "Diesel Blends" means diesel fuel and diesel fuel blended with biodiesel.

(b) "Gasoline Blends" means gasoline and gasoline blended with ethanol.

(c) "Price evaluation threshold" means that the 12-month rolling weighted average price of gasoline blends or diesel blends in Oregon is more than five percent higher than the 12-month rolling weighted average price in the:

(A) Statutory PADD 5 for gasoline; or

(B) Statutory PADD 5 or, if unavailable, Actual PADD 5, for diesel fuel.

(2) Average price. Each month, DEQ will calculate the 12-month rolling average price for gasoline blends and diesel blends using data available from the U.S. Energy Information Administration or a comparable source, as follows:

(a) Oregon's 12-month rolling average price. Each month, DEQ will calculate the Oregon 12-month rolling average price for gasoline blends and diesel blends.

(b) Gasoline 12-month rolling weighted-average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume-weighted average price for gasoline blends using the statutory PADD 5 data.

(c) Diesel 12-month rolling weighted-average price for PADD 5. Each month, DEQ will calculate the PADD 5 12-month rolling volume-weighted average price for diesel blends using the actual PADD 5 or, if available, the statutory PADD 5 data.

(3) Determining need for cost mitigation. If the price of gasoline blends or diesel blends in Oregon exceeds the price evaluation threshold:

(a) DEQ will provide fuel data and analysis to EQC that includes the applicable information under sections (4) and (5);

(b) EQC will determine the need to mitigate the costs of complying with the clean fuel standard after considering the DEQ fuel data and analysis. EQC will direct DEQ to implement one or more cost mitigation strategies if EQC determines that:

(A) The price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard; and

(B) Implementing one of the strategies under section (6) is necessary to mitigate the costs of compliance with the clean fuel standard.

(4) Determining whether the clean fuel standard caused the price evaluation threshold exceedance. EQC will determine whether the price of Oregon gasoline blends or diesel blends exceeds the price evaluation threshold due to the costs of complying with the clean fuel standard. DEQ will analyze and provide the following information to EQC:

(a) Whether fuel volume and price data is faulty or incomplete;

(b) Price of gasoline substitutes and diesel substitutes;

(c) Changes in demand for gasoline blends and diesel blends such as changes caused by:

(A) An increase in population; or

(B) An increase in fuel usage.

(d) A decrease in retail outlets for gasoline blends and diesel blends in Oregon;

(e) Natural or manmade disasters affecting Oregon but not the statutory PADD 5 as a whole;

(f) Regulatory change that affects Oregon but not the statutory PADD 5 as a whole;

(g) Change in the usage of reformulated gasoline or other special fuel in any state in the statutory PADD 5; and

(h) Any other information DEQ or EQC may need to determine whether the clean fuel standard caused the price of Oregon gasoline blends or diesel blends to exceed the price evaluation threshold.

(5) Factors in determining whether a price mitigation strategy is necessary. EQC will consider the following factors to determine whether it is necessary to mitigate the costs of compliance with the clean fuel standard, or whether the price of gasoline blends or diesel blends will fall below the price evaluation threshold within six months without implementing a cost mitigation strategy:

(a) Fuel price trends;

(b) Price of gasoline substitutes and diesel substitutes;

(c) Availability and use of gasoline substitutes and diesel substitutes in Oregon;

(d) Compliance schedule for the fuel;

(e) Future supply of gasoline substitutes and diesel substitutes; and

(f) Any other information DEQ or EQC may need to determine whether implementing standard cost mitigation strategy is necessary.

(6) Cost mitigation strategies. If EQC determines under subsection (3)(b) that mitigating the cost of compliance is necessary, it will order, and DEQ will implement, one of the following cost mitigation strategies with EQC-approved start and end dates:

(a) Suspending deficit accrual during a cost mitigation period and allowing credits to accrue during that period;

(b) Allowing credits to accrue and allowing deficits to be carried over into future compliance periods, notwithstanding OAR 340-253-1030(4) through (6), during a cost mitigation period. EQC may allow deficits to be carried over for one, two, or three future compliance periods before the deficits must be reconciled;

(c) Suspending deficit accrual for a percentage of the fuel during the cost mitigation period and allowing credits to accrue during the period;

(d) Eliminating the requirement to comply with the clean fuel standard for up to one year; or

(e) Adopting any other price mitigation strategy that EQC determines to be necessary to effectively mitigate the cost of compliance.

(7) EQC reconsideration. EQC may reconsider and revise its determinations under sections (4) and (5) if the information it considered under those sections has changed. Based on that reconsideration, EQC may reconsider and revise or withdraw any cost mitigation strategies ordered under section (6).

(8) DEQ implementation. In implementing a cost mitigation strategy as EQC directs, DEQ will notify the affected parties with the following information:

(a) EQC's determinations under sections (4) through (6);

(b) The start date and end date for the cost mitigation strategy period;

(c) The fuel(s) affected by the price mitigation strategy; and

(d) The cost mitigation strategy that EQC adopted under section (6).

Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8010

Table 1 — Oregon Clean Fuel Standard for Gasoline and Gasoline Substitutes

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020 & 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8020

Table 2 — Oregon Clean Fuel Standard for Diesel Fuel and Diesel Substitutes

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition)
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8030

Table 3 — Oregon Carbon Intensity Lookup Table for Gasoline and Gasoline Substitutes

NOTE: DEQ recognizes that indirect effects, including indirect land use change, are real. However the methodologies to quantify these effects are still in development. DEQ intends to monitor the science of indirect effect and will adjust carbon intensity values through future rulemaking as methodologies improve.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3010 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-15; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8040

Table 4 — Oregon Carbon Intensity Lookup Table for Diesel and Diesel Substitutes

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; DEQ 15-2013(Temp), f. 12-20-13, cert. ef. 1-1-14 thru 6-30-14; DEQ 8-2014, f. & cert. ef. 6-26-14; Renumbered from 340-253-3020 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8050

Table 5 — Summary Checklist of Quarterly Progress and Annual Compliance Reporting Requirements

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8060

Table 6 — Oregon Energy Densities of Fuels

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3030 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8070

Table 7 — Oregon Energy Economy Ratio Values for Fuels Used as Gasoline Substitutes

NOTE: Renumbered from 340-253-3040.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3040 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

340-253-8080

Table 8 — Oregon Energy Economy Ratio Values for Fuels Used as Diesel Substitutes

NOTE: Renumbered from 340-253-3050.
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 468.020, 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Stats. Implemented: 2009 OL Ch. 754 Sec. 6 (2011 Edition) & 2015 OL Ch. 4 Sec. 3
Hist.: DEQ 8-2012, f. & cert. ef. 12-11-12; Renumbered from 340-253-3050 by DEQ 3-2015, f. 1-8-15, cert. ef. 2-1-155; DEQ 13-2015, f. 12-10-15, cert. ef. 1-1-16

Rule Caption: Medford Carbon Monoxide Limited Maintenance Plan
Adm. Order No.: DEQ 14-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 12-10-15
Notice Publication Date: 9-1-2015
Rules Amended: 340-200-0040
Subject: In the 1970s and 1980s the Medford area violated the national air quality standard for carbon monoxide (CO). State and federal regulations applied measures that reduced CO concentrations.

In 2002 the EPA redesignated Medford as meeting the CO standard. The redesignation included approval of the first Medford CO Maintenance Plan which demonstrated how the area would continue to meet the standard in the coming decade. EPA required the plan to include a budget for the amount of CO that vehicles operating on the future highway system could emit in coming decades. Each time a new transportation plan is adopted, planners must show that estimated CO emissions from the new highway system will remain within the budgeted amount.

A second CO maintenance plan is now due under the Clean Air Act to address how the area will continue to meet the CO standard through September 23, 2022, the final maintenance plan period. In addition, DEQ recently discovered that the instructions by EPA's consultant for calculating the motor vehicle emissions budget in the original plan were incorrect and the budget was set too low. When future vehicle emissions are estimated and compared to the emissions budget they exceed the allowable amount. This error prevents Medford from adopting a new transportation plan under the original maintenance plan. The situation can be corrected by revising the budget in the original plan or by adopting a new CO maintenance plan. Since a second CO maintenance plan is already due a new plan is the preferred way of correcting the error.

CO monitoring was discontinued in Medford in 2009 because CO levels were well below the federal CO health standard, which is 27 percent of the federal CO limit. This low level of CO allows Medford to use the streamlined requirements of a "limited maintenance plan." Under these streamlined requirements, a vehicle emissions budget is no longer required when preparing future transportation plans.

DEQ, in consultation with EPA and the Rouge Valley Metropolitan Planning Organization (RVMPO), is presenting this new limited maintenance plan as the most efficient way to ensure continued compliance with the CO standard while supporting Medford's transportation planning process and schedule. A significant benefit of this limited maintenance plan is that an emissions budget is no longer needed and the RVMPO can demonstrate conformity without a regional analysis. DEQ estimates this change will save the Rogue Valley MPO approximately $10,000 in unnecessary analysis costs every two years.

Under this plan Medford will continue to meet the federal CO standard, while eliminating administrative requirements that are no longer needed to protect air quality. The limited maintenance plan updates Medford's existing air quality plan, imposes no new control measures and saves the cost of emissions analyses that are no longer useful.
Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-200-0040

State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by DEQ and is adopted as the State Implementation Plan (SIP) of the State of Oregon pursuant to the FCAA, 42 U.S.C.A 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the EQC's rulemaking procedures in OAR 340 division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the EPA for approval. The SIP was last modified by the EQC on Dec. 9, 2015.

(3) Notwithstanding any other requirement contained in the SIP, DEQ may:

(a) Submit to the EPA any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after DEQ has complied with the public hearings provisions of 40 CFR 51.102; and

(b) Approve the standards submitted by LRAPA if LRAPA adopts verbatim, other than non-substantive differences, any standard that the EQC has adopted, and submit the standards to EPA for approval as a SIP revision.

(4) Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the EPA. If any provision of the federally approved State Implementation Plan conflicts with any provision adopted by the EQC, DEQ must enforce the more stringent provision.

Stat. Auth.: ORS 468.020 & 468A

Stats. Implemented: ORS 468A.035 & 468A.135

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 7-2005, f. & cert. ef. 7-12-05; DEQ 9-2005, f. & cert. ef. 9-9-05; DEQ 2-2006, f. & cert. ef. 3-14-06; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 3-2007, f. & cert. ef. 4-12-07; DEQ 4-2007, f. & cert. ef. 6-28-07; DEQ 8-2007, f. & cert. ef. 11-8-07; DEQ 5-2008, f. & cert. ef. 3-20-08; DEQ 11-2008, f. & cert. ef. 8-29-08; DEQ 12-2008, f. & cert. ef. 9-17-08; DEQ 14-2008, f. & cert. ef. 11-10-08; DEQ 15-2008, f. & cert. ef 12-31-08; DEQ 3-2009, f. & cert. ef. 6-30-09; DEQ 8-2009, f. & cert. ef. 12-16-09; DEQ 2-2010, f. & cert. ef. 3-5-10; DEQ 5-2010, f. & cert. ef. 5-21-10; DEQ 14-2010, f. & cert. ef. 12-10-10; DEQ 1-2011, f. & cert. ef. 2-24-11; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11; DEQ 5-2011, f. 4-29-11, cert. ef. 5-1-11; DEQ 18-2011, f. & cert. ef. 12-21-11; DEQ 1-2012, f. & cert. ef. 5-17-12; DEQ 7-2012, f. & cert.ef 12-10-12; DEQ 10-2012, f. & cert. ef. 12-11-12; DEQ 4-2013, f. & cert. ef. 3-27-13; DEQ 11-2013, f. & cert. ef. 11-7-13; DEQ 12-2013, f. & cert. ef. 12-19-13; DEQ 1-2014, f. & cert. ef. 1-6-14; DEQ 4-2014, f. & cert. ef. 3-31-14; DEQ 5-2014, f. & cert. ef. 3-31-14; DEQ 6-2014, f. & cert. ef. 3-31-14; DEQ 7-2014, f. & cert. ef. 6-26-14; DEQ 6-2015, f. & cert. ef. 4-16-15; DEQ 7-2015, f. & cert. ef. 4-16-15; DEQ 10-2015, f. & cert. ef. 10-16-15; DEQ 14-2015, f. & cert. ef. 12-10-15

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Rule Caption: Water Quality Credit Trading Program
Adm. Order No.: DEQ 15-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 12-10-15
Notice Publication Date: 9-1-2015
Rules Adopted: 340-039-0001, 340-039-0003, 340-039-0005, 340-039-0015, 340-039-0017, 340-039-0020, 340-039-0025, 340-039-0030, 340-039-0035, 340-039-0040, 340-039-0043
Subject: The Environmental Quality Commission is adopting new rules establishing a water quality trading program as a new rule division (039) in Chapter 340 of DEQ's administrative rules. The rules are intended to address important and essential elements of DEQ's water quality trading program, with appropriate standards for accountability and enforceability and with provisions to ensure transparency.

The rules :

Clarify DEQ's authority to allow water quality trading as a voluntary compliance option in water quality permits and water quality certifications issued under the Clean Water Act (CWA);

Establish the mechanisms through which DEQ will evaluate and approve water quality trades and oversee implementation of water quality trades;

Require that a trade proponent develop a trading plan that includes specified essential elements of a proposed trade and submit that plan to DEQ for review and approval;

Require that a trading plan go through a public notice and comment period along with the permit or certification and, if approved, the elements of the approved trading plan are incorporated into the permit or water quality certification as enforceable conditions;

Require annual reporting to ensure that trading projects are implemented and verified and that credits are developed as intended under the trading plan; and

Provide consistency and regulatory certainty for eligible entities, other stakeholders and the public.

The rules apply to many different types of trades and are written to be flexible enough so that trading may be authorized under various trading scenarios. Specifically, the rules account for both the current state of water quality trading program development as well as future scenarios that are reasonably likely to occur. As an example, the rules allow DEQ to develop and use "trading frameworks" that would guide trading within a watershed but currently DEQ does not have any such frameworks in existence outside of an established Total Maximum Daily Load (TMDL).
Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-039-0001
Purpose and Policy

(1) Purpose. This rule implements ORS 468B.555 to allow entities regulated under the Clean Water Act to meet pollution control requirements through water quality trading. This rule establishes the requirements for water quality trading in Oregon.

(2) Policy. The Oregon Department of Environmental Quality may approve water quality trading only if it promotes one or more of the following Environmental Quality Commission policies:

(a) Achieves pollutant reductions and progress towards meeting water quality standards;

(b) Reduces the cost of implementing Total Maximum Daily Loads (TMDLs);

(c) Establishes incentives for voluntary pollutant reductions from point and nonpoint sources within a watershed;

(d) Offsets new or increased discharges resulting from growth;

(e) Secures long-term improvement in water quality; or

(f) Results in demonstrable benefits to water quality or designated uses the water quality standards are intended to protect.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0003
Water Quality Trading Objectives

Water quality trading authorized under this rule must:

(1) Be consistent with anti-degradation policies;

(2) Not cause or contribute to an exceedance of water quality standards;

(3) Be consistent with local, state, and federal water quality laws;

(4) Be designed to result in a net reduction of pollutants from participating sources in the trading area;

(5) Be designed to assist the state in attaining or maintaining water quality standards;

(6) Be designed to assist in implementing TMDLs when applicable;

(7) Be based on transparent and practical Best Management Practices (BMPs) quality standards to ensure that water quality benefits and credits are generated as planned; and

(8) Not create localized adverse impacts on water quality and existing and designated beneficial uses.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555

Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0005
Definitions

(1) Best Management Practices (BMPs): In-water or land-based conservation, enhancement or restoration actions that will reduce pollutant loading or create other water quality benefits. BMPs include, but are not limited to, structural and nonstructural controls and practices and flow augmentation.

(2) BMP Quality Standards: Specifications for the design, implementation, maintenance and performance tracking of a particular BMP that ensure the estimated water quality benefits of a trading project are achieved, and that allow for verification that the BMP is performing as described in an approved trading plan.

(3) Credit: A measured or estimated unit of trade for a specific pollutant that represents the water quality benefit a water quality trading project generates at a location over a specified period of time, above baseline requirements and after applying trade ratios or any other adjustments.

(4) Public Conservation Funds: Public funds that are targeted to support voluntary natural resource protection or restoration. Examples of public conservation funds include United States Department of Agriculture (USDA) cost share programs, United States Environmental Protection Agency (EPA) section 319 grant funds, United States Fish and Wildlife Service Partners for Fish and Wildlife Program funds, State Wildlife Grants, and Oregon Watershed Enhancement Board restoration grants. Public funds that are not considered public conservation funds include: public loans intended to be used for water quality infrastructure projects, such as Clean Water State Revolving Funds, USDA Rural Development funds, and utility sewer storm water and surface water management fees.

(5) Trading Area: A watershed or other hydrologically-connected geographic area, as defined within a water quality management plan adopted for a TMDL, trading framework or trading plan. A trading area must encompass the location of the discharge to be offset, or its downstream point of impact, if applicable, and the trading project to be implemented.

(6) Trading Baseline: Pollutant load reductions, BMP requirements, or site conditions that must be met under regulatory requirements in place at the time of trading project initiation.

(7) Trading Framework: A description contained in a TMDL water quality management plan, or water pollution control plan, adopted by rule or issued by order under ORS 468B.015 or 468B.110, that identifies trading elements applicable to one or more entities in a trading area.

(8) Trading Plan: A plan that describes the design, implementation, maintenance, monitoring, verification and reporting elements of a water quality trade.

(9) Trading Project: A site-specific implementation of a trading plan used to generate credits.

(10) Trading Ratio: A numeric value used to adjust the number of credits generated from a trading project, or to adjust the number of credits that a credit user needs to obtain.

(11) Verification: A process to confirm and document that a trading project is implemented and performing according to the approved trading plan and BMP quality standards, and to confirm the quantity of credits generated by the trading project.

(12) Water Quality Benefit: The quantifiable water quality improvement or net pollutant reduction that can be reasonably attributed to BMPs at a trading project site.

(13) Water Quality Trading or Trade: The use of water quality credits generated at one location in a trading area to comply with water quality-based requirements at another location within the trading area.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0015
Eligibility

(1) An entity regulated by a National Pollutant Discharge Elimination System (NPDES) permit or a federal permit or license for which DEQ has issued a water quality certification pursuant to Clean Water Act section 401 and OAR chapter 340, division 048 (a "401 water quality certification") is eligible to enter into a trade.

(2) Water quality parameters eligible for water quality trading:

(a) DEQ may authorize water quality trading for the following water quality parameters: temperature, ammonia, sediment, total suspended solids, and nutrients and other oxygen-demanding substances, including biochemical oxygen demand.

(b) Water quality trading for pollutants that are toxic and either persist in the environment or accumulate in the tissues of humans, fish, wildlife or plants is prohibited, except if trading is an element of a pollution reduction plan in a variance that has been issued by DEQ or the EQC and approved by EPA pursuant to OAR 340-041-0059.

(c) Water quality trading authorized under this division may not be used to meet technology-based effluent limitations.

(d) DEQ may authorize trading for other water quality parameters on a case-by-case basis provided it does not cause or contribute to an exceedance of a water quality standard.

(3) Water bodies where trading may occur:

(a) High quality waters. DEQ may authorize trading to maintain or improve water quality in water bodies that meet water quality standards, including but not limited to, trading projects designed to offset new or increased pollutant loads.

(b) Water quality limited waters. DEQ may authorize trading where it is consistent with the water quality management plan in a TMDL or other water pollution control plan adopted by rule or issued by order under ORS 468B.015 or 468B.110, or in water bodies:

(A) That are water quality limited but not subject to a TMDL; or

(B) Where trading projects are designed to achieve progress towards meeting water quality standards before or while a TMDL is being developed.

(4) BMPs eligible for credit generation must be quantifiable and have BMP quality standards.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0017
Regulatory Mechanisms for Water Quality Trading

(1) NPDES Permitting:

(a) Trading in Permits: DEQ may authorize water quality trading in an NPDES permit to meet water quality-based effluent requirements.

(b) Compliance Schedules. Water quality trading may be included in an NPDES permit compliance schedule only if the trade is consistent with the requirements of OAR 340-041-0061 and any applicable regulations of the EPA.

(c) Permit Variances. Water quality trading may be included as a component of the pollution reduction plan in a variance issued under OAR 340-041-0059.

(2) 401 Water Quality Certifications. DEQ may condition a 401 water quality certification based on water quality trading consistent with this division.

(3) Annual Reporting. The regulated entity must submit an annual report to DEQ that describes trading plan implementation and performance over the past year. The annual report must include information specific to each trading project implemented including:

(a) The location of each trading project and BMPs implemented in the preceding year;

(b) The trading project baseline;

(c) The trading ratios used;

(d) Trading project monitoring results;

(e) Verification of trading plan performance including the quantity of credits acquired from each trading project, and the total quantity of credits generated under the trading plan to date;

(f) A demonstration of compliance with OAR 340-039-0040(4), if applicable; and

(g) Adaptive management measures implemented under the trading plan, if applicable.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0020
Trading Frameworks

(1) DEQ may establish one or more trading frameworks in a TMDL water quality management plan or water pollution control plan adopted by rule or issued by order under ORS 468B.015 or ORS 468B.110. If established, a trading framework must specify pollutants that are eligible for trading, the trading area, any priority areas, as well as regulations and applicable TMDL allocations and implementation schedules that will be used to derive trading baseline.

(2) DEQ must provide an opportunity for public notice and comment before issuing a trading framework.

(3) A trading framework is not required in order for DEQ to approve a water quality trading plan.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0025
Requirements of a Water Quality Trading Plan

(1) An eligible entity may not engage in water quality trading unless DEQ has reviewed and approved that entity's water quality trading plan. The use of credits will be authorized after all elements of a DEQ-approved trading plan required by subsection (5) of this rule are incorporated as enforceable conditions of an NPDES permit issued under OAR chapter 340 division 045 or a 401 water quality certification issued under OAR chapter 340 division 048.

(2) For NPDES permittees trading may be proposed as part of a permittee's application for permit renewal or modification.

(3) DEQ must provide an opportunity for public notice and comment on a trading plan before approving the trading plan. DEQ may amend the trading plan or require amendments to the trading plan prior to approval. Individual trading projects must be consistent with an approved trading plan. Individual trading projects do not require separate public notice and comment.

(4) A trading plan must be consistent with an applicable DEQ-issued trading framework if such a framework exists at the time DEQ approves the trading plan.

(5) A trading plan must include all of the following elements and a description of how the elements were derived or calculated:

(a) The parameter for which water quality trading is proposed;

(b) Trading baseline: A trading plan must identify any applicable regulatory requirements from OAR 340-039-0030(1) that apply within the trading area and that must be implemented to achieve baseline requirements;

(c) Trading area: A description of the trading area including identification of the location of the discharge to be offset, its downstream point of impact, if applicable, where trading projects are expected to be implemented, and the relationship of the trading projects to beneficial uses in the trading area;

(d) BMPs: A description of the water quality benefits that will be generated, the BMPs that will be used to generate water quality benefits, and applicable BMP quality standards;

(e) Trading ratios: A description of applicable trading ratios, the basis for each applicable trading ratio, including underlying assumptions for the ratio, and a statement indicating whether those ratios increase or decrease the size of a credit obligation or the number of credits generated from an individual trading project;

(f) Credits: A description of the credits needed to meet water quality-based requirements of an NPDES permit or 401 water quality certification, including:

(A) Quantity and timing: The number of credits needed and any credit generation milestones, including a schedule for credit generation;

(B) Methods used: How credits will be quantified, including the assumptions and inputs used to derive the number of credits; and

(C) Duration of credits: A description of the length of time credits are expected to be used.

(g) Monitoring. The trading plan must include a description of the following:

(A) Proposed methods and frequency of trading project BMP monitoring; and

(B) Proposed methods and frequency of how water quality benefits generated by a trading project will be monitored;

(h) Trading Plan Performance Verification: A description of how the entity will verify and document for each trading project that BMPs are conforming to applicable quality standards and credits are generated as planned; and

(i) Tracking and Reporting: A description of how credit generation, acquisition and usage will be tracked and how this information will be made available to the public.

(6) Adaptive Management: Trading plans must include a description of how monitoring and other information may be used over time to adjust trading projects and under what circumstances;

(7) Trading Plan Revision: An approved trading plan must be revised during permit or 401 water quality certification renewal or if there is a change in circumstances that affects a trading plan element required by subsection (5) of this rule. Revised trading plans must be submitted to DEQ for review and approval and must be given an opportunity for public notice and comment. DEQ will reopen and modify the permit or 401 water quality certification for any revisions affecting an enforceable condition.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0030
Requirements for Trading Baselines

(1) Trading baseline must account for the following regulatory requirements applicable to the trading project at the time of trading project initiation:

(a) NPDES permit requirements;

(b) Rules the Oregon Department of Agriculture issued for an agricultural water quality management area under OAR chapter 603 division 095;

(c) Rules the Oregon Board of Forestry issues under OAR chapter 629 divisions 610-680;

(d) Requirements of a federal land management plan, or an agreement between a federal agency and the state;

(e) Requirements established in a Clean Water Act Section 401 water quality certification;

(f) Local ordinances;

(g) Tribal laws, rules, or permits;

(h) Other applicable rules affecting nonpoint source requirements;

(i) Projects completed as part of compensatory mitigation, or projects required under a permit or approval issued under Clean Water Act section 404, or a supplemental environmental project used to settle a civil penalty imposed under OAR chapter 340 division 012 or the Clean Water Act; and

(j) Regulatory requirements a designated management agency establishes to comply with a DEQ-issued TMDL, water quality management plan or another water pollution control plan adopted by rule or issued by order under ORS 468B.015 or 468B.110.

(2) BMPs required to meet baseline requirements and BMPs used to generate additional water quality benefits and trade credits may be installed simultaneously.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0035
Requirements for Trading Areas

(1) DEQ may establish trading areas in trading frameworks.

(2) All trading areas must be consistent with any applicable TMDL water quality management plan, independent state water quality management plans, or trading framework.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0040
Requirements for Credits

(1) Credits used for compliance with NPDES permit and 401 water quality certification requirements must be generated within the trading area of an approved trading plan.

(2) A credit may not be used to meet a regulatory obligation by more than one entity at any given time.

(3) Credits may be generated only from BMPs that result in water quality benefits above trading baseline requirements.

(4) Credits generated under an approved trading plan may not include water quality benefits obtained with public conservation funds. Where public sources of funding are used for credit-generating activities, it is the entity's responsibility to demonstrate compliance with this requirement in its annual report.

(5) Credits may be used for compliance with NPDES permit requirements and 401 water quality certifications once implementation of BMPs has been verified as consistent with applicable BMP quality standards according to OAR 340-039-0025(5)(h).

(6) Credits may be generated from BMPs installed before DEQ approves a trading plan if BMPs are verified as having been implemented consistent with BMP quality standards identified in a subsequently approved trading plan and are functioning effectively.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

340-039-0043
Requirements for Trading Ratios

(1) Water quality trades must include one or more trading ratios that apply to credits. Ratio components and underlying assumptions must be clearly documented in the trading plan.

(2) Trading ratios may be used to account for variables associated with a trading project including the following:

(a) Attenuation of a water quality benefit between the location where credit-generating BMPs occur and the point of use;

(b) Pollutant equivalency;

(c) Uncertainty of BMP performance or water quality benefit measurement or estimate;

(d) Types of risk not associated with BMP performance;

(e) Time lag after BMP installation before a BMP produces full water quality benefit;

(f) Credit for trading projects located in priority areas; or

(g) Credit retirement to ensure a net reduction in water pollution.

Stat. Auth.: ORS 468.020, 468B.020, 468B.030, 468B.035, 468B.555
Stats. Implemented: ORS 468B.555
Hist.: DEQ 15-2015, f. & cert. ef. 12-10-15

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Rule Caption: Water Quality Permit Fee 2015 Update
Adm. Order No.: DEQ 16-2015
Filed with Sec. of State: 12-10-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 340-045-0075, 340-071-0140
Subject: These rule amendments increase water quality fees by 12 percent for individuals, businesses and government agencies that hold the following permits, effective Jan. 1, 2016:

- National Pollutant Discharge Elimination System permits
- Water Pollution Control Facility permits
- Water Pollution Control Facility permits specific to onsite septic systems

ORS 468B.051 allows water quality permit fee increases.

Oregon DEQ proposed two policy option packages in the 2015 Agency Request Budget. Package 120 supports replacing an outdated and inadequate wastewater permitting information management system with a commercial off-the-shelf product. Package 123 restores 6 FTE that are unaffordable due to shortfalls in federal funds and fee funds. DEQ requested a one-time 12 percent increase to support replacing the permitting information management system and to maintain the six permitting positions.

The 2015 Oregon Legislature approved the fee increase. With approval of the 12 percent increase, DEQ will forego annual permit fee increases for the 2015-17 biennium.

The proposed fee increases would affect:

- Persons that currently hold a permit
- Persons that apply for modifications to or transfer of these permits
- Any person that applies for a new permit
- Any person that needs technical assistance related to these permits

Other proposed updates to the fee tables that affect regulated parties include:

- New Municipal Separate Storm Sewer System (MS4) General Permit replaces the former individual permit. See Table G (OAR 340-045-0075). The program's annual fees collected are the same, but scaled to reflect population of community served.
- New Underground Injection Control (UIC) General Permit is now listed in Table 70G (OAR 340-045-0075). Fees for permittees covered under this and the former permit remain identical to the "Other" fee category.
- The industrial reuse wastewater permit (2501) for sources managing under 25,000 gallons per day of industrial reuse water free of human and animal waste and suitable for reuse without secondary or advanced treatment is now listed in Table 70G (OAR 340-045-0075).

The proposed fee increases would not affect fees for the following permits:

- Suction dredge discharge: 700-PM permit fees: Statute requires DEQ to set these fees through a separate rulemakings.
- Graywater Water Pollution Control Facility permits 2401 and 2402 for graywater use: DEQ proposes to maintain permit fees for graywater reuse and disposal systems at current levels to promote individual water reuse efforts, which is of public interest during Oregon's current drought conditions.
- Small off-stream mining operations: Water Pollution Control Facility permit 600. These permits do not currently have application fees or annual fees.

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-045-0075
Permit Fee Schedule

(1) OAR chapter 340, division 71 contains the fee schedule for onsite sewage disposal system permits, including WPCF permits, and graywater reuse and disposal system WPCF individual permits.

(2) The department establishes fees for various industrial, domestic and general permit categories. Tables 70B and 70C list the industrial and domestic permit categories and fees. OAR 340-045-033 defines the general permit categories and Table 70G lists the fees.

(3) The department must consider the following criteria when classifying a facility for determining applicable fees. For industrial sources that discharge to surface waters, discharge flowrate refers to the system design capacity. For industrial sources that do not discharge to surface waters, discharge flow refers to the total annual flow divided by 365:

(a) Tier 1 industry. A facility is classified as a Tier 1 industry if the facility:

(A) Discharges at a flowrate that is greater than or equal to 1 mgd; or

(B) Discharges large biochemical oxygen demand loads; or

(C) Is a large metals facility; or

(D) Has significant toxic discharges; or

(E) Has a treatment system that will have a significant adverse impact on the receiving stream if not operated properly; or

(F) Needs special regulatory control, as determined by the department.

(b) Tier 1 domestic facility. A facility is classified as a Tier 1 domestic facility if the facility:

(A) Has a dry weather design flow of 1 mgd or greater; or

(B) Serves an industry that can have a significant impact on the treatment system.

(c) Tier 2 industry or domestic facility: does not meet Tier 1 qualifying factors.

(4) New-permit application fee. Unless waived by this rule, the applicable new-permit application fee listed in Table 70A, 70C or 70G must be submitted with each application. The facility category and type of permit (e.g., individual vs. general) determines the amount of the fee.

(5) Permit modification fee. Tables 70A and 70C list the permit modification fees. Permit modification fees vary with the type of permit, the type of modification and the timing of modification as follows:

(a) Modification at time of permit renewal:

(A) Major modification — involves an increase in effluent limitations or any other change that involves significant analysis by the department;

(B) Minor modification — does not involve significant analysis by the department.

(b) Modification prior to permit renewal:

(A) Major modification — involves an increase in effluent limitations or any other change that involves significant analysis by the department. A permittee requesting a significant modification to their permit may be required by the department to enter into an agreement to pay for these services according to ORS 468.073. ORS 468.073 allows the department "to expedite or enhance a regulatory process by contracting for services, hiring additional staff or covering costs of activities not otherwise provided during the ordinary course of department business;"

(B) Minor modification — does not involve significant analysis by the department.

(6) Annual fees. Tables 70B, 70G and 70I list applicable annual fees for General and Industrial permit holders. Annual fees for domestic sources may also be found in Table 70C and include the following:

(a) Base annual fee. This is based on the type of treatment system and the dry weather design flow;

(b) Population-based fee. A permit holder with treatment systems other than Type F (septage alkaline stabilization facilities) must pay a population-based fee. Tables 70D lists the applicable fee;

(c) Pretreatment fee. A source required by the department to administer a pretreatment program pursuant to federal pretreatment program regulations (40CFR, Part 403; January 29, 1981 and amendments thereto) must pay an additional annual fee plus a fee for each significant industrial user specified in their annual report for the previous year. Table 70E lists the applicable fee.

(7) Technical activities fee. Tables 70F and 70H list the technical activity fees. They are categorized as follows:

(a) All permits. A permittee must pay a fee for NPDES and WPCF permit-related technical activities. A fee will be charged for initial submittal of engineering plans and specifications. Fees will not be charged for revisions and re-submittals of engineering plans and specifications or for facilities plans, design studies, reports, change orders, or inspections;

(b) General permits. A permittee must pay the technical activity fee shown in Table 70H when the following activities are required for application review:

(A) Disposal system plan review;

(B) Site inspection and evaluation.

(8) For permits administered by the Oregon Department of Agriculture, the permit applicant or permit holder must pay the permit fees following the fee schedule established by the Oregon Department of Agriculture.

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

Stat. Auth.: ORS 468.020, 468B.020 & 468B.035

Stats. Implemented: ORS 468.065, 468B.015, 468B.035 & 468B.050

Hist.: DEQ 113, f. & ef. 5-10-76; DEQ 129, f. & ef. 3-16-77; DEQ 31-1979, f. & ef. 10-1-79; DEQ 18-1981, f. & ef. 7-13-81; DEQ 12-1983, f. & ef. 6-2-83; DEQ 9-1987, f. & ef. 6-3-87; DEQ 18-1990, f. & cert. ef. 6-7-90; DEQ 10-1991, f. & cert. ef. 7-1-91; DEQ 9-1992, f. & cert. ef. 6-5-92; DEQ 10-1992, f. & cert. ef. 6-9-92; DEQ 30-1992, f. & cert. ef. 12-18-92; DEQ 20-1994, f. & cert. ef. 10-7-94; DEQ 4-1998, f. & cert. ef. 3-30-98; Administrative correction 10-22-98; DEQ 15-2000, f. & cert. ef. 10-11-00; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 7-2004, f. & cert. ef. 8-3-04; DEQ 5-2005, f. & cert. ef. 7-1-05; DEQ 11-2006, f. & cert. ef. 8-15-06; DEQ 5-2007, f. & cert. ef. 7-3-07; DEQ 8-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11; DEQ 15-2011, f. & cert. ef. 9-12-11; DEQ 6-2012, f. 10-31-12, cert. ef. 11-1-12; DEQ 8-2013, f. 10-23-13, cert. ef. 11-1-13; DEQ 13-2014, f. 11-14-14, cert. ef. 12-1-14; DEQ 16-2015, f. 12-10-15, cert. ef. 1-1-16

340-071-0140

Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services DEQ provides under this division.

(2) Table 9A lists the site evaluation and existing system evaluation fees. [Table not included. See ED. NOTE.]

(3) Tables 9B and 9C list the permitting fees for systems not subject to WPCF permits. Online submittals for annual report evaluation fees may apply upon DEQ implementation of online reporting. [Table not included. See ED. NOTE.]

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. Table 9D lists the WPCF permit fees. [Table not included. See ED. NOTE.]

(5) Table 9F lists the innovative, Alternative Technology and Material Plan Review fees. [Table not included. See ED. NOTE.]

(6) Table 9E lists the Sewage Disposal Service License and Truck Inspection fees. [Table not included. See ED. NOTE.]

(7) Compliance Recovery Fee. When a violation results in an application in order to comply with the requirements in this division, the agent may require the applicant to pay a compliance recovery fee in addition to the application fee. The amount of the compliance recovery fee shall not exceed the application fee. Such violations include but are not limited to installing a system without a permit, performing sewage disposal services without a license, or failure to obtain an authorization notice when it is required.

(8) Land Use Review Fee. Land use review fees are listed in Table 9C and are assessed when an agent review is required in association with a land use action or building permit application and no approval is otherwise required in the division.

(9) Contract county fee schedules.

(a) Each county having an agreement with DEQ under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include DEQ's surcharge established in section (10) of this rule unless identified as a DEQ surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to DEQ.

(c) Fees may not exceed actual costs for efficiently conducted services.

(10) DEQ surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, DEQ and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers. [Table not included. See ED. NOTE.]

(b) Proceeds from surcharges collected by DEQ and contract counties must be accounted for separately. Each contract county must forward the proceeds to DEQ in accordance with its agreement with the DEQ.

(11) Refunds. DEQ may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

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

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 10-2009, f. 12-28-09, cert. ef. 1-4-10; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11; DEQ 6-2012, f. 10-31-12, cert. ef. 11-1-12; DEQ 8-2013, f. 10-23-13, cert. ef. 11-1-13; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14; DEQ 11-2014, f. & cert. ef. 10-15-14; DEQ 13-2014, f. 11-14-14, cert. ef. 12-1-14; DEQ 4-2015, f. & cert. ef. 2-3-15; DEQ 16-2015, f. 12-10-15, cert. ef. 1-1-16

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Commercial Dungeness Crab Season in the Pacific Ocean and Columbia River Delayed.
Adm. Order No.: DFW 157-2015(Temp)
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15 thru 1-31-16
Notice Publication Date:
Rules Amended: 635-005-0465
Subject: This amended rule delays the opening of the 2015-2016 commercial Dungeness crab season in the Pacific ocean and Columbia River due to elevated levels of the biotoxin domoic acid detected in samples of crab viscera during preseason testing. The season opening set in permanent rule is December 1. A new opening date for these fisheries has not been set, will depend on further testing and may differ regionally. Commercial Dungeness crab fisheries in bays and estuaries have already been closed in accordance with the provisions of temporary OAR 635-005-0505(2)(b) effective November 13, 2015.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-005-0465

Closed Season in Pacific Ocean and Columbia River

(1) It is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of PointArena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised July 2014) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV – Season Opening Criteria.

(b) Section V – Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI – Procedure for Establishing Fishing Zones. In the event that crab quality tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the Tri-State Protocol.

(3) It is unlawful to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season

opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
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; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 11-14-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-12-12 thru 6-9-13; Administrative correction, 6-27-13; DFW 118-2013, f. 10-11-13, cert. ef. 10-15-13: DFW 129-2013(Temp), f. 11-25-13, cert. ef. 12-1-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 113-2014, f. 8-5-14, cert. ef. 8-15-14; DFW 157-2014(Temp), f. 11-24-14, cert. ef. 11-25-14 thru 5-23-15; Administrative correction, 6-23-15; DFW 150-2015, f. & cert. ef. 10-29-15; DFW 157-2015(Temp), f. & cert. ef. 11-20-15 thru 1-31-16

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Rule Caption: Establish 2016 Seasons and Regulations for Game Mammals
Adm. Order No.: DFW 158-2015
Filed with Sec. of State: 11-25-2015
Certified to be Effective: 11-25-15
Notice Publication Date: 9-1-2015
Rules Amended: 635-008-0123, 635-010-0015, 635-045-0000, 635-045-0002, 635-060-0000, 635-060-0005, 635-060-0018
Rules Repealed: 635-008-0123(T)
Subject: Establish 2016 hunting regulations for game mammals, including season dates, open areas, location of cooperative travel management areas, wildlife areas, and other rules including, but not limited to, general hunting and controlled hunt regulations.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-008-0123
Lower Deschutes Wildlife Area (Sherman/Wasco Counties)

The Lower Deschutes Wildlife Area is open to wildlife-oriented public use compatible with the goals and objectives contained in the 2009 Lower Deschutes Wildlife Area Management Plan unless otherwise excluded or restricted by the Deschutes River Scenic Waterway Rules and the following additional rules:

(1) Open to the discharge of firearms only while hunting big game and game birds during authorized seasons or by permit; except that discharge of firearms is prohibited within the scenic waterway boundary from the third Saturday in May through August 31.

(2) Unauthorized motor vehicle use is prohibited.

(3) Horses and horseback riding are prohibited except by access permit issued by OPRD.

(4) Open fires are prohibited except as specified under the Scenic Waterway rules.

(5) Running or training of dogs is prohibited except during authorized game bird hunting seasons.

(6) Camping is prohibited on river islands, areas posted "camping prohibited" within the Deschutes River Scenic Waterway, and on state lands outside the Deschutes River Scenic Waterway in the Lower Deschutes Wildlife Area (Deschutes Scenic Waterway is an area extending 1/4-mile away from each bank of the river). Exception: Camping is allowed on the River Ranch parcel from three days prior to the opening of controlled buck deer season through February 28, and may not exceed 14 days per stay.

(7) Public access to the River Ranch parcel is only allowed from the Deschutes River through adjacent Bureau of Land Management lands.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162
Hist.: FWC 71-1984, f. & ef. 10-12-84; FWC 53-1994, f. & cert. ef. 8-25-94; DFW 40-2009, f. & cert. ef. 4-27-09; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 117-2014, f. & cert. ef. 8-7-14; DFW 136-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; DFW 158-2015, f. & cert. ef. 11-25-15

635-010-0015
Issuing Documents

(1) Licensing documents may be obtained by mail, FAX or Internet. A legible copy of the mail order application form printed in the Oregon Big Game, Game Bird, and Sport Fishing Regulations or a copy of that form may be mailed or Faxed to the Oregon Department of Fish and Wildlife, Licensing Section, 4034 Fairview Industrial Drive SE, Salem, OR 97302. License documents may be obtained from the Internet from the ODFW website (http://www.dfw.state.or.us/).

(a) Requests for mail-ordered documents must be postmarked on or before any deadlines established for issuing such documents;

(b) The Department may require additional information if necessary to complete the ordered documents;

(c) The Department will not issue any document until it receives the required fee by check, money order, or a valid debit or credit card authorization.

(2)(a) With the exceptions noted in paragraph (d) below, a resident is a person who has resided in Oregon at least six months immediately prior to the date of making application for a license, tag or permit issued by the State Fish and Wildlife Commission. Temporary absence from the state for a purpose other than establishing residency outside the state shall not be considered in determining whether a person meets the residency requirement.

(b) To implement the legal standard, the applicant must sign this certification: "I certify under penalty of law that the information on this license is true and I meet the requirements for these licenses. I acknowledge that these licenses were issued as requested."

(d) The legislature has waived the six month requirement for certain classes of persons:

(1) Active members the uniformed services permanently assigned to active duty in Oregon (and their spouses and dependent children). This includes, but is not limited to, those who serve as crew members of ships that have an Oregon port or shore establishment as their home port or permanent station;

(2) Active members of the uniformed services who reside outside Oregon but paid Oregon resident income taxes no later than 12 months before leaving active duty; and

(3) Aliens attending an Oregon school as foreign exchange students.

(4) A non-resident member of the uniformed services may purchase licenses, tags, and permits at resident rates.

(5) Agents must supply all the information requested on the data screen. If the person applying for the licensing document fails to supply the necessary information, the agent may not issue the requested licensing document. All daily angling licenses must show the date they become valid.

(6) Agents must obtain social security numbers for any person who purchases a license. The Department will use this number to comply with collection of the social security numbers pursuant to the child support enforcement laws as required by Section 117, Chapter 746, Oregon Laws 1997. The Department will issue a system-generated number to persons who are not citizens of this country or who do not have a social security number. If the social security number provided by an applicant is in use by another individual, the agent will not issue the license until the applicant provides proof that the social security number is, in fact, the applicant's social security number. An official document such as a social security card, payroll document, or health insurance identification card with the social security number printed on it must be presented to the agent as proof. An individual's social security number is not subject to disclosure to members of the public under the Oregon Public Records Law.

(7) Any employee of the agent may issue documents, provided that the employee is instructed as to all applicable statutes and regulations. An agent is responsible for employee training and for any violation of applicable statutes and regulations committed by the employees.

Stat. Auth.: ORS 496, 497 & 498

Stats. Implemented: ORS 496, 497 & 498
Hist.: 3WC 2, f. 12-19-73, ef. 1-11-74, Renumbered from 630-010-0021; FWC 124-1990, f. 11-28-90, cert. ef. 1-1-91; FWC 122-1992, f. & cert. ef. 11-23-92; FWC 4-1994, f. & cert. ef. 1-25-94; DFW 99-1999(Temp), f.12-22-99, cert. ef. 1-1-00 thru 6-27-00; DFW 33-2000, f. & cert. ef. 6-19-00; DFW 30-2002, f. & cert. ef. 4-11-02; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 129-2008, f. & cert. ef. 10-14-08; DFW 117-2013, f. & cert. ef. 10-10-13; DFW 158-2015, f. & cert. ef. 11-25-15

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 "2015–2016 Oregon Game Bird Regulations," and "2016 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; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 117-2010, f. & cert. ef. 8-13-10; DFW 140-2010(Temp), f. & cert. ef. 10-6-10 thru 12-31-10; Administrative correction 1-25-11; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 85-2013, f. & cert. ef. 8-5-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 112-2014, f. & cert. ef. 8-4-14; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 105-2015, f. & cert. ef. 8-12-15; DFW 158-2015, f. & cert. ef. 11-25-15

635-045-0002
Definitions

(1) "Adult hunting license" is a resident or nonresident hunting license, resident combination angling and hunting license, disabled veteran's angling and hunting license, pioneer's angling and hunting license or senior citizen's angling and hunting 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) "Bait" for hunting game mammals means any substance placed to attract an animal by its sense of smell or taste, including but not limited to food items or minerals (such as salt). Applying a scent or attractant to one's body or clothing while worn, is not baiting.

(8)"Baited Area" means an area where baiting has taken place.

(9) "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.

(10) "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.

(11) "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.

(12) "Buck Deer" means a male deer with at least one visible antler.

(13) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(14) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(15) "Calendar year" means from January 1 through December 31.

(16) "Carcass" is the skinned or unskinned body, with or without entrails, of a game bird or game mammal.

(17) "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 Spraque units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(18) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(19) "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.

(20) "Commission" means the Oregon Fish and Wildlife Commission.

(21)"Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.

(22)"Department" means the Oregon Department of Fish and Wildlife.

(23) "Director" means the Oregon Fish and Wildlife Director.

(24) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawn (young of the year) of either sex.

(25) "Domestic partner" means, as provided in section 3 of the Oregon Family Fairness Act of 2007 (ORS Chapter 106), "an individual who has, in person, joined into a civil contract with another individual of the same sex, provided that each individual is at least 18 years of age and is otherwise capable, and that at least one of the individuals is a resident of Oregon."

(26) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(27) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(28) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.

(29) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.

(30) "Established airport" is one that the Oregon Department of Aviation has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(31) "Feral Swine" means animals of the genus Sus as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(32) "Fiscal year" means from July 1 through June 30.

(33) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(34) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, mourning dove, pheasant, quail, partridge, grouse, or wild turkey.

(35) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(36) "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.

(37) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(38) "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.

(39)"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.

(40) "Immediate family" for the purpose of Landowner Preference, means a landowner's spouse, children, sons-in law, daughters-in-law, father, mother, brother, brothers-in law, sister, sisters-in-law, stepchildren, and grandchildren.; for all other purposes, it means spouse, domestic partner, children, father, mother, brother, sister, stepchildren, and grandchildren.

(41) "Inedible" means unfit for human consumption.

(42) "Juvenile hunting license" is a resident, nonresident hunting license or resident combination angling and hunting license for persons 9 to 17 years of age to hunt wildlife.

(43) "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 or Limited Liability Company (LLC) holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation or LLC 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.

(44) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(45) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(46) "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.

(47) "On or within" means a straight line distance measured on a map.

(48) "One deer" means a buck, doe, or fawn deer.

(49) "One elk" means a bull, cow, or calf elk.

(50) "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.

(51) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.

(52) "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.

(53) "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.

(54) "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.

(55) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(56) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(35) "game birds" as defined in 635-045-0002(34), "furbearers" as defined in 635-045-0002(33), "threatened and endangered species" as defined in 635-100-0125, and "nongame wildlife protected" as defined in 635-044-0130.

(57) "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.

(58) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(59) "Resident" is any person who

(a) Has resided in Oregon for a period of at least six consecutive months immediately prior to the date of making application for a license, tag, or permit.

(b) Members of the uniformed services of the United States who:

(i) Are permanently assigned to active duty in this state, and their spouse and dependent children.

(ii) Reside in this state while assigned to duty at any base, station, shore establishment or other facility in this state.

(iii) Reside in this state while serving as members of the crew of a ship that has an Oregon port or shore establishment as its home port or permanent station.

(iv) Aliens attending school in Oregon under a foreign student exchange program.

(v) All other persons are nonresidents.

(60) "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.

(61) "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.

(62) "Sabot" A carrier, bushing or device in which a projectile of a smaller caliber is centered so as to permit firing the projectile within a larger caliber weapon. Cloth, paper or felt patches used with round balls are not considered a sabot.

(63) "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.

(64) "Sight bait" is exposed flesh bait within 15 feet of any foothold trap set for carnivores.

(65) "Spike deer" is a deer with spike (unbranched) antlers.

(66) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (a brow tine is not considered an antler branch under spike-only regulations).

(67) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(42)(b).

(68) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(69) "Take" means to kill or obtain possession or control of any wildlife.

(70) "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.

(71) "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.

(72) "Uniformed Services" means Army, Navy, Air Force, Marine Corps and Coast Guard, or their reserve components; the National Guard or Oregon National Guard, commissioned corps of the National Oceanic and Atmospheric Administration, and the Public Health Service of the United States Department of health and Human Services detailed with the Army or Navy.

(73) "Unprotected Mammals and Birds" are European starling, house sparrow, Eurasian collared-dove and any mammal species for which there are no closed seasons or bag limits.

(74) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(75) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(76) "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.

(77) "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.

(78) "Waterfowl" means ducks, geese, mergansers and coots.

(79) "Weapon" is any device used to take or attempt to take wildlife.

(80) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(81) "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.

(82) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(83) "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.

(84) "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.

(85) "Wildlife" means, for the purposes of the Wildlife Diversity Plan described in OAR 635-100-0001 through 635-100-0194, fish, shellfish, amphibians, reptiles, feral swine, wild mammals, wild birds, and animals living intertidally on the bottom as defined by ORS 506.011.

(86) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

(87) "Youth" is any "Resident" of Oregon or Nonresident 12 through 17 years of age.

[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. 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 73-2001, f. & cert. ef. 8-15-01; 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 142-2005, f. & cert. ef. 12-16-05; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 52-2008, f. & cert. ef. 5-28-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 108-2009, f. & cert. ef. 9-8-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 117-2013, f. & cert. ef. 10-10-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 158-2015, f. & cert. ef. 11-25-15

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 Chapter 496.162.

(2) The documents entitled "2015–2016 Oregon Game Bird Regulations," and "2016 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. & ef. 6-3-77; FWC 25-1978, f. & ef. 5-26-78; 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 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 16-1985, f. & ef. 4-11-85; 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 40-1987, f. & 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. 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 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. 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. 12-4-03, cert. ef. 1-1-04; DFW 84-2004, f. & cert. ef. 8-18-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; 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; DFW 68-2007, f. & cert. ef. 8-14-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 60-2008, f. & cert. 6-12-08; DFW 90-2008, f. & cert. ef. 8-13-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 93-2009, f. & cert. ef. 8-12-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 117-2010, f. & cert. ef. 8-13-10; DFW 140-2010(Temp), f. & cert. ef. 10-6-10 thru 12-31-10; Administrative correction 1-25-11; DFW 108-2011, f. & cert. ef. 8-5-11; DFW 103-2012, f. & cert. ef. 8-6-12; DFW 85-2013, f. & cert. ef. 8-5-13; DFW 112-2014, f. & cert. ef. 8-4-14; DFW 151-2014, f. & cert. ef. 10-17-14; DFW 105-2015, f. & cert. ef. 8-12-15; DFW 158-2015, f. & cert. ef. 11-25-15

635-060-0005
Application Eligibility and Procedures

(1)(a) An applicant for game mammal controlled hunts shall have a current adult hunting license or juvenile hunting license. A current and complete hunting license number shall be entered on the application for the controlled hunt.

(b) Licenses are nonrefundable, whether or not an applicant is successful in the drawing.

(2)(a) A valid controlled hunt application shall be purchased from a license agent authorized to sell controlled hunt applications. The purchase price of the application shall be a nonrefundable fee of $6.00 per game mammal application, and a nonrefundable $2.00 license agent processing fee.

(b) Department license agents authorized to sell applications for controlled hunts shall be connected to the Department's computerized licensing system.

(3) Each controlled hunt is assigned a hunt number. The hunt number shall be entered on the application indicating area of choice and shall match the type of application purchased. All hunt numbers listed on an application shall have the same first digit or letter, which indicates a species or group of hunts as listed below:

(a) 100 series for controlled buck deer.
(b) 200 series for controlled elk.
(c) 400 series for pronghorn antelope.
(d) 500 series for bighorn sheep.
(e) 600 series for controlled antlerless deer.
(f) 700 series for controlled black bear.
(g) 900 series for controlled Rocky Mountain goat.
(h) L series for Premium deer.
(i) M series for Premium elk.
(j) N series for Premium pronghorn antelope.

(4) If successful in the drawing, party members shall receive the same hunt choice as the party leader. If a party application exceeds the allowed party size, all applicants in the party shall be considered as individual applicants in the drawing. Party size limits are as follows:

(a) 100 series hunts up to 18 persons.
(b) 200 series hunts up to 18 persons
(c) 400 series hunts up to two persons.
(d) 500 series hunts, no parties allowed.
(e) 600 series hunts up to 18 persons.
(f) 700 series hunts up to six persons.
(g) 900 series hunts no parties allowed.
(h) L series hunts no parties allowed.
(i) M series hunts no parties allowed.
(j) N series hunts no parties allowed.

(5) Controlled Hunt applications may be submitted to the Department headquarters office via telephone fax machine, US Postal Service, or hand-delivery (4034 Fairview Industrial Drive SE, Salem, OR 97302). Applications along with the proper fees must be submitted by telephone, fax machine, or hand-delivered received at the Department headquarters office (4034 Fairview Industrial Drive SE, Salem, OR 97302); Fax: (503) 947-6117 no later than midnight of the deadline date described in OAR 635-060-0008 (1) - (5). Applications along with proper fees submitted by U.S. Postal Service must be postmarked by the application deadline. Applications received after the specified deadline dates may be considered disqualified as described in OAR 635-060-0018(4).

(6) To apply for a controlled youth hunt for spring bear, pronghorn, deer or elk a youth must be 12-17 years old at the time they hunt.

(7) The purchase price of applications for controlled game bird hunts shall be a nonrefundable fee of $2.00 per application, and a nonrefundable $2.00 license agent processing fee. Game bird controlled hunt application procedures are listed in the current Oregon Game Bird Regulations.

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 14-1980, f. & ef. 4-8-80; 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 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; 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 40-1987, f. & 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; Renumbered from 635-60-017; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 54-1990, f. & cert. ef. 6-21-90; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; 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; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 32-2002(Temp), f. & cert. ef. 4-17-02 thru 10-13-02; DFW 59-2002, f. & cert. ef. 6-11-02; 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 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 142-2009, f. 11-12-09, cert. ef. 1-1-10; DFW 6-2013, f. & cert. ef. 1-23-13; DFW 158-2015, f. & cert. ef. 11-25-15

635-060-0018
Applicant Disqualification

If an applicant violates any of the following restrictions, his/her individual application shall be removed from the drawing. If an applicant is a member of a party application and is removed from the drawing, the other party members may remain as a party provided they commit no violation of the following restrictions and apply without error.

(1) An applicant may submit only one application per hunt number series referenced in OAR 635-060-0005(3)(a)(j).

(2) An application receipt shall not be altered from what was originally issued by the license agent.

(3) An applicant shall not violate the wait period for bighorn sheep ram or Rocky Mt. goat hunts.

(4) An application shall have correct and complete information.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; 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 71-1997, f. & cert. ef. 12-29-97; DFW 158-2015, f. & cert. ef. 11-25-15

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Rule Caption: Federal Action Implemented for Shore-based Midwater Trawl Groundfish Fishery.
Adm. Order No.: DFW 159-2015(Temp)
Filed with Sec. of State: 11-25-2015
Certified to be Effective: 11-25-15 thru 5-22-16

Notice Publication Date:
Rules Amended: 635-004-0275
Rules Suspended: 635-004-0275(T)
Subject: This amended rule implements a fishery closure action previously implemented by the federal government for the 2015 Pacific Coast Groundfish Individual Fishery Quota (IFQ) program including, but not limited to, closure of the shore-based midwater trawl groundfish IFQ fishery shoreward of the boundary line approximating the 150 fathom depth contour (defined at 50 CFR 660.73(h)).
Rules Coordinator: Michelle Tate—(503) 947-6044

635-004-0275
Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2014 ed.);

(b) Federal Register Vol. 80, No. 46, dated March 10, 2015 (80 FR 12567);

(c) Federal Register Vol. 79, No. 231, dated December 2, 2014 (79 FR 71340).

(2) Persons must consult the federal regulations in addition to Division 004 to determine all applicable groundfish fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

(4) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register Vol. 80, No. 107, dated Thursday, June 4, 2015 (80 FR 31858), announced inseason actions and management measures effective June 1, 2015, including but not limited to establishment of trip limits and sorting requirements for big skate.

(5) Notwithstanding the regulations defined in sections (1) and (4) of this rule, the National Marine Fisheries Service, by means of Federal Register Vol. 80, No. 160, dated Wednesday, August 19, 2015 (80 FR 50212), announced inseason actions and management measures effective August 14, 2015, including but not limited to increases to sablefish trip limits in the Limited Entry Fixed Gear and Open Access Sablefish Daily Trip Limit Fisheries, and increases to Big Skate trip limits in the Shorebased Individual Fishing Quota Program.

(6) Notwithstanding the regulations defined in sections (1), (4) and (5) of this rule, the National Marine Fisheries Service, by means of Federal Register Vol. 80, No. 197, dated Tuesday, October 13, 2015 (80 FR 61318), announced inseason actions and management measures effective November 1, 2015, including but not limited to increases to sablefish trip limits in the Limited Entry Fixed Gear Daily Trip Limit Fishery.

(7) Notwithstanding the regulations defined in sections (1) and (4) through (6) of this rule, the National Marine Fisheries Service, by means of public announcement NMFS-SEA-15-30, dated November 25, 2015, announced inseason actions and management measures effective November 26, 2015, including but not limited to closure of the shorebased midwater trawl groundfish fishery shoreward of the boundary line approximating the 150 fathom depth contour, as defined in the Code of Federal Regulations at 50 CFR 660.73(h).

[Publications: Publications referenced are available from the Department.]
Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12; DFW 106-2012(Temp), f. 8-15-12, cert. ef. 9-1-12 thru 12-31-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 96-2013(Temp), f. 8-27-13, cert. ef. 9-1-13 thru 12-31-13; DFW 132-2013(Temp), f. & cert. ef. 12-9-13 thru 6-7-14; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 34-2014(Temp), f. & cert. ef. 4-23-14 thru 9-30-14; DFW 109-2014(Temp), f. & cert. ef. 8-4-14 thru 12-31-14; DFW 163-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 6-29-15; DFW 18-2015, f. & cert. ef. 3-10-15; DFW 68-2015(Temp), f. 6-11-15, cert. ef. 6-12-15 thru 12-8-15; DFW 111-2015(Temp), f. & cert. ef. 8-19-15 thru 2-14-16; DFW 151-2015(Temp), f. & cert. ef. 11-2-15 thru 4-29-15; DFW 159-2015(Temp), f. & cert. ef. 11-25-15 thru 5-22-16

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Rule Caption: Amend rule to change bag limit for Pronghorn Antelope Controlled Hunt 473M2
Adm. Order No.: DFW 160-2015(Temp)
Filed with Sec. of State: 12-1-2015
Certified to be Effective: 12-1-15 thru 4-15-16
Notice Publication Date:
Rules Amended: 635-067-0027
Subject: The current bag limit for Pronghorn Antelope Controlled Hunt 473M2 is "One buck pronghorn". To provide landowners the opportunity to take antelope causing property damage, the Department is expanding the bag limit to "One pronghorn either sex". This change is necessary because Landowner Preference Tags for pronghorn cannot be issued for pronghorn hunts with a bag limit of "One buck pronghorn".
Rules Coordinator: Michelle Tate—(503) 947-6044

635-067-0027
Controlled Pronghorn Antelope Muzzleloader Hunts

As provided in the final, printed 2016 Oregon Big Game Regulations, the bag limit for Pronghorn Antelope Controlled Hunt 473M2 is "One pronghorn either sex".

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 16-1984, f. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 16-1989, f. & cert. ef. 3-28-89; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 25-1990, f. & cert. ef. 3-21-90; FWC 21-1991, f. & cert. ef. 3-12-91; FWC 45-1992, f. & cert. ef. 7-15-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 54-1995, f. & cert. ef. 6-20-95; 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; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 160-2015(Temp), f. & cert. ef. 12-1-15 thru 4-15-16

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Rule Caption: Per HB3315 Adopt Rules Regarding Reporting on Rendering Recompensable Assistance to Other State Agencies
Adm. Order No.: DFW 161-2015
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 12-9-15
Notice Publication Date: 11-1-2015
Rules Adopted: 635-001-0030
Subject: Adopt rules to implement House Bill 3315, which requires the Oregon Department of Fish and Wildlife to track and prepare statements reporting on costs incurred by department personnel in rendering recompensable assistance to any executive department agency for advancing the administration of fee-funded programs on or after July 1, 2015, and before July 1, 2019.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-001-0030
Rendering Recompensable Assistance to Other State Agencies

Pursuant to HB 3315 (2015), the Department shall:

(1) Track and prepare statements each fiscal year reporting the number of hours spent by department personnel performing recompensable assistance for any executive department agency, including an hourly rate that would be charged, based on the class of department personnel performing the services.

(2) Send statements to the agency receiving services at the closing of each fiscal year, but may not charge

for services.

Stat. Auth.: HB 3315 (2015)
Stats. Implemented: HB 3315 (2015)
Hist.: DFW 161-2015, f. & cert. ef. 12-9-15

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Rule Caption: Amendments to Wildlife Control Operators Rules
Adm. Order No.: DFW 162-2015
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 12-9-15
Notice Publication Date: 11-1-2015

Rules Amended: 635-435-0000, 635-435-0005, 635-435-0010, 635-435-0015, 635-435-0020, 635-435-0025, 635-435-0040, 635-435-0045, 635-435-0050, 635-435-0055, 635-435-0060
Rules Repealed: 635-435-0030, 635-435-0035
Subject: These rules are needed to change or update various aspects of agency management of Wildlife Control Operators.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-435-0000
Purpose

The purpose of these rules is to:

(1) Clarify the requirements and restrictions for wildlife control activities, especially in incorporated city limits and associated urban development while promoting sound wildlife management; and

(2) Provide a means for an agent to act on the behalf of a landowner or occupant to remove wildlife causing damage, posing a public health threat or creating a public nuisance, as defined in ORS 498.012.

Stat. Auth.: ORS Ch., 496.012, 496.138, 496.146, 496.162, 497.308, 498.012 & 498.052
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146, 496.162, 497.308, 498.012 & 498.052
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 126-2014(Temp), f. & cert. ef. 8-29-14 thru 2-25-15; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0005
Definitions

For the purposes of these rules the following definitions apply:

(1) "Agent" means an individual or business conducting wildlife control activities for a fee for a property owner, legal occupant, local jurisdiction or agency to take furbearers, unprotected mammals and western gray squirrels for the purpose of reducing property damage, removing nuisance animals, or resolving public health threat or safety concerns caused by wildlife.

(2) "Damage" means loss of or harm inflicted on land, livestock or agricultural or forest crops.

(3) "Department" means Oregon Department of Fish and Wildlife (ODFW).

(4) "Euthanasia" means to humanely end the life of an individual animal by a person in a way that minimizes or eliminates pain and distress as defined in the "American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals: 2013 Edition."

(5) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take beaver or muskrat on that property, these two species are considered predatory animals.

(6) "Notification" means that the Wildlife Control Operator (WCO) conducting wildlife control activities has been contacted by the client or designee by phone, text, email, fax, or in person that a trap has been closed, with a live animal inside.

(7) "Possess" means to have control or exercise dominion over any wildlife or wildlife parts (OAR 635-045-0002(53).

(8) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities (ORS 610.002 & 610.105). This definition is applicable where wildlife is taken under the authority of one who owns leases, occupies, possesses or has charge or dominion over the land. Beavers, muskrats, western gray squirrels (Sciuris griseus), gophers, mountain beaver (boomer), marmot, nutria, and porcupine causing damage on private property are defined as predatory animals under ORS 610.002.

(9) "Prohibited species" means wildlife that the commission has placed on the Prohibited list in its Wildlife Integrity Rules (OAR 635-056-0050 & 635-056-0130).

(10) "Protected wildlife" means any species that meets any of the following definitions: "game mammals" as defined in OAR 635-045-0002, "game birds" as defined in OAR 635-045-0002, "furbearers" as defined in OAR 635-045-0002, "threatened and endangered species" as listed in OAR 635-100-0125, or "nongame wildlife protected" as defined in OAR 635-044-0130 or is otherwise protected by statute or law.

(11) "Public Nuisance" means loss of or harm inflicted on persons, gardens, ornamental plants, ornamental trees, pets, vehicles, boats, structures, or other personal property (ORS 498.012).

(12) "Unprotected Mammals" means badger, coyote, gophers (Thomomys bottae, T. bulbivorus, T. mazama, T. talpoides and T. townsendii), moles (Scapanus townsendii, S. orarius and S. latimanus), mountain beaver (Apolodontia rufa), yellowbellied marmots (Marmota flaviventris), nutria, opossum, porcupine, spotted skunk, striped skunk, and weasel. For any person owning, leasing, occupying, possessing or having charge of or dominion over any land (or an agent of this person) who is taking or attempting to take coyote, gophers, mountain beaver (boomer), marmot, nutria, or porcupine on that property, these six species are considered to be predatory animals.

(13) "Wildlife Control Operator" (WCO) means an agent, who is the principal manager or business owner, or employee of the business listed on the WCO permit and responsible for activities conducted in the course of wildlife control activities.

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0010
Permit Required to Capture, Possess, or Transport Wildlife

(1) A WCO permit is required for any individual, business owner, or the business owner's designee charging a fee to control furbearers, unprotected mammals (excluding moles (Scapanus spp.), and western gray squirrels causing damage, creating a public nuisance or posing a public health or safety concern; and for the offsite transportation of any live wildlife;

(a) A WCO permit is not required for the onsite capture and euthanasia of species defined as "predatory animals."

(b) Federal employees of the U.S. Department of Agriculture, Animal Plant and Health Inspection Service-Wildlife Services and, county or municipality employees, working in their official capacity, are exempt from this requirement.

(c) WCO permittees must comply with all state wildlife laws and regulations; and, all activities must be in compliance with conditions specified by these rules, permit and authorization from the Department.

(2) A permit allows a WCO to:

(a) Capture, possess, or transport furbearers, predatory animals, western gray squirrels, unprotected mammals and all snakes.

(b) Humanely euthanize wildlife authorized under this permit using methods defined by the "American Veterinary Medical Association (AVMA) Guidelines for Euthanasia of Animals: 2013 Edition" except for the following species of snakes which shall be relocated.

(A) Willamette Valley Populations of Western Rattlesnake (Crotalus oreganus).

(B) Sharptail snake (Contia tenuis).

(C) Common Kingsnake (Lampropeltis getula).

(D) California Mountain Kingsnake (Lampropeltis zonata).

(E) Western Ground Snake (Sonora semiannulata).

(c) Collect and dispose of animals directly related to WCO activities.

(3) All bat spp. are limited to exclusion and eviction from a structure during the months of June through August or they may be captured and immediately released outdoors or taken to a licensed wildlife rehabilitator.

(4) A permit does not allow a WCO to transport, for the purposes of release, any wildlife captured under terms of the WCO permit except for:

(a) Western Gray Squirrel, Marten and Fisher;

(b) Reptiles listed in subsection (2);

(c) Badger and Beaver with prior approval from the Department.

(5) A WCO permit does not authorize the permittee to intentionally capture, possess, or transport:

(a) Wildlife not authorized under a WCO permit;

(b) Species protected by other state or federal law;

(c) Species protected by other state or federal law caught incidentally must be released immediately onsite.

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146, 496.162 & 610.005
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146, 496.162, 610.002 & 610.105
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0015
Requirements for Wildlife Control Operator Permit

(1) WCO permits may be issued to either an individual or business listed on the application. A business or business owner is not required to take the WCO test if they do not conduct any wildlife control activities. A biennial, $60 non-refundable WCO permit fee is required for each WCO business; and each permit will cover all employees eligible to conduct WCO activities. A WCO permit for a business requires a minimum of one employee designee passing the WCO test, administered by the Department.

(2) All individuals > 18 years of age conducting wildlife control activities must pass the Department administered WCO test with a minimum test score of 80%. A WCO training manual is available on the ODFW website. A $25 non- refundable test administration fee is required of test applicants for each test administered.

(3) Submittal of a completed WCO application form shall include:

(a) Business information including whether the applicant is an individual, partnership, corporation, Limited Liability Company or other legal entity.

(A) If a partnership, the application must provide the full names and addresses of the partners.

(B) If a corporation, the application must provide the full name and addresses of all officers, directors and stockholders.

(C) If a Limited Liability Company, the application must provide the full names and addresses of all members and managers.

(D) If the application is structured as a tiered organization, the application must provide the full names and address of all of the partners; or officers, directors and stockholders; or members and managers of each substituent entity within the tiered organization.

(b) List of each employee who will be conducting WCO activities and has passed the WCO test.

(4) Upon application approval, applicants must submit a $60 nonrefundable WCO Permit fee.

(5) The Department must notify an applicant that it intends to deny the application within 30 days of the date a completed application is received. The proposed denial will be based on a review of the applicant's information not meeting the conditions defined in these rules.

(6) A WCO permit is not required for any person younger than 18 years of age that is directly associated with a business that has at least one employee that has passed the WCO test who is mentoring the young individual.

(7) Permits are valid for two consecutive calendar years from the date of issue.

(8) WCO permit renewal by an individual or business requires:

(a) Submission of renewal application and remittance of a $60 nonrefundable application fee.

(b) Individual Applicants and Employees listed on the business renewal application must:

(A) Provide documentation with the renewal application of 12 hours of Department approved continuing education within the previous two calendar years; or

(B) Retake the WCO test administered by the Department with a minimum score of 80%.

(c) Failure to renew a WCO permit, due to expirations or to permit revocation requires the permittee to apply as a new applicant with all employees listed on the application required to retake the WCO test with a passing score.

(9) A WCO permit revoked for violation of wildlife rules or conditions of the permit may be denied reapplication by the Department for up to five years.

(10) Businesses must notify the Department within 14 business days of termination or removal of an employee listed on their WCO permit.

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0020
Wildlife Control Operator Permit Required to be in Possession

(1) Individuals or employees of businesses holding a WCO Permit must have the permit or a copy, in possession while conducting wildlife control activities and make the permit available for inspection upon request by any Department employee or any person authorized to enforce wildlife laws.

(2) Individuals or businesses holding a permit must obtain and have in possession any other federal, state, or local permits that may be required.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0025
Disposition of Wildlife

(1) All wildlife captured, held, or transported under a WCO Permit remains the property of the State of Oregon and cannot be sold, traded, bartered, or exchanged except as allowed by OAR chapter 635 dxivision 200.

(2) Wildlife captured, held, or transported under the terms of the WCO permit shall not be intentionally displayed for public exhibit.

(3) Cage traps or restraining traps shall be inspected for capture success at a minimum of once every 48 hours. The local Department district biologist will consider extenuating circumstances to extend check time on a case by case basis upon contact from the WCO. Killing traps or traps set for predatory animals as defined in ORS 610.002 must be checked within the time periods specified in OAR Chapter 635, Division 50. The inspection and removal of any captured animal shall be done by the person who set the trap or the owner of the land where the trap is set, or designee of either.

(4) WCO's must conduct one of the following within 24 hours of notification of possession of wildlife:

(a) Humanely euthanize the animal(s) in a manner consistent with the "AVMA Guidelines for Euthanasia of Animals: 2013 Edition;" or

(b) Release animal on site; or

(c) Relocate the animal (with prior approval from the Department).

(5) Wildlife held, relocated, or used for attracting offspring must be supplied with fresh drinking water within a period of 4 hours of possession and must be provided access to clean drinking water at reasonable intervals, not to exceed 8 hours between water replenishment.

(6) A WCO capturing a wild animal must make reasonable efforts to locate and capture dependent neonatal offspring. Lactating female wildlife and dependent neonates(s) may be kept in possession up to 72 hours or longer as approved by the Department.

(7) Wildlife indicating symptoms of disease must be humanely euthanized consistent with ORS 498.016, or handled as directed by local Department district biologist or Department veterinarian.

(8) A WCO must humanely euthanize prohibited species as identified in the Wildlife Integrity Rules (OAR 635-056-0050).

(9) A WCO may sell, purchase or exchange the pelt, or any part thereof, of any legally taken furbearing or unprotected mammal as allowed by OAR 635-050-0045(3).

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0040
Transportation of Wildlife

(1) Live wildlife may only be transported with a transport permit issued by the Department or a WCO permit.

(2) Permittees are authorized to transport permitted live wildlife for:

(a) Humane euthanasia of the captured animal; or

(b) Transport wildlife specified in 635-435-0010 (4) to a licensed Oregon Wildlife Rehabilitator; or

(c) Relocation to suitable release habitat with prior approval of the Department.

(3) WCOs may transport wildlife carcasses in their usual course of business for disposal by burying, placement in a landfill, rendering, incineration or as directed by the Department, or for use of wildlife parts in compliance with OAR 635 Division 200.

(4) Permittees must provide all live wildlife with humane care during transport.

(5) When transporting live wildlife in a vehicle:

(a) The vehicles transport area must have access to free-flowing fresh air without injurious exhaust fumes.

(b) Wildlife must have adequate protection from extreme weather conditions and temperature that would result in hypo- or hyperthermia of the animals or conditions that could lead to illness or death.

(c) The cage or enclosure must be of sufficient strength to hold wildlife securely during transportation and to prevent escape.

(d) The interior of the cage must be in good working condition: free of defects, sharp points, objects or edges that could injure the transported wildlife.

(e) Cages must be of sufficient size to assure the safety of the transported wildlife and WCO.

(f) Holding cage must be large enough to ensure that each individual has sufficient space to turn, stand, and lay naturally. Skunks may be held in a cage that limits its ability to spray the WCO.

(g) No more than one animal will be transported in the same cage or enclosure unless they are of the same species, accepting of a cage-mate and were captured together in the same trap or capture device.

(h) A visual barrier must be placed between aggressive individuals or animals considered predators and prey to reduce stress during possession and transport.

(i) Caged wildlife must be separated by sufficient distance or shall have a physical divider placed between them to prevent injury or physical contact between caged occupants.

(j) Caged wildlife must not be stacked unless each cage is fitted with a floor or barrier preventing excretions or body parts from entering lower cages or enclosures.

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146 & 496.162

Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0045
Equipment Subject to Inspection

Any Law Enforcement officer or Department representative may inspect a permittee's traps, cages, enclosures, or other equipment in use for capturing, possession, transporting or relocating wildlife; or any wildlife held in such equipment or otherwise in possession; or wildlife control records. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of a permit holder's residence.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0050
Trap Tampering Prohibited

(1) Any trap or capture device used by a permittee must be legibly marked or branded with either the individual or owner's business name and phone number, or the owner's furtaker license (brand) number or WCO number that has been assigned by the Department.

(2) It is unlawful to tamper with any trap or capture device set by a WCO or to remove wildlife from such a trap or capture device without written authorization of the WCO.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0055
Record Keeping and Reporting Requirements

(1) Landowner or occupier of premises must sign an affidavit of damage designating the permitted WCO as his or her agent to address damage caused by any wildlife.

(2) A complete record of the WCO activities must be maintained by permit holder on a WCO calendar-month report form provided by the Department for all wildlife captured on a WCO permit. A copy of each signed affidavit must be submitted with monthly report.

(3) WCO monthly report must be received by the Department by the 15th day of the following month. Reports are required for periods when no wildlife control activity occurred during the month.

Stat. Auth.: ORS 496.012, 496.138, 496.146, & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 162-2015, f. & cert. ef. 12-9-15

635-435-0060
Cancellation or Non-Renewal of Permit

(1) Failure to comply with the record keeping, reporting, or other requirements of the WCO Permit may lead to cancellation or denial of renewal of the permit.

(2) The Department may revoke or deny issuance of a WCO Permit if listed employees were, convicted of, or admits to, a violation of a wildlife law (under the Interstate Wildlife Violators Compact), or rule, or permit issued under the wildlife laws within the previous five years.

(3) A WCO permittee that has been notified that the permit will be cancelled or denied renewal may petition the Department for a contested case hearing. The request for a contested case hearing on a proposed cancellation must be received by the Department within 21 days after service of notice (90 days for emergency cancellations). The request for hearing on a proposed non-renewal must be received by the Department within 60 days of notice. Final Orders in contested case hearings shall be issued by the Department Director.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15

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Rule Caption: Amendments to Wildlife Rehabilitation Rules
Adm. Order No.: DFW 163-2015
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 12-9-15
Notice Publication Date: 11-1-2015
Rules Adopted: 635-062-0000, 635-062-0005, 635-062-0010, 635-062-0015, 635-062-0020, 635-062-0025, 635-062-0030, 635-062-0035, 635-062-0040, 635-062-0045, 635-062-0050, 635-062-0055, 635-062-0060
Rules Repealed: 635-044-0200, 635-044-0205, 635-044-0210, 635-044-0215, 635-044-0240, 635-044-0245, 635-044-0250, 635-044-0255, 635-044-0280, 635-044-0300, 635-044-0305, 635-044-0310
Subject: The proposed rules are to change or to update various aspects of agency management of wildlife rehabilitation.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-062-0000
Purpose of the Wildlife Rehabilitation Permit

Any person desiring to hold any bird, mammal, amphibian or reptile for the purpose of wildlife rehabilitation shall first obtain a Wildlife Rehabilitation Permit from the Oregon Department of Fish and Wildlife. The permittee may capture, transport, temporarily possess, rehabilitate, and (with permission from the local Department district wildlife biologist) release such wildlife. The permittee may euthanize wildlife that are injured, ill, orphaned, restricted or not authorized for holding or release, as specified within the conditions of their permit and these rules.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0005
Definition of Terms

(1) "Assistant" means someone who conducts wildlife rehabilitation activities in a wildlife rehabilitation facility under the direct supervision of the permittee.

(2) "AZA" means the Association of Zoos and Aquariums.

(3) "Candidate" means an animal species for which the USFWS has sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened.

(4) "Department" means Oregon Department of Fish and Wildlife.

(5) "Direct Supervision" means the oversight and management of the activities of an employee, assistant or volunteer by the permittee occurring primarily onsite and at the facility, but may include periods of indirect oversight of activities conducted independently by the employee or volunteer.

(6) "DVM" means Oregon licensed Doctor of Veterinary Medicine.

(7) "Endangered species" means those species defined in ORS 496.004(6).

(8) "Euthanasia" means to humanely kill an animal as per the American Veterinary Medical Association Guidelines for the Euthanasia of animals: 2013 Edition or 2006 American Association of Zoo Veterinarians - Guidelines for the Euthanasia of Nondomestic Animals.

(9) "Home Care" means the facility used by the subpermittee for the care and feeding of neonate avian species (or other wildlife species as approved in writing by the Department district wildlife biologist) under the guidance and at the request of the permittee.

(10) "Marine mammals" means seals, sea lions, sea otters, and cetaceans (e.g., whales and porpoises).

(11) "Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in U.S. 50CFR§10.13, including any part, nest, or egg of any such bird. Birds listed under OAR 635-057-0000 are not included.

(12) "NMFS" means National Marine Fisheries Service.

13) "Non-releasable" means:

(a) Individual wildlife that cannot be rehabilitated and returned to the wild with a reasonable potential for survival;

(b) Those species classified as prohibited by OAR 635 Division 056; or

(c) Those species classified as controlled by OAR 635 Division 56 under rules that do not allow release into the wild (OAR 635-056-0070).

(14) "Permittee" means the person who holds a valid Oregon Wildlife Rehabilitation Permit issued by the Department.

(15) "Public display" means to place or locate wildlife so that it may be viewed or accessed directly by the public.

(16) "Rehabilitation" means the attempted or successful restoration of an injured, sick or immature bird, mammal, amphibian or reptile to a condition whereby it can be returned to the wild.

(17) "Sensitive species" means those wildlife species, subspecies, or populations that are facing one or more threats to their populations, habitat quantity or habitat quality or that are subject to a decline in number of sufficient magnitude such that they may become eligible for listing on the state Threatened and Endangered Species List.

(18) "Subpermittee" means person(s) listed on a wildlife rehabilitation permit as authorized to perform wildlife rehabilitation activities under

the supervision (direct or indirect) of a permittee. Subpermittees may include, but are not limited to, veterinarians, falconers, or others assisting the permittee with the rehabilitation of wildlife specifically allowed on the permit.

(19) "Threatened species" means those species defined in ORS 496.004(15).

(20) "USFWS" means U.S. Fish and Wildlife Service.

(21) For the purpose of these rules, "wildlife" means wild mammals and wild birds, as defined by OAR 635-057-0000, amphibians, reptiles and fish.

(22) "Wildlife rehabilitation facility" means the primary location where an Oregon licensed wildlife rehabilitator (permittee) conducts rehabilitation.

Stat. Auth.: ORS 496
Stats. Implemented: ORS 496
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0010
Wildlife Rehabilitation Permit Requirements and Conditions

(1) A Wildlife Rehabilitation Permit may only be issued to a person who:

(a) Resides in Oregon or is a non-resident wildlife rehabilitator whose rehabilitation activities occur in Oregon or whose facility (or facilities) exist within the state;

(b) Is at least 18 years of age when taking the Oregon Wildlife Rehabilitation examination;

(c) Submits a completed and accurate written application form provided by the Department;

(d) Possesses a letter from an Oregon licensed DVM agreeing to act as a medical supervisor and consultant to the permittee if the permittee is not an Oregon licensed DVM;

(e) Passes the Oregon wildlife rehabilitation examination administered by the Department with a score of 80 percent or higher on the general section of the test and each relevant section of interest. Any applicant who fails to pass the Oregon Wildlife Rehabilitation examination may retake the examination no earlier than 14 days from the date of prior attempt;

(f) Is approved by the local Department district wildlife biologist or other Department representative as meeting a need for rehabilitation services in the area;

(g) Has not been convicted of, or admitted to, a violation of a wildlife law (under the Interstate Wildlife Violators Compact), or administrative rule, or permit issued under the Oregon wildlife laws within the previous five years; and

(h) Provides a suitable rehabilitation facility, or plan for such facility, approved by the local Department district wildlife biologist or other Department representative as meeting all requirements of these rules; and

(i) (Upon permit renewal) documents compliance with the Department's Rehabilitation Continuing Education Standards. Permittees must complete and provide documentation of 12 hours of Department approved continuing education every 2 years.

(2) Subpermittees may perform wildlife rehabilitation activities under the supervision (direct or indirect) of a permittee only if:

(a) The permittee inspects the facilities of the subpermittee prior to the subpermittee receiving wildlife;

(b) The permittee provides the subpermittee written instruction concerning caging, food and feeding protocols, veterinary- directed treatment and any other assistance the permittee deems necessary for the care of wildlife in the subpermittee's possession. The permittee must provide information concerning such assistance to the Department district wildlife biologist upon request;

(c) The subpermittee follows the written protocol, described in paragraph 2(b), provided by the permittee and, if necessary, approved by the Department district wildlife biologist;

(d) The subpermittee is approved by the Department district wildlife biologist before receiving wildlife. The name, physical address, and current phone number of the subpermittee must be provided to the Department. Any changes in subpermittee contact information must be provided to the Department with the permittee's semi-annual Wildlife Rehabilitation Report (635-062-0305 (2));

(e) All wildlife is admitted through the permittee's licensed facility, the subpermittee may not accept wildlife from any other source;

(f) The permittee is directly responsible for the rehabilitation activities of the subpermittee working under their permit;

(g) The subpermittee resides and conducts wildlife rehabilitation activities within Oregon; and

(h) The subpermittee does not perform wildlife rehabilitation activities at their Home Care facility except for the care and feeding of neonate avian species unless the permittee has prior written approval to hold other wildlife species at the Home Care facility from the local Department district wildlife biologist.

(3) Licensed Oregon veterinarians administering immediate medical care for injured wildlife are not required to have a Wildlife Rehabilitation Permit or submit a semi-annual report. Veterinarians that provide care or hold wildlife longer than 48-hours must be listed as a subpermittee or are required to pass the Oregon Wildlife Rehabilitation examination and possess a Wildlife Rehabilitation Permit. The local Department district wildlife biologist may, by written authorization, allow a non-permittee veterinarian to hold animals longer than 48 hours due to extenuating medical circumstances.

(4) The Department may deny issuance of a Wildlife Rehabilitation Permit, disapprove subpermittee(s) and impose permit conditions or restrictions (e.g., number of species, types of species, subpermittees, etc.) if the applicant or subpermittee is convicted of, or admits to, a violation of wildlife law (under the Interstate Wildlife Violators Compact), or administrative rule, or an order or permit issued under the Oregon wildlife laws within the previous five years.

(5) At least one member of a wildlife rehabilitation facility's staff must possess a Wildlife Rehabilitation Permit and that person must provide direct on-site supervision to non-permitted staff and volunteers.

(6) Wildlife Rehabilitation Permits are issued free of charge and expire no more than two years from date of issue.

(7) A Wildlife Rehabilitation Permit does not exempt the permittee from complying with other state, federal, county, and city laws and regulations.

(8) A Wildlife Rehabilitation Permit does not authorize the practice of veterinary medicine or the treatment of domestic animals.

(9) Permits must be carried on the person or displayed in a public area in the facility while performing wildlife rehabilitation activities.

(10) The Department is not liable for any injuries or infections to the public or permittee, subpermittee, or volunteers, or damage caused by wildlife held, captured, or transported as authorized by and due to activities or actions associated with a Wildlife Rehabilitation Permit.

(11) The Oregon Wildlife Rehabilitation Permit does not allow the possession of wildlife for direct access or display to the public except during release events or as approved in writing by the Department. Indirect electronic viewing of wildlife patients by the public is permissible. Images of wildlife patients may be used for monitoring, advertising, brochures, websites, presentations or trainings. Non-releasable wildlife held for educational purposes may be publically displayed within the conditions of the permittee's federal permit or letter of authorization to hold non-releasable wildlife.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0015
Federal Rehabilitation Permit

In addition to an Oregon Wildlife Rehabilitation Permit issued by the Department, and prior to receiving and holding federally protected species, a permittee must obtain a federal permit for species protected by federal law and provide a current and valid copy of the federal permit to the Department with each renewal application.

Stat. Auth.: ORS 496
Stats.Implemented: ORS 496
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0020
Restricted Species

The following categories of wildlife may not be rehabilitated and released under these rules:

(1) Nonnative wildlife classified as prohibited or noncontrolled per the wildlife integrity rules (OAR 635-056-0050 & 0060) or classified as controlled and specifically not allowed to be released in the wild (OAR 635-056-0070) shall not be rehabilitated or released into the wild. If these species are received by a permittee, the permittee must humanely euthanize the nonnative wildlife within 24 hours of receiving the animal. Nonnative wildlife listed as game animals in OAR 635 Division 045 are not affected by these rules.

(2) Imported native wildlife except migratory birds as defined in 635-062-0035 (2).

(3) Marine mammals

(a) Unless specifically authorized by the Department and NMFS, marine mammals shall not be rehabilitated;

(b) Section 109(h)(1) of the Marine Mammal Protection Act authorizes Federal, State, or local government officials or employees or designees, including members of the Oregon Marine Mammal Stranding Network, to humanely euthanize marine mammals in severe distress.

(4) Coyote (Canis latrans). Permittees must notify the local Department district wildlife biologist within 24 hours of receiving a coyote into their facility. Coyotes may be housed for up to 48 hours while the Department locates and places the animal in a pre-approved facility or other disposition as determined by the Department.

(5) Cougar (Felis concolor). Wildlife rehabilitators must notify the local Department district wildlife biologist immediately upon receipt of a cougar into their facility.

(a) Cougar kittens confirmed to be orphaned by the Department will not be rehabilitated for release to the wild due to public safety concerns.

(b) All cougars will be immediately transferred to Department veterinary staff at the ODFW Wildlife Health Lab for health and behavior evaluations and placement in a Department-approved Association of Zoos and Aquarium (AZA) accredited facility or other disposition as determined by Department staff.

(c) Non-AZA accredited zoos available for holding cougar kittens be approved by the Department veterinarian or division administrator prior to placement.

Stat. Auth.: ORS 496
Stats.Implemented: ORS 496
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0025
Restricted Species with Conditions

The following native wildlife require Department notification upon receipt by a permittee. Placement, care conditions, and final disposition will be determined by the Department.

(1) Healthy young-of-the-year animals that are not known to be orphaned should not be captured or removed from the wild.

(a) Young-of-the-year wildlife with unknown orphaned status includes those with no accompanying adult nearby and animals collected when the maternal animal is not observed as deceased.

(b) All young-of-the-year animals of unknown or questionable orphaned status and taken from the wild should be immediately returned to the place where they were collected if not held longer than 48 hours.

(c) Permittees should contact their district biologist for situations involving extenuating circumstances including animals that cannot be returned to the nest or collection site.

(2) Black bear (Ursus americanus). Permittees must notify the local Department district wildlife biologist immediately upon receipt of a black bear into their facility.

(a) All black bear will be immediately transferred to Department veterinary staff at the ODFW Wildlife Health Lab for health and behavior evaluations and placement in a Department-approved Association of Zoos and Aquarium (AZA) accredited facility, approved-black bear cub rehabilitation facility, or other disposition as determined by the Department.

(b) Non-AZA accredited zoos available for holding black bear cubs will be approved by the Department veterinarian or division administrator and must meet minimum caging specifications and standards for design and construction (Exhibit 1 Caging and Enclosure Standards for the Rehabilitation of Black Bears and Ungulates) and specific requirements for animal handling and monitoring, and animal care prior to placement.

(c) Orphaned black bear cubs meeting conditions as candidates for rehabilitation will only be rehabilitated in Department pre-approved facilities designed for orphaned wild black bear cub rehabilitation that meet all Department specifications for caging standards (Exhibit 1 Caging and Enclosure Standards for the Rehabilitation of Black Bears and Ungulates) including specific requirements for animal handling and monitoring, and animal care.

(d) Oregon wildlife rehabilitation facilities desiring to rehabilitate black bear cubs require prior Department approval and must meet all minimum caging specifications and standards (Exhibit 1 Caging and Enclosure Standards for the Rehabilitation of Black Bears and Ungulates) including specific requirements for animal handling and monitoring, and animal care prior to placement.

(3) Deer (Odocoileus hemionus and 0. virginianus), elk (Cervus elaphus), pronghorn antelope (Antilocapra americana), bighorn sheep (Ovis canadensis), mountain goat (Oreamnos americanus) or moose (Alces alces) may be rehabilitated under the following conditions:

(a) Orphaned deer, elk, pronghorn antelope, bighorn sheep, mountain goat, or moose received by a wildlife rehabilitator and born during the year received may be held and rehabilitated from birth through September 30 of the year received. Orphaned animals must be released to the wild prior to September 30 of the year received to the area of initial collection or an appropriate location determined by the District biologist. Extenuating circumstances for holding orphaned ungulates beyond September 30 requires written approval by the local Department district wildlife biologist.

(b) Injured or diseased deer, elk, pronghorn antelope, bighorn sheep, mountain goat, or moose received after September 30 of their birth year must be humanely euthanized unless otherwise authorized in writing by the Department district wildlife biologist.

(c) Orphaned deer, elk, pronghorn antelope, bighorn sheep, mountain goats, or moose will only be rehabilitated in Department pre-approved facilities designed for orphaned wild ungulate rehabilitation that meet all Department specifications in Exhibit 1 Caging and Enclosure Standards for the Rehabilitation of Black Bears and Ungulates including pen standards for design and construction, animal handling and monitoring, and animal care.

(d) All wildlife rehabilitators must notify the local Department district wildlife biologist within 24 hours of receiving any orphaned deer, elk, pronghorn antelope, bighorn sheep, mountain goats, or moose. Unless held in a Department approved facility, orphaned deer, elk, pronghorn antelope, bighorn sheep, mountain goats, or moose may be held for up to 48 hours while the Department locates and places the animal in a pre-approved facility or other disposition as directed by the Department.

(4) Raccoons (Procyon lotor). Permittees must be pre-approved by the Department to rehabilitate raccoons with the following conditions:

(a) Raccoons must be released back to the original location of capture or humanely euthanized, unless otherwise authorized in writing by the local Department district wildlife biologist.

(b) Raccoons will only be rehabilitated in Department pre-approved facilities designed for orphaned raccoon kit rehabilitation including requirements for animal handling and monitoring, and animal care.

(c) The maximum number of raccoons held by any single facility will be determined by the Department and listed on the permit.

(d) Raccoons from multiple locations must be held separately by their respective collection site and identified appropriately to facilitate the return of animals to their site of origin; exceptions require prior written approval by the local Department district wildlife biologist.

(5) Wolves (Canis lupus). Wildlife rehabilitators must notify the local Department district wildlife biologist immediately upon receiving a wolf into their facility.

(a) Wolf pups may be housed for up to 48 hours while the Department locates and places the animal in a pre-approved facility or other disposition as directed or determined by Department staff.

(6) Bobcat (Lynx rufus) and Lynx (Lynx canadensis). Wildlife rehabilitators must notify the local Department district wildlife biologist immediately upon receiving a bobcat or lynx into their facility.

(a) Bobcat or Lynx kittens may be housed for up to 48 hours while the Department locates and places the animal in a pre-approved facility or other disposition as directed or determined by Department staff.

(7) Other wild native mammals including Fox (Urocyon cinereoargenteus, Vulpes microtis, Vulpes vulpes), Ringtail (Bassariscus astutus), American Marten (Martes americana), Fisher (Martes pennant), Wolverine (Gulo gulo), River Otter (Lutra canadensis) and all bats (order Chiroptera). Wildlife rehabilitators must notify the local Department district wildlife biologist within 24 hours of receiving these species into their facility.

(a) The wild native mammals listed in this sub-section, 635-062-0025 (7), may be housed for up to 48 hours while the Department locates and places the animal in a pre-approved facility or other disposition as directed or determined by Department staff.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0030
Department Notification

(1) State and Federal Endangered, Threatened, Candidate or Sensitive species:

(a) The holder of a Wildlife Rehabilitation Permit (permittee) must notify the local Department district wildlife biologist within 24 hours of receiving a state or federally listed endangered, threatened, candidate or sensitive species;

(b) The permittee must notify the local Department district wildlife biologist within 24 hours of the death of any state or federally Endangered, Threatened, Candidate or Sensitive species in the permittee's custody or as soon as the permittee determines that an individual animal of an Endangered, Threatened, Candidate or Sensitive species is not fit to be released into the wild;

(c) A permittee may (at the permittee's discretion) euthanize a state-listed Endangered, Threatened, Candidate or Sensitive species if the permittee determines that the individual is not fit to be released into the wild, but must then report the euthanasia to a local Department district wildlife biologist within 24 hours or the animal may be placed in an AZA-accredited facility, educational organization or institution with Department approval and letter of authorization as per 635-044-0255 (4). Federally-listed threatened or endangered species and bald or golden eagles require USFWS approval prior to euthanasia unless USFWS personnel are not available and humane considerations warrant prompt euthanasia.

(2) Wildlife Crimes. A permittee must notify the Oregon State Police immediately of any wildlife admitted with gunshot wounds or other injuries of a suspicious or criminal nature.

(3) Diseased Wildlife. A permittee must notify the Department veterinarian within 24 hours of receiving any wildlife with clinical signs for known or suspected poisoning or infectious disease. Clinical signs involving poisoning or infectious disease may include, but are not limited to, incoordination, ataxia, depression, regurgitation, vomiting, or diarrhea.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0035
Wildlife Importation for Rehabilitation Purposes

(1) To prevent the importation of sub-clinical stages of infectious disease carried by these taxa of wildlife and the importation of non-native invasive species, no person may transport any mammal, upland game bird, amphibian, reptile, fish, invertebrate, or prohibited or controlled species into Oregon for the purpose of rehabilitation.

(2) Importation of injured wildlife into Oregon for rehabilitation purposes is limited to migratory bird species. Importation of migratory birds into Oregon for rehabilitation requires compliance with the Oregon Department of Agriculture's importation rules.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0040
Disposition of Wildlife

(1) Any wildlife, carcasses, or parts of wildlife from Oregon held under an Oregon Wildlife Rehabilitation Permit remain the property of the State of Oregon (through the Department) and nothing in these rules may be construed as granting any ownership interest to a permittee or any other person. Wildlife held under an Oregon Wildlife Rehabilitation Permit cannot be sold, traded, bartered, transferred, loaned or exchanged unless otherwise authorized in writing by the local Department district wildlife biologist.

(2) To avoid habituation of rehabilitated animals, permittees, subpermittees, and volunteers must minimize contact between humans and wildlife undergoing rehabilitation, including the following minimum requirements:

(a) Human contact must be limited to the rehabilitation facility staff to the extent necessary for adequate rehabilitation care;

(b) Wildlife must not be habituated to humans or treated as pets;

(c) Wildlife must not be placed in view of the public. However, it is acceptable to make use of a remote video camera for observation purposes by rehabilitation staff and the public;

(d) Rehabilitation facilities must be located in areas separate from day to day human and domestic animal activity. Outdoor facilities must have visual barriers separating wildlife, humans and domestic animals;

(e) No permittee may possess an imprinted or habituated animal. If the permittee causes or comes into possession of an imprinted or habituated animal, the permittee must surrender the animal to the Department for placement in an approved facility or euthanize it, as directed by the local Department district wildlife biologist.

(3) A permittee must release rehabilitated wildlife:

(a) When the wildlife reaches physical maturity and is capable of self-maintenance or has attained adequate recovery from injury or illness;

(b) At a time of year appropriate for optimum species survivability;

(c) Within suitable habitat close to the point of origin, with prior approval from the local Department district wildlife biologist.

(d) Deer, elk, pronghorn antelope, bighorn sheep, mountain goat, or moose received by a wildlife rehabilitator and born during the year received may be held and rehabilitated from birth through September 30 of the year received and must be released to the wild prior to September 30 of the year received. Extenuating circumstances requiring holding of orphaned ungulates beyond September 30 requires written approval by the local Department district wildlife biologist.

(4) A permittee may not hold wildlife for rehabilitation longer than 180 days unless authorized in writing by the Department. If a permittee or the Department determines that an animal is incapable of survival in the wild, the permittee must euthanize the animal or upon Department direction, provide the animal to an AZA-accredited facility or other approved educational organization or institution.

(5) If a permittee has possession of wildlife that, after medical attention, is unable to feed, move, or stand to conduct normal life support functions to survive in the wild, the permittee must euthanize the animal unless given alternative instruction by the Department.

(6) A permittee must bury or incinerate any wildlife in their possession that die due to poisoning or infectious disease.

(a) Wildlife dying of other causes must be disposed of by burying, incineration, use as food for other rehabilitating wildlife, or retained for educational purposes if appropriate permits or letter of authorization from the local Department district wildlife biologist has been obtained.

(b) Any wildlife chemically euthanized must be buried or incinerated to avoid secondary toxicity by scavenging animals.

(c) Notwithstanding these restrictions, the local Department district wildlife biologist may approve in writing the disposal of wildlife carcasses to institutions, museums, licensed rendering facilities, or other persons possessing the appropriate permits.

(d) A permittee may retain feathers of migratory birds for use in repair of broken wing and tail feathers (imping) or for educational purposes if authorized by the appropriate permit from the USFWS.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0045
Facility Requirements

(1) A holder of an Oregon Wildlife Rehabilitation Permit (and any subpermittee) must maintain wildlife held for rehabilitation in a humane manner by:

(a) Providing a level of care meeting the Minimum Standards set by The International Wildlife Rehabilitation Council/National Wildlife Rehabilitators Association (IWRC/NWRA) in 2012 unless different standards are established in Exhibit 1 Caging and Enclosure Standards for the Rehabilitation of Black Bears and Ungulates (635-062-0025). This is to prevent distress from captivity, injury, sickness, neglect or disease and be used as guidelines for the care and housing of rehabilitated wildlife which, at the minimum, include but is not limited to the following;

(A) Appropriate food for each species and water of sufficient quantity and quality to allow for normal growth, healing, or maintenance of body weight shall be provided;

(B) Shelter sufficient to protect from adverse elements, protect from predators, to prevent escape, and injury. Any other requirement particular to the survival of the animal shall also be provided;

(C) Sufficient space for exercise necessary for the health, rehabilitation and eventual release of the animal shall be provided;

(D) Confinement areas shall be cleaned and kept free from excess food or fecal waste or other contaminants which could affect the health of the animal;

(E) Wildlife under rehabilitation will be maintained in a separate enclosure from regular human or domestic animal activity. Outdoor facilities must have visual barriers or adequate distance between wildlife and humans and domestic animals to prevent psychological and physical stress or habituation to care givers;

(F) Wildlife may not be restrained with a chain, rope, tape, hobbles or similar holding devices except for jesses used for holding raptors and during procedures required for safe handling.

(2) The permittee may receive from the Department and possess at the wildlife rehabilitation facility dead wildlife for the purpose of feeding wildlife in rehabilitation. Deceased wildlife received for purposes of

feeding wildlife rehabilitation patients may not be used for human consumption.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0050
Facilities Subject to Inspection

Facilities for care of birds, mammals, amphibians, or reptiles by the holder of a Wildlife Rehabilitation Permit or by any subpermittee are subject to inspection by any Department employee or Oregon State Police officer.

(1) Inspection may take place without warrant or notice.

(2) Unless prompted by emergency or other exigent circumstances, facility inspections will be limited to regular and usual business hours, including weekends.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635 062-0055
Record Keeping and Reporting Requirements

(1) The holder of a Wildlife Rehabilitation Permit and any subpermittee must maintain accurate and up-to-date records of rehabilitation activities concerning any bird, mammal, amphibian, or reptile in their care for a minimum of three years following release or other disposition of the animal. Such records must include:

(a) Name, physical address (if provided) and affiliation of person picking up and delivering wildlife for rehabilitation;

(b) Wildlife category (bird, raptor, mammal, etc.);

(c) Species (common name, genus and species);

(d) Age (if known);

(e) Gender (if known);

(f) Description and extent of injury, sickness or reason animal is held by permittee;

(g) Wildlife Collection location or site of origin;

(h) Date animal was admitted or received by permittee;

(i) Subpermittee name associated with animal case; and

(j) Final disposition (release into wild, euthanized, died, transferred, etc.), including date and location with authorizing documents from the local Department district wildlife biologist for appropriate cases.

(2) Each permittee must submit current rehabilitation records of required information in a legible document twice per year, by July 31 and January 31, to the Department.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

635-062-0060
Cancellation or Non-Renewal of Permit

(1) If a holder of Wildlife Rehabilitation Permit (or subpermittee) violates any requirement of these Wildlife Rehabilitation Permit rules, the Department may revoke or decline permit renewal and any birds, mammals, amphibians and reptiles being held may be confiscated by law enforcement personnel.

(2) If a permittee fails to receive and rehabilitate wildlife for greater than 180 consecutive days, the Department may revoke (or decline to renew) the permit. The Department may choose to not revoke the permit if the permittee has completed the requisite 12 continuing education hours during the preceding 2 year period. In addition, the Department will consider extenuating circumstances on a case by case basis if presented to the Department in writing within 10 days following notification of permit revocation. If the Department revokes or declines to renew a permit under this subsection, a permittee who seeks renewal of the permit must comply with all requirements and conditions in 635-062-0210 including, but not limited to, retaking and passing the ODFW Wildlife Rehabilitation Permit test and submitting to a facility inspection.

(3) The Department may revoke or decline to renew a Wildlife Rehabilitation Permit if the permittee or subpermittee: fails to report or release wildlife, including species approved on the permit and restricted wildlife, as directed by the Department and these rules; or

(a) is convicted of, or admits to a violation of, any wildlife law, or any rule, order or permit issued under the wildlife laws within 5 years of application.

(4) Upon revocation or non-renewal of a permit, law enforcement personnel will confiscate any wildlife held.

(5) A permittee may appeal revocation or non-renewal of a permit through a contested case hearing. The request for a contested case hearing on a proposed revocation must be received by the Department within 21 days after service of notice (or 90 days for emergency revocations). The request for hearing on a proposed non-renewal must be received by the Department within 60 days of notice. Final Orders in contested case hearings will be issued by the Department Director.

Stat. Auth.: ORS 183.430, 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222, 498.242
Hist.: DFW 163-2015, f. & cert. ef. 12-9-15

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Rule Caption: Amendments to Commercial Bay Clam Fishery Regulations.
Adm. Order No.: DFW 164-2015
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 8-1-2015
Rules Adopted: 635-005-0387
Rules Amended: 635-005-0290, 635-005-0305, 635-005-0310, 635-005-0350, 635-005-0355, 635-005-0385
Subject: These administrative rule amendments incorporate new stock assessment data and fishery monitoring data collected over the last several years to update regulations for the commercial bay clam fishery. Since the commercial bay clam fishery transitioned from a developmental fishery to a limited entry fishery 10 years ago, these modifications apply the principles of adaptive management to ensure sustainable and productive harvest of bay clams.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-005-0290
Closed Seasons and Areas

It is unlawful to take for commercial purposes:

(1) Gaper clams from January 1 through June 30, except under a limited entry Bay Clam Dive Permit (OAR 635-005-0310) an incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch.

(2) Razor clams from July 15 through September 30 in the area north of Tillamook Head in Clatsop County.

(3) Any clams from:

(a) Little Nestucca Bay;

(b) Big Nestucca Bay;

(c) Netarts Bay, except cockles may be taken in an area west of and including the main channel, north of the northern boundary line for the Shellfish Preserve (Latitude 45°23.68'N), and south of Latitude 45°24.71'N, near the informational kiosk;

(d) Salmon River and Bay;

(e) Siletz River and Bay; or

(f) All state parks south of Tillamook Head.

(4) Bay clams in Tillamook Bay from the following areas:

(a) The "Ghost Hole" from the floating toilet site south to Sandstone Point and 500 feet westward from the Highway 101 shoreline;

(b) The area east of a line connecting the Coast Guard tower on the north jetty, buoy marker 13, and Hobsonville Point; or

(c) The area above mean lower low water near Kincheloe Point.

(5) Subtidal cockle clams in Netarts Bay.

(6) Subtidal bay clams in Coos Bay from the following areas:

(a) In depths shallower than 10 feet from mean lower low water; or

(b) The area of South Slough south of the Charleston bridge.

(7) Any clams from the Shellfish Preserve in Yaquina Bay, Lincoln County, which is the tideflat on the north side of the wood piling breakwater, south of the troller's basin. The legal description is as follows: Beginning at a point 1,181.24 feet south and 430.55 feet east of the meander corner of Sections 8 and 9, T11S, R11W, W.M., said point being a flashing red beacon on the southeastern end of the U.S. Army Engineers wood piling breakwater, thence northwesterly along said breakwater to a point being a flashing white beacon on the northwestern end of said breakwater located 583.46 feet south and 2,082.62 feet west of the above meander cor-

ner, thence southeasterly along the extreme low water line of the sand pit lying on the north side of the said breakwater to the point of beginning, said tideland being 7.2 acres, more or less, at mean low water line.

(8) Any clams from the Shellfish Preserve in Netarts Bay beginning from the quarter corner of Section 17, 20, T2S, R10W, thence north 10 degrees 14 feet west 200 feet to point of beginning, thence west approximately 6,250 feet to the west meander line of Netarts Bay, thence north 1,000 feet, thence east about 6,250 feet, thence south along the meander line to the point of beginning, except any privately owned tidelands within the described area are excluded from the closure.

(9) Any shellfish from Special Regulation Marine Areas as described in OAR 635-005-0260.

(10) Clams or mussels from a health closure area closed for biotoxins. "Health closure area" means an area closed to the public due to health risks of consuming shellfish from the area, and "Biotoxin" means naturally occurring shellfish toxins monitored by the Oregon Department of Agriculture.

(11) Any shellfish taken for human consumption from an area designated as restricted by the Oregon Department of Agriculture. Fishers should call the Oregon Department of Agriculture Shellfish Safety Hotline at 1-800-448-2474, the Oregon Department of Agriculture Food Safety Division at 1-503-986-4720 or visit the Oregon Department of Agriculture website at www.oregon.gov/ODA to confirm the area of intended harvest is open before harvesting shellfish.

(12) Littleneck clams (Leukoma staminea).

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; Renumbered from 625-010-0065, 1975; Renumbered from 635-036-0090, 1979; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 137-1991(Temp), f. 12-20-91, cert. ef. 12-23-91; FWC 39-1992(Temp), f. & cert. ef. 6-19-92; FWC 94-1992(Temp), f. 9-18-92, cert. ef. 9-19-92; FWC 102-1992 (Temp), f. 10-1-92, cert. ef. 10-2-92; FWC 121-1992(Temp), f. & cert. ef. 11-9-92; DFW 30-1998(Temp), f. & cert. ef. 5-6-98 thru 10-23-98; DFW 92-1998, f. & cert. ef. 11-25-98; DFW 61-2002, f. & cert. ef. 6-14-02; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 133-2008(Temp), f. 10-17-08, cert. ef. 10-18-08 thru 12-31-08; Administrative correction 1-23-09; DFW 135-2010(Temp), f. 9-23-10, cert. ef. 9-27-10 thru 12-31-10; DFW 141-2010(Temp), f. 10-6-10, cert. ef. 10-7-10 thru 12-31-10; DFW 79-2011(Temp), f. 6-29-11, cert. ef. 7-3-11 thru 12-29-11; Renumbered from 635-005-0020, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0305
Fishery Defined

"Bay clam dive fishery" means the commercial fishery for bay clams (including: cockle clams, Clinocardium nuttallii; butter clams, Saxidomus gigantea; gaper clams, Tresus capax; and softshell clams, Mya arenaria) from subtidal areas in Oregon estuaries using dive gear.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0310
Requirement for Bay Clam Dive Permit

(1) It is *unlawful* in the bay clam dive fishery to:

(a) Take, land or possess bay clams for commercial purposes, using dive gear, from subtidal areas in any Oregon estuary north of Heceta Head without first obtaining a coast-wide Bay Clam Dive Permit issued pursuant to OAR 635-005-0315 through OAR 635-005-0340.

(b) Take, land or possess bay clams for commercial purposes, using dive gear, from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining either a coast-wide Bay Clam Dive Permit or a south-coast Bay Clam Dive Permit issued pursuant to OAR 635-005-0315 through OAR 635-005-0340.

(c) For a wholesaler dealer, canner or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by subsections (1)(a) or (1)(b) of this rule.

(d) To take bay clams where more than two divers operating from any one vessel were in the water at the same time or where more than three persons without Bay Clam Dive Permits, excluding persons authorized by the Department for the performance of official duties, were on board any vessel while harvesting, possessing, or transporting bay clams.

(e) To take clams except under the terms and conditions specified in the permit. Permits may be issued to mechanically harvest clams in subtidal areas by means of water jet or other hand or handpowered tool. Application for such a permit must be written and include a description of the specific areas where mechanical taking is proposed and such other information as the Director shall require. Applications should be mailed to: Marine Resources Program Office, Department of Fish and Wildlife, 2040 SE Marine Science Drive, Newport, OR 97365.

(2) The Department shall not issue more than ten coast-wide permits required by subsection (1)(a) of this rule and five south-coast permits required by subsection (1)(b) of this rule.

(3) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation shall not change during the year.

(4) The Bay Clam Dive Permit required by section (1) of this rule is in addition to and not in lieu of either:

(a) The commercial fishing license required by ORS 508.235; or

(b) The commercial bait fishing license required by ORS 508.312.

(5) No vessel may hold more than one Oregon Bay Clam Dive Permit at any one time.

(6) If Bay Clam Dive Permits are issued on an individual basis, no individual may hold more than one Oregon Bay Clam Dive Permit at any one time.

(7) Unless otherwise provided, Bay Clam Dive Permits must be purchased by January 31 of the year the permit is sought for renewal.

(8) No Bay Clam Dive Permit shall be transferred without the vessel lien holder's written permission.

(9) Applications for Bay Clam Dive Permits shall be in such form and contain such information as the Department may prescribe. Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0350
Size Limit

The minimum legal size of cockle clams taken for commercial purposes under a Bay Clam Dive Permit (OAR 635-005-0310) in Tillamook Bay is 2-3/4 inches at the greatest dimension, and 2-1/4 inches at the greatest dimension in all other bays. It is unlawful to possess any cockle clams taken for commercial purposes under a Bay Clam Dive Permit which are less than the minimum legal size.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 241, f. 4-5-72, ef. 4-15-72; FC 255, f. 9-12-72, ef. 10-1-72; Renumbered from 625-010-0075, 1975; Renumbered from 635-036-0100, 1979; DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06 ; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 10-2007, f. & cert. ef. 2-14-07; Renumbered from 635-005-0030, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0355
Catch Limits

(1) In Tillamook Bay, the commercial landing caps for clams harvested by the bay clam dive fishery are 185,000 pounds for cockles, 235,000 pounds for gaper clams, and 225,000 pounds for butter clams.

(2) When any of the commercial clam landing caps specified in section (1) of this rule are reached, the commercial clam fishery for that species in that particular estuary will close for the remainder of the calendar year.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06, Renumbered from 635-005-0032, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 80-2012(Temp), f. 6-28-12, cert. ef. 7-4-12 thru 12-30-12; Administrative correction, 2-1-13; DFW 54-2013(Temp), f. 6-12-13, cert. ef. 6-15-13 thru 12-11-13; Administrative correction, 12-19-13; DFW 69-2014(Temp), f. 6-12-14, cert. ef. 6-13-14 thru 12-10-14; Administrative correction, 12-18-14; DFW 11-2015(Temp), f. 2-3-15, cert. ef. 2-6-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 112-2015(Temp), f. 8-20-15, cert. ef. 8-26-15 thru 12-31-15; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0385
Size Limit

(1) There is no size limit for mussels taken for commercial purposes.

(2) The minimum legal size of razor clams taken for commercial purposes is 3-3/4 inches from tip to tip of the shell. It is unlawful to possess any razor clams taken for commercial purposes which are less than the minimum legal size. All undersized razor clams must be immediately returned to the hole from which they were dug with the hinge oriented towards the ocean.

(3) The minimum legal size of intertidal cockles taken for commercial purposes in Tillamook Bay and Netarts Bay is 2-3/4 inches at the greatest dimension. It is unlawful to possess any cockles taken for commercial purposes which are less than the minimum legal size.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

635-005-0387
Catch Limits

(1) In Netarts Bay, the commercial landing cap for cockles harvested by the intertidal fishery is 22,000 pounds.

(2) When the commercial cockle landing cap specified in section (1) of this rule is reached, the intertidal cockle fishery in Netarts Bay will close for the remainder of the calendar year.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129
Stats. Implemented: ORS 506.109, 506.129
Hist.: DFW 164-2015, f. 12-9-15, cert. ef. 1-1-16

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Rule Caption: Amendment to Wildlife Control Operator Rules
Adm. Order No.: DFW 165-2015(Temp)
Filed with Sec. of State: 12-9-2015
Certified to be Effective: 12-9-15 thru 6-1-16
Notice Publication Date:
Rules Amended: 635-435-0010
Subject: This temporary rule amendment is necessary to correct Wildlife Control Operators time frame for bat control.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-435-0010
Permit Required to Capture, Possess, or Transport Wildlife

(1) A WCO permit is required for any individual, business owner, or the business owner's designee charging a fee to control furbearers, unprotected mammals (excluding moles (Scapanus spp.), and western gray squirrels causing damage, creating a public nuisance or posing a public health or safety concern; and for the offsite transportation of any live wildlife;

(a) A WCO permit is not required for the onsite capture and euthanasia of species defined as "predatory animals."

(b) Federal employees of the U.S. Department of Agriculture, Animal Plant and Health Inspection Service-Wildlife Services and, county or municipality employees, working in their official capacity, are exempt from this requirement.

(c) WCO permittees must comply with all state wildlife laws and regulations; and, all activitiesmust be in compliance with conditions specified by these rules, permit and authorization from the Department.

(2) A permit allows a WCO to:

(a) Capture, possess, or transport furbearers, predatory animals, western gray squirrels, unprotected mammals and all snakes.

(b) Humanely euthanize wildlife authorized under this permit using methods defined by the "American Veterinary Medical Association (AVMA) Guidelines for Euthanasia of Animals: 2013 Edition" except for the following species of snakes which shall be relocated:

(A) Willamette Valley Populations of Western Rattlesnake (Crotalus oreganus);

(B) Sharptail snake (Contia tenuis);

(C) Common Kingsnake (Lampropeltis getula);

(D) California Mountain Kingsnake (Lampropeltis zonata);

(E) Western Ground Snake (Sonora semiannulata);

(c) Collect and dispose of animals directly related to WCO activities.

(3) WCO activities for all bat spp are:

(a) Prohibited during the months from June through August without prior authorization by the Department.

(b) Limited to exclusion and eviction during the months from September through May.

(c) Permitted year round to capture bats from areas not associated with roosting, hibernaculum and nurseries, and immediately released outdoors or taken to a licensed wildlife rehabilitator.

(4) A permit does not allow a WCO to transport, for the purposes of release, any wildlife captured under terms of the WCO permit except for:

(a) Western Gray Squirrel, Marten and Fisher;

(b) Reptiles listed in subsection (2);

(c) Badger and Beaver with prior approval from the Department.

(5) A WCO permit does not authorize the permittee to intentionally capture, possess, or transport:

(a) Wildlife not authorized under a WCO permit.

(b) Species protected by other state or federal law.

(c) Species protected by other state or federal law caught incidentally must be released immediately onsite.

Stat. Auth.: ORS Ch. 496.012, 496.138, 496.146, 496.162 & 610.005
Stats. Implemented: ORS Ch. 496.012, 496.138, 496.146, 496.162, 610.002 & 610.105
Hist.: DFW 117-2006, f. & cert. ef. 10-16-06; DFW 25-2012, f. & cert. ef. 3-16-12; DFW 162-2015, f. & cert. ef. 12-9-15; DFW 165-2015(Temp), f. & cert. ef. 12-9-15 thru 6-1-16

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities
Chapter 411

Rule Caption: Oregon Project Independence Pilot for Adults with Disabilities
Adm. Order No.: APD 21-2015
Filed with Sec. of State: 12-1-2015
Certified to be Effective: 12-27-15
Notice Publication Date: 11-1-2015
Rules Amended: 411-032-0050
Rules Repealed: 411-032-0050(T)
Subject: The Department of Human Services (Department) is permanently updating OAR chapter 411-032-0050 to make permanent temporary changes that became effective July 1, 2015. The Department is amending 411-032-0050 to continue providing services to younger adults with disabilities that are currently receiving such services in regionally diverse pilot locations under the Oregon Project Independence Pilot. This rulemaking expands the date of the pilot program to allow the Department to continue providing services through this biennium. Minor formatting adjustments were made to the rule as well.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-032-0050
Pilot for Adults with Disabilities

This rule applies only until June 30, 2017.

(1) The purpose of this rule is to set out the policies that apply to the expansion of Oregon Project Independence services to adults with physical disabilities. The pilot allows the Department to study the potential to transition Oregon Project Independence to a statewide, age neutral, program that assesses and serves seniors and persons with physical disabilities based on their functional needs.

(2) "Disability" means, for the purposes of this rule, a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006, or in one or more of the instrumental activities of daily living defined in 411-015-0007.

(3) "Adult" means, for purposes of this rule, any person 19 to 59 years of age.

(4) OAR 411-032-0000 to 411-032-0044 apply to this pilot program, except as noted below:

(a) Authorized Services and Allowable Costs. Authorized services may not be available in all service areas. Authorized services for the pilot funds include home care supportive services, service coordination, and other services, including the following:

(A) Home care.

(B) Chore services.

(C) Assistive Technology.

(D) Personal care services.

(E) Adult day services.

(F) Registered nurse services.

(G) Home delivered meals.

(H) Services to support community caregivers and strengthen the natural support system of individuals.

(I) Evidence-based health promotion services.

(J) Options counseling.

(K) Assisted transportation options that allow individuals to live at home and access the full range of community resources.

(b) Eligibility.

(A) In order to qualify for authorized services under this pilot, an individual must:

(i) Be an adult with a disability;

(ii) Be a resident of a designated pilot area and seek services at that location;

(iii) Not be receiving Medicaid; and

(iv) Meet the requirements of the long-term care services priority rules in OAR chapter 411, division 015.

(B) The Area Agencies on Aging must determine eligibility prior to an individual receiving authorized services.

Stat. Auth.: ORS 409.050, 410.070, 410.435
Stats. Implemented: ORS 409.010, 410.410 - 410.480

Hist.: APD 19-2014(Temp), f. 6-26-14, cert. ef. 7-1-14 thru 12-28-14; APD 38-2014, f. 12-16-14, cert. ef. 12-28-14; APD 11-2015(Temp), f. 6-24-15, cert. ef. 7-1-15 thru 12-27-15; APD 21-2015, f. 12-1-15, cert. ef. 12-27-15

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Rule Caption: ODDS — Medically Involved Children's Program
Adm. Order No.: APD 22-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-28-15
Notice Publication Date: 11-1-2015
Rules Adopted: 411-355-0045, 411-355-0075
Rules Amended: 411-355-0000, 411-355-0010, 411-355-0020, 411-355-0030, 411-355-0040, 411-355-0050, 411-355-0080, 411-355-0090, 411-355-0100
Rules Repealed: 411-355-0060, 411-355-0070, 411-355-0110, 411-355-0120, 411-355-0000(T), 411-355-0010(T), 411-355-0020(T), 411-355-0030(T), 411-355-0040(T), 411-355-0045(T), 411-355-0050(T), 411-355-0075(T), 411-355-0080(T), 411-355-0090(T), 411-355-0100(T)
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is permanently updating the rules in OAR chapter 411, division 355 for the Medically Involved Children's Program (MICP).

The permanent rules:

- Make permanent temporary rule language that became effective on August 1, 2015;

- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;

- Incorporate the expenditure guidelines;

- Account for changes in Medicaid service eligibility;

- Clarify when a child may be exited from the MICP and reiterate the requirement for a Notification of Planned Action in the instance services are terminated;

- Include a timeframe for when a functional needs assessment must be completed and clarify service planning;

- Update the language to reflect the completion of the transition period for implementation of the Community First Choice 1915(k) state plan amendment and update the available supports to reflect changes to the Medically Involved Model Waiver;

- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from its misuse. The rule defines indications of misuse of employer authority, the steps that must be taken to remove employer authority, and appeals of the removal;

- Expand provider types to include personal support workers, independent providers, provider organizations, and general business providers, and specify the qualifications;

- Implement Senate Bill 22 by updating the rights of a child and providing a uniform dispute resolution process by incorporating the individual rights, complaint, Notification of Planned Action, and hearing rules adopted in OAR chapter 411, division 318; and

- Remove the sanctions for providers and include termination of provider enrollment.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-355-0000
Statement of Purpose

(1) The rules in OAR chapter 411, division 355 establish the policy of, and prescribe the standards and procedures for, the provision of services for children enrolled in the Medically Involved Children's Program.

(2) MICP services are exclusively intended to enable a child who meets the nursing facility level of care to return to the family home, or remain at the family home, with specialized supports and services. MICP services specifically preserve the capacity of a parent to care for their child, assure the health and safety of the child within the family home, and enable a child who has been separated from their family due to their health and medical care needs to return to the family home to prevent out of home placement. MICP services complement and supplement the services that are available through the State Medicaid Plan and other federal, state, and local programs as well as the natural supports that families and communities provide.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0010
Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 355:

(1) "Abuse" means "abuse" of a child as defined in ORS 419B.005.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(4) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(5) "Alternative Resources" mean possible resources for the provision of supports to meet the needs of a child. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(6) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-355-0040 that are necessary to enable a child to increase the ability of the child to perform ADL and IADLs or to perceive, control, or communicate with the home and community environment in which the child lives.

(7) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-355-0040 that are purchased to provide support for a child and replace the need for direct interventions to enable self-direction of care and maximize independence of the child.

(8) "Attendant Care" means assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding as described in OAR 411-355-0040.

(9) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(10) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-355-0050 who conducts functional assessments and develops a Behavior Support Plan.

(11) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of a child and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

(12) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges of a child that prevents the child from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(13) "Billing Form" means the document generated by the Department that acts as a prior authorization, contract, and payment mechanism for services.

(14) "Case Management" means the functions performed by a services coordinator. Case management includes, but is not limited to, determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(15) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(16) "Child" means an individual who is less than 18 years of age, and applying for, or accepted for, the Medically Involved Children's Program under the Medically Involved Model Waiver.

(17) "Chore Services" mean the services described in OAR 411-355-0040 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(18) "Community Nursing Services" mean the nursing services described in OAR 411-355-0040 that focus on the chronic and ongoing health and safety needs of a child living in the family home. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided

according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(19) "Community Transportation" means the services described in OAR 411-355-0040 that enable a child to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the family home that is commonly used by people in the same area to obtain ordinary goods and services.

(20) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(21) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(22) "Department" means the Department of Human Services.

(23) "Designated Representative" means any adult who is not a paid provider of ODDS funded services, such as a family member or advocate, who is chosen by a parent or guardian and authorized by the parent or guardian to serve as the representative of the parent or guardian in connection with the provision of ODDS funded supports. A parent or guardian is not required to appoint a designated representative.

(24) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services, or the designee of the Director.

(25) "Employer of Record" means, for the purpose of obtaining MICP services through a personal support worker as described in these rules, the parent or guardian or a person selected by the parent or guardian to act on the behalf of the parent or guardian to conduct the employer responsibilities described in OAR 411-355-0045. An employer of record may also be a designated representative.

(26) "Employer-Related Supports" mean the activities that assist a family with directing and supervising provision of services described in the ISP for a child. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as service agreements; and

(d) Fiscal intermediary services.

(27) "Entry" means admission to a Department-funded disability service.

(28) "Environmental Modifications" mean the physical adaptations described in OAR 411-355-0040 that are necessary to ensure the health, welfare, and safety of a child in the family home, or that are necessary to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(29) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-355-0040 that are made to the exterior of a family home as identified in the ISP for a child to ensure the health, welfare, and safety of the child or to enable the child to function with greater independence around the family home or lead to a substitution for, or decrease in direct human assistance to the extent expenditures would otherwise be made for human assistance.

(30) "Exit" means termination or discontinuance of MICP services.

(31) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for MICP funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(32) "Family":

(a) Means a unit of two or more people that includes at least one child where the primary caregiver is:

(A) Related to the child by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for MICP services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(33) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(34) "Family Training" means the training services described in OAR 411-355-0040 that are provided to a family to increase the capacity of the family to care for, support, and maintain a child in the family home.

(35) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child enrolled in MICP services is known as the Child Needs Assessment (CNA). Effective December 31, 2014, the Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(36) "General Business Provider" means an organization or entity selected by a parent or guardian and paid with MICP funds that:

(a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(37) "Guardian" means the parent of a minor child or a person or agency appointed and authorized by a court to make decisions about services for a child.

(38) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to enable a child to be independent in the family home and community, such as:

(a) Meal planning and preparation;

(b) Managing personal finances;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Traveling around and participating in the community.

(39) "Independent Provider" means a person selected by a parent or guardian and paid with MICP funds to directly provide services to a child.

(40) "Individual-Directed Goods and Services" mean the services, equipment, or supplies described in OAR 411-355-0040, not otherwise provided through other waiver or state plan services, that address an identified need in an ISP. Individual-directed goods and services may include services, equipment, or supplies that improve and maintain the full membership of a child in the community.

(41) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(42) "Level of Care" means a child meets the institutional level of care for a nursing facility:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the medically involved criteria; and

(b) The medical condition requires the care and treatment of services normally provided in a nursing facility.

(43) "Medically Involved Criteria" means the criteria used by the Department to evaluate the intensity of the challenges presented by a child eligible for MICP services.

(44) "MICP" means "Medically Involved Children's Program". MICP is the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on a child living in the family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(45) "Natural Supports" mean the parental responsibilities for a child who is less than18 years of age and the voluntary resources available to the child from the relatives, friends, neighbors, and the community that are not paid for by the Department.

(46) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to a child and identifies the diagnoses and health needs of the child and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(47) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(48) "ODDS" means the Department of Human Services, Office of Developmental Disability Services.

(49) "OHP" means the Oregon Health Plan.

(50) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(51) "OIS" means the "Oregon Intervention System". OIS is the system of providing training of elements of positive behavior support and nonaversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(52) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(53) "Parent" means the biological parent, adoptive parent, or stepparent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of ODDS funded supports.

(54) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by a child, that includes people chosen by the child and their parent or guardian, ensures the child directs the process to the maximum extent possible, and assures the child is enabled to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the child and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the child.

(55) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(56) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(57) "Primary Caregiver" means the parent, guardian, relative, or other non-paid parental figure of a child that provides direct care at the times that a paid provider is not available. In this context, the term parent or guardian may include a designated representative.

(58) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(59) "Provider" means a person, agency, organization, or business selected by a parent or guardian that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services. A provider is not a primary caregiver.

(60) "Provider Organization" means an entity licensed or certified by the Department that is selected by a parent or guardian and paid with MICP funds that:

(a) Is primarily in business to provide supports for children with disabilities;

(b) Provides supports for a child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(61) "Relief Care" means the intermittent services described in OAR 411-355-0040 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(62) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in an ISP and relating to the ADL, IADL, and health-related tasks of a child as discussed by the parent or guardian, services coordinator, and ISP team.

(63) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes at a minimum:

(A) Type of service to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if a child is unable to provide for their own safety and the child is missing while in the community under the service of a contractor or provider organization.

(b) For employed personal support workers, the service agreement serves as the written job description.

(64) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and medically involved criteria and made available to meet the identified support needs of a child.

(65) "Services Coordinator" means an employee of a CDDP, the Department, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services who ensures the eligibility of a child for services. The services coordinator acts as the proponent for children enrolled in the MICP and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(66) "Skills Training" means the activities described in OAR 411-355-0040 that are intended to maximize the independence of a child through training, coaching, and prompting the child to accomplish ADL, IADL, and health-related skills.

(67) "Social Benefit" means the service or financial assistance solely intended to assist a child enrolled in the MICP to function in society on a level comparable to that of a child not enrolled in the MICP. Social benefits are pre-authorized by a services coordinator and provided according to the description and limits written in an ISP.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a child regardless of a disability;

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a child with or without a disability; or

(D) Replace other governmental or community services available to a child.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP or prior payment in anticipation of an expense authorized in a previously authorized ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by a child to be supported in the family home.

(68) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-355-0040 that are specific to the medical condition or diagnosis of a child and in support of an evidence-based treatment regimen.

(69) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-355-0040, such as:

(a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(70) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(71) "Supplant" means take the place of.

(72) "Support" means the assistance that a child and a family requires, solely because of the effects of a disability or medical condition of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(73) "These Rules" mean the rules in OAR chapter 411, division 355.

(74) "Transition Costs" mean the expenses described in OAR 411-350-0050 required for a child to make the transition to the family home from a nursing facility, or intermediate care facility for individuals with intellectual or developmental disabilities.

(75) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(76) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-350-0050 that are made to the vehicle that is the primary means of transportation for a child in order to accommodate the service needs of the child.

(77) "Waiver Services" mean the menu of disability related services and supplies that are specifically identified by the Medically Involved Model Waiver.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0020
Eligibility

(1) ELIGIBILITY. In order to be eligible for the MICP, a child must:

(a) Be under the age of 18;

(b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(c) Be receiving Medicaid Title XIX benefits under OSIPM;

(d) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620;

(e) Meet the level of care as defined in OAR 411-355-0010;

(f) Be accepted by the Department by scoring 100 or greater on the medically involved criteria and maintain an eligibility score of 100 or greater as determined by a reassessment annually;

(g) Require services offered under the MICP;

(h) Reside in the family home; and

(i) Be safely served in the family home. This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-355-0040, and participate in planning, monitoring, and evaluation of the MICP services provided.

(2) TRANSFER OF ASSETS.

(a) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(A) An annuity evaluated according to OAR 461-145-0022;

(B) A transfer of property when a child retains a life estate evaluated according to OAR 461-145-0310;

(C) A loan evaluated according to OAR 461-145-0330; or

(D) An irrevocable trust evaluated according to OAR 461-145-0540.

(b) When a child is considered ineligible for MICP services due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(3) ENROLLMENT. If a child meets the criteria of section (1) of this rule and space is available in the MICP, the priority of the child for enrollment is in accordance with ORS 417.345, Medically Involved Model Waiver requirements. The date the initial application is complete is the date that the Department receives all of the required demographic and referral information on the child.

(4) INELIGIBILITY. A child is not eligible for the MICP if the child:

(a) Has primary residence in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services;

(c) Receives sufficient family, government, or community resources available to provide for his or her care; or

(d) Cannot be safely served in the family home as described in section (1)(i) of this rule.

(5) REDETERMINATION. The Department redetermines the eligibility of a child for the MICP using the medically involved criteria at least every 12 months, or as the status of the child changes.

(6) TRANSITION. A child whose reassessment score on the medically involved criteria is less than 100 is transitioned out of the MICP within 30 days. The child must exit from the MICP at the end of the 30 day transition period.

(7) DISENROLLMENT.

(a) A child is disenrolled from the MICP:

(A) At the oral or written request of a parent or guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child may not be safely served in the family home as described in section (1)(i) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of MICP funds, or otherwise knowingly misused public funds associated with the MICP;

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event a child is disenrolled from the MICP, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(8) WAIT LIST. If the maximum number of children allowed on the Medically Involved Model Waiver are enrolled and being served, the Department may place a child eligible for the MICP on a wait list. A child

on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible.

(a) The date of the initial completed application for the MICP determines the order on the wait list. A child, who previously received children's intensive in-home services that currently meets the criteria for eligibility as described in section (1) of this rule, is put on the wait list as of the date the original application for MICP services was complete.

(b) The date the application for the MICP is complete is the date that the Department has the required demographic data and referral information for the child.

(c) Children on the wait list are prioritized for entry if they are currently residing in a nursing facility for long term care and whose family wishes them to return home, enrolled in another waiver meeting the medically involved criteria, are residing in the community and at imminent risk of placement in a nursing facility , and as space on the Medically Involved Model Waiver allows. An evaluation is completed prior to entry to determine current eligibility.

(9) ASSESSMENT. Anyone may request an assessment for a child for MICP services.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0030
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry in to the MICP;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs assessment.

(c) The parent or guardian must participate in the functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of a service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the services coordinator must mail a notice of the assessment process to the parent or guardian. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The ISP must be facilitated, developed, and authorized by a services coordinator.

(B) The initial ISP must be authorized:

(i) No more than 90 days from the date of eligibility determination made by the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with MICP funds and annually thereafter that identifies:

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the child;

(C) The projected dates of when specific supports are to begin and end;

(D) A list of personal, community, and alternative resources that are available to the child and how the resources may be applied to provide the required supports. Sources of support may include waiver services, Community First Choice state plan services, other state plan services, state general funds, or natural supports;

(E) The manner in which services are delivered and the frequency of the services;

(F) The maximum hours or units of provider services determined necessary by a functional needs assessment;

(G) Provider type;

(H) Additional services authorized by the Department for the child;

(I) Projected costs with sufficient detail to support estimates;

(J) The strengths and preferences of the child;

(K) Individually identified goals and desired outcomes of the child;

(L) The services and supports (paid and unpaid) to assist the child to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;

(M) The risk factors and the measures in place to minimize the risk factors, including back-up plans for assistance with support and service needs;

(N) The identity of the person responsible for case management and monitoring the ISP;

(O) The date of the next ISP review that must be completed within 12 months of the previous ISP;

(P) A provision to prevent unnecessary or inappropriate care; and

(Q) Any changes in support needs identified through a functional needs assessment.

(d) An ISP must be reviewed with the child (as appropriate) and parent or guardian prior to implementation. The child (as appropriate), parent or guardian, and the services coordinator must sign the ISP and a copy must be provided to the child (as appropriate) and parent or guardian.

(e) The ISP must be understandable to the family and the people important in supporting the child. An ISP is translated, as necessary, upon request.

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and medically involved criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be renewed at least every 12 months.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0040
Scope of MICP Services and Limitations

(1) MICP services are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the MICP. MICP services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) When multiple children in the same family home or setting qualify for MICP services, the same provider may provide services to all qualified children if services may be safely delivered by a single provider, as determined by the services coordinator.

(3) The use of MICP funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of assessed hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include attendant care, skills training, and state plan personal care service hours as described in OAR chapter 411, division 034; and

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the Expenditure Guidelines.

(4) To be authorized and eligible for payment by the Department, all MICP services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines; and

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(5) When conditions of purchases are met and provided purchases are not prohibited, MICP funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (6) of this rule;

(B) Community nursing services as described in section (7) of this rule;

(C) Environmental modifications as described in section (8) of this rule;

(D) Attendant care as described in section (9) of this rule;

(E) Skills training as described in section (10) of this rule;

(F) Relief care as described in section (11) of this rule;

(G) Assistive devices as described in section (12) of this rule;

(H) Assistive technology as described in section (13) of this rule;

(I) Chore services as described in section (14) of this rule;

(J) Community transportation as described in section (15) of this rule; and

(K) Transition costs as described in section (16) of this rule.

(b) Home and community-based waiver services:

(A) Case management as defined in OAR 411-355-0010;

(B) Family training as described in section (17) of this rule;

(C) Environmental safety modifications as described in section (18) of this rule;

(D) Vehicle modifications as described in section (19) of this rule;

(E) Specialized medical supplies as described in section (20) of this rule;

(F) Special diet as described in section (21) of this rule; and

(G) Individual-directed goods and services as described in section (22) of this rule.

(c) State Plan personal care services.

(6) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must:

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness, etc.) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-355-0010.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training the primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(7) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude private duty nursing care.

(c) A Nursing Service Plan must be present when MICP funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(8) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove, etc.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the family home, excluding external ramps; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and the determination by the Department of appropriateness and cost effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work as defined in OAR 411-355-0010 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(9) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) ADL services include, but are not limited to:

(A) Basic personal hygiene — providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(B) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing a child or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(C) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning a child or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(D) Nutrition - assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(E) Delegated nursing tasks;

(F) First aid and handling emergencies — addressing medical incidents related to the conditions of a child, such as seizure, aspiration, constipation, or dehydration, responding to the call of the child for help during an emergent situation, or for unscheduled needs requiring immediate response;

(G) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments; and

(H) Observation of the status of a child and reporting of significant changes to a physician, health care provider, or other appropriate person.

(b) IADL services include, but are not limited to, the following services provided solely for the benefit of the child:

(A) Light housekeeping tasks necessary to maintain the child in a healthy and safe environment - cleaning surfaces and floors, making the child's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(B) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(C) Meal preparation and special diets;

(D) Cognitive assistance or emotional support provided to a child - helping the child cope with change and assisting the child with decision-making, reassurance, orientation, memory, or other cognitive functions;

(E) Medication and medical equipment - assisting with ordering, organizing, and administering medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring a child for choking while taking medications, assisting with the administration of medications, maintaining equipment, or monitoring for adequate medication supply; and

(F) Support in the community around socialization and participation in the community:

(i) Support with socialization - assisting a child in acquiring, retaining, and improving self-awareness and self-control, social responsiveness, social amenities, and interpersonal skills;

(ii) Support with community participation - assisting a child in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses; and

(iii) Support with communication - assisting a child in acquiring, retaining, and improving expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(c) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance

or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any of the IADL tasks described in subsection (b) of this section.

(A) "Cueing" means giving verbal, audio, or visual cues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(d) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(e) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services as defined in this rule available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment and medically involved criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(G) Services provided by the family; and

(H) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(10) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(11) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential, but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider chosen by the parent or guardian as a safe setting for the child; or

(D) The community during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the child.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than seven consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(12) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may be purchased with MICP funds when the disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(b) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(f) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(13) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(14) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(15) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(16) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(17) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the disability or medical condition of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop, costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for individual family members who are employed to care for the child.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(18) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct medical or remedial benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(f) In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work as defined in OAR 411-355-0010 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(19) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(20) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961 as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(21) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods and vitamins.

(22) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services, OHP, or Medicaid State Plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment;

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age; or

(D) Purchased solely due to the inability of the parent or guardian to pay for an item or service.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(23) The assessed supports as authorized by the Department in the ISP, dated from the initial ISP to the anniversary date, must not be exceeded. Supports may increase or decrease in direct relationship to the functional needs assessment.

(24) All MICP services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the assessed needs of a child as determined by a services coordinator. Any goods purchased with MICP funds that are not used according to an ISP may be immediately recovered by the Department.

(25) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) The child is not safely served in the family home without the expenditure;

(b) The expenditure provides supports for emerging or changing service needs or behaviors of the child;

(c) A significant medical condition or event, as documented by a primary caregiver, prevents or seriously impedes the primary caregiver from providing services; or

(d) The services coordinator, and if appropriate a behavior consultant, determines that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that the caregiver, including the parent or guardian, and where indicated, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(26) Payment for MICP services is made in accordance with the Expenditure Guidelines.

(27) The Department does not pay for MICP services that are:

(a) Illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(b) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(c) Not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-355-0010;

(d) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(e) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(f) Medical treatments; or

(g) Provided by private health insurance, OHP, or alternative resources.

Stat. Auth.: ORS 409.050, 417.345

Stats. Implemented: ORS 417.345, 427.007, 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0045

Standards for Employers

(1) EMPLOYER OF RECORD. An employer of record is required when a personal support worker who is not an independent contractor is selected by a parent or guardian to provide supports. The Department may not act as the employer of record.

(2) SERVICE AGREEMENT. The employer must create and maintain a service agreement for a personal support worker that is in coordination with the services authorized in the ISP.

(3) BENEFITS. Only personal support workers qualify for benefits. The benefits provided to personal support workers are described in OAR chapter 411, division 375.

(4) INTERVENTION. For the purpose of this rule, "intervention" means the action the Department or the designee of the Department

requires when an employer fails to meet the employer responsibilities described in this rule. Intervention includes, but is not limited to:

(a) A documented review of the employer responsibilities described in section (5) of this rule;

(b) Training related to employer responsibilities;

(c) Corrective action taken as a result of a personal support worker filing a complaint with the Department, the designee of the Department, or other agency who may receive labor related complaints;

(d) Identifying an employer representative if a person is not able to meet the employer responsibilities described in section (5) of this rule; or

(e) Identifying another representative if the current employer representative is not able to meet the employer responsibilities described in section (5) of this rule.

(5) EMPLOYER RESPONSIBILITIES.

(a) For a child to be eligible for MICP services provided by an employed personal support worker, an employer must demonstrate the ability to:

(A) Locate, screen, and hire a qualified personal support worker;

(B) Supervise and train the personal support worker;

(C) Schedule work, leave, and coverage;

(D) Track the hours worked and verify the authorized hours completed by the personal support worker;

(E) Recognize, discuss, and attempt to correct any performance deficiencies with the personal support worker and provide appropriate, progressive, disciplinary action as needed; and

(F) Discharge an unsatisfactory personal support worker.

(b) Indicators that an employer may not be meeting the employer responsibilities described in subsection (a) of this section include, but are not limited to:

(A) Personal support worker complaints;

(B) Multiple complaints from a personal support worker requiring intervention from the Department as defined in section (4) of this rule;

(C) Frequent errors on timesheets, mileage logs, or other required documents submitted for payment that results in repeated coaching from the Department;

(D) Complaints to Medicaid Fraud involving the employer; or

(E) Documented observation by the Department of services not being delivered as identified in an ISP.

(c) The Department may require intervention as defined in section (4) of this rule when an employer has demonstrated difficulty meeting the employer responsibilities described in subsection (a) of this section.

(d) A child may not receive MICP services provided by a personal support worker if, after appropriate intervention and assistance, an employer is not able to meet the employer responsibilities described in subsection (a) of this section. The child may receive MICP services provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) A parent or guardian not able to meet all of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative in order for the child to receive or continue to receive MICP services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MICP services.

(b) A parent or guardian able to demonstrate the ability to meet some of the employer responsibilities described in section (5)(a) of this rule must:

(A) Designate an employer representative to fulfill the responsibilities the parent or guardian is not able to meet in order for the child to receive or continue to receive MICP services provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent or guardian and the employer responsibilities to be performed by the employer representative.

(c) When an employer representative is not able to meet the employer responsibilities described in section (5)(a) or the qualifications in section (7)(c) of this rule, the parent or guardian must:

(A) Designate a different employer representative in order for the child to receive or continue to receive MICP services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MICP services.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian must seek an alternate employer for purposes of the employment of the personal support worker. The alternate employer must:

(A) Track the hours worked and verify the authorized hours completed by the personal support worker; and

(B) Document the specific employer responsibilities performed by the employer on a Department-approved form.

(c) The Department may suspend, terminate, or deny a request for an employer representative if the requested employer representative has:

(A) A founded report of child abuse or substantiated adult abuse;

(B) Participated in billing excessive or fraudulent charges; or

(C) Failed to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (5)(a) or (7)(b) of this rule.

(d) If the Department suspends, terminates, or denies a request for an employer representative for the reasons described in subsection (c) of this section, the parent or guardian may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent or guardian when:

(A) The Department denies, suspends, or terminates an employer from performing the employer responsibilities described in sections (5)(a) or (7)(b) of this rule; and

(B) The Department denies, suspends, or terminates an employer representative from performing the employer responsibilities described in section (5)(a) or (7)(b) of this rule because the employer representative does not meet the qualifications in section (7)(c) of this rule.

(b) If the parent or guardian does not agree with the action taken by the Department, the parent or guardian may request an administrator review.

(A) The request for an administrator review must be made in writing and received by the Department within 45 days from the date of the notice.

(B) The determination of the Director is issued in writing within 30 days from the date the written request for an administrator review was received by the Department.

(C) The determination of the Director is the final response from the Department.

(c) When a denial, suspension, or termination of an employer results in the Department denying, suspending, or terminating a child from MFC services, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050, 417.345

Stats. Implemented: ORS 417.345, 427.007, 430.215

Hist.: APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0050

Standards for Providers Paid with MICP Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide MICP services must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

(I) Based on possible criminal activity or other allegations against the independent provider, a new fitness determination is conducted resulting in a change in approval status; or

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

(D) Be legally eligible to work in the United States;

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, spouse, or other person legally responsible for the child receiving MICP services;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP for the child, with such demonstration confirmed in writing by the parent or guardian including:

(i) Ability and sufficient education to follow oral and written instructions and keep any records required;

(ii) Responsibility, maturity, exercising sound judgment, and reputable character;

(iii) Ability to communicate with the parent or guardian;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

(I) Not be on the list of excluded or debarred providers maintained by the Office of Inspector General (http://exclusions.oig.hhs.gov/);

(J) If providing transportation, a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (1)(a)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom MICP services are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-355-0040;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) The following provider organizations may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services:

(A) 24-hour residential settings certified, endorsed, and licensed under OAR chapter 411, division 325;

(B) Foster homes for children certified under OAR chapter 411, division 346;

(C) Foster homes for adults licensed under OAR chapter 411, division 360;

(D) Employment settings certified and endorsed under OAR chapter 411, divisions 323 and 345; and

(E) Supported living settings certified and endorsed under OAR chapter 411, divisions 323 and 328.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with MICP funds must hold any current license appropriate to operate required by the State of Oregon or federal law or regulation. Services purchased with MICP funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental modification consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Division of Medical Assistance Programs;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0075
Provider Enrollment Inactivation and Termination

(1) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(A) The provider has not provided any paid services to a child within the last previous 12 months;

(B) The provider informs the Department, CDDP, MICP, or Support Services Brokerage that the provider is no longer providing services in Oregon;

(C) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(D) The actions of the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(E) Payments to the provider, either whole or in part, for the provider have been suspended based on a credible allegation of fraud or has a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(b) The enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated adult abuse;

(F) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made a false statement concerning conviction of a crime or substantiated abuse;

(I) Falsified required documentation;

(J) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(K) Violated the requirement to maintain a drug-free work place;

(L) Failed to provide services as required;

(M) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(N) Been excluded or debarred by the Office of the Inspector General.

(c) If the Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the Department must issue a written notice. The written notice must include:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in subsection (A) or (B) of this section; and

(C) The appeal rights for the independent provider, including how to file an appeal.

(d) For terminations based on substantiated abuse allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(e) The provider may appeal a termination within 30 days from the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days from the date the termination notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215
Hist.: APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0080
MICP Documentation Needs

(1) Accurate timesheets of MICP services must be dated and signed by the provider and the parent or guardian of the child after the services are provided. Timesheets must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MICP services must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the provider acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the parent or guardian of the child after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of MICP services provided must be provided to the services coordinator upon request or as outlined in the ISP for the child and maintained in the family home or the place of business of the provider of services. The Department does not pay for services that are not outlined in the ISP for the child or unrelated to the disability of the child.

(4) The Department retains billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit the following to the Department written in clear, concrete language, understandable to the parent or guardian of the child and the provider:

(a) An evaluation of the child, the concerns of the parent or guardian, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or provider that describes the suggested strategies to be used with the child.

(6) A Nursing Service Plan must be developed within seven days of the initiation of MICP services and submitted to the Department for approval when services which require nursing delegation are provided.

(a) The Nursing Service Plan must be reviewed, updated, and resubmitted to the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the nurse who writes the Nursing Service Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospital admission or change in health status.

(b) The provider must share the Nursing Service Plan with the parent or guardian.

(7) The Department must be notified by the provider or the primary caregiver within one working day of the hospitalization or death of any eligible child.

(8) Providers must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(9) Providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, and within the time frame specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(10) Access to records by the Department, including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the child or the parent or guardian of the child.

Stat. Auth.: ORS 409.050, 417.345
Stats. Implemented: ORS 417.345, 427.007, 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0090
Payment for MICP Services

(1) Payment is made after MICP services are delivered as authorized.

(2) Effective July 28, 2009, MICP funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(3) Section (2) of this rule does not apply to an employee of a parent or guardian or a provider who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(4) Payment for MICP services is made in accordance with the Expenditure Guidelines.

(5) Service levels are based on the individual needs of a child as identified by a functional needs assessment and medically involved criteria and authorized in the ISP for the child.

(6) Authorization must be obtained prior to the delivery of any MICP services for the services to be eligible for payment.

(7) A providers must request payment authorization for MICP services provided during an unforeseeable emergency on the first business day following the emergency service. A services coordinator must determine if the service is eligible for payment.

(8) The Department makes payment to the employee of a parent or guardian on behalf of the parent or guardian. The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds FICA as a service to the parent or guardian, who is the employer.

(9) The delivery of authorized MICP services must occur so that any individual employee of the parent or guardian does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime without prior written authorization by the supervisor of children's intensive in-home services.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) Payment by the Department for MICP services is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for MICP services from the parent, guardian, or any other source, under any circumstances.

(13) Medicaid funds are the payor of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(14) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

(15) The Department may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child, such as hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent or guardian to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties;

(d) Documentation of a person who is subject to background checks on or after July 28, 2009, as required by administrative rule, has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275; or

(e) Any situation, as determined by the services coordinator that puts the health or safety of the child at risk.

(16) Section (15)(d) of this rule does not apply to employees of parents or guardians or billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(17) Upon submission of the billing form for payment, a provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973 as amended;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MICP services provided within the licensure and certification of the provider.

(19) The provider must submit true and accurate information on the billing form. Use of a provider organization does not replace the responsibility of the provider for the truth and accuracy of submitted information.

(20) A person may not submit the following to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for MICP services that have not been provided.

(21) The Department only makes payment to an enrolled provider who actually performs the MICP services or the enrolled provider organization. Federal regulations prohibit the Department from making payment to a collection agency.

(22) Payment is denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a parent or guardian, the parent or guardian has the right to request a hearing as provided in ORS chapter 183.

(24) The Department makes payment for MICP services after services are delivered as authorized in the ISP for the child and required documentation is received by the services coordinator.

(25) In order to be eligible for payment, requests for payments must be submitted to the Department within 12 months of the delivery of MICP services.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

411-355-0100

Rights, Complaints, Notification of Planned Action, and Hearings

(1) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to the parent or guardian and the child.

(2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 must be explained and provided to the parent or guardian of each child.

(3) NOTIFICATION OF PLANNED ACTION. In the event MICP services are denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) The parent or guardian may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings as described in OAR chapter 411, division 318 must be explained and provided to the parent or guardian of each child.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15

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Rule Caption: DHS - Home and Community-Based (HCB) Services and Settings and Person-Centered Service Planning
Adm. Order No.: APD 23-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 411-004-0000, 411-004-0010, 411-004-0020, 411-004-0030, 411-004-0040
Subject: To implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Human Services (Department) is adopting rules in OAR chapter 411, division 004 to provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The rules ensure individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater

community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Seek employment and work in competitive integrated employment settings;
- Engage in community life;
- Control personal resources; and
- Receive services in the community.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-004-0000
Statement of Purpose

The rules in OAR chapter 411, division 4 provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon. Additional standards are set forth in OAR chapters 309 and 411.

(1) These rules are consistent with the missions and goals of the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to help people achieve optimum physical, mental, and social well-being and independence.

(2) These rules ensure that individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

(a) Seek employment and work in competitive integrated employment settings;

(b) Engage in greater community life;

(c) Control personal resources; and

(d) Receive services in the greater community.

(3) These rules implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) in the following areas:

(a) HCBS and HCB settings authorized under the following Medicaid authorities:

(A) 1915(c) — HCBS Waivers;

(B) 1915(i) — State Plan HCBS; or

(C) 1915(k) — Community First Choice (K State Plan Option).

(b) HCBS and HCB settings delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) Programs, services, or settings designated as HCB and licensed, certified, or endorsed by, and receiving oversight from, the DHS, Office of Licensing and Regulatory Oversight or OHA;

(d) Alternative resources specifically authorized as HCB by DHS or OHA; and

(e) Person-centered service plans for individuals receiving HCBS. Person-centered service plans provide the written details of the supports, desired outcomes, activities, and resources required for individuals to achieve and maintain personal goals and health and safety.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16

411-004-0010
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 4:

(1) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(2) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(3) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:

(A) Chosen by the individual or, as applicable, the legal representative of the individual;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual or, as applicable, the legal representative of the individual to serve as the representative of the individual or, as applicable, the legal representative in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(4) "DHS" means the Department of Human Services.

(5) "HCB" means "Home and Community-Based".

(6) "HCBS" means "Home and Community-Based Services". HCBS are services provided in the home or community of an individual.

(a) HCBS are authorized under the following Medicaid authorities:

(A) 1915(c) — HCBS Waivers;

(B) 1915(i) — State Plan HCBS; or

(C) 1915(k) — Community First Choice (K State Plan Option).

(b) HCBS are delivered through the following program areas:

(A) DHS, Aging and People with Disabilities;

(B) DHS, Office of Developmental Disabilities Services; and

(C) OHA.

(c) DHS or OHA may designate other services, delivered under (6)(b) above, as HCBS.

(7) "HCB Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives HCBS.

(8) "Heightened Scrutiny" means the process set out in OAR 411-004-0020(7)(e) that DHS or OHA uses when determining if a setting meets the criteria to be considered a HCB setting.

(9) "Individual" means a person enrolled in or utilizing HCBS.

(10) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(11) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to an individual and, as applicable, the legal representative of the individual, in a manner that the individual and, as applicable, the legal representative, comprehends; and

(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(12) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

(13) "OHA" means the Oregon Health Authority.

(14) "Person-Centered Service Plan" means, for Medicaid eligible individuals, the written details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030 as documented by the person-centered service plan coordinator.

(15) "Person-Centered Service Plan Coordinator" means case managers, service coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service planning for and with individuals.

(16) "Provider" means any person or entity providing HCBS.

(17) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering HCBS to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(18) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving HCBS in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(19) "Room and Board" means compensation for the provision of meals and a place to sleep.

(20) "These Rules" mean the rules in OAR chapter 411, division 4.

(21) "Unit" means the personal space and bedroom of an individual receiving HCBS in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16

411-004-0020
Home and Community-Based Services and Settings

(1) Residential and non-residential HCB settings must have all of the following qualities:

(a) The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The residential or non-residential setting is selected by an individual or, as applicable, the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the person-centered service plan for the individual;

(B) Based on the needs and preferences of the individual;

(C) For residential settings, based on the available resources of the individual for room and board; and

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the person-centered service plan.

(c) The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint.

(d) The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact.

(e) The setting facilitates individual choice regarding services and supports, and who provides the services and supports.

(2) Provider owned, controlled, or operated residential settings must have all of the following qualities:

(a) The setting meets all the qualities in section (1) of this rule.

(b) The setting is physically accessible to an individual.

(c) The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement. The individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord tenant law of the state, county, city, or other designated entity. For a setting in which landlord tenant laws do not apply, the Residency Agreement must provide protections for the individual and address eviction and appeal processes. The eviction and appeal processes must be substantially equivalent to the processes provided under landlord tenant laws.

(d) Each individual has privacy in his or her own unit.

(e) Units must have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit.

(f) Individuals sharing units must have a choice of roommates.

(g) Individuals must have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(h) Each individual may have visitors of his or her choosing at any time.

(i) Each individual has the freedom and support to control his or her own schedule and activities.

(j) Each individual has the freedom and support to have access to food at any time.

(3) The qualities of an HCB setting described in sections (2)(d) to (2)(j) of this rule apply to children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities. Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, shall be addressed through a person-centered service planning process and documented in the person-centered service plan for the child. Limitations which deviate from and are more restrictive than what is typical for children of the same age without disabilities, must comply with OAR 411-004-0040.

(4) When conditions under sections (2)(d) to (2)(j) of this rule may not be met due to threats to the health and safety of the individual or others, the person-centered service plan may apply an individually-based limitation with the consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(5) Providers initially licensed, certified, or endorsed by DHS or OHA on or after January 1, 2016 must meet the requirements in this rule prior to being licensed, certified, or endorsed.

(6) Providers licensed, certified, or endorsed prior to January 1, 2016 must make measurable progress toward compliance with these rules and be in full compliance with these rules by September 1, 2018.

(7) HCB settings do not include the following:

(a) A nursing facility;

(b) An institution as outlined in ORS 426.010;

(c) An intermediate care facility for individuals with intellectual disabilities;

(d) A hospital providing long-term care services; or

(e) Any other setting that has the qualities of an institution.

(A) The following settings are presumed to have the qualities of an institution:

(i) A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;

(ii) A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution; or

(iii) A setting that has the effect of isolating individuals receiving HCBS from the greater community.

(B) In addition to the qualities under subsection (A) above, non-residential settings that isolate individuals receiving HCBS from the greater community and are presumed to have the qualities of an institution also include:

(i) Facility-based prevocational settings that do not, at minimum, provide interaction with the general public; or

(ii) Facility or site-based non-residential day service settings that do not, at minimum, facilitate going out into the greater community.

(C) A setting that is presumed to have the qualities of an institution, as described in this section, will be subject to a heightened scrutiny process. If a setting has indicators that lead the State to question their HCBS status,

the setting will be given the opportunity to rebut that presumption by submitting evidence of their compliance with these regulations. Based on the evidence, the State may determine that a setting has not overcome the presumption and HCBS funding will not be utilized. If the State determines that a setting has provided adequate evidence to rebut the presumption that it has the qualities of an institution, the State will submit the evidence to CMS after a public comment period. CMS determines, based on information presented by DHS, OHA, or other parties, whether the setting is home and community-based or is institutional in nature. If CMS determines that a setting has not overcome the presumption and is institutional in nature, HCBS funding will not be utilized.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16

411-004-0030
Person-Centered Service Plans

(1) PERSON-CENTERED SERVICE PLANNING PROCESS. A person-centered service plan must be developed through a person-centered service planning process. The person-centered service planning process:

(a) Is driven by the individual;

(b) Includes people chosen by the individual;

(c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(e) Reflects the cultural considerations of the individual;

(f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the legal or designated representative of the individual;

(g) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as:

(A) Discussing the concerns of the individual and determining acceptable solutions;

(B) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(C) Utilizing any available greater community conflict resolution resources;

(D) Referring concerns to the Office of the Long-Term Care Ombudsman; or

(E) For Medicaid recipients, following existing, program-specific grievance processes.

(h) Offers choices to the individual regarding the services and supports the individual receives, and from whom, and records the alternative HCB settings that were considered by the individual;

(i) Provides a method for the individual or, as applicable, the legal or designated representative of the individual, to request updates to the person-centered service plan for the individual, as needed;

(j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(l) Includes any services that are self-directed, if applicable;

(m) Includes, but is not limited to, individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;

(n) Includes risk factors and plans to minimize any identified risk factors; and

(o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in section (2)(d) of this rule. The person-centered service plan is distributed to the individual, and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described below in section (2)(d) of this rule.

(2) PERSON-CENTERED SERVICE PLANS.

(a) For individuals receiving Medicaid:

(A) The person-centered service plan coordinator documents the person-centered service plan on behalf of the individual and provides the necessary information and supports to ensure the individual directs the person-centered service planning process to the maximum extent possible.

(B) The person-centered service plan must be developed by the individual and, as applicable, the legal or designated representative of the individual, and the person-centered service plan coordinator. Others may be included only at the invitation of the individual and, as applicable, the legal or designated representative.

(C) To avoid conflict of interest, the person-centered service plan may not be developed by the provider of HCBS for individuals receiving Medicaid. Exceptions may be granted when DHS or OHA has determined that the only willing and qualified entity to provide case management and develop the person-centered service plan in a specific geographic area also provides HCBS.

(b) For private pay individuals, a person-centered service plan will be developed by the individual, or, as applicable, the legal or designated representative of the individual, and others chosen by the individual. Providers may assist private pay individuals in developing person-centered service plans when no alternative resources are available. Private pay individuals are not required to have a written person-centered service plan.

(c) For individuals receiving Medicaid services the written person-centered service plan reflects:

(A) HCBS and setting options based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;

(B) The HCBS and settings are chosen by the individual and are integrated in, and support full access to, the greater community;

(C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option must be presented and documented in the person-centered service plan;

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;

(E) The strengths and preferences of the individual;

(F) The service and support needs of the individual;

(G) The goals and desired outcomes of the individual;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People who are important in supporting the individual;

(L) The person responsible for monitoring the person-centered service plan;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and, as applicable, the legal or designated representative of the individual;

(N) The written informed consent of the individual or, as applicable, the legal or designated representative of the individual;

(O) Signatures of the individual or, as applicable, the legal or designated representative of the individual, participants in the person-centered service planning process, and all people and providers responsible for the implementation of the person-centered service plan as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The individual or, as applicable, the legal or designated representative of the individual, decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers must have access to the portion of the person-centered service plan that the provider is responsible for implementing.

(e) The person-centered service plan is distributed to the individual and, as applicable, the legal or designated representative of the individual, and other people involved in the person-centered service plan as described above in subsection (d) of this section.

(f) The person-centered service plan must justify and document an individually-based limitation as described in OAR 411-004-0040 when conditions under OAR 411-004-0020(2)(d) to (2)(j) may not be met due to threats to the health and safety of the individual or others.

(g) The person-centered service plan must be reviewed and revised:

(A) At the request of the individual or, as applicable, the legal or designated representative of the individual;

(B) When the circumstances or needs of the individual change; or

(C) Upon reassessment of functional needs as required every 12 months.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16

411-004-0040
Individually-Based Limitations

This rule becomes effective on July 1, 2016.

(1) When conditions under OAR 411-004-0020(2)(d) to (2)(j) may not be met due to threats to the health and safety of an individual or others, provider owned, controlled, or operated residential settings must apply individually-based limitations as described in this rule.

(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to any individually-based limitation;

(c) Less intrusive methods that have been tried but did not work;

(d) A clear description of the limitation that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(g) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(h) An assurance that the interventions and support do not cause harm to the individual.

(3) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16

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Department of Human Services, Child Welfare Programs
Chapter 413

Rule Caption: Amending child welfare rules
Adm. Order No.: CWP 25-2015(Temp)
Filed with Sec. of State: 11-24-2015
Certified to be Effective: 11-24-15 thru 5-21-16
Notice Publication Date:
Rules Amended: 413-030-0400, 413-040-0010, 413-070-0551, 413-080-0050
Rules Suspended: 413-080-0050(T)
Subject: The Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules to make language clarifications related to implementation of federal legislation HR 4980. Changes are immediately required to achieve state plan compliance. Specifically, "independent living" is being changed to "successful adulthood" and the definition of "sex trafficking" is being amended to include "patronizing or soliciting" a person for the purpose of a commercial sex act.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-030-0400
Purpose

The purpose of OAR 413-030-0400 to 413-030-0460 is to describe the responsibilities of the Department for comprehensive transition planning with and providing services to a child or young adult to:

(1) Obtain personal and emotional support and promote healthy relationships that can be maintained into adulthood;

(2) Develop the personal life management skills necessary to function independently;

(3) Receive education, training, and services necessary to lead to employment;

(4) Attain academic or vocational education and prepare for post-secondary education or training;

(5) Gain experience in taking responsibility and exercising decision-making control; and

(6) Transition to successful adulthood.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 418.475, 419B.343, 419B.476(3)
Hist.: SOSCF 1-2002, f. & cert. ef. 1-22-02; CWP 16-2009, f. & cert. ef. 11-3-09; CWP 25-2015(Temp), f. & cert. ef. 11-24-15 thru 5-21-16

413-040-0010
Requirements for the Case Plan

(1) The caseworker must analyze the information gathered during the protective capacity assessment to develop a case plan. The case plan must include all of the following information:

(a) Family composition, which includes the information identifying each child, each young adult, and each parent or guardian.

(b) Original impending danger safety threats identified in the CPS assessment as described in OAR 413-015-0425.

(c) The ongoing safety plan including any additional impending danger safety threats identified since the CPS assessment, as described in OAR 413-015-0450 and recorded in the Department's information system.

(d) The findings of the protective capacity assessment.

(e) Expected outcomes and actions that each parent or guardian is taking to achieve them.

(f) Services (if applicable) to the child or young adult that include:

(A) The identified needs of and services provided to any child or young adult placed in substitute care, including the results of the CANS screening, the personal care services provided to an eligible child or young adult under OAR 413-090-0100 to 413-090-0210, and other current assessments or evaluations of the child or young adult, and the reasons the substitute care placement is the least restrictive placement to meet the child or young adult's identified needs;

(B) The health information of the child or young adult, which documents the child's routine and specialized medical, dental, and mental health services;

(C) The education services of the child or young adult, the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or a young adult, and any special educational needs; and

(D) Services to transition the child or young adult to successful adulthood in all cases when the child is 14 years of age or older.

(g) Services the Department will provide including:

(A) Case oversight and routine contact with the parents or guardians and the child or young adult;

(B) Appropriate and timely referrals to services and service providers suitable to address identified impending danger safety threats or strengthen parental protective capacity;

(C) Appropriate and timely referrals to services and service providers suitable to address the needs of the child or young adult as identified through the CANS screening and other current assessments or evaluations of the child or young adult; and

(D) Timely preparation of reports to the court or other service providers.

(h) The date that the progress of the parents or guardians in achieving expected outcomes will be reviewed. The case plan must be reviewed with the parents or guardians every 90 days; however, the caseworker and parents or guardians may agree on a review date at any time within the 90-day period.

(i) When the child or young adult is in substitute care, the case plan must also include:

(A) Current placement information including:

(i) The location of the child or young adult and the substitute caregiver of the child or young adult, except when doing so would jeopardize the safety of the child, young adult, or the substitute caregiver, or the substitute caregiver will not authorize release of the address; and

(ii) Documentation that shows that the child or young adult is receiving safe and appropriate care in the least restrictive environment able to provide safety and well-being for the child or young adult.

(B) The child or young adult's record of visits with his or her parents and siblings.

(C) The permanency plan.

(D) The conditions for return.

(E) The concurrent permanent plan and the progress the Department has made in implementing the concurrent permanent plan.

(j) The case plan for any child or young adult in foster care who has attained 14 years of age must include:

(A) A document that describes:

(i) The rights of the child or young adult with respect to education, health, visitation, and court participation;

(ii) The right to be provided with a copy of the young adult's birth certificate, social security card, health insurance information, medical records, and a driver's license or equivalent state-issued identification card when the child leaves foster care having attained age 18 or greater; and

(iii) The right to stay safe and avoid exploitation.

(B) A signed acknowledgment by the child or young adult that the child or young adult has been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way.

(2) As applicable, the caseworker must also include in the case plan:

(a) The goals and activities required for an Indian child under OAR 413-010-0100 to 413-010-0260 or for a refugee child under OAR 413-070-0300 to 413-070-0380.

(b) Recommendations of expert evaluations requested by the Department whenever the recommendations may impact parental protective capacities or treatment services for the child or young adult. If the recommendations are not included in the case plan, the rationale must be documented in the Department's information system.

(c) Diligent efforts to place the child or young adult with relatives and with siblings who are also in substitute care, sibling connections, and the Department's efforts to keep siblings together.

(d) Orders of the court.

(3) The persons involved with the Department in the development of the case plan include:

(a) The parents or guardians, unless their participation threatens or places other participants at risk;

(b) The child who has obtained 14 years of age or the young adult; and

(c) At the option of the child or young adult, up to two members of the case planning team chosen by the child or young adult who are not:

(A) A foster parent;

(B) A caseworker for the child or young adult; or

(C) An individual the Department has good cause to believe would not act in the best interests of the child or young adult.

(d) One of the individuals in subsection (c) of this section may be designated to be the advisor of the child or young adult, and as needed, advocate for the child or young adult with respect to the application of the reasonable and prudent parent standard to the child or young adult.

(4) Additional persons involved with the Department in the development of the case plan may include the child regardless of age or young adult, adoptive parents, an Indian custodian when applicable, other relatives, persons with significant attachments to the child or young adult, the substitute caregiver, and other professionals when appropriate.

(5) The case plan must include the signature of the caseworker and each parent or guardian, unless subsections (7)(a) or (7)(b) of this rule apply.

(6) Approval and distribution of the case plan.

(a) The Child Welfare supervisor must approve and sign the case plan.

(b) The caseworker must give a copy of the case plan to the parents or guardians of the child or young adult, and the Indian child's tribe when applicable, as soon as possible but no later than seven working days after the case plan is approved by the supervisor, except when doing so would provide information that places another person at risk.

(7) Exceptions and exemptions to the required case plan.

(a) A court may authorize an exception to the involvement of the parents or guardians when it determines that reasonable efforts to return the child home are not required, as described in OAR 413-070-0515.

(b) When the Department has custody of a child or young adult in substitute care and is unable to obtain the signature of a parent or guardian, the caseworker must prepare and send a letter of expectations and a copy of the case plan to the parent or guardian within seven working days after the supervisor has approved and signed the case plan. A letter of expectations means an individualized written statement for the family of the child or young adult that identifies family behaviors, conditions, or circumstances that resulted in an unsafe child; the expected outcomes; and what the Department expects each parent or guardian will do to achieve safety, permanency, and well-being of the child or young adult in the parental home.

(c) A case plan as described in sections (1) to (5) of this rule is not required if a family, child, or young adult is eligible for Family Support Services as described in OAR 413-030-0000 to 413-030-0030.

(8) Timeline for case plan development. The caseworker must develop the case plan within 60 days of a child's removal from home or within 60 days of the completion of the CPS assessment, in cases where the child remains in the home of a parent or guardian.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 8-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; SCF 4-1997, f. 6-19-97, cert. ef. 6-28-97; SOSCF 15-1998, f. & cert. ef. 7-27-98; SOSCF 4-2000(Temp), f. & cert. ef. 1-31-00 thru 7-28-00; SOSCF 19-2000, f. & cert. ef. 8-8-00; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 18-2008, f. & cert. ef. 8-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 25-2015(Temp), f. & cert. ef. 11-24-15 thru 5-21-16

413-070-0551

Contents of an APPLA Case Plan

(1) When APPLA is the permanency plan for a child or young adult, the caseworker must address each of the following in the case plan of the child or young adult:

(a) Family composition, which includes the identifying information of each parent, except when parental rights have been terminated, guardian, and sibling.

(b) Except when parental rights have been terminated, the identified impending danger safety threats.

(c) Except when parental rights have been terminated, the ongoing safety plan as described in OAR 413-015-0400 to 413-015-0485 and recorded in the electronic information system of the Department.

(d) A description of how the Department determined the APPLA is the most appropriate permanency plan for the child or young adult, and each compelling reason why the more preferred permanency plan options were not selected for the child or young adult.

(e) The steps the Department has taken to ensure the substitute caregiver is applying the reasonable and prudent parent standard and the child or young adult has regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities.

(f) A description of how the attachments and relationships of the child or young adult with each parent, sibling, other family member, advocate, substitute caregiver, and other person who provides continuity, belonging, stability, support, nurturing, and caring relationships and cultural connections for the child or young adult may be developed while the child or young adult is in substitute care and maintained when the child or young adult reaches the age of majority or the juvenile court relieves the Department of legal custody of the child or young adult. When appropriate, the description may include the following:

(A) A description of how each parent and sibling of the child or young adult may participate actively in the life of the child or young adult.

(B) For each existing relationship the child or young adult has with a permanent adult caregiver or adult parental figure who is capable of sustaining a significant relationship with the child or young adult, a description of how the relationship may be maintained.

(C) A description of how relationships with relatives and other persons involved in the child or young adult's life may be developed and maintained.

(D) Current placement information including the location of the child or young adult when the substitute caregiver authorizes release of the address, except when doing so would jeopardize the safety of the child.

(E) The record of visits between the child or young adult and his or her parents or siblings.

(g) When applicable, a description of the plan to transition a child or young adult with intellectual or developmental disabilities to an appropriate program for adults with intellectual or developmental disabilities.

(h) The comprehensive transition plan described in OAR 413-030-0400 to 413-030-0460 for any child 14 years of age or older or young adult and services that prepare the child or young adult to transition to successful adulthood.

(i) A description of the reasonable efforts made by the Department to put the services and structures described in this rule in place to meet the needs of the child or young adult and to enhance the stability of the living arrangement of the child or young adult when the child or young adult is not living with a specified adult.

(j) A description of the services the Department must provide to ensure the emotional, medical, educational, cultural, and physical needs of the child or young adult are being met, including:

(A) The health information of the child or young adult, which documents the specialized medical, dental, and mental health services of the child or young adult; and

(B) The education services of the child or young adult, including the school or educational placement history of the child or young adult, high school credits earned for a child over 14 years of age or young adult, and any special educational needs.

(k) The services required to prepare the child or young adult to live in the least restrictive setting possible at the most appropriate time.

(l) The services that may make it possible to achieve a more preferred permanency plan listed in OAR 413-070-0536(2) for the child or young adult.

(m) The services the Department may continue to make available to the parents of the child or young adult, upon request, that continue to be in the best interests of the child or young adult.

(n) For any child who has attained 14 years of age or young adult, the documents described in OAR (1)(j)(A) and (B).

(2) Except when parental rights have been terminated or the Department is unable to obtain the signature of the parent or guardian, the case plan must include the signature of the caseworker, the supervisor, and each parent or guardian as described in OAR .

Stat. Auth.: ORS 409.050, 418.005
Stats. Implemented: ORS 409.010, 418.005, 419A.004
Hist.: CWP 15-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 17-2009, f. & cert. ef. 11-3-09; Renumbered from 413-070-0548, CWP 28-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 25-2015(Temp), f. & cert. ef. 11-24-15 thru 5-21-16

413-080-0050
Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home initial safety plan or in-home ongoing safety plan.

(4) "Contact" means any communication between Child Welfare staff and a child, parent or guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. "Contact" includes, but is not limited to, communication in person, by telephone, by video-conferencing, or in writing. "Contact" may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or guardian; a court or Citizen Review Board hearing; or a family meeting.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Face-to-face" means an in-person interaction between individuals.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(10) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a child that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(11) "Initial safety plan" means a documented set of actions or interventions sufficient to protect a child from an impending danger safety threat in order to allow for completion of the CPS assessment.

(12) "Monthly face-to-face contact" means in-person interaction between individuals at least once each and every full calendar month.

(13) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

(14) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(15) "Present danger safety threat" means an immediate, significant, and clearly observable family behavior, condition or circumstance occurring in the present tense, already endangering or threatening to endanger a child. The family behavior, condition, or circumstance is happening now and it is currently in the process of actively placing a child in peril.

(16) "Protective action plan" means an immediate, same day, short-term plan, lasting a maximum of ten calendar days, sufficient to protect a child from a present danger safety threat.

(17) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(18) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(19) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(20) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(21) "Safety services" means the actions, assistance, and supervision provided by safety service providers to manage the identified present danger safety threats or impending danger safety threats to a child.

(22) "Screener" means a Department employee with training required to provide screening services.

(23) "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person under the age of 18 for the purpose of a commercial sex act or the recruitment, harboring, transportation, provision, or obtaining of a person over the age of 18 using force, fraud, or coercion for the purpose of a commercial sex act.

(24) "Social service assistant" means a Department employee with training required to provide services to assist a caseworker on an open case.

(25) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(26) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 25-2015(Temp), f. & cert. ef. 11-24-15 thru 5-21-16

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Department of Human Services, Self-Sufficiency Programs
Chapter 461

Rule Caption: Amending rules relating to the OFSET program in Multnomah County and Washington County
Adm. Order No.: SSP 31-2015(Temp)
Filed with Sec. of State: 11-30-2015
Certified to be Effective: 11-30-15 thru 5-27-16
Notice Publication Date:
Rules Amended: 461-190-0360
Subject: Oregon is required to implement a three-month time limit for SNAP benefits for ABAWD (able-bodied adults without dependents) in Multnomah County and Washington County effective January 1, 2016 because the statewide waiver of the time limits from the Food and Nutrition Service (FNS) expires December 31, 2015. Funding for employment and training is being shifted to focus on helping ABAWD clients get employment to maintain eligibility for SNAP benefits beyond three months. Therefore, the OFSET program in the districts in these counties will end effective November 30,

2015 to focus on employment and training for ABAWD. OAR 461-190-0360 is amended to reflect that.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-190-0360
Special Payments; OFSET

(1) In the OFSET program, the Department may authorize payment of not more than $80 over the eight week participation period for transportation and other costs identified in the client's case plan (see OAR 461-001-0020). If public transportation is available, the Department may issue to the client bus passes or tickets sufficient to enable the client to participate in the OFSET program activities identified in the case plan. If necessary, a client's case plan is adjusted to ensure that OFSET program participation requirements may be fulfilled at no cost to the client.

(2) The OFSET program in Multnomah County and Washington County ends effective November 30, 2015.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 31-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

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Rule Caption: Changing the start date of benefits for the GAM, OSIPM, and QMB-DW programs
Adm. Order No.: SSP 32-2015(Temp)
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-15-15 thru 6-11-16
Notice Publication Date:
Rules Amended: 461-135-0750, 461-180-0010, 461-180-0090, 461-180-0140
Subject: Effective December 1, 2015, to align with changes to the State Medicaid Plan, the Department of Human Services is changing the start date for benefits in the GAM (General Assistance Medical), OSIPM (Oregon Supplemental Income Program Medical), and QMB-DW (Qualified Medical Beneficiaries — Disabled Worker) programs. Specifically:

- OAR 461-135-0750 about OSIPM eligibility for individuals in long-term care or home and community-based care is being amended to state that OSIPM eligibility is not effective prior to the first day of the month that includes the effective date for long-term care.

- OAR 461-180-0010 about effective dates and adding a new person to an open case is being amended to state that in the GAM and OSIPM programs, the effective date for adding an individual is the first day of the month that includes the client's date of request if the client was eligible on the date of request. If the client does not meet all eligibility requirements on the date of request, but meets them within 45 days after the date of request, it is the first day of the month in which all eligibility requirements are met.

- OAR 461-180-0090 about effective dates and the initial month of medical benefits is being amended to state that in the GAM, OSIPM, and QMB-DW programs, when a client meets all eligibility requirements on the date of request, the effective date for starting medical benefits is the first day of the month that includes the date of request. If the client does not meet all eligibility requirements on the date of request, the effective date of medical benefits is the first day of the month that includes the date all eligibility requirements are met, provided all eligibility requirements are met within 45 days of the date of the request.

- OAR 461-180-0140 about effective dates for retroactive medical benefits is being amended to state that in the OSIPM program, the earliest date the applicant can be eligible is the first day of the third month before the month that includes the date of request. After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the last day of the month prior to the month that includes the date of request.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-135-0750
Eligibility for Individuals in Long-Term Care or Home and Community-Based Care; OSIPM

An individual who meets the requirements of all of the following sections is eligible for OSIPM:

(1) Meets the eligibility requirements for the OSIPM program except that income is above the OSIPM adjusted income standard for a one person need group (see OAR 461-155-0250(3)).

(2) Has countable (see OAR 461-001-0000) income at or below 300 percent of the full SSI standard for a single individual; has established a qualifying trust as specified in OAR 461-145-0540(9)(c); or is eligible for the OSIPM-EPD program.

(3) Meets one of the following eligibility standards:

(a) The criteria in OAR 411-015-0100 (except subsection (1)(b)) regarding eligibility for nursing facility care or home and community-based care (see OAR 461-001-0030).

(b) The level-of-need criteria for an ICF/MR.

(c) The service eligibility standards for medically fragile children in OAR 411-350-0010.

(d) The service eligibility standards for the CIIS (Children's Intensive In-Home Services) behavioral program in OAR chapter 411, division 300.

(e) The service eligibility standards for the Medically Involved Children's Waiver in OAR chapter 411, division 355.

(4) Resides in or will reside in one of the following locations for a continuous period of care (see OAR 461-001-0030) and is applying for or receiving long-term care services authorized by the Department (effective December 1, 2015, eligibility for OSIPM is not effective prior to the first day of the month that includes the effective date for long-term care under OAR 461-180-0040):

(a) A Medicaid-certified nursing facility.

(b) An intermediate care facility for the mentally retarded (ICF/MR).

(c) A home and community-based care setting.

(5) An individual in a home and community-based care setting must receive Title 1915(c) waivered services.

Stat. Auth.: ORS 411.060, 411.070, 411.404
Stats. Implemented: ORS 411.060, 411.070, 411.404
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 10-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 9-2014, f. & cert. ef. 4-1-14; SSP 32-2015(Temp), f. & cert. ef. 12-15-15 thru 6-11-16

461-180-0010
Effective Dates; Adding a New Person to an Open Case

(1) In the following programs, the effective date for adding an individual (other than an assumed eligible newborn) to the benefit group (see OAR 461-110-0750) is one of the following:

(a) Effective December 1, 2015, in the GAM and OSIPM programs, it is:

(A) The first day of the month that includes the date of request (see OAR 461-115-0030), if the individual was eligible on the date of request.

(B) If the individual does not meet all eligibility requirements on the date of request, but meets all eligibility requirements within 45 days after the date of request, it is the first day of the month that includes the date that all eligibility requirements are met.

(b) In the REFM program, it is whichever occurs first:

(A) The date the individual requests benefits, if the individual was eligible as of that date.

(B) The date all eligibility requirements are met.

(c) In the SNAP program:

(A) If adding the individual increases benefits, it is the first of the month after the filing group (see OAR 461-110-0370) reports the person has joined the household group (see OAR 461-110-0210). If verification is requested, the effective date for the change is:

(i) The first of the month following the date the change was reported if verification is received by the Department no later than the due date for the verification.

(ii) The first of the month following the date the verification is received by the Department if received after the verification due date.

(B) If adding the individual reduces benefits, it is the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(c) In the GA, OSIP, REF, SFPSS, and TANF programs, it is the date on which all eligibility requirements are met and verified. If benefits have been issued for the month and adding the new person would reduce bene-

fits, the person is added the first of the month following the month in which the notice period ends (see OAR 461-175-0050).

(d) In the QMB-BAS and QMB-DW programs, it is the first of the month after the new individual has been determined to meet all QMB eligibility criteria and the Department receives the required verification.

(e) In the QMB-SMB program, it is the first of the month in which the new individual has been determined to meet all QMB-SMB eligibility criteria and the Department receives the required verification.

(f) In the SFPSS and TANF programs, for adding a child (see OAR 461-001-0000) to be covered by a provider-direct child care payment, it is the first of the month in which the child is added to the benefit group.

(2) In the following programs, the effective date for adding an assumed eligible newborn to the benefit group is one of the following:

(a) In the GAM, OSIPM, and REFM programs, it is the date of birth if all the following paragraphs are true. If any of the following paragraphs is not true, the newborn is added to the benefit group in accordance with section (1) of this rule.

(A) A request for benefits is made within one year of the birth. For purposes of this paragraph, a telephone call from the attending physician, another licensed practitioner, a hospital, or the family is considered a request for benefits.

(B) The newborn has continuously lived with the mother since the date of birth.

(C) The mother was receiving GAM or OSIPM on the date of birth, even if she is not currently eligible for benefits.

(b) In the SFPSS and TANF programs, it is:

(A) The date of birth, if all eligibility requirements are met and verified within 45 days after the birth; or

(B) The date all eligibility factors are met and verified, if the verification is completed more than 45 days after the date of birth.

(3) In the ERDC program, the effective date for adding an individual to the need group (see OAR 461-110-0630) or benefit group is as follows:

(a) If adding the individual to the need group will decrease the copay, the effective date is the first of the month after the client reports the person has joined the household.

(b) If adding the individual to the need group increases the copay, for instance, because the individual receives income, the effective date is the first of the month following the end of the decision notice period (see OAR 461-175-0050).

(c) The effective date for adding a child to the benefit group, that is, covering the cost of the child's care, is the earliest of the following:

(A) For newborns, the date of birth, if all eligibility requirements are met and verified within 45 days after the birth.

(B) For all other children, the first of the month in which the change is reported, if all eligibility requirements are met and verified within 45 days.

(C) For newborns and other children, if eligibility cannot be verified within 45 days, the effective date is the first of the month in which all eligibility factors are met and verified.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049, 414.042
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 19-1997, f. & cert. ef. 10-1-97; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 32-2015(Temp), f. & cert. ef. 12-15-15 thru 6-11-16

461-180-0090
Effective Dates; Initial Month Medical Benefits

The effective date for starting medical benefits is as follows:

(1) Effective December 1, 2015, in the GAM, OSIPM, and QMB-DW programs:

(a) Except as provided for in subsection (b) of this section:

(A) If the client meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the first day of the month that includes the date of request. An OSIPM program client who is assumed eligible under OAR 461-135-0010(5) meets "all eligibility requirements" for the purposes of this section as follows:

(i) Effective the first day of the month of the initial SSI payment if the client is age 21 or older.

(ii) Effective the first day of the month prior to the month of the initial SSI payment if the client is under the age of 21.

(B) If the client does not meet all eligibility requirements on the date of request, but meets all requirements within 45 days after the date of request, it is the first day of the month that includes the date that all eligibility requirements are met.

(b) If the client does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(2) In the QMB-BAS program, it is the first of the month after the benefit group (see OAR 461-110-0750) has been determined to meet all QMB-BAS program eligibility criteria and the Department receives the required verification.

(3) In the QMB-SMB and QMB-SMF programs, it is:

(a) The first of the month in which the benefit group meets all program eligibility criteria and the Department receives the required verification; or

(b) The first of the month in which the Low Income Subsidy (LIS) information is received by the Social Security Administration (SSA), if the SMB or SMF program application was generated by the electronic transmission of LIS data from the SSA and the benefit group meets all program eligibility criteria.

(4) In the REFM program:

(a) Except as provided in subsection (b) of this section:

(A) If the individual meets all eligibility requirements on the date of request (see OAR 461-115-0030), it is the date of request.

(B) If the individual does not meet all eligibility requirements on the date of request, it is the first day following the date of request that all eligibility requirements are met.

(b) If the individual does not complete the application within the time period described in OAR 461-115-0190 (including the authorized extension), the determination of an effective date requires a new date of request.

(5) Retroactive eligibility is authorized under certain circumstances in some medical programs (see paragraph (1)(a)(A) of this rule, OAR 461-135-0875, and 461-180-0140).

Stat. Auth.: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 414.025, 414.231, 414.826, 414.831, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 5-2000, f. 2-29-00, cert. ef. 3-1-00; SSP 5-2003, f. 2-26-03, cert. ef. 3-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 1-2010(Temp), f. & cert. ef. 1-26-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 20-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 19-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 1-28-14; SSP 28-2013(Temp), f. & cert. ef. 10-1-13 thru 1-28-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 32-2015(Temp), f. & cert. ef. 12-15-15 thru 6-11-16

461-180-0140
Effective Dates; Retroactive Medical Benefits

(1) Effective December 1, 2015, in the OSIPM program:

(a) If an applicant requests and is eligible for retroactive medical benefits, the earliest date the applicant may be eligible is the first day of the third month before the month that includes the date of request (see OAR 461-115-0030).

For example, if the applicant requests benefits on July 10th, eligibility may begin as early as April 1.

(b) After the earliest date is established, eligibility is determined on a month-by-month basis. The period starts on the earliest established date and ends on the last day of the month prior to the month that includes the date of request. For example, if the applicant requests benefits on August 10th, the earliest date is May 1. Eligibility is established separately for May 1 through May 31, June 1 through June 30, and July 1 through July 31.

(2) If an applicant requests and is eligible for retroactive QMB DW, the earliest date the applicant may be eligible is three months before the date of request.

(3) If a QMB-SMB or QMB-SMF applicant requests and is eligible for retroactive payment of Part B Medicare premiums, the earliest date the applicant may be eligible is three months before the date of request.

(4) If an applicant applying for REFM is eligible for retroactive medical benefits, the earliest the applicant may be eligible is the most recent of the following:

(a) The date the applicant arrived in the United States; or

(b) Three months before the date of request.

Stat. Auth.: ORS 409.050, 411.060, 411.404
Stats. Implemented: ORS 409.010, 411.060, 411.404
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 17-2004,

f. & cert. ef. 7-1-04; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 32-2015(Temp), f. & cert. ef. 12-15-15 thru 6-11-16

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Department of Revenue
Chapter 150

Rule Caption: Personal Income Tax; Surplus refund (aka Kicker) donation to State School Fund when debt owed.
Adm. Order No.: REV 1-2015(Temp)
Filed with Sec. of State: 12-7-2015
Certified to be Effective: 12-7-15 thru 6-3-16
Notice Publication Date:
Rules Adopted: 150-305.792
Subject: Clarifies how an election to donate the surplus refund credit to the State School Fund is calculated when the taxpayer also owes an outstanding debt.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.792
Kicker donation to State School Fund

Any amount of a taxpayer's surplus refund credit determined under ORS 291.349 that the taxpayer elects to donate to the State School Fund under ORS 305.792 shall be limited to the amount remaining after offset or crediting against other amounts due from the taxpayer as determined under applicable statutes and rules.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 291.349; 305.792
Hist.: REV 1-2015(Temp), f. & cert. ef. 12-7-15 thru 6-3-16

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Rule Caption: Establishes rules for Early Start marijuana point-of-sale taxation of limited marijuana retail products.
Adm. Order No.: REV 2-2015(Temp)
Filed with Sec. of State: 12-8-2015
Certified to be Effective: 1-4-16 thru 7-1-16
Notice Publication Date:
Rules Adopted: 150-475B.710-(A), 150-475B.710-(B), 150-475B.710-(C)
Subject: Establishes rules for Early Start marijuana point-of-sale taxation of limited marijuana retail products.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-475B.710-(A)
Marijuana Tax: Registration of Medical Marijuana Dispensaries

(1) A medical marijuana dispensary that elects to sell limited marijuana retail products, as defined under section 2, chapter 784, Oregon Laws 2015, must register with the department as a marijuana tax collector. The department will assign a business identification number to each medical marijuana dispensary. Medical marijuana dispensaries must use the business identification number on all reports and payment vouchers filed with the department that are associated with the marijuana tax. A business identification number is required to schedule marijuana tax cash deposits or payments with the department.

(2) The department will make forms available for reports and payment vouchers for use by registered medical marijuana dispensaries in reporting and paying marijuana tax.

(3) A registered medical marijuana dispensary must notify the department in writing if the status of the medical marijuana dispensary changes including, but not limited to, ownership changes, address changes, or the medical marijuana dispensary no longer sells limited marijuana retail products.

(4) This rule is effective January 4, 2016.

Stat. Auth.: ORS 305.100, 475B.710 (OL 2015 Ch 699, §3)
Stats. Implemented: ORS 475B.710 (OL 2015 Ch 699)
Hist.: REV 2-2015(Temp), f. 12-8-15, cert. ef. 1-4-16 thru 7-1-16

150-475B.710-(B)
Marijuana Tax: Deposit Due Dates

(1) A medical marijuana dispensary that elects to sell limited marijuana retail products, as defined in section 2, chapter 784, Oregon Laws 2015, must pay all marijuana taxes due for each tax period by the due dates described in section 3, chapter 699, Oregon Laws 2015 and this rule.

(2) A medical marijuana dispensary that elects to sell limited marijuana retail products on or after January 4, 2016 must pay the marijuana tax due in three monthly deposits for each calendar quarter. The first monthly deposit is due on or before the last day of the second month of the calendar quarter; the second monthly deposit is due on or before the last day of the third month of the calendar quarter; and the third monthly deposit is due on or before the last day of the month following the close of the calendar quarter.

(3) If a medical marijuana dispensary does not make any sales of limited marijuana retail products in a particular month of a calendar quarter, the medical marijuana dispensary is not required to remit payment of marijuana tax for that month.

Example: All tax calculations in this example exclude two percent of the taxes collected for dispensary administrative expenses as allowed by statute. It's Easy Being Green, LLC has $300,000 in April sales resulting in tax liability of $73,500 (($300,000 x .25) x .98) and the deposit of the tax is due on or before May 31. The dispensary's sales of $250,000 in May result in tax liability of $61,250 (($250,000 x .25) x .98) that is due on or before June 30. And the dispensary's sales of $325,000 in June result in tax liability of $79,625 (($325,000 x .25) x .98) that is due on or before July 31.

(4) This rule is effective January 4, 2016.

Stat. Auth.: ORS 305.100, 475B.710 (OL 2015 Ch 699, §3)
Stats. Implemented: ORS 475B.710 (OL 2015 Ch 699)
Hist.: REV 2-2015(Temp), f. 12-8-15, cert. ef. 1-4-16 thru 7-1-16

150-475B.710-(C)
Marijuana Tax: Cash Handling Procedures

(1) Definitions. For purposes of this rule, the following definitions apply:

(a) "Paper currency" means United States paper currency.

(b) "Faced" means United States paper currency presented facing portrait-side up.

(c) "Oriented" means United States paper currency presented so that the words on the bill are right-side up from the perspective of the reader.

(d) "Mutilated paper currency" has the same meaning as used under 31 CFR 100.5.

(e) "Mutilated coins" include bent coins, partial coins, fused coins, or mixed coins as defined under 31 CFR 100.11 and 31 CFR 100.12.

(f) "Contaminated currency" means any United States currency or coin that has been damaged by or exposed to contaminants, poses a health hazard or safety risk, and cannot be processed under normal operating procedures. Contamination may be caused by, but is not limited to:

(A) Floodwater or any prolonged exposure to water or other liquids;

(B) Exposure to blood, urine, feces, or any other bodily fluids, including removal from any body cavity, corpse, or animal;

(C) Exposure to sewage, mold, or mildew;

(D) Exposure to any foreign substance or chemical, including dyepacks, which may pose a health hazard or safety risk.

(2) A registered medical marijuana dispensary that elects to sell limited marijuana retail products on or after January 4, 2016 and remits the marijuana tax in cash must follow the cash handling requirements for paying the marijuana tax as set forth in this rule.

(3) A medical marijuana dispensary must contact the department and schedule an appointment to deliver marijuana tax cash deposits or payments. All marijuana tax cash deposits or payments must be delivered to the Oregon Department of Revenue's main building at 955 Center Street, NE, Salem, Oregon 97301. No cash deposits or payments will be accepted at any other location. Marijuana tax cash deposits or payments may not be remitted to the department via the United States Postal Service or any other mail courier.

(4) Marijuana tax cash deposits or payments must not be more than the exact amount due and must match the amount shown on the accompanying payment voucher required under section (7) of this rule.

(5) The department will accept no more than one dollar in United States coins for each marijuana tax cash deposit or payment.

(6) The department requires cash deposits or payments with paper currency for marijuana tax to be sorted by denomination, faced and oriented upon delivery. The department will not accept any mutilated paper currency, mutilated coins or contaminated currency for cash deposits or payments of marijuana tax.

(7) All marijuana tax cash deposits or payments must be accompanied by a completed payment voucher that shows the amount of marijuana tax being paid at the appointment.

(8) The department will provide a receipt to a medical marijuana dispensary for deposits or payments made in person at the Oregon Department of Revenue. The receipt will identify the amount of marijuana tax paid, the tax period to which the deposit or payment of marijuana tax will be applied, the name of the medical marijuana dispensary, the business identification number, and the date the deposit or payment was paid to the department.

(9) If the department calculates an amount of a cash deposit or payment of marijuana tax that does not match the amount asserted by a medical marijuana dispensary as being paid and the dispensary doesn't provide

a receipt provided under section (8) of this rule, the department will credit to the medical marijuana dispensary's tax account the amount determined by the department.

(10) This rule is effective January 4, 2016.

[Publications: Contact the Oregon Department of Revenue to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100, 475B.710 (OL 2015 Ch 699, §3)
Stats. Implemented: ORS 475B.710 (OL 2015 Ch 699)
Hist.: REV 2-2015(Temp), f. 12-8-15, cert. ef. 1-4-16 thru 7-1-16

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

Rule Caption: Implements Chapter 404, Oregon Laws 2015, Relating to an Exemption from County Registration Fees
Adm. Order No.: DMV 8-2015
Filed with Sec. of State: 11-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 735-032-0070
Subject: ORS 801.040, 801.041, 802.042, 802.110, and 803.445 authorize Oregon counties and districts to charge vehicle registration fees that are in addition to state vehicle registration fees after meeting certain statutory requirements.

For purposes of confidentiality, Oregon law authorizes eligible public employees, including police officers, to use their employment address in place of their residence address on DMV records. Currently, when an eligible employee registers a vehicle to an employment address in a county that charges a registration fee, the employee must pay a county registration fee for each vehicle registered to the employment address-even if the employee resides in another county.

In part, Chapter 404, Oregon Laws 2015 amends ORS 801.041 to prohibit counties from imposing a vehicle registration fee on vehicles registered to an employment address, when the registered owner is an eligible employee or household member who resides in another county.

OAR 735-032-0070 establishes the procedure to notify DMV when an eligible employee or household member's residence address is not within the county of the employment address as provided by ORS 801.041, as amended by Chapter 404, Oregon Laws 2015.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-032-0070
Notification of Employment Address; Exemption from County Registration Fees

(1) For the purposes of this rule, the following definitions apply:

(a) "Authorized agency representative" means a person authorized to act on behalf of the public agency by law or the director of the agency.

(b) "Eligible employee" has the same meaning as defined in ORS 802.250.

(c) "Employment address" means the address of the public agency employing an eligible employee.

(d) "Residence address" has the same meaning as defined in OAR 735-010-0008.

(2) To notify DMV when an eligible employee or household member's residence address is not within the county of the employment address as provided by ORS 801.041, as amended by Chapter 404, Oregon Laws 2015, the public agency employing the eligible employee must submit to DMV a completed and signed Request for Police or Public Agency Address on DMV Records form (735-6438A). The form must:

(b) Include a written certification from an authorized agency representative stating that the eligible employee or household member's residence address is not within the county of the employment address; and

(c) Be submitted to: DMV Confidential Records Desk, 1905 Lana Ave. NE, Salem, OR, 97314.

Stat. Auth.: ORS 184.616, 184.619, 190.110, 801.040, 801.041, 802.010, 802.110, 803.420, 803.445, Ch. 404 OL 2015
Stats. Implemented: ORS 801.040, 801.041, 802.110, 803.420 & 803.445, Ch. 404 OL 2015
Hist.: DMV 8-2015, f. 11-17-15, cert .ef. 1-1-16

Rule Caption: Conforms DMV Vehicle Dealer Rules to Chapter 708, Oregon Laws 2015
Adm. Order No.: DMV 9-2015
Filed with Sec. of State: 11-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 735-150-0055, 735-150-0140
Subject: ORS 822.043 authorizes vehicle dealers to charge a fee to prepare DMV documents necessary to issue or transfer title and registration on behalf of a vehicle purchaser. The fee limit was previously set by DMV under OAR 735-150-0055. Chapter 708, Oregon Laws 2015, amends ORS 822.043 to repeal DMV's authority to set the fee amount by rule and establishes a new statutory document-processing fee of $150, if the dealer uses an integrator (a third party independent contractor) or $115 if the dealer does not use an integrator. The amendment of OAR 735-150-0055 and 735-150-0140 removes reference to the fee to prepare documents, formerly set by rule, and updates rule text to conform to the legislation.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0055
Dealer Document-Processing Fee; Inspection

(1) Dealers must implement procedures to ensure that any document processing fee charged to a vehicle purchaser does not exceed the amount authorized under ORS 822.043(4). Collected fees that exceed the authorized amount must be refunded to the vehicle purchaser within five (5) business days of discovery.

(2) DMV may inspect dealer records for compliance with ORS 822.043(4) and may refer information related to non-compliance to the Department of Justice, or any other enforcement agency.

Stat. Auth.: ORS 184.616, 814.619, 802.010, 822.009, 822.035 & 822.045
Stats. Implemented: ORS 822.009, 822.030, 822.035 & 822.045
Hist.: DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 25-2010, f. 12-22-10, cert. ef. 1-1-11; DMV 9-2015, f. 11-17-15, cert. ef. 1-1-16

735-150-0140
Schedule of Civil Penalties for Certified Dealers

(1) Failure to comply with any provision of OAR 735-150-0030(1) through (3), concerning dealer location regulations:

(a) For the first violation: warning;
(b) For the second violation: $250;
(c) For the third violation: $500;
(d) For the fourth and subsequent violation(s): $1,000.

(2) Failure to comply with the provisions of OAR 735-150-0030(4) concerning dealer location regulations:

(a) For the first violation: $500;
(b) For the second and subsequent violation(s): $1,000.

(3) Failure to comply with OAR 735-150-0040(5), (6) or (7), concerning delivery of the registration plates, stickers or temporary registration to the purchaser of a vehicle:

(a) For the first violation: warning;
(b) For the second violation: $250;
(c) For the third violation: $500;
(d) For the fourth and subsequent violation(s): $1,000.

(4) Failure to comply with any provision of OAR 735-150-0050, concerning submission of DMV documents and fees on behalf of a purchaser:

(a) For the first violation: warning;
(b) For the second violation: $250;
(c) For the third violation: $500;
(d) For the fourth and subsequent violation(s): $1,000.

(5) Failure to comply with any provision of OAR 735-150-0060, concerning issuance of temporary registration permits:

(a) For the first violation: warning;
(b) For the second violation: $50;
(c) For the third violation: $100;
(d) For the fourth and subsequent violation(s): $250.

(6) Failure to comply with any provision of OAR 735-150-0070, concerning trip permits issued by dealers:

(a) For the first violation: warning;
(b) For the second violation: $50;
(c) For the third violation: $100;
(d) For the fourth and subsequent violation(s): $250.

(7) Failure to comply with any provision of OAR 735-150-0080, concerning requirements for issuing light vehicle or recreational vehicle trip permits:

(a) For the first violation: warning;

(b) For the second violation: $50;

(c) For the third violation: $100;

(d) For the fourth and subsequent violation(s): $250.

(8) Failure to comply with OAR 735-150-0110(1), prohibiting a dealer from allowing a person not employed by the dealership to engage in dealer activity:

(a) For the first violation: $250;

(b) For the second violation: $500;

(c) For the third and subsequent violation(s): $1,000.

(9) Failure to comply with OAR 735-150-0110(2), concerning failing to submit all taxes and fees:

(a) For the first violation: $250;

(b) For the second violation: $500;

(c) For the third and subsequent violation(s): $1,000.

(10) Failure to comply with OAR 735-150-0110(3), concerning a dealer who signs the name or allows any other person to sign the name of an owner, security interest holder or lessor on title or transfer documents without a Power of Attorney:

(a) For the first violation: $500;

(b) For the second and subsequent violation(s): $1,000.

(11) Failure to comply with OAR 735-150-0110(4), concerning dealing in stolen vehicles: $1,000 for the first and subsequent violation(s).

(12) Failure to comply with OAR 735-150-0110(6), concerning altered vehicle identification numbers: $1,000 for the first and subsequent violation(s).

(13) Failure to comply with OAR 735-150-0110(7), concerning odometers, except violations of ORS 815.410, 815.420 and 815.430:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(14) Violation of ORS 815.410, 815.420 and 815.430, concerning odometer tampering and notices: $1,000 for the first and subsequent violation(s).

(15) Failure to comply with OAR 735-150-0110(8), concerning fraudulent title or registration documents: $1,000 for the first and subsequent violation(s).

(16) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of ORS 822.045, including the failure to comply with OAR 735-150-0110(10), concerning acting as a vehicle dealer any time between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(17) Violation of ORS 822.045(1)(d), (e), (j) or (k) or OAR 735-150-0039: $1,000 for the first and subsequent violation(s).

(18) Failure to comply with OAR 735-150-0110(11), concerning issuance of temporary registration permits to persons not eligible:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(19) Failure to comply with OAR 735-150-0110(12), concerning failure to notify DMV of a vehicle transferred to the dealer:

(a) For the first violation: warning;

(b) For the second violation: $50;

(c) For the third violation: $100;

(d) For the fourth violation: $250;

(e) For the fifth and subsequent violation(s): $500.

(20) Failure to comply with OAR 735-150-0110(13), concerning failure to remove foreign registration plates:

(a) For the first violation: warning;

(b) For the second violation: $50;

(c) For the third violation: $100;

(d) For the fourth and subsequent violation(s): $250.

(21) Failure to comply with OAR 735-150-0110(14), concerning failure to destroy foreign registration plates:

(a) For the first violation: warning;

(b) For the second violation: $50;

(c) For the third violation: $100;

(d) For the fourth and subsequent violation(s): $250.

(22) Failure to comply with OAR 735-150-0110(15), concerning the physical inspection of vehicle identification numbers:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(23) Failure to comply with OAR 735-150-0110(16), concerning the sale of vehicles of a type not authorized by the dealer certificate:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(24) Failure to comply with ORS 822.060(1)(a), (b), (c), (e), (h) or (i), concerning consignment sales:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(25) Violations of ORS 822.060(1)(d), (f) or (g) or 822.065, concerning consignment sales:

(a) For the first violation: $500;

(b) For the second and subsequent violation(s): $1,000.

(26) Failure to comply with OAR 735-150-0110(20) concerning making a false statement of material fact:

(a) For the first violation: $500;

(b) For the second and subsequent violation(s): $1,000.

(27) Any violation of the Oregon Vehicle Code or OAR chapter 735 not otherwise classified in this rule:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(28) Violations of OAR 735-150-0035 concerning dealer records:

(a) For the first violation: warning;

(b) For the second violation: $500;

(c) For the third and subsequent violation(s): $1,000.

(29) Violations of OAR 735-150-0045 and, ORS 822.082 through 822.084 concerning special rules and statutory provisions for RV dealers:

(a) For a certified dealer or person acting as a show organizer that conducts a show without a license:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(b) For failing to display a show license at a show:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(c) For a certified dealer or person acting as a show organizer that fails to include a dealer in a show license application:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(d) For selling a new RV without maintaining a service facility:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(e) For selling a new RV while maintaining a service facility that is not primarily engaged in the service and repair of RVs:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(f) For failing to prominently display the location of the dealer's service facility at a sales facility or RV show:

(A) For the first violation: Warning;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(g) For subcontracting a service facility rather than directing the service operation:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(h) For a certified dealer or person acting as a show organizer that conducts a show beyond the scope of the show license. For example, for additional days or hours:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(i) For submitting an application that contains a false statement or omission of material fact:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(j) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of OAR 735-150-0045 and ORS 822.082 to 822.084:

(A) For the first violation: $250;

(B) For the second violation: $500;

(C) For the third and subsequent violation(s): $1,000.

(30) Violation of OAR 735-150-0055 concerning vehicle dealer document processing fees:

(a) For the first violation: $250;

(b) For the second violation: $500;

(c) For the third and subsequent violation(s): $1,000.

(31) Violation of OAR 735-150-0037 concerning records; satisfying prior interest; providing clear title:

(a) For the first violation: Warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(32) Violation of OAR 735-150-0110(24), concerning the unlawful use of any certificate or registration plate:

(a) For the first violation: $100;

(b) For the second violation: $500;

(c) For the third violation: $750;

(d) For the fourth and subsequent violation(s): $1,000.

(33) Failure to comply with any provision of ORS 822.047 or OAR 735-150-0110(19), concerning the requirements for providing brokerage services:

(a) For the first violation: warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(34) Violations of OAR 735-150-0033 and, ORS 822.040(4) concerning the display of a vehicle at a location other than the dealers place of business for the purpose of advertising:

(a) For the first violation: Warning;

(b) For the second violation: $250;

(c) For the third violation: $500;

(d) For the fourth and subsequent violation(s): $1,000.

(35) Violation of OAR 735-150-0110(21) and ORS 822.605 concerning false swearing relating to regulation of a vehicle dealer business: $1,000 for the first and subsequent violation(s).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.009 & 822.035

Stats. Implemented: ORS 822.009, 822.035 & 822.045

Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98 thru 3-12-99; DMV 2-1999, f. & cert. ef. 2-19-99; DMV 8-2000, f. & cert. ef. 8-10-00; DMV 10-2001, f. & cert. ef. 6-14-01; DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001 f. 12-14-01, cert. ef. 1-1-02; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 3-2014, f. & cert. ef. 5-19-14; DMV 9-2015, f. 11-17-15, cert. ef. 1-1-16

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Establishment of Variable Speed Zones and Locations; Criteria of Variable Interstate Speed Limits
Adm. Order No.: HWD 5-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15
Notice Publication Date: 10-1-2015
Rules Amended: 734-020-0018, 734-020-0019
Subject: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads, including interstate highways. Minor edits have been made to 734-020-0018, adding an acronym and changing the number of years records must be retained. As amended, 734-020-0019 will establish locations of variable speed limits on the Old Oregon Trail Highway (I-84) in the Baker Valley area. This amendment also significantly modifies the criteria for changing speeds and provides descriptions for congestion subsystem, weather subsystem, manual intervention and general conditions.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-020-0018
Establishment of Variable Speed Zones

(1) Purpose:

(a) This rule is adopted for the purpose of the Department and other road authorities establishing variable speed zones on public roads under ORS 810.180. A variable speed zone may be established on a section of highway when an engineering study determines that a range of speeds in response to recurring conditions provides for better traffic safety and operation than a single set speed.

(b) A variable speed zone is established by a written order or rule defining the criteria, boundaries and procedures for speed changes in a designated manner over a given range of speeds at minimum specified intervals. At a particular time and place, the applicable speed zone reflects some of the same factors a prudent driver also considers. Examples include the effects of congestion, road conditions, reduced visibility or weather conditions. Improving the consistency between a responsible driver's speed selection and the speed zone can keep traffic moving smoothly and improve safety. An engineering study is required.

(c) This rule applies to all public roads except where the Department has delegated its authority to establish designated speeds on low volume or unpaved roads under ORS 810.180(5) (f). The delegation of authority for low volume roads and unpaved roads is covered in OAR 734-020-0016 and OAR 734-020-0017.

(2) The State Traffic Engineer may apply this rule to establish a limited number of Variable Speed Zone pilot projects around the state. The State Traffic Engineer, subject to the following limitation, will decide the appropriate number of pilot projects to test the criteria and procedures in this rule. There may be pilot projects for a particular recurring condition such as congestion, road conditions, reduced visibility or weather conditions.

(a) An evaluation of each pilot project Variable Speed Zone will be completed by the State Traffic Engineer after two years from the start of operation of that pilot project until each pilot project has been evaluated for an identified recurring condition under Section (1).

(b) The Speed Zone Review Panel will review the evaluations for each identified recurring condition. The Speed Zone Review Panel will make a recommendation to the State Traffic Engineer to continue the evaluation period, terminate the evaluation, amend this rule to revise the criteria and procedures or remove the pilot project requirement.

(c) The State Traffic Engineer will consider the recommendation of the Speed Zone Review Panel and decide whether to continue the evaluation period, terminate the evaluation, amend this rule to review the criteria and procedures or remove the pilot project requirement.

(d) The State Traffic Engineer may continue the established pilot projects pending further evaluation, Speed Zone Review Panel review and final decision on establishing Variable Speed Zones.

(3) Definitions: the following definitions apply to this rule in addition to the speed zone definitions in OAR 734-20-0010 and 734-020-0014,

(a) "Algorithm" means the method or procedure by which the optimum speed is determined based on road, traffic or weather conditions.

(b) "Maximum Speed" means the maximum designated speed or statutory speed that may be posted in the variable speed zone, typically when conditions such as congestion, road conditions, reduced visibility or weather conditions are not present to support a reduced variable speed. A maximum designated speed is determined per OAR 734-020-0010, 734-020-0015 or 734-020-0016. A maximum statutory speed is established as a speed limit under ORS 811.111 or basic speed rule under 811.105.

(c) "Speed Change Interval" means the magnitude of allowed change in miles-per-hour when the posted speed is changed in response to conditions.

(d) "Speed Change Record" is the long term storage of each activated change including the reason or condition, in the posted speed at each variable speed sign in a manner such that the posted speed at a given location and time within a variable speed zone can be determined and reported.

(e) "Transportation Operations Center (TOC)" (also called a Traffic Management Center or Traffic Management Operations Center) means the

facility through which the road, traffic and/or weather conditions are monitored and collected, processed, distributed and communicated to the variable speed signs.

(f) "Variable Speed Zone" means a designated speed that changes based on congestion, road conditions, reduced visibility or weather conditions.

(4) Establishing a Variable Speed Zone on Interstate Highways: the following procedures apply when the Department of Transportation proposes establishing a variable speed zone on any section of interstate highway under ORS 810.180:

(a) The Department may establish variable speed zones on a section of interstate highway based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or weather conditions. For each section of interstate highway under consideration the Department will prepare an engineering study that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week, season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

(D) Traffic characteristics by time of day, day of week, season of year or other periods where recurring congestion levels and reduced average speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(b) The Department will prepare a written analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include:

(A) Locations of each sign,

(B) Set of algorithms,

(C) The speed change intervals,

(D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(c) If appropriate, the Department will institute rulemaking to make changes to the interstate speed designations which are included in OAR 734-020-0019.

(d) The speed change record must be retained and maintained for at least 5 years.

(e) The speed zone becomes enforceable when variable speed signs are installed and operated.

(5) Establishing a Variable Speed Zone on rural state highways except unpaved roads: the following apply when the Department of Transportation proposes to establish variable speed zones on sections of state highway outside city limits:

(a) The Department may establish variable speed zones on a section of rural state highway based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or other weather conditions. For each section of rural state highway under consideration the Department will prepare an engineering study that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week, season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

(D) Traffic characteristics by time of day, day of week or season of year or other periods where recurring congestion levels and reduced speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(b) The Department will prepare a written analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include all of the following:

(A) Locations of each sign,

(B) Set of algorithms,

(C) The speed change intervals,

(D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(c) A written variable speed zone order must be issued by the department to establish a variable speed zone.

(d) The original written variable speed zone order must be retained in the Department of Transportation's records for each speed zone issued.

(e) The speed change record must be retained and maintained for at least 5 years.

(f) The speed zone becomes enforceable when variable speed signs are installed and operated.

(6) Establishing a Variable Speed Zone on state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads: the following procedures apply when the applicable Road Authority proposes to establish variable speed zones on sections of state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads:

(a) The road authority must make a recommendation to the State Traffic Engineer to establish a variable speed zone. The recommendation will include all of the information required in this section including the engineering study.

(b)The Department may establish variable speed zones on a section of state highways inside city limits, city streets, county roads and any other rural public roads except unpaved public roads based on an engineering study of the characteristics such as congestion, road conditions, reduced visibility or other weather conditions. For each section of public road under consideration an engineering study must be completed that will include all of the following:

(A) The Maximum speed.

(B) Crash patterns in the section of highway under consideration by time of day, day of week or season of year or other period exhibiting recurring crash patterns.

(C) Law enforcement consultation and input.

(D) Traffic characteristics by time of day, day of week or season of year or other periods where recurring congestion levels and reduced average speeds occur, such as hourly congestion levels and calculated eighty-fifth percentile speeds (85% speeds).

(E) Type and frequency of adverse road conditions, including weather, environment, and visibility.

(c) The road authority, or the Department on state highways, will submit an engineering study to the State Traffic Engineer, which includes the analysis and recommendation of the boundaries and algorithms for the variable speed zone. The recommendation will include all of the following:

(A) Locations of each sign,

(B) Set of algorithms,

(C) The speed change intervals,

(D) The means, responsibilities and procedures for changing posted speed and

(E) The means, responsibilities and procedures for keeping the speed change records.

(d) A written variable speed zone order must be issued by the department to establish a variable speed zone.

(e) The original written variable speed zone order must be retained in the Department of Transportation's records for each speed zone issued.

(f) The speed change record must be retained and maintained for at least 5 years.

(g) The speed zone becomes enforceable when variable speed signs are installed and operated.

Stat. Auth.: ORS 184.616, 184.319, 810.180, Ch. 819, OL 2003
Stats. Implemented: ORS 810.180, Ch. 819, OL 2003
Hist.: HWD 1-2012, f. & cert. ef. 1-27-12; HWD 5-2015, f. & cert. ef. 11-20-15

734-020-0019
Locations and Criteria of Variable Interstate Speed Limits

This rule is applicable only to regulatory systems and not to advisory systems.

(1) All locations of interstate highways have maximum speed limits set in section (2) of OAR 734-020-0011 or statutory maximum speed limits per ORS 811.111.

(2) Variable speed limits on the following sections of interstate highways are established as follows:

(a) I-84 Eastbound, MP 277.49 – MP 305.00: The following sections each may have different speed limits based on the criteria in section (3) of this rule:

(A) 1.15 mile west of Clover Creek Interchange Structure (MP 277.49) to 0.30 mile east of North Powder River (MP 286.50).

(B) 0.30 mile east of North Powder River (MP 286.50) to 100 feet west of Culley Lane Structure (MP 295.65).

(C) 100 feet west of Culley Lane Structure (MP 295.65) to 0.86 mile east of Campbell Street Interchange Structure (MP 305.00).

(b) I-84 Westbound, MP 277.88 – MP 306.40: The following sections each may have different speed limits based on the criteria in section (3) of this rule:

(A) 0.76 mile west of Clover Creek Interchange Structure (MP 277.88) to 0.67 mile west of North Powder Interchange Structure (MP 285.01).

(B) 0.67 mile west of North Powder Interchange Structure (MP 285.01) to 0.24 mile west of Culley Lane Structure (MP 295.43).

(C) 0.24 mile west of Culley Lane Structure (MP 295.43) to 0.13 mile west of S. Baker Interchange Structure (MP 306.40).

(3) Criteria for Changing Speeds. The Variable Speed Limit system has two automated subsystems, 1) a congestion subsystem and 2) a weather subsystem, each determining a recommended speed based on criteria set forth below in (a) and (b). The system also includes a manual control subsystem with criteria for use as described below in (c). The system automatically displays the lowest recommended speed from the automated subsystems with the ability for limited manual intervention when appropriate.

(a) Automated variable speed limits for congestion:

(A) During periods of free flow or near free flow when there is little or no congestion and drivers are not impeded by other vehicles, the subsystem will be programmed to select the maximum speed limit.

(B) During periods of congestion characterized by slower speeds on the roadway the subsystem will be programmed to select recommended reduced speeds corresponding to the congested conditions.

(C) The 85th percentile speed will be calculated from traffic sensor data. The variable posted speed limit shall be the 85th percentile speed rounded to within 5 mph. If there are multiple traffic sensors within the segment, the 85th percentile speed will be taken from the speed sensor with the lowest speed.

(D) If the subsystem does not have sufficient data to calculate the 85th percentile speeds, occupancy data (percent of time a vehicle was on the sensor) shall be used to determine if vehicles are stopped at the sensors. If the presence of vehicles is indicated, then the subsystem will assume traffic is stopped and display the minimum speed limit.

(E) If the subsystem is unable to determine a recommended speed due to the lack of data, the subsystem will use the last valid speed until a new speed is calculated.

(b) Automated variable speed limits for adverse weather conditions:

(A) The weather responsive subsystem will select recommended reduced speeds during periods where speeds are required to be at least 10 mph below the maximum speed limit due to either adverse weather conditions or other safety hazards.

(B) Weather sensors must be installed within the corridor. These sensors may measure such elements as the friction of the roadway (grip factor), classify roadway surface conditions (ice or snow present), measure visibility, or other factors related to weather depending on the corridor and reoccurring conditions.

(C) The variable speed determined by weather sensor data shall generally be 10 to 20 mph lower than maximum speed limit in the segment depending on severity and number of conditions present. If the maximum speed limits on the highways are above 65 mph (i.e., speeds on interstate are 70 or 75 mph) then the variable speeds shall be lowered to 55 mph and 45 mph depending on severity and number of conditions present. The minimum speed limit of 30 mph will be reserved for the most severe weather conditions in combination with low visibility or where significant traction problems are present.

(D) The TOC has authority to disable the weather responsive subsystem when necessary or override the speed if other conditions are present and not being detected by weather sensors.

(E) The subsystem shall also consider the snow zone chain condition in place during inclement weather conditions. ODOT establishes the chain conditions based on OAR 734-017-0005 thru 0025.

(i) When chains are required on some classes of vehicles, but not all, the subsystem will recommend a 45 mph speed.

(ii) When chains are required on all vehicles the subsystem will recommend a 35 mph speed.

(F) When a chain condition is present and a weather event is being detected the slowest recommended speed shall be used.

(c) When sensors are not detecting properly or conditions are such that the automated system does not adequately address the conditions present on the roadway the TOC may establish variable speed limits other than those established by either the weather subsystem or the congestion subsystem in accordance with the following:

(A) The TOC shall have the ability to temporarily override the system when in the judgement of the Department it is necessary to protect the safety of the public or workers, or avoid damage to any portion of the highway.

(B) Key information such as weather and displayed speeds from the automated systems, if available, should be used to provide information for decision making.

(C) The minimum period for changing speeds may be overridden by the TOC and the posted speed changed immediately.

(D) Unforeseen conditions not covered by the automated system may necessitate overriding the automated system such as a major natural disaster or evacuation.

(E) Other conditions include setting the variable speed system to a lower speed for properly documented reduced speeds. Examples include construction work zones or emergency conditions such as landslides.

(F) When manual control is requested, the TOC shall record who made the request and the reason for the request.

(d) General conditions for variable speed limits:

(A) Speed signs shall not display a speed greater than the designated speed limit for the segment as set in OAR 734-020-0011 and if none, then the statutory maximum speed limit in ORS 811.111.

(B) Speed Limits displayed shall be the lowest of the two automated subsystems, congestion or weather, unless overridden by the TOC.

(C) Speed limits between subsequent highway speed change segments typically shall not be reduced by more than 10 to 15 MPH between adjacent segments. These may be urban situations where speed signs are separated by no more than a few miles. In some cases (such as rural locations) where there are relatively long distances between speed signs, the speed change between subsequent sections may be much greater since there may be free flow speeds in adjacent segments and thus no reason for reduced speeds.

(D) The speed limit shall be displayed in 5 MPH increments.

(E) The speed limit shall not be decreased more than once within a 2 minute period, unless overridden by the TOC.

(F) The speed limit shall not be increased more than once within a 3 minute period, unless overridden by the TOC.

(G) The minimum variable speed limit shall not be less than 30 MPH.

(H) Variable speed signs should be posted near, and downstream of interstate entrances, typically within about 1500 to 2000 feet.

(I) Variable speed signs for urban areas should be placed at frequent intervals. For rural areas the sign interval should be at least every five miles but no more than every ten miles.

(J) The TOC shall log the speed limit being displayed on the variable speed signs and keep the log for a minimum of five years.

(K) Static signs giving warning of entering the variable speed corridor shall be placed at the beginning of the corridor.

(L) Static signs giving notice of the end of the variable speed limit may be placed at the exit points. A static speed sign shall be placed at the end of the corridor to establish the end of the variable speed and the beginning of the fixed speed limit.

Stat. Auth.: ORS 184.616, 184.619, 810.180 & 811.111
Stats. Implemented: ORS 810.180 & 811.111
Hist.: HWD 1-2012, f. & cert. ef. 1-27-12; HWD 10-2012, f. & cert. ef. 9-27-12; HWD 5-2015, f. & cert. ef. 11-20-15

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Department of Transportation,
Rail Division
Chapter 741

Rule Caption: Repeals 741-520-0010, Adoption of Federal Regulations
Adm. Order No.: RD 3-2015
Filed with Sec. of State: 11-17-2015
Certified to be Effective: 11-17-15
Notice Publication Date: 10-1-2015
Rules Repealed: 741-520-0010
Subject: This rule is no longer needed as its provisions are now incorporated into newly revised 741-510-0015. This rule repeal eliminates the duplication.
Rules Coordinator: Lauri Kunze—(503) 986-3171

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Clarifying HECC's Allotment Authority for Public University and OHSU Funds

Adm. Order No.: HECC 15-2015(Temp)
Filed with Sec. of State: 12-14-2015
Certified to be Effective: 12-14-15 thru 6-10-16
Notice Publication Date:
Rules Amended: 715-013-0005
Subject: This rule clarifies that the HECC has delegated the authority to its executive director or designee to distribute all relevant funds to Public Universities and Oregon Health Sciences Universities in the amounts and for the purposes specified by the Oregon Legislature. It makes no substantive change in any allocation formulas by which these funds are distributed and does not impact the net amount any institution will receive for any program in any way.
Rules Coordinator: Kelly Dickinson—(503) 947-2379

715-013-0005
Allotment Authority

(1) Effective December 23, 2014, the Higher Education Coordinating Commission delegates to the Executive Director, or designee, authority in all areas of fiscal and administrative responsibility necessary for the execution of Commission policy relating to the allotment of funds to public universities and Oregon Health Sciences University.

(2) The Executive Director, or designee, shall have the authority to distribute funds to public universities and to Oregon Health Sciences University in the amounts appropriated to the HECC for public universities and Oregon Health Sciences University by the Oregon Legislature.

(a) Funds shall only be distributed to public universities and Oregon Health Sciences University for the specific purposes outlined in statute or by the Oregon Legislature.

(b) This section shall be construed to apply to all distributions of funds by the HECC to public universities and Oregon Health Sciences University, including but not limited to:

(A) Funds distributed through the Student Success and Completion Model as outlined in OAR 715-013-0025 and OAR 715-013-0040.

(B) Funds distributed to Oregon Health Sciences University for support of its Schools of Medicine, Nursing and Dentistry as well as to provide funds to its education, public health and rural health programs.

(C) Funds distributed to state programs as authorized by law or legislative action.

(D) Statewide Public Service programs as authorized by law or legislative action.

(E) Funds allocated to the Sports Lottery Account as authorized by ORS 461.543.

(F) Any other funds authorized by the Oregon Legislature to the HECC for distribution to public universities or Oregon Health Sciences University.

Stat. Auth.: ORS 351.738
Stats. Implemented: ORS 351.735(3)(f), ORS 351.054(2)
Hist.: HECC 2-2015, f. & cert. ef. 3-16-15; HECC 15-2015(Temp), f. & cert. ef. 12-14-15 thru 6-10-16

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Oregon Department of Aviation
Chapter 738

Rule Caption: Public Records Access and Fees
Adm. Order No.: AVIA 3-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-15-15
Notice Publication Date: 11-1-2015
Rules Amended: 738-001-0035
Subject: This rule amendment raises the cost of public records photocopy fees from $0.20 to $0.25; reduces the amount of free staff time from 30 minutes to 15 minutes; and increases labor rates for public records requests from $15 to $50 per hour for professional staff time, and $60 per hour for managerial staff time. These changes are designed to allow ODA to recapture costs incurred commensurate with inflation and increasing frequency of public records requests.
Rules Coordinator: Lauri Kunze—(503) 986-3171

738-001-0035
Public Records Access and Fees

All information in the custody of the Director of the Oregon Department of Aviation shall be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) Requests for records may be verbal; however, the Oregon Department of Aviation may require the request to:

(a) Be in writing;

(b) Be dated;

(c) Be signed;

(d) Adequately describe the records being requested; and

(e) Indicate the date the records are needed.

(2) A reasonable period of time, as determined by the department, shall be allowed for the records custodian to locate and assemble the requested records.

(3) Unless otherwise provided by statute or other administrative rule, the fees shall be calculated as follows:

(a) $0.25 per page for photocopies;

(b) Actual cost for use of material and equipment for producing copies of non-standard records. "Non-standard" records include, but are not limited to:

(A) Audio tapes;

(B) Video tapes;

(C) Oversize maps; and

(D) Machine readable formats such as computer hard drives, diskettes and magnetic tape.

(c) Costs for labor, which includes locating, compiling, editing or otherwise processing information and records. There shall be no charge for the first 15 minutes of staff time. Prorated fees are not available for less than a quarter-hour. The labor rate assessed thereafter shall be:

(A) $60 per hour for managerial staff time;

(B) $50 per hour for professional staff time, and;

(C) $15 per hour for clerical staff time.

(d) Costs may also include the cost of time spent by the Oregon Department of Aviation's attorney reviewing, redacting, and segregating records at the Oregon Department of Aviation's request, although the cost of the attorney's time spent determining the application of the Public Records Law is not a recoverable cost.

(e) The actual cost for delivery of records such as postage, FAX costs and courier fees; and

(f) $5 for each true copy certification.

(4) Estimated payment or deposit may be requested in advance.

(5) An individual or entity that chooses to receive meeting agendas and materials electronically may subscribe by sending an email request to aviation.mail@state.or.us. The email shall include a contact name, the email address of the individual or organization, and a daytime telephone number for the contact person. An email subscription continues until cancelled by the subscriber. There is no charge to subscribe electronically.

(6) The Department shall notify a requestor of the estimated costs of making records available for inspection or providing copies of records to the requestor. If the estimated costs exceed $25, the Department shall provide written notice and shall not act further to respond to the request unless and until the requestor confirms that the requestor wants the Department to proceed with making the public records available. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

Stat. Auth.: ORS 192.430, 192.440, 835.035, 835.112
Stats. Implemented: ORS 192.410 - 192.505
Hist.: AVIA 1-2000, f. & cert. ef. 12-26-00; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 2-2005, f. & cert. ef. 9-23-05; AVIA 3-2015, f. & cert. ef. 12-15-15

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Rule Caption: Tie-Down Fees
Adm. Order No.: AVIA 4-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-15-15
Notice Publication Date: 11-1-2015
Rules Amended: 738-010-0025, 738-010-0035, 738-010-0050, 738-010-0060
Rules Repealed: 738-010-0040
Subject: OAR 738-005-0010(129) defines "Tie-Down Area" as state-owned airport property, either pavement or turf, designated for parking based or transient aircraft. Tiedowns are "D" rings and chains fixed in the ground used to secure aircraft while parked to protect against winds moving the aircraft.

OAR 738-0010-0025 has required the Department of Aviation's (ODA) Fixed Based Operator (FBO) tenants to pay 30 percent of the tiedown fees they collect through their commercial operations at state airports. ODA does not have the ability to monitor the use of tiedowns at its tenants' facilities; therefore tenants are on their honor

to pay the 30 percent fee. However, tenants most often do not pay the department. In order to simplify this rule, and to encourage compliance, ODA has changed the fee from a percentage to a flat fee.
Rules Coordinator: Lauri Kunze—(503) 986-3171

738-010-0025
Types of Rates, Charges and Fees

Each user of an Oregon State-owned airport shall be charged one or more of the following types of rates, charges and fees for the use of the premises and the rights granted by the Department:

(1) All leases of improved or unimproved state-owned land at state-owned airports shall include rent assessed at an annual rate per square foot. All rents and other charges for a lease of Department property shall reflect fair market rent as determined by first considering the fair market value established by the most recent appraisal of the property, if available, adjusted, if necessary, to reflect current lease market conditions as reflected in a market rent analysis conducted by a licensed real estate broker or a similar analysis conducted by Department staff experienced in such analysis. The market rent or similar analysis shall consider relevant circumstances including but not limited to whether the land is buildable and the restrictions, if any, that apply to the land. Lessees shall also pay all real property taxes and other taxes, if any, imposed on the leased property.

(a) Rent shall be paid to the Department as follows:

(A) Annually in full, with the first annual payment on or before the date the lease begins and subsequent payments on the anniversary date;

(B) Monthly in equal installments, payable at the beginning of each month; or

(C) By the terms of a payment-in-kind agreement that may constitute partial payment or full payment. The Department will determine and assign a value to payments in kind based upon a determination of the value of the goods, improvements or services actually received or to be provided. In kind payments are subject to rent escalation clauses. The determination of value will be based on an objective process which compares estimates obtained by the Department, the lessee or the proposed lessee from service providers for like services, goods or improvements. A payment-in-kind agreement and all documents used to determine payment-in-kind value must be retained in the lease file. Acceptance of an in kind payment offering requires documentation of an affirmative finding by the Department that the value of the in kind offering primarily benefits the airport generally rather than the individual lessee or the business of the individual lessee. Any payment-in-kind provision contained in an agreement executed before the effective date of this rule will be deemed valid. The Director must approve all payment-in-kind agreements prior to implementation.

(b) In new or renewed leases where all or part of the capital improvements are constructed at the Department's expense, the Department reserves the right to amortize all or part of the construction costs of the capital improvements, plus a reasonable rate of return as part of the rent, during the term of the lease.

(2) A fuel flowage fee, not to exceed $0.12 per gallon, shall be assessed to each FBO for all types of fuel received from a commercial distributor. Fuel flowage fees shall be calculated from the FBO's fuel flowage delivery report and shall be paid in full not later than two working days after the conclusion of the reporting period.

(3) Each user with an agreement to access the State-owned airport property shall pay an access fee according to a published fee schedule. To ensure equity among all users, the schedule shall be based on the quantity and individual weight of user's aircraft that will access the airport.

(a) Each commercial operator shall pay a fee to the Department, either annually on the agreement anniversary date or monthly on or before the 25th, for the month then in process.

(A) The fee shall be the greater of:

(i) A fee for each aircraft based on the adjacent property, based on aircraft maximum gross landing weight as shown below; or

(ii) A minimum guaranteed amount determined by Airport Category, as follows:

$275.00 — Per month per Category II Airport.
$175.00 — Per month per Category III and IV Airports.
$75.00 — Per month per Category V Airport.

(B) For multiple aircraft, payment shall be accompanied by a report listing each based aircraft showing aircraft class, N-number, aircraft type and the hangar or tiedown number where the aircraft is stored.

(b) Each non-commercial operator shall pay a fee for each aircraft based on the adjacent property, based on aircraft's maximum gross landing weight as set forth in Table 1 below. Payment is due either:

(A) Annually on the anniversary date of the agreement; or

(B) Monthly on or before the 25th, for the month then in process.

(c) At residential airparks, access fees as set forth below shall be assessed for each developed lot with airport access, whether or not the access is being utilized.

PER AIRCRAFT WEIGHT-BASED FEE FOR ALL STATE-OWNED AIRPORTS
Aircraft Weight Class — Weight Range — Monthly Fee Per Aircraft.
Class 1 — Up to 5,000 lbs — $15 per month.
Class 2 — 5,001 to 10,000 lbs — $24 per month.
Class 3 — 10,001 to 20,000 lbs — $44 per month.
Class 4 — 20,001 to 30,000 lbs — $66 per month.
Class 5 — 30,001 to 40,000 lbs — $88 per month.
Class 6 — 40,001 lbs. and over — $120 per month.

(4) The Department shall offer tiedown facilities to based and transient aircraft at specific State-owned airports. Based aircraft operators leasing an available tiedown shall pay rent for an entire year in full beginning at lease commencement and subsequently on each anniversary date of the lease, according to rates set forth below. To lease a tiedown please call the Department at (503) 378-4880, or email aviation.mail@state.or.us.

(a) NON-COMMERCIAL TIEDOWN FEES:
Category II Airports — $20 per month.
Category III and IV Airports — $17.50 per month.
Category V Airports — $15 per month.

(b) COMMERCIAL TIEDOWN FEES: ODA shall rent tiedown facilities to FBOs wherever possible. ODA shall collect $10.00 per tiedown per month. The number of tiedowns rented by an FBO shall be stated in FBO's lease contract with ODA. The tiedown fees shall be paid to ODA at the same interval as the lease payments as stated in the lease contract. For example: If an FBO leases 8 tiedowns, than the FBO would pay $80 per month, or $960 for the year.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: 1AD 2-1981, f. & ef. 4-20-81; AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 2-2003, f. & cert. ef. 4-3-03; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10; AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10; AVIA 1-2012(Temp), f. & cert. ef. 2-28-12 thru 8-26-12; Administrative correction 9-20-12; AVIA 4-2015, f. & cert. ef. 12-15-15

738-010-0035
Fair Market Value Cost of Construction — Adjustments of Unimproved Land, Improved Land and Facility Rents

All rents set forth in agreements for rental of improved or unimproved land, or for any facility or structure, may be adjusted by the Department as follows:

(1) Adjustments shall be made annually;

(2) Adjustments shall be based on the Consumer Price Index-Urban of the State of Oregon, rounded up to the penny, or three percent (3%) of the previous year's rent, whichever is greater, or the lease rate can be determined by an appraisal of the Fair Market Value of the lease rate.

(3) Except as provided in subsection (4), at intervals of not less than five (5) years, the Department may engage a certified appraiser or equally qualified aviation consultant, at its sole expense, to determine by either appraisal or market rent analysis, the current fair market value or rent for any property subject to a rental agreement.

(4) The minimum five (5) year interval described in subsection (3) may be waived by the Department when the Department finds it necessary to meet a legitimate business need arising prior to conclusion of the five-year period.

(5) The Department shall be responsible for the engagement of an appraiser or aviation consultant. All expenses for the appraisal or market rent analysis shall be borne by the Department.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 1-2010(Temp), f. & cert. ef. 1-7-10 thru 7-6-10; AVIA 2-2010, f. 6-9-10, cert. ef. 7-7-10; AVIA 4-2015, f. & cert. ef. 12-15-15

738-010-0050
Rate of Return

(1) If the appraisal is to determine the value of unimproved land only, then the determined value shall assume a "target" rate of return of not less than ten percent (10%), in order to yield the appropriate annual ground rental rate. The rate of return applied shall be commensurate with the term of the lease and capital improvements to be completed on the property.

(2) If there are any improvements situated on the property (including, but not limited to, paved ramp/apron, office facilities, hangars and terminal buildings), the determined value shall assume a "target" rate of return of not less than ten percent (10%), in order to yield the appropriate annual rental rate. The rate of return utilized shall be commensurate with the term of the lease and capital improvements to be completed on the property.

(3) If an appraisal is performed, the appropriate rental rate shall be derived by multiplying the rate of return by the final determined value.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2015, f. & cert. ef. 12-15-15

738-010-0060
Penalties

(1) At the discretion of the Director, or the Director's designee, each lessee may pay a penalty for late or delinquent payments. Such penalty may not exceed ten percent (10%) of the original delinquent payment. Then that amount will be charged to the lessee each month until the lease payment is current. Example: If a lessee fails to pay a $100 lease payment, then the lessee will be charged $10 per month until the original lease payment and late fees are current.

(2) Whenever a bank-issued check is presented for payment of any State-owned airport fee, and said check is returned to the ODA due to insufficient funds, closed account, or other similar reason, the Department shall charge the lessee presenting such check an additional fee of $50, plus any and all related collection fees. If the initial charges and returned check fees are not paid within 14 days after notification to lessee, ODA may suspend, revoke or place in default all of lessee's permits, agreements or leases in force at that time, according to the terms specified in such contract.

Stat. Auth.: ORS 835.035, 835.040 & 835.112
Stats. Implemented: ORS 835.035, 835.040, 835.112 & 836.055
Hist.: AVIA 3-2002, f. 10-30-02 cert. ef. 11-1-02; AVIA 4-2015, f. & cert. ef. 12-15-15

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Rule Caption: Public Agency Registration of Unmanned Aircraft System (UAS)
Adm. Order No.: AVIA 5-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-15-15
Notice Publication Date: 11-1-2015
Rules Adopted: 738-080-0015, 738-080-0045
Rules Amended: 738-080-0010, 738-080-0020, 738-080-0030
Rules Repealed: 738-080-0040
Subject: ORS 837.360(4), which was enacted during the 2013 legislative session, requires the Department of Aviation (ODA) to register all Public Use Unmanned Aerial Systems (UAS) by January 1, 2016. ODA is permitted by statute to charge a fee sufficient to reimburse the department for the maintenance of the registry.
Rules Coordinator: Lauri Kunze—(503) 986-3171

738-080-0010
Purpose and Statutory Authority

To regulate the registration of aircraft and UAS in Oregon:

(1) ORS 184.619 pertaining to rulemaking authority.

(2) ORS 835.035 and 837.005 pertaining to the general public interest, safety, and the development and promotion of aeronautics.

Stat. Auth.: ORS 835.035, 835.112
Stats. Implemented: ORS 835.035, 835.112, 837.015
Hist.: 1AD 2-1984, f. & ef. 7-31-84; AVIA 5-2015, f. & cert. ef. 12-15-15

738-080-0015
Definitions

(1) "Aircraft" means any contrivance used or designed for navigation of flight in the air. Examples include, but are not limited to, airplane or rotorcraft (helicopter, gyrocopter or autogyro). Aircraft specifically does not mean a one-person motorless glider that is launched from the earth's surface solely by the operator's power.

(2) "Commercial Use" means the conduct of aeronautical activity by means of business, concession, operation, or agency in order to provide goods or services to any person for compensation or hire. An activity for compensation or hire is considered a commercial activity regardless of whether the business is for-profit, nonprofit, charitable, or tax-exempt.

(3) "Manned Aircraft" means an aircraft or spacecraft transporting or operated by direct physical contact from a human or humans.

(4) "Model Aircraft" means an aircraft that is operated purely for recreational or hobby purposes without the possibility of direct human intervention from within or on the aircraft.

(5) "Private use Aircraft" means aircraft operated by citizens, not operated for profit, and not owned or operated by a public agency.

(6) "Public Agency" means government bodies, local government bodies, and special government bodies in the state of Oregon, excluding military or federal government.

(7) "Public Use Aircraft" means aircraft under control of and in operation by a public agency, excluding military or federal government aircraft.

(8) "Recreational Aircraft" means aircraft that is operated purely for recreational or hobby purposes, not operated for profit, and not by a public agency.

(9) "Unmanned Aircraft System" means an unmanned flying machine, commonly known as a drone, used or intended to be used for flight in the air that has no onboard pilot. This includes all classes of airplanes, helicopters, airships, and translational lift aircraft that have no onboard pilot. Unmanned aircraft are understood to include only those aircraft controllable in three axes and therefore, exclude traditional balloons. "Unmanned aircraft system" does not include a model aircraft as defined in section 336 of the FAA Modernization and Reform Act of 2012 (P.L. 112–95) as in effect on July 29, 2013.

Stat. Auth.: ORS 835.035, 835.112
Stats. Implemented: ORS 835.035, 835.112
Hist.: AVIA 5-2015, f. & cert. ef. 12-15-15

738-080-0020
Exemption from Aircraft and UAS Registration Fee

All Civil Air Patrol aircraft and UAS controlled by the Oregon Wing, and used primarily for search and rescue training exercises or missions, shall be registered in accordance with applicable state statutes with the exception that the annual Oregon aircraft or UAS registration fee will not be required. All aircraft and UAS owned and by the United States Federal Government are exempt from Oregon aircraft registration.

Stat. Auth.: ORS 835.035, 835.112
Stats. Implemented: ORS 835.035, 835.112, 837.005
Hist.: 1AD 2-1984, f. & ef. 7-31-84; AVIA 5-2015, f. & cert. ef. 12-15-15

738-080-0030
Temporary Exemption from Registration of Manned Aircraft

(1) Aircraft not physically capable of operation or flight may be temporarily exempt from the requirement of annual registration by the Oregon Department of Aviation (Department):

(a) "Not physically capable of operation and flight" means any aircraft that is not capable of:

(A) Being operated in forward motion on the ground or in flight;

(B) The need for repairs to the aircraft such as flat tires, broken windows or other short term maintenance items that are normally required are not considered adequate justification for an exemption;

(C) An aircraft that is grounded merely because it has not had appropriate inspections required by the Federal Aviation Administration is not eligible for exemption;

(D) An aircraft must be incapable of physical operation or flight for a period of time that extends beyond March 1 of each calendar year to be eligible for exemption.

(b) An aircraft that is under construction, or one that is disassembled waiting reassembly, may be exempt from registration until it is physically capable of operation or flight.

(2) The Director of the Department or the Director's designee shall make the final determination as to which aircraft may be temporarily exempt from registration:

(a) The owner of any aircraft that has been assigned a Federal Aviation Administration "N" number must complete an application for registration within the prescribed time limits. (Prior to March 1 or within 60 days of entering the state or being purchased.);

(b) An aircraft owner that believes an aircraft to be not physically capable of operation or flight shall prepare a statement giving the reasons why it should be temporarily exempted from registration. This statement shall be signed and shall accompany the application for registration:

(A) This statement must be received by the Department 30 days before the appropriate registration deadline. This will allow time for the Director of the Department or to determine the eligibility for exemption from registration;

(B) Following the Administrator's determination, the aircraft owner will be notified as to exemption status;

(C) If the exemption is denied, the aircraft owner will be notified. The owner must then submit the appropriate registration fee to the Department by the established deadline to avoid assessment of penalty and possible citation for "failure to register";

(D) An aircraft owner may request a review of the Director of the Department or the Director's designee's decision after payment of the appropriate registration fee has been submitted. Such review may include an informal discussion with the Director of the Department or the Director's designee of the aircraft's status;

(E) Receipt of an application for registration, with accompanying exemption statement, subsequent to the appropriate deadline will result in assessment of the prescribed penalty if the request for exemption is denied.

(3) A temporary exemption from registration under this section shall only be effective for the calendar year in which the exemption is granted. A new application and statement must be submitted each year within the

time frame specified in paragraph (2)(b)(A) of this rule for the original statement.

Stat. Auth.: ORS 835.035, 835.112, 837.005
Stats. Implemented: ORS 835.035, 835.112
Hist.: 1AD 1-1985, f. & ef. 12-20-85; AERO 1-1991, f. & cert. ef. 5-21-91; AVIA 4-2002, f. 11-27-02, cert. ef. 12-1-02; AVIA 5-2015, f. & cert. ef. 12-15-15

738-080-0045
Public Agency Registration of Unmanned Aircraft System (UAS)

All public departments, public agencies, and other public entities in the State of Oregon must register each UAS with the Federal Aviation Administration prior to registration with ODA. Registration with ODA must be completed prior to UAS flight. Fees to register each UAS weighing less than 55lbs shall be $25. Fees to register each UAS weighing 55lbs or more shall be $50. To register public UAS please visit http://www.oregon.gov/aviation or call (503) 378-4880.

Stat. Auth.: ORS 835.035, 835.112, 837.360
Stats. Implemented: ORS 835.035, 835.112, 837.360
Hist.: AVIA 5-2015, f. & cert. ef. 12-15-15

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Rule Caption: Civil Penalties
Adm. Order No.: AVIA 6-2015
Filed with Sec. of State: 12-15-2015
Certified to be Effective: 12-15-15
Notice Publication Date: 11-1-2015
Rules Adopted: 738-140-0005, 738-140-0010, 738-140-0015, 738-140-0020, 738-140-0025, 738-140-0030, 738-140-0035, 738-140-0040
Subject: ORS 837.998 grants the Director of the Department of Aviation (ODA) the ability to impose civil penalties on citizens or public agencies for violating any part of ORS Chapter 837. These OARs help to define and explain the determination of the civil penalties and their process.
Rules Coordinator: Lauri Kunze—(503) 986-3171

738-140-0005
Scope and Purpose

(1) These rules are designed by the Oregon Department of Aviation to establish procedures and requirements for the administration and enforcement of civil penalties. These rules are intended to explain the authority granted to the Director of the Department of Aviation by ORS 835.106 and 835.112 et seq. The civil penalty authority described in these rules is in addition to other authorities and corrective actions available to the Director and the Department regarding violations of ORS chapter 837. Civil penalties imposed under these rules apply to violations of ORS chapter 837 and associated rules, orders, or permits included in, implemented, or issued, in accordance with ORS 837.998 and 183.745.

(2) At the Director's discretion, imposition of a civil penalty may be waived when the responsible party responds with timely compliance or voluntary restitution. If the timely compliance or restitution action(s) satisfy the Department, and the violation avoided long-term and irreversible impacts on public health, safety, welfare, and economic values of persons or property, then the Director may mitigate the consequences of the violation.

(3) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

(4) The Department of Aviation may reduce any civil penalty provided for in this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request for reduction of the penalty; or

(b) The defendant submits to the department a written request for reduction of the penalty within 15 days from the date the penalty order is served.

(5) If the amount of such penalty is not paid to the department, the Attorney General, at the request of the department, shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the department. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter.

Stat. Auth.: ORS 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0010
Definitions

For purposes of 738-140-0005 through 738-140-0050, the following definitions apply:

(1) "Aircraft" is a device that is used or intended to be used for flight in the air.

(2) "Class A Violation" is an action or non-action in breach of a statute or rule that incurs a maximum fine of $2,000 for an individual and $4,000 for a corporation in accordance with ORS 153.012. See also: ORS 153.018, 153.019, 153.021.

(3) "Department" is the Oregon Department of Aviation.

(4) "Director" is the Director of the Oregon Department of Aviation.

(5) "Director's delegate" is any person acting with sanction from and on behalf of the Director of the Department of Aviation.

(6) "Intentional" is the deliberate or willful action or non-action of a person or entity.

(7) "OAR" is the Oregon Administrative Rules.

(8) "ORS" is the Oregon Revised Statutes.

(9) "Violation" is a breach of a statute, rule, standard, or permit condition.

(10) "Violator" is any person, entity, or public department that has breached a statute, rule, standard, or permit condition.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0015
Civil Penalty Policy

Upon a determination that a violation has occurred, the Director or Director's delegate may impose a civil penalty against the party responsible for the violation. The Director or Director's delegate may waive or adjust any civil penalty as provided in OAR 738-140-0015, 738-140-0020, or 738-140-0030. Imposing a civil penalty under these rules for a violation shall not preclude the Director or Director's delegate from pursuing other regulatory or penalty actions.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0020
Violations for Which a Civil Penalty May be Imposed

The Department may impose a civil penalty for violations of any of the following statutes, administrative rules, or orders:

(1) Intentional violation of any provision of ORS 837.020 or 837.025 concerning registration of pilots may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to $24.00; and "I" is the impact of the violation and shall be equal to 1.

Example of an intentional violation of ORS 837.020: If a pilot were to explicitly refuse to register with the Department, or if the pilot were to expressly state to the Department that he or she will not fly, and then the Department receives information that the pilot did fly, then the Department may impose a civil penalty under this rule.

(2) Intentional violation of any provision of ORS 837.015 or 837.040 to 837.060 concerning registration of aircraft may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to $24.00; and "I" is the impact of the violation and, shall be equal to 1.

Example of an intentional violation of ORS 837.015: If an aircraft owner were to explicitly refuse to register their aircraft with the Department, or if the aircraft owner were to expressly state to the Department that the aircraft will not fly, and then the Department receives information that the aircraft did fly, then the Department may impose a civil penalty under this rule.

(3) Intentional violation of any provision of ORS 837.070 concerning notice of sale or transfer of registration of aircraft may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to $24.00; and "I" is the impact of the violation and, shall be equal to 1.

Example: If an aircraft seller were to explicitly refuse to submit notice of sale or transfer of registration to the Department, or if the aircraft owner was aware of their obligation to submit an Oregon Aircraft Ownership Transfer Form to the Department and failed to do so, then the Department receives information that the aircraft was sold or transferred, then the Department may impose a civil penalty under this rule.

(4) Intentional violation of any provision of ORS 837.075 concerning aircraft dealer's license may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine, and shall be equal to $24.00; and "I" is the impact of the violation and, shall be equal to 1.

Example: If a person matching the description in OAR 738-005-0010(9) of an "Aircraft Dealer" intentionally refuses to submit an Oregon Aircraft Dealer's License Application with the appropriate fee, and then the Department acquires evidence of

aircraft dealing by that person, then the Department may impose a civil penalty under this rule.

(5) Violation of any provision of ORS 837.080 concerning prohibited operation of aircraft may incur a minimum civil penalty of an amount computed using the formula described in OAR 738-140-0030. The "BF" is the base fine and shall be equal to $27.50. In accordance with ORS 837.998(2), the maximum civil penalty that may be imposed under this rule is $2,500 per violation. Violations of ORS 837.080 may also be a Class B misdemeanor as per ORS 837.990.

Example of a violation of ORS 837.080: if the Department were to receive information about a person operating an aircraft in a careless or reckless manner so as to endanger the life or property of another, or operating an aircraft under the influence of intoxicating liquor, drugs or controlled substances, then the violator would incur a civil penalty under this rule.

(6) Intentional Violation of any provision of ORS 837.085 concerning dropping articles without a permit issued by the Department may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to $8.00, and the maximum potential fine equal to $720.

Example: If the Department had issued a warning, fine, or citation to a pilot or passenger for a violation of ORS 837.085 on a previous occasion, and then the Department learns of a subsequent violation of ORS 837.085, then the violation is deemed intentional, and the pilot or passenger may incur a civil penalty under this rule.

(7) Intentional violation of ORS 837.090 concerning landings under non-exigent circumstances on public highways, grounds, closed runways, or any other place where landing is impermissible may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine, and shall be equal to $8.00.

Example: If the a pilot has received information stating that a runway is closed, or that landing on a grass strip is impermissible, or if the pilot has violated ORS 837.090 previously, and then the Department receives information that the pilot did land on a closed runway or anywhere landing is impermissible, then the Department may impose a civil penalty under this rule.

(8) Intentional violation of any provision of ORS 837.095 concerning flying over military establishments or taking photographs of a military establishment without permission from the person in command of the military establishment may incur a civil penalty. The amount of the penalty shall be determined using the formula described in OAR 738-140-0030, where "BF" is the base fine and shall be equal to $8.00, and the maximum potential fine equal to $720.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0025
Intentional Violation of Public Body Registration of Unmanned Aircraft Systems Requirement

Violation of any provision of ORS 837.360 concerning public body registration of unmanned aircraft systems may incur a civil penalty of an amount computed using the formula described in OAR 738-140-0030, whichever is greater, where "BF" is the base fine and shall be equal to $111.00. The maximum civil penalty that may be imposed under these rules is $10,000.

Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0030
Formula to Determine Amount of Civil penalty for Violations of Chapter 837

[Table not included. See ED. NOTE.]
[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 153.022, 183.745, 835.035, 835.112, 837.998
Stats. Implemented: ORS 837.005 - 837.998
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0035
Notice of Violation

(1) The agency's notice of violation issued pursuant to ORS 183.415 shall include:

(a) A caption with the name of the agency and the name of the person or agency to whom the notice is issued;

(b) A short and plain statement of the matters asserted or charged and a reference to the particular sections of the statute and rules involved;

(c) A statement of the party's right to be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(d) A statement of the party's right to a hearing;

(e) A statement of the agency's authority and jurisdiction to hold a hearing on the matters asserted or charged; and

(f) Either:

(A) A statement of the procedure and time to request a hearing, the agency address to which a hearing request should be sent, and a statement that if a request for hearing is not received by the agency within the time stated in the notice the person will have waived the right to a hearing; or

(B) A statement of the time and place of the hearing.

(g) A statement indicating whether and under what circumstances an order by default may be entered.

(2) A notice of violation may include either or both of the following:

(a) A statement that the record of the proceeding to date, including information in the agency file or files on the subject of the violation and all materials submitted by the party, automatically becomes part of the violation record upon default for the purpose of proving a prima facie case;

(b) A statement that a collaborative dispute resolution process is available as an alternative to a hearing, if requested within the time period stated in the notice, and that choosing such a process will not affect the right to a hearing if a hearing request is received by the agency within the time period stated in the notice and the matter is not resolved through the collaborative process.

Stat. Auth.: ORS 835.035, 835.112
Stats. Implemented: ORS 835.035, 835.112
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

738-140-0040
Rights of Parties and Opportunity for Hearing

(1) In addition to the information required to be given in writing under ORS 183.413(2) and 183.415(2) and (3), before commencement of a hearing, the agency shall inform a party, if the party is an agency, corporation, or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise. This information may be given orally or in writing.

(2) Unless otherwise precluded by law, the agency and the parties may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(3) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency shall incorporate the disposition into a final order. A copy of any final order incorporating an agreement must be delivered or mailed to each party and, if a party is represented by an attorney, to the party's attorney.

Stat. Auth.: ORS 835.035, 835.112
Stats. Implemented: ORS 835.035, 835.112
Hist.: AVIA 6-2015, f. & cert. ef. 12-15-15

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Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: Temporary amendments to OAR 309-114 titled Informed Consent to Treatment by Patients in State Institutions.
Adm. Order No.: MHS 8-2015(Temp)
Filed with Sec. of State: 11-24-2015
Certified to be Effective: 11-24-15 thru 5-20-16
Notice Publication Date:
Rules Amended: 309-114-0005
Subject: These rules prescribe standards and procedures to be observed by personnel of state institutions operated by Division in obtaining informed consent to significant procedures, as defined by these rules, from patients of such state institutions. These rules do not apply to routine medical procedures. Administration of significant procedures without informed consent is permitted as described in OAR 309-114-0010(1)(b). The purpose of these rules is to assure that the rights of patients are protected with respect to significant procedures.
Rules Coordinator: Nola Russell—(503) 945-7652

309-114-0005
Definitions

As used in these rules:

(1) "Authorized Representative" or "representative" means an individual who represents a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar.

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Committed" or "Commitment" means an individual is admitted under ORS 161.327, 161.328, 161.370, 426.701, 426.130, 427.215 or 426.220 when the individual's guardian or health care representative is unavailable or unable to consent

(4) "Dangerousness" means either:

(a) A substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats, including verbal threats or attempts to commit suicide or inflict physical harm on him or herself. Evidence of substantial risk may include information about historical patterns of behavior that resulted in serious harm being inflicted by an individual upon him or herself as those patterns relate to the current risk of harm;

(b) A substantial risk that physical harm will be inflicted by an individual upon another individual, as evidenced by recent acts, behavior or threats, including verbal threats, which have caused such harm or which would place a reasonable person in reasonable fear of sustaining such harm. Evidence of substantial risk may include information about historical patterns of behavior

(5) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(6) "Guardian" means a legal guardian who is an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(7) "Health Care Representative" means a person who has authority to make health care decisions for a patient.

(8) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs, or who is a person under guardianship.

(9) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to raised blood pressure, onset of diabetes and metabolic changes.

(10) "Medication Educator" means a Qualified Mental Health Professional (QMHP) who provides information about the proposed significant procedures to patients.

(11) "Patient" means an individual who is receiving care and treatment in a state institution for the mentally ill.

(12) Patient with a "grave disability" means a patient who:

(a) Is in danger of serious physical harm to his or her health or safety absent the proposed significant procedures; or

(b) Manifests severe deterioration in routine functioning evidenced by loss of cognitive or volitional control over his or her actions which is likely to result in serious harm absent the proposed significant procedures.

(13) "Person Committed to the Division" or "Person" means an individual committed under ORS 161.327, 161.328, 426.701, 426.220, 161.370, 426.130, or 427.215.

(14) "Psychiatric Nurse Practitioner," means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(15) "Qualified Mental Health Professional" (QMHP) means any individual meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(16) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing, human immunodeficiency virus (HIV) testing and hygiene.

(17) "Significant Procedure" means a diagnostic or treatment modality and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient such as, but not limited to psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures.

(18) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure.

(a) For purposes of these rules, medications listed in subsections 14(a)(A) through 14(a)(F) of this rule will be considered the same or similar class of medication as other medications in the same subsection:

(A) All medications used under current clinical practice as antipsychotic medications including typical and atypical antipsychotic medications;

(B) All medications used under current clinical practice as mood stabilizing medications;

(C) All medications used under current clinical practice as antidepressants;

(D) All medications used under current clinical practice as anxiolytics;

(E) All medications used under current clinical practice as psychostimulants; and

(F) All medications used under current clinical practice as dementia cognitive enhancers.

(b) Significant procedures of the same or similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(19) "State Institution" or "Institution" means all Oregon State Hospital campuses and the Blue Mountain Recovery Center.

(20) "Superintendent" means the executive head of the state institution listed in section (18) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040 & 413.042
Stats. Implemented: ORS 179.321, 183.458, 426.070 & 426.385
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2009, f. & cert. ef. 12-28-09; MHS 5-2010(Temp), f. & cert. ef. 3-12-10 thru 9-8-10; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11; MHS 4-2011, f. & cert. ef. 5-19-11; MHS 15-2014(Temp), f. & cert. ef. 12-1-14 thru 5-29-15; MHS 2-2015(Temp), f. & cert. ef. 4-24-15 thru 10-20-15; MHS 5-2015, f. & cert. ef. 8-28-15; MHS 8-2015(Temp), f. & cert. ef. 11-24-15 thru 5-20-16

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Rule Caption: Temporary amendments to OAR 309-012: "Standards For Approval/Licensure of Alcohol and Other Drug Abuse Programs".
Adm. Order No.: MHS 9-2015(Temp)
Filed with Sec. of State: 11-25-2015
Certified to be Effective: 11-25-15 thru 5-20-16
Notice Publication Date:
Rules Amended: 309-012-0130, 309-012-0210, 309-012-0220
Subject: (1) These rules establish procedures for approval of the following kinds of organizations:

(a) Any mental health service provider which is, or seeks to be, contractually affiliated with the Division or community mental health authority for the purpose of providing services described in ORS 430.630(3);

(b) Performing providers under OAR 309-016-0070;

(c) Organizations seeking Division approval of insurance reimbursement as provided in ORS 743A.168; and

(d) Holding facilities.

(2) These rules do not establish procedures for residential licensure under ORS 443.410 and 443.725.

(3) These rules do not establish procedures for regulating behavioral health care practitioners that are otherwise licensed to render

behavioral healthcare services in accordance with applicable statutes.

(4) These rules do not establish procedures for regulating practices exclusively comprised of behavioral healthcare practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

Rules Coordinator: Nola Russell—(503) 945-7652

309-012-0130
Purpose and Scope

(1) Purpose. These rules establish procedures for approval of the following kinds of organizations:

(a) Any mental health service provider which is, or seeks to be, contractually affiliated with the Division or community mental health authority for the purpose of providing services described in ORS 430.630(3);

(b) Performing providers under OAR 309-016-0070;

(c) Organizations seeking Division approval of insurance reimbursement as provided in ORS 743A.168; and

(d) Holding facilities.

(2) These rules do not establish procedures for residential licensure under ORS 443.410 and 443.725.

(3) These rules do not establish procedures for regulating behavioral health care practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

(4) These rules do not establish procedures for regulating practices exclusively comprised of behavioral healthcare practitioners that are otherwise licensed to render behavioral healthcare services in accordance with applicable statutes.

(5) For Intensive Treatment Services (ITS) providers subject to these rules, these rules shall operate in addition to the requirements for ITS certification in OAR 309, division 022.

Stat. Auth.: ORS 179.040, 430.640, 743A.168, 413.032-413.033, & 413.042
Stats. Implemented: ORS 179.505, 430.010 & 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 14-2013(Temp), f. & cert. ef. 12-20-13 thru 6-18-14; MHS 10-2014, f. 6-10-14, cert. ef. 6-19-14; MHS 9-2015(Temp), f. & cert. ef. 11-25-15 thru 5-20-16

309-012-0210
Certificate Denial or Revocation

(1) Immediate Denial or Suspension. The Division, or in the case of a subcontractor provider, either the Division or the CMHP may refuse to renew or may immediately suspend a Certificate of Approval, without a prior notice or hearing when there is a serious danger to the public health or safety, or the applicant or provider:

(a) Has demonstrated a substantial failure to comply with applicable rules such that the health or safety of individuals is jeopardized during two reviews within a six-year period;

(b) Has failed to maintain any State of Oregon license which is a prerequisite for providing services that were approved;

(c) Is a county, or direct contractor that has terminated its agreement or contract with the Division for the provision of the approved services, or when the approval is to a subcontract provider of such a county or direct contractor;

(d) Is approved to provide a service as a CMHP subcontractor, whose subcontract is terminated;

(e) Continues to employ personnel who have been convicted of any felony, or a misdemeanor associated with the provision of mental health services;

(f) Falsifies information required by the Division regarding services to consumers, or information verifying compliance with rules; or

(g) Refuses to submit or allow access to information for the purpose of verifying compliance with applicable rules when notified to do so as set forth in OAR 309-012-0190(2), or fails to submit such information following the date specified for such a submission in the written notification.

(2) Denial or Revocation with Notice. The Division may deny or revoke a certificate under any of the circumstances described in OAR 309-012-0210(1) or when the applicant or provider has:

(a) Threatened the health, safety, or welfare of any resident;

(b) Substantially failed to comply with applicable rule or statute;

(c) Submitted fraudulent or untrue information to the Division;

(d) Failed to timely implement a plan of correction;

(e) Failed to comply with a condition on the certificate;

(f) Failed to cooperate with or grant access to the Division, or CMHP if applicable, for a review under OAR 309-012-0190;

(g) Failed to disclose requested information; or

(h) Failed to provide complete and accurate information on the application.

(4) Hearing. Following issuance of a notice of Certificate revocation or denial, the Division shall provide the opportunity for a hearing as set forth in OAR 309-012-0220.

(5) A county may employ process consistent with the above, or processes adopted by resolution of the local mental health authority for revoking the approval of a subcontract provider.

Stat. Auth.: ORS 179.040, 179.505, 430.010, 430.640 743A.168, 413.032-413.033, 413.042
Stats. Implemented: 183.415, 183.430, 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 9-2015(Temp), f. & cert. ef. 11-25-15 thru 5-20-16

309-012-0220
Hearings

(1) Hearing rights under OAR 309-012-0210(1). When the Division orders the immediate suspension or denial of a Certificate under OAR 309-012-0210(1), the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

(2) Hearing rights under OAR 309-012-0210(2). When the Division issues a notice of intent to deny or revoke a Certificate under OAR 309-012-0210(2), the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 179.040, 179.505, 430.010, 430.640, 743.556 , 413.032-413.033, 413.042
Stats. Implemented: 183.430, 430.620
Hist.: MHD 4-1992, f. & cert. ef. 8-14-92; MHS 9-2015(Temp), f. & cert. ef. 11-25-15 thru 5-20-16

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Oregon Health Authority, Division of Medical Assistance Programs
Chapter 410

Rule Caption: OHP FFS Program, Begin Requiring Prior Authorization for Billing Out-of-Hospital Birth Services
Adm. Order No.: DMAP 68-2015(Temp)
Filed with Sec. of State: 11-25-2015
Certified to be Effective: 12-1-15 thru 5-28-16
Notice Publication Date:
Rules Amended: 410-130-0200
Subject: This rule specifies the medical billing codes for which the OHP FFS medical surgical program requires prior authorization (PA) for reimbursement. The codes for which PA is required are listed in Table 1 of the rule. The amendment to the rule adds the billing codes used for out-of-hospital birth services to the list of codes requiring prior authorization.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0200
Prior Authorization

(1) For fee-for-service (FFS) clients, prior authorization (PA) is required for all procedure codes listed in Table 130-0200-1 regardless of the setting in which they are performed. For details on where to obtain PA, download a copy of the Medical-Surgical Services Supplemental Information booklet at: http://www.dhs.state.or.us/policy/healthplan/guides/medsurg/med-surgsupp0912.pdf

(2) For clients enrolled in a prepaid health plan (PHP), providers must obtain PA from the client's PHP.

(3) The Division shall authorize for the level of care or type of service that meets the client's medical need consistent with the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) and guideline notes, as referenced in OAR 410-141-0520.

(4) Codes for which medical need has not been specified by the HERC shall be authorized based on medical appropriateness as that term is defined in OAR 410-120-0000.

(5) For bariatric surgery, PA is required from both of the following:

(a) The primary care provider prior to referral to a bariatric surgery center, and

(b) The bariatric surgery center prior to surgery.

(6) For clients with both Medicare and Medicaid coverage PA is not required in most instances. PA may be required when a service is covered by Medicaid but not by Medicare and PA is required for the following regardless of Medicare coverage:

(i) Bariatric surgery evaluations,

(ii) Bariatric surgeries,

(iii) And most transplants;

(7) PA is not required:

(a) For kidney and cornea transplants unless they are performed out-of-state;

(b) For emergent or urgent procedures or services;

(c) For hospital admissions unless the procedure requires PA.

(8) The Division may request a second opinion before PA is given for a surgery.

(9) Treating and performing practitioners are responsible for obtaining PA.

(10) Refer to Table 130-0200-1 for all services and procedures requiring PA.

(11) Table 130-0200-1.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, 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 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 43-2014, f. & cert. ef. 7-8-14; DMAP 55-2014(Temp), f. 9-26-14, cert. ef. 10-1-14 thru 3-30-15; DMAP 13-2015, f. & cert. ef. 3-10-15; DMAP 68-2015(Temp), f. 11-25-15, cert. ef. 12-1-15 thru 5-28-16

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Rule Caption: Update Reference to Current ADA Dental Claim Form

Adm. Order No.: DMAP 69-2015

Filed with Sec. of State: 11-25-2015

Certified to be Effective: 12-1-15

Notice Publication Date: 10-1-2015

Rules Amended: 410-123-1240

Rules Repealed: 410-123-1240(T)

Subject: The Authority is amending this rule to identify the current version of the dental claim form that is appropriate for billing. The form is already in common use, and this amendment allows this to continue.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-123-1240

The Dental Claim Invoice

(1) Providers: Refer to the Dental Services Provider Guide for information regarding claims submissions and billing information.

(2) Providers billing dental services on paper must use the 2012 version of the American Dental Association (ADA) claim form.

(3) Submission of electronic claims directly or through an agent must comply with the Electronic Data Interchange (EDI) rules. OAR 943-120-0100 et seq.

(4) Specific information regarding Health Insurance Portability and Accountability Act (HIPAA) requirements can be found on the Division Web site.

(5) Providers will not include any client co-payments on the claim when billing for dental services.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 76-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 36-2005, f. & cert. ef. 8-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 47-2015(Temp), f. 8-26-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 69-2015, f. 11-25-15, cert. ef. 12-1-15

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Rule Caption: Align with Department of Human Services OAR Chapter 461 Rules

Adm. Order No.: DMAP 70-2015

Filed with Sec. of State: 12-8-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 8-1-2015

Rules Amended: 410-120-0006

Subject: In coordination with the Department of Human Services' (Department) revision of rules established in OAR chapter 461 for all overpayment, personal injury liens and estate administration the Division is amending OAR 410-120-0006 to assure that the Division's rule aligns with and reflects information found in the Department's amended rules. In OAR 410-120-0006, the Division adopts and incorporates Department rules and must update OAR 410-120-0006 accordingly. The Division is amending this rule which incorporates rules established in OAR Chapter 461, for all overpayment, personal injury liens and estate administration for Authority programs covered under OAR 410-200. References to OAR Chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0006

Medical Eligibility Standards

As the state Medicaid and CHIP agency, the Oregon Health Authority (Authority) is responsible for establishing and implementing eligibility policies and procedures consistent with applicable law. As outlined in OAR 943-001-0020, the Authority and the Department of Human Services (Department) work together to adopt rules to assure that medical assistance eligibility procedures and determinations are consistent across both agencies.

(1) The Authority adopts and incorporates by reference the rules established in OAR chapter 461 for all overpayment, personal injury liens and estates administration for Authority programs covered under OAR chapter 410, division 200.

(2) Any reference to OAR chapter 461 in contracts of the Authority are deemed to be references to the requirements of this rule and shall be construed to apply to all eligibility policies, procedures and determinations by or through the Authority.

(3) For purposes of this rule, references in OAR chapter 461 to the Department or to the Authority shall be construed to be references to both agencies.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042, 414.065

Hist.: DMAP 10-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 18-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; DMAP 21-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-11-12; DMAP 25-2011(Temp), f. 9-28-11, cert. ef. 10-1-11 thru 1-11-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 1-2012(Temp), f. & cert. e.f 1-13-12 thru 7-10-12; DMAP 2-2012(Temp), f. & cert. ef. 1-26-12 thru 7-10-12; DMAP 3-2012(Temp), f. & cert. ef. 1-31-12 thru 2-1-12; DMAP 4-2012(Temp), f. 1-31-12, cert. ef. 2-1-12 thru 7-10-12; DMAP 9-2012(Temp), f. & cert. ef. 3-1-12 thru 7-10-12; DMAP 21-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-10-12; DMAP 25-2012(Temp), f. & cert. ef. 5-1-12 thru 7-10-12; Administrative correction 8-1-12; DMAP 35-2012(Temp), f. & cert. ef. 7-20-12 thru 1-15-13; DMAP 45-2012(Temp), f. & cert. ef. 10-5-12 thru 1-19-13; DMAP 50-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 53-2012(Temp), f. & cert. ef. 11-1-12 thru 4-29-13; DMAP 56-2012(Temp), f. 11-30-12, cert. ef. 12-1-12 thru 4-1-13; DMAP 60-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 65-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 2-2013(Temp), f. & cert. ef. 1-8-13 thru 6-29-13; DMAP 3-2013(Temp), f. & cert. ef. 1-30-13 thru 6-29-13; DMAP 5-2013(Temp), f. & cert. ef. 2-20-13 thru 6-29-13; DMAP 7-2013(Temp), f. & cert. ef. 3-1-13 thru 6-29-13; DMAP 12-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 17-2013, f. & cert. ef. 4-10-13; DMAP 24-2013, f. & cert. ef. 5-29-13; DMAP 32-2013, f. & cert. ef. 6-27-13; DMAP 39-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 1-28-14; DMAP 44-2013(Temp), f. 8-21-13, cert. ef. 8-23-13 thru 1-28-14; DMAP 51-2013, f. & cert. ef. 10-1-13; DMAP 52-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 55-2013(Temp), f. & cert. ef. 10-2-13 thru 3-31-14; DMAP 59-2013(Temp), f. 10-31-13, cert. ef. 11-1-13 thru 3-31-14; DMAP 9-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 3-31-14; DMAP 18-2014, f. 3-28-14, cert. ef. 3-31-14; DMAP 41-2014, f. & cert. ef. 7-1-14; DMAP 54-2014, f. & cert. ef. 9-23-14; DMAP 12-2015(Temp), f. 3-5-15, cert. ef. 3-19-15 thru 9-14-15; DMAP 33-2015, f. 6-24-15, cert. ef. 7-1-15; DMAP 49-2015, f. 9-3-15, cert. ef. 10-1-15; DMAP 70-2015, f. 12-8-15, cert. ef. 1-1-16

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Rule Caption: PCCM Program Dissolution of Rules and Program References

Adm. Order No.: DMAP 71-2015

Filed with Sec. of State: 12-10-2015

Certified to be Effective: 12-10-15

Notice Publication Date: 10-1-2015

Rules Amended: 410-141-0000, 410-141-0080, 410-141-0160, 410-141-0220, 410-141-0320, 410-141-0340, 410-141-0420, 410-141-0860, 410-141-3080

Rules Repealed: 410-141-0085, 410-141-0410, 410-141-0660, 410-141-0680, 410-141-0700, 410-141-0720, 410-141-0740, 410-141-0760, 410-141-0780, 410-141-0800, 410-141-0820, 410-141-0840
Subject: The Primary Care Case Manager (PCCM) and related references to Primary Care Manager (PCM) programs have been eliminated from the OHP open card service delivery system. There are no longer OHP clients enrolled in the program for care management and oversight. As a result, it is now time to repeal the rules that have provided structure for the PCCM program from the OHP administrative rules and any related references removed from language in other rules listed in this document.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0000
Definitions

In addition to the definitions in OAR 410-120-0000, the following definitions apply:

(1) "Action" means in the case of a Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO):

(a) The denial or limited authorization of a requested 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 (Division);

(e) The failure of a PHP or CCO to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a member who resides in a rural service area where the PHP or CCO is the only PHP or CCO, the denial of a request to obtain covered services outside of the PHP or CCO provider network under any of the following circumstances:

(A) From any other provider (in terms of training, experience, and specialization) not available within the network;

(B) From a provider not part of the network that is the main source of a service to the member as long as the provider is given the same opportunity to become a participating provider as other similar providers. If the provider does not choose to join the network or does not meet the qualifications, the member is given a choice of participating providers and is transitioned to a participating provider within 60 days;

(C) Because the only plan or provider available does not provide the service due to moral or religious objections;

(D) Because the member's provider determines the member needs related services that would subject the member to unnecessary risk if received separately, and not all related services are available within the network; or

(E) The Authority determines that other circumstances warrant out-of-network treatment for moral or religious objections.

(2) "Adjudication" means the act of a court or entity in authority when issuing an order, judgment, or decree, as in a final CCO or MCO claims decision or the Authority issuing a final hearings decision. This function is non-delegable under the Coordinated Care contracts in the context of hearings and appeals.

(3) "Capitated Services" means those covered services that a PHP agrees to provide for a capitation payment under contract with the Authority.

(4) "Capitation Payment" means monthly prepayment to a PHP for health services the PHP provides to members.

(5) "CCO Payment" means the monthly payment to a CCO for services the CCO provides to members in accordance with the global budget.

(6) "Certificate of Authority" means the certificate issued by DCBS to a licensed health entity granting authority to transact insurance as a health insurance company or health care service contractor.

(7) "Cold Call Marketing" means a PCP's or CCO's unsolicited personal contact with a potential member for the purpose of marketing.

(8) "Community Advisory Council" means the CCO-convened council that meets regularly to ensure the CCO is addressing the health care needs of CCO members and the community consistent with ORS 414.625.

(9) "Community Standard" means typical expectations for access to the health care delivery system in the member's community of residence. Except where the community standard is less than sufficient to ensure quality of care, the Division requires that the health care delivery system available to Division members in PHPs take into consideration the community standard and be adequate to meet the needs of the Division.

(10) "Contract" means an agreement between the State of Oregon acting by and through the Authority and a PHP or CCO to provide health services to eligible members.

(11) "Converting MCO" means a CCO that:

(a) Is the legal entity that contracted as an MCO with the Authority as of July 1, 2011, or;

(b) Was formed by one or more MCOs that contracted with the Authority as of July 1, 2011.

(12) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.

(13) "Coordinated Care Services" mean a CCO's fully integrated physical health, behavioral health services pursuant to ORS 414.651, and dental health services pursuant to ORS 414.625(3) that a CCO agrees to provide under contract with the Authority.

(14) "Corrective Action or Corrective Action Plan" means a Division-initiated request for a contractor or a contractor-initiated request for a subcontractor to develop and implement a time specific plan for the correction of identified areas of noncompliance.

(15) "Dental Care Organization (DCO)" means a PHP that provides and coordinates dental services as capitated services under OHP.

(16) "Dental Case Management Services" means services provided to ensure the member receives dental services including a comprehensive, ongoing assessment of the member's dental and medical needs related to dental care and the development and implementation of a plan to ensure the member receives those services.

(17) "DCBS Reporting CCO" means for the purpose of OAR 410-141-3340 through 410-141-3395 a CCO that reports its solvency plan and financial status to DCBS, not a CCO holding a certificate of authority.

(18) "Department of Consumer and Business Services (DCBS)" means Oregon's business regulatory and consumer protection agency.

(19) "Disenrollment" means the act of removing a member from enrollment with a PHP or CCO.

(20) "Exceptional Needs Care Coordination (ENCC)" means for PHPs a specialized case management service provided by FCHPs to members identified as aged, blind, or disabled who have complex medical needs, consistent with OAR 410-141-0405. ENCC includes:

(a) Early identification of those members who are aged, blind, or disabled who have 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.

(21) "Enrollment" means the assignment of a member to a PHP or CCO for management and receipt of health services.

(22) "Free-Standing Mental Health Organization (MHO)" means the single MHO in each county that provides only behavioral services and is not affiliated with a fully capitated health plan for that service area.

(23) "Fully-Capitated Health Plan (FCHP)" means PHPs that contract with the Authority to provide capitated health services including inpatient hospitalization.

(24) "Global Budget" means the total amount of payment as established by the Authority to a CCO to deliver and manage health services for its members including providing access to and ensuring the quality of those services.

(25) "Grievance" means a member's complaint to a PHP, CCO, or to a participating provider about any matter other than an action.

(26) "Grievance System" means the overall system that includes:

(a) Grievances to a PHP or CCO on matters other than actions;

(b) Appeals to a PHP or CCO on actions; and

(c) Contested case hearings through the state on actions and other matters for which the member is given the right to a hearing by rule or state statute.

(27) "Health Services" means:

(a) For purposes of CCOs, the integrated services authorized to be provided within the medical assistance program as defined in ORS 414.025 for the physical medical, behavioral health that includes mental health and substance use disorders, and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services;

(b) For all other purposes, the services authorized to be provided within the medical assistance program as defined in ORS 414.025 for the physical medical, behavioral health, and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services.

(28) "Holistic Care" means incorporating the care of the entire member in all aspects of well-being including physical, psychological, cultural, linguistic, and social and economic needs of the member. Holistic care utilizes a process whereby providers work with members to guide their care and identify needs. This also involves identifying with principles of holism in a system of therapeutics, especially one considered outside the mainstream of scientific medicine as naturopathy or chiropractic and often involving nutritional measures.

(29) "Home CCO" means enrollment in a CCO in a given service area based upon a client's most recent permanent residency, determined at the time of original eligibility determination or most current point of CCO enrollment prior to hospitalization.

(30) "Intensive Case Management (ICM)" means a specialized case management service provided by CCOs to members identified as aged, blind, or disabled who have complex medical needs including:

(a) Early identification of members eligible for ICM services;

(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 necessary and appropriate linkage of community support and social service systems with medical care systems.

(31) "Licensed Health Entity" means a CCO that has a Certificate of Authority issued by DCBS as a health insurance company or health care service contractor.

(32) "Line Items" means condition/treatment pairs or categories of services included at specific lines in the Prioritized List of Health Services.

(33) "Marketing" means any communication from a PHP or a CCO to a potential member who is not enrolled in the PHP or CCO, and the communication can reasonably be interpreted as intended to compel or entice the potential member to enroll in that particular CCO.

(34) "Medical Case Management Services" means services provided to ensure members obtain health services necessary to maintain physical and emotional development and health.

(35) "Mental Health Organization (MHO)" means a PHP that provides capitated behavioral services for clients.

(36) "National Association of Insurance Commissioners (NAIC)" means the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories.

(37) "Net Premium" means the premium, net of reinsurance premiums paid, HRA and GME payments, and MCO tax expenses.

(38) "Non-Participating Provider" means a provider that does not have a contractual relationship with a PHP or CCO and is not on their panel of providers.

(39) "Oregon Health Authority or Authority Reporting CCO" means a CCO that reports its solvency plan and financial status to the Authority under these rules.

(40) "Other Non-Medical Services" means non-state plan, health related services, also referred to as "flexible services." These services are provided in–lieu of traditional benefits and are intended to improve care delivery, member health, and lower costs. Services may effectively treat or prevent physical or behavioral healthcare conditions. Services are consistent with the member's treatment plan as developed by the member's primary care team and documented in the member's medical record.

(41) "Participating Provider" means a provider that has a contractual relationship with a PHP or CCO and is on their panel of providers.

(42) "Physician Care Organization (PCO)" means a PHP that contracts with the Authority to provide partially-capitated health services under OHP exclusive of inpatient hospital services.

(43) "Potential Member" means an individual who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific PHP or CCO.

(44) "Prioritized List of Health Services" means the listing of condition and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP health services.

(45) "Service Area" means the geographic area within which the PHP or CCO agreed under contract with the Authority to provide health services.

(46) "Treatment Plan" means a documented plan that describes the patient's condition and procedures that will be needed, detailing the treatment to be provided and expected outcome and expected duration of the treatment prescribed by the healthcare professional. This therapeutic strategy is designed in collaboration with the member, the member's family, or the member representative and may incorporate patient education, dietary adjustment, an exercise program, drug therapy, and the participation of nursing and allied health professionals.

Stat. Auth.: ORS 413.042

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; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 54-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0080

Managed Care Disenrollment from Prepaid Health Plans

For purposes of this rule, "Managed Care Prepaid Health Plan" means Fully Capitated Health Plan, Dental Care Organization, Physician Care Organization, and Mental Health Organization.

(1) All Oregon Health Plan (OHP) member-initiated requests for disenrollment from a Prepaid Health Plan (PHP) shall 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 461-001-0000, 461-001-0035 and 461-110-0750, respectively. For members who are not able to request disenrollment on their own, the request may be initiated by the member's representative.

(2) In accordance with 42 CFR 438.56(c)(2), the Authority and PHP shall honor a member or representative request for disenrollment for the following:

(a) Without cause:

(A) Newly eligible members may change their PHP assignment within 12 months following the date of initial enrollment. The effective date of disenrollment shall be the first of the month following the Division's approval of disenrollment;

(B) At least once every 12 months;

(C) Existing members may change their PHP assignment within 30 days of the Authority's automatic assignment or reenrollment in a PHP;

(D) In accordance with ORS 414.645, members may disenroll from a PHP during their redetermination (enrollment period) or one additional time during their enrollment period based on the members choice and with Authority approval. The disenrollment shall be considered "recipient choice."

(b) With cause:

(A) At any time;

(B) Members who disenroll from a Medicare Advantage plan shall also be disenrolled from the corresponding PHP. The effective date of disenrollment shall be the first of the month that the member's Medicare Advantage plan disenrollment is effective;

(C) Members who are receiving Medicare (dual eligible) and who are enrolled in a PHP that has a corresponding Medicare Advantage component shall be disenrolled from the PHP if the contractor has declared its decision to disenroll members in accordance with OAR 410-141-0060 in the annual Dual Eligible Clients with Medicare Advantage Plans (Schedule 5) form. The effective date of disenrollment from the PHP shall be the first of the month following the date of request for disenrollment. Dual eligible shall receive choice counseling prior to reassignment;

(D) PHP does not, because of moral or religious objections, cover the service the member seeks;

(E) The 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 member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk; or

(F) 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 participating providers experienced in dealing with the member's health care needs. Examples of sufficient cause include, but are not limited to:

(i) The member moves out of the PHP's service area;

(ii) The 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 member has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care shall be denied if the basis for this request is primarily for the convenience of a member 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;

(iv) As specified in ORS 414.645, the Authority may approve the transfer of 500 or more members from one PHP to another PHP if:

(I) The members' provider has contracted with the receiving PHP and has stopped accepting patients from or has terminated providing services to members in the transferring PHP; and

(II) Members are offered the choice of remaining enrolled in the transferring PHP; and

(III) The member and all family (case) members shall be transferred to the provider's new PHP;

(IV) The transfer shall take effect when the provider's contract with their current PHP contractual relationship ends or on a date approved by the Division;

(V) Members may not be transferred under section 2(E)(vi) until the Division has evaluated the receiving PHP and determined that the PHP meets criteria established by the Division as stated in rule including, but not limited to, ensuring that the PHP maintains a network of providers sufficient in numbers, areas of practice, and geographically distributed in a manner to ensure that the health services provided under the contract are reasonably accessible to members; and

(VI) The Division shall provide notice of a transfer to members that will be affected by the transfer at least 90 days before the scheduled date of the transfer.

(G) Members whose request for disenrollment is denied shall receive notice in accordance with OAR 410-141-0263 and 410-141-3263 of their right to file a grievance or request a hearing over the denial.

(c) If the following conditions are met:

(A) 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 redetermined eligible and was not enrolled in a PHP within the past three months; and

(B) The new PHP the member is enrolled with does not contract with the member's current OB provider, and the member wishes to continue obtaining maternity services from that non-participating OB provider; and

(C) The request to change PHP or return to FFS is made prior to the date of delivery;

(d) For purposes of a member's right to file a grievance or request a hearing, disenrollment does not include the following:

(A) Transfer of a member from a PHP to a CCO or DCO;

(B) Involuntary transfer of a member from a PHP to another PHP; or

(C) Automatic enrollment of a member in a PHP.

(e) Member disenrollment requests are subject to the following requirements:

(A) The member shall join another PHP unless the member resides in a service area where enrollment is voluntary, or the member meets the exemptions to enrollment as stated in 410-141-0060(4), and the member meets disenrollment criteria state in 42 CFR 438.56(c)(2), or there isn't another PHP in the service area;

(B) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless the Division approves retroactively;

(C) If the Division fails to make a disenrollment determination by the first day of the second month following the month in which the member files a request for disenrollment, the disenrollment is considered approved.

(3) The PHP may not disenroll members solely for the following reasons:

(a) Because of a physical, intellectual, developmental, or mental disability;

(b) Because of an adverse change in the member's health;

(c) Because of the member's utilization of services, either excessive or lack thereof;

(d) Because the member requests a hearing;

(e) Because the member exercises their option to make decisions regarding their medical care with which the PHP disagrees;

(f) Because of uncooperative or disruptive behavior resulting from the member's special needs.

(4) Subject to applicable disability discrimination laws, the Division may disenroll members for cause when the PHP requests it for cause that includes, but is not limited to, the following:

(a) Member commits fraudulent or illegal acts related to the member's participation in OHP such as: permitting the use of their medical ID card by others, altering a prescription, theft, or other criminal acts. The PHP shall report any illegal acts to law enforcement authorities and, if appropriate, to DHS Fraud Investigations Unit at 1-888-Fraud01 (1-888-372-8301) or http://www.oregon.gov/DHS/aboutdhs/Pages/fraud/index.aspx consistent with 42 CFR 455.13;

(b) Member became eligible through a hospital hold process and placed in the Adults and Couples category as required under 410-141-0060(4).

(c) Requests by the PHP for routine disenrollment of specific members shall include the following procedures to be followed and documented prior to requesting disenrollment of a member:

(A) A request shall be submitted in writing to the Coordinated Account Representative (CAR). The PHP shall document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made;

(B) There shall be notification from the provider to the PHP at the time the problem is identified. The notification shall describe the problem and allow time for appropriate resolution by the PHP. Such notification shall be documented in the member's clinical record. The PHP shall conduct provider education or training regarding the need for early intervention, disability accommodation, and the services available to the provider;

(C) The PHP shall contact the member either verbally or in writing if it is a severe problem to inform the member of the problem that has been identified and attempt to develop an agreement with the member regarding the issues. Any contact with the member shall be documented in the member's clinical record. The PHP shall inform the member that their continued behavior may result in disenrollment from the PHP;

(D) The PHP shall provide individual education, disability accommodation, counseling, and other interventions with the member in a serious effort to resolve the problem;

(E) The PHP shall contact the member's care team regarding the problem and, if needed and with the agreement of the member, involve the care team and other appropriate individuals working with the member in the resolution within the laws governing confidentiality;

(F) If the severity of the problem warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and coordinate a care conference with the member, their care team, and other individuals chosen by the member. If necessary, the PHP shall obtain an authorization for release of information from the member for the providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it shall be documented in the member's record;

(G) The PHP shall submit any additional information or assessments requested by the Division CAR;

(H) The Authority shall notify the member in writing of a disenrollment made as defined in the section above;

(I) If the member's behavior is uncooperative or disruptive including, but not limited to, threats or acts of physical violence, as the result of his or her special needs or disability, the PHP shall also document each of the following:

(i) A written description 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 member poses a direct threat to the health or safety of others, the PHP shall 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 shall actually occur, and whether reasonable modifications of policies, practices, or procedures shall mitigate the risk to others;

(ii) A PHP-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist and other health care professionals who have the appropriate clinical expertise in treating the 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 and why the accommodations haven't worked;

(v) Documentation of the PHP's rationale for concluding that the member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular member or other members;

(vi) If a Primary Care Provider (PCP) terminates the member as a patient, the PHP shall attempt to locate another PCP on their panel who will accept the member as their patient. If needed, the PHP shall obtain an authorization for release of information from the member in order to share the information necessary for a new provider to evaluate whether they can treat the member. All terminations of members as patients shall be according to the PHP's policies and shall be consistent with PHP or PCP's policies for commercial members and with applicable disability discrimination laws. The PHP shall determine whether the PCP's termination of the member as a patient is based on behavior related to the member's disability and shall provide education to the PCP about disability discrimination laws.

(d) In addition to the requirements as stated above, requests by the PHP for an exception to the routine disenrollment process shall include the following:

(A) In accordance with 42 CFR 438.56, the PHP shall submit a request in writing to the CAR for approval. An exception to the disenrollment process may only be requested for members who have committed an act of or made a credible threat of physical violence directed at a health care provider, the provider's staff, other patients, or the PHP's staff so that it seriously impairs the PHP's ability to furnish services to either this particular member or other members. A credible threat means that there is a significant risk that the member will cause grievous physical injury to others (including, but not limited to, death) in the near future, and that risk cannot be eliminated by a modification of policies, practices, or procedures. The PHP shall document the reasons for the request and provide written evidence to support the basis for the request prior to requesting an Exception to the Disenrollment Process of a Member;

(B) The provider shall immediately notify the PHP about the incident with the member. The notification shall describe the problem and shall be maintained for documentation purposes;

(C) The PHP shall attempt and document contact with the member and their care team regarding the problem and, if needed, involve the care team and other appropriate individuals in the resolution within the laws governing confidentiality;

(D) The PHP shall provide any additional information requested by the CAR, the Authority, or Department of Human Services assessment team;

(E) If the member's behavior could reasonably be perceived as the result of his or her special needs or disability, the PHP shall also document each of the following:

(i) A written description of the relationship between the behavior to the special needs or disability of the individual and whether the individual's behavior poses a credible threat of physical violence as defined above;

(ii) In determining whether a member poses a credible threat to the health or safety of others, the PHP shall 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;

(F) Documentation shall exist that verifies the provider or PHP immediately reported the incident to law enforcement. The PHP shall submit a copy of the police report or case number. If a report is not available, submit a signed entry in the member's clinic record documenting the report to law enforcement or other reasonable evidence;

(G) Documentation shall exist that verifies what reasonable modifications were considered and why reasonable modifications of policies, practices, or procedures will not mitigate the risk to others;

(H) Documentation shall exist that verifies any past incidents and attempts to accommodate similar problems with this member;

(I) Documentation shall exist that verifies the PHP's rationale for concluding that the member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular member or other members.

(e) Approval or denial of disenrollment requests shall include the following:

(A) If there is sufficient documentation, the request shall be evaluated by the PHP's CAR or a team of CARs who may request additional information from Ombudsman Services or other agencies as needed. If the request involves the member's mental health condition or behaviors related to substance abuse, the CAR shall also confer with the Division's substance use disorder specialist;

(B) In cases where the member is also enrolled in the PHP's Medicare Advantage plan, the PHP shall provide proof to the Division of CMS' approval to disenroll the member. If approved by the Division, the date of disenrollment from both plans shall be the disenrollment date approved by CMS;

(C) If there is not sufficient documentation, the CAR shall notify the PHP within two business days of initial receipt what supporting documentation is needed for final consideration of the request;

(D) The CARs shall review the request and notify the PHP of the decision within ten working days of receipt of sufficient documentation from the PHP;

(E) Written decisions including reasons for denials shall be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the CAR.

(5) The following procedures apply to all denied disenrollment requests:

(a) The CAR shall send the member a notice within five days after the decision for denial with a copy to the PHP and the member's care team;

(b) The notice shall give the reason for the denial of the disenrollment request and the notice of a member's right to file a complaint (as specified in 410-141-0260 through 410-141-0266) and to request an administrative hearing in accordance with 42 CFR 438.56;

(c) Written decisions including the reason for denials shall be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the CAR.

(6) The following procedures apply to all approved disenrollment requests:

(a) The CAR shall send the member a notice within five days after the request was approved with a copy to the PHP and the member's care team;

(b) The notice shall give the disenrollment date, the reason for disenrollment, and the notice of the member's right to file a complaint (as specified in 410-141-0260 through 410-141-0266) and to request an administrative hearing and the option to continue enrollment in the PHP pending the outcome of the hearing, in accordance with 42 CFR 438.420. If the member requests a hearing, the disenrollment will proceed unless the member requests continued enrollment, pending a decision;

(c) The disenrollment effective date will be ten calendar days after the disenrollment notice is sent to the member, unless the member requests a hearing and ongoing enrollment, pending a hearing decision. The disenrollment will take effect immediately upon the issuing of a hearing officer's decision to uphold disenrollment;

(d) If disenrollment is approved, the CAR shall contact the member's care team to arrange enrollment in a different plan. The Division may require the member to obtain services from FFS providers until such time as they can be enrolled with another PHP;

(e) If no other PHP is available to the member, the member will be exempt from enrollment in that type of managed care plan for 12 months. If a member who has been disenrolled for cause is re-enrolled in the PHP, the PHP may request a disenrollment review by the CAR. A member may not be involuntarily disenrolled from the same PHP for a period of more than 12 months. If the member is re-enrolled after the 12-month period and the PHP again requests disenrollment for cause, the request shall be referred to the OHA assessment team for review.

(7) Other reasons for the PHP's request for disenrollment shall include the following:

(a) If the member is enrolled in the PHP on the same day the member is admitted to the hospital, the PHP shall be responsible for said hospitalization. If the member is enrolled after the first day of the inpatient stay, the member shall be disenrolled and enrolled on the next available enrollment date following discharge from inpatient hospital services;

(b) The 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 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 member had End Stage Renal Disease at the time of enrollment in the PHP;

(e) Excluding the DCOs, if the PHP determines that the member has Third Party Liability (TPL), the PHP will contact the Health Insurance Group (HIG) to request disenrollment;

(f) If a PHP has knowledge of a member's change of address, the PHP shall notify the member's care team. The care team shall verify the address information and disenroll the member from the PHP, if the member no longer resides in the PHP's service area. Members shall be disenrolled if out of the PHP's service area for more than three months, unless previously arranged with the PHP. The effective date of disenrollment shall be the date specified by the Division and if a partial month remains, the Division shall recoup the balance of that month's capitation payment from the PHP;

(g) The 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 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 members and providing sufficient proof of incarceration to the Division for review of the disenrollment request. The Division shall approve requests for disenrollment from PHPs for members who have been taken into custody;

(h) The member is in a state psychiatric institution.

(8) The Division has authority to initiate and disenroll members as follows:

(a) If informed that a member has a third party insurer (TPL), the Division shall refer the case to the HIG for investigation and possible exemption from PHP enrollment. The Division shall disenroll members who have TPL effective the end of the month in which HIG makes such a determination. In some situations, the Division may approve retroactive disenrollment;

(b) If the member moves out of the PHP's service area, the effective date of disenrollment shall be the date specified by the Division, and the Division shall recoup the balance of that month's capitation payment from the PHP;

(c) If the member is no longer eligible for the Oregon Health Plan, the effective date of disenrollment shall be the date specified by the Division;

(d) If the member dies, the last date of enrollment shall be the date of death.

(9) Unless specified otherwise in these rules or in the Division notification of disenrollment to the PHP, all disenrollments are effective the end of the month the Authority approves the request with the following exceptions:

(a) The Authority may retroactively disenroll or suspend enrollment when the member is taken into custody. The effective date shall be the date the member was incarcerated.

(b) The Authority may retroactively disenroll enrollment if the member has TPL pursuant to this rule. The effective date shall be the end of the month in which HIG makes the determination.

Stat. Auth.: ORS 413.042, 414.645, 414.647

Stats. Implemented: ORS 414.065, 414.645, 414.647

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410-141-0160

Oregon Health Plan Prepaid Health Plan (PHP) Coordination and Continuity of Care

(1) PHPs shall have written policies, procedures, and monitoring systems that ensure the provision of Medical Case Management Services and delivery of primary care to and coordination of health care services for all members:

(a) PHPs are to coordinate and manage capitated services and non-capitated services and ensure that referrals made by the PHP's providers to other providers for covered services are noted in the appropriate Division member's clinical record;

(b) PHPs shall ensure members receiving Exceptional Needs Care Coordination (ENCC) services for the aged, blind, or disabled who have complex medical needs as described in 410-141-0405 are noted in the appropriate Division member's record. ENCC is a service available through Fully Capitated Health Plans (FCHPs) or Physician Care Organizations (PCOs) that is separate from and in addition to medical case management services;

(c) These procedures must ensure that each member has an ongoing source of primary care appropriate to his or her needs and a practitioner or entity formally designated as primarily responsible for coordinating the health care services furnished to the member in accordance with OAR 410-141-0120;

(d) FCHPs and PCOs shall communicate these policies and procedures to providers, regularly monitor providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. FCHPs and PCOs shall document all monitoring and corrective action activities:

(A) PHPs shall develop and maintain a formal referral system consisting of a network of consultation and referral providers, including applicable Alternative Care Settings, for all services covered by contracts/agreements with the Division). PHPs shall ensure that access to and quality of care provided in all referral settings is monitored. Referral services and services received in alternative care settings shall be reflected in the member's clinical record. PHPs shall establish and follow written procedures for participating and non-participating providers in the PHP's referral system. Procedures shall include the maintenance of records within the referral system sufficient to document the flow of referral requests, approvals, and denials in the system;

(B) The member shall obtain all covered services either directly or upon referral from the PHP responsible for the service from the date of enrollment through the date of disenrollment, except when the member is enrolled in a Medicare HMO or Medicare Advantage FCHP or PCO:

(i) FCHPs or PCOs with a Medicare HMO component or Medicare Advantage and MHOs have significant and shared responsibility for prepaid services and shall coordinate benefits for the member to ensure that the member receives all medically appropriate services covered under respective capitation payments;

(ii) If the member is enrolled in a FCHP or PCO with a Medicare HMO component or Medicare Advantage, then Medicare covered mental health services shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO, respectively. Mental health services that are not covered by the FCHP or PCO but are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(C) PHPs shall have written procedures for referrals that ensure adequate prior notice of the referral to referral providers and adequate documentation of the referral in the member's clinical record;

(D) PHPs shall designate a staff member who is responsible for the arrangement, coordination, and monitoring of the PHP's referral system;

(E) PHPs shall ensure that any staff member responsible for denying or reviewing denials of requests for referral is a health care professional;

(F) PHPs shall have written procedures that ensure relevant medical, mental health, and dental information is obtained from referral providers including telephone referrals. These procedures shall include:

(i) Review of information by the referring provider;

(ii) Entry of information into the member's clinical record;

(iii) Monitoring of referrals to ensure that information, including information pertaining to ongoing referral appointments, is obtained from the referral providers, reviewed by the referring practitioner, and entered into the clinical record.

(G) PHPs shall have written procedures to orient and train their staff, participating practitioners and their staff, the staff in alternative care settings, and staff in urgent and emergency care facilities in the appropriate use of the PHP's referral, alternative care, and urgent and emergency care systems. Procedures and education shall ensure use of appropriate settings of care;

(H) PHPs shall have written procedures that ensure an appropriate staff person responds to calls from other providers requesting approval to provide care to members who have not been referred to them by the PHP. If the person responding to the call is not a health care professional, the PHP shall have established written protocols that clearly describe when a health care professional needs to respond to the call. These procedures and protocols shall be reviewed by the PHP for appropriateness. The procedures shall address notification of acceptance or denial and entry of information into the PCP's clinical record;

(I) FCHPs and PCOs shall have written policies and procedures to ensure information on all emergency department visits is entered into the member's appropriate PCP's clinical record. FCHPs and PCOs shall communicate this policy and procedure to providers, monitor providers' compliance with this policy and procedure, and take corrective action necessary to ensure compliance;

(J) If a member is hospitalized in an inpatient or outpatient setting for a covered service, PHPs shall ensure that:

(i) A notation is made in the member's appropriate PCP's clinical record of the reason, date, and expected duration of the hospitalization;

(ii) Upon discharge, a notation is made in the member's appropriate PCP's clinical record of the actual duration of the hospitalization and follow-up plans, including appointments for provider visits; and

(iii) Pertinent reports from the hospitalization are entered in the member's appropriate PCP's clinical record. Such reports shall include, as applicable, the reports of consulting practitioners' physical history, psychosocial history, list of medications and dosages, progress notes, and discharge summary.

(2) For members living in residential facilities or homes providing ongoing care, PHPs shall work with the appropriate staff person identified by the facility to ensure the member has timely and appropriate access to covered services and to ensure coordination of care provided by the PHP and care provided by the facility or home. PHPs shall make provisions for a PCP or the facility's "house doctor or dentist" to provide care to members who, due to physical, emotional, or medical limitations, cannot be seen in a PCP office.

(3) For members living in residential facilities or homes providing ongoing care, FCHPs and PCOs shall provide medications in a manner that is consistent with the appropriate medication dispensing system of the facility, which meets state dispensing laws. FCHPs and PCOs shall provide emergency prescriptions on a 24-hour basis.

(4) For members who are discharged to post hospital extended care, the FCHP shall notify the appropriate Authority office at the time of admission to the skilled nursing facility (SNF) and begin appropriate discharge planning. The FCHP is not responsible for the post hospital extended care benefit unless the member was a member of the FCHP during the hospitalization preceding the nursing facility placement. The FCHP shall notify the nursing facility and the member no later than two full working days prior to discharge from post hospital extended care. For members who are discharged to Medicare Skilled Care, the appropriate DHS office shall be notified at the time the FCHP learns of the admission. The FCHP shall initiate appropriate discharge planning at the time of the notification to the Authority office.

(5) PHPs shall coordinate the services the PHP furnishes to members with the services the member receives from any other PHP (FCHP, PCO, DCO, CDO, or MHO) in accordance with OAR 410-141-0120(6). PHPs shall ensure that in the process of coordinating care, each member's privacy is protected in accordance with the privacy requirements of 45 CFR parts 160 and 164 subparts A and E to the extent that they are applicable.

(6) When a member's care is being transferred from one PHP to another or for clients transferring from fee-for-service to a PHP, the PHP shall make every reasonable effort within the laws governing confidentiality to coordinate transfer of the client into the care of a PHP participating provider.

(7) PHPs shall make attempts to contact targeted Division populations by mail, telephone, in person, or through the Authority within the first three months of enrollment to assess medical, mental health, or dental needs appropriate to the PHP. The PHP shall, after reviewing the assessment, refer the member to his PCP or other resources as indicated by the assessment. Targeted populations shall be determined by the PHP and approved by the Division.

(8) MHOs shall establish working relationships with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the service area for the purposes of maintaining a comprehensive and coordinated mental health delivery system and to help ensure member access to mental health services that are not provided under the capitation payment.

(9) MHOs shall ensure that members receiving services from extended or long term psychiatric care programs (e.g., secure residential facilities, PASSAGES projects, state hospital) will receive follow-up services as medically appropriate to ensure discharge within five working days of receiving notification of discharge readiness.

(10) MHOs shall coordinate with Community Emergency Service Agencies (e.g., police, courts and juvenile justice, corrections, and the LMHAs and CMHPs) to promote an appropriate response to members experiencing a mental health crisis.

(11) MHOs shall use a multi-disciplinary team service planning and case management approach for members requiring services from more than one public agency. This approach shall help avoid service duplication and assure timely access to a range and intensity of service options that provide individualized, medically appropriate care in the least restrictive treatment setting (e.g., clinic, home, school, community).

(12) MHOs shall consult with and provide technical assistance to FCHPs and PCOs to help assure that mental health conditions of members are identified early so that intervention and prevention strategies can begin as soon as possible.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.651

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; 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 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0220

Managed Care Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all 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 members and non-members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures that ensure for 90 percent of their 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 the Division:

(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 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 members in terms of timeliness, amount, duration, and scope as those services are to non- members within the same service area. If the PHP is unable to provide those services locally, it must so demonstrate to the Division and shall provide reasonable alternatives for members to access care that must be approved by the Division. PHPs shall demonstrate to the Division that it surveys and monitors for equal access of member referrals to provider, pharmacy, hospital, vision, and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that members who are aged, blind, or disabled who have complex medical needs 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 members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs enrollment standards:

(a) PHPs shall remain open for enrollment unless the Authority has closed enrollment because the PHP has exceeded their enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by the Division and the PHP;

(b) PHPs enrollment may also be closed by the Division due to sanction provisions;

(c) PHPs shall accept all clients, regardless of health status at the time of enrollment, subject to the stipulations in contracts/agreements with the Division to provide covered services;

(d) PHPs may confirm the enrollment status of a client by one of the following:

(A) The individual's name appears on the monthly or weekly enrollment list produced by the Division;

(B) The individual presents a valid medical care identification that shows he or she is enrolled with the PHP;

(C) The Automated Voice Response (AVR) verifies that the individual is currently eligible and enrolled with the PHP;

(D) An appropriately authorized staff member of the Authority states that the individual is currently eligible and enrolled with the PHP.

(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, members shall be automatically enrolled in the succeeding PHP. The member will have 30 calendar days to request disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare Advantage plan, those 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 that has significant impact on access in that service area and necessitates either transferring members to other providers or the PHP withdrawing from part or all of a service area, the PHP shall provide the Authority 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-day notice to the Authority upon approval by the Authority when the PHP must terminate a participating provider or participating provider group due to problems that could compromise 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-day notice;

(b) If DHS must notify members of a change in participating providers or PHPs, the PHP shall provide the Authority with the name, prime number, and address label of the members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide members with at least a 30 calendar-day notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of 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 members have access to appointments according to the following standards:

(A) FCHPs and PCOs:

(i) Emergency Care: The member shall be seen immediately or referred to an emergency department depending on the member's condition;

(ii) Urgent Care: The member shall be seen within 48 hours or as indicated in initial screening, in accordance with OAR 410-141-0140; and

(iii) Well Care: The member shall be seen within four weeks or within the community standard.

(B) DCOs:

(i) Emergency Care: The member shall be seen or treated within 24-hours;

(ii) Urgent Care: The member shall be seen within one to two weeks or as indicated in the initial screening in accordance with OAR 410-123-1060; and

(iii) Routine Care: The member shall be seen for routine care within an average of eight weeks and within twelve weeks or the community standard, whichever is less, unless there is a documented special clinical reason that would make access longer than 12 weeks appropriate.

(C) MHOs:

(i) Emergency Care: The member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care: The member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care: The member shall be seen for an intake assessment within two weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of members through the office such that members are not kept waiting longer than non- member patients under normal circumstances. If members are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through complaint and appeal reviews, termination reports, and 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 members when participating providers have notified the PHP that the members 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 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 members if there is a need to cancel or reschedule the 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 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) Members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the member's needs or be evaluated for treatment within two hours by a medical, mental health, or dental provider.

(6) 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 the Division 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 Division 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 Division 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 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 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 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 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 members with hearing impairment or in the primary language of non-English speaking members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the provider to be able to understand the member's complaint, to make a diagnosis, to respond to the member's questions and concerns, and to communicate instructions to the member;

(c) PHPs shall ensure the provision of care and interpreter services that 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 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 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 members are receiving accommodations for access and to determine what will be done to remove existing barriers and to accommodate the needs of members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all members including, but not limited to, the following:

(i) Street level access or accessible ramp into the facility;

(ii) Wheelchair access to the lavatory;

(iii) Wheelchair access to the 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 complex medical needs of members who are aged, blind, or disabled:

(A) PHPs shall have a written plan for meeting the complex medical needs of members who are aged, blind, or disabled;

(B) PHPs shall monitor participating providers for compliance with the access plan and take corrective action when necessary.

Stat. Auth.: ORS 413.042

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; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0320

Oregon Health Plan Prepaid Health Plan Member Rights and Responsibilities

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure Division of Medical Assistance Programs (Division) members have the rights and responsibilities included in this rule:

(a) PHPs shall communicate these policies and procedures to participating providers;

(b) PHPs shall monitor compliance with policies and procedures governing member rights and responsibilities, take corrective action as needed, and report findings to the PHP's Quality Improvement Committee.

(2) The members shall have the following rights:

(a) To be treated with dignity and respect;

(b) To be treated by participating providers the same as other people seeking health care benefits to which they are entitled;

(c) To choose a PHP as permitted in OAR 410-141-0060, Oregon Health Plan Managed Care Enrollment Requirements, a Primary Care Physician (PCP) or service site, and to change those choices as permitted in OAR 410-141-0080, Oregon Health Plan Disenrollment from PHPs, and the PHP's administrative policies;

(d) To refer oneself directly to mental health, chemical dependency or family planning services without getting a referral from a PCP or other participating provider;

(e) To have a friend, family member, or advocate present during appointments and at other times as needed within clinical guidelines;

(f) To be actively involved in the development of the member's treatment plan;

(g) To be given information about the member's condition and covered and non-covered services to allow an informed decision about proposed treatments;

(h) To consent to treatment or refuse services and be told the consequences of that decision, except for court ordered services;

(i) To receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;

(j) To have written materials explained in a manner that is understandable to the member;

(k) To receive necessary and reasonable services to diagnose the presenting condition;

(L) To receive covered services under the Oregon Health Plan that meet generally accepted standards of practice and is medically appropriate;

(m) To obtain covered preventive services;

(n) To have access to urgent and emergency services 24 hours a day, seven days a week as described in OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(o) To receive a referral to specialty practitioners for medically appropriate covered services;

(p) To have a clinical record maintained that documents conditions, services received, and referrals made;

(q) To have access to one's own clinical record unless restricted by statute;

(r) To transfer a copy of the member's clinical record to another provider;

(s) To execute a statement of wishes for treatment including the right to accept or refuse medical, surgical, chemical dependency, or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127 as amended by the Oregon Legislative Assembly 1993 and the OBRA 1990 — Patient Self-Determination Act;

(t) To receive written notices before a denial of or change in a benefit or service level is made unless such notice is not required by federal or state regulations;

(u) To know how to make a complaint or appeal with the PHP and receive a response as defined in OAR 410-141-0260 to 410-141-0266;

(v) To request an administrative hearing with the Authority;

(w) To receive interpreter services as defined in OAR 410-141-0220, Oregon Health Plan Prepaid Health Plan Accessibility; and

(x) To receive a notice of an appointment cancellation in a timely manner.

(3) The member shall have the following responsibilities:

(a) To choose or help with assignment to a PHP as defined in 410-141-0060, Oregon Health Plan Enrollment Requirements and a PCP or service site;

(b) To treat the PHP, practitioner, and clinic staff with respect;

(c) To be on time for appointments made with practitioners and other providers and to call in advance either to cancel if unable to keep the appointment or if the member expects to be late;

(d) To seek periodic health exams and preventive services from a PCP or clinic;

(e) To use a PCP or clinic for diagnostic and other care except in an emergency;

(f) To obtain a referral to a specialist from the PCP or clinic before seeking care from a specialist unless self-referral to the specialist is allowed;

(g) To use urgent and emergency services appropriately and notify the PHP within 72 hours of an emergency;

(h) To give accurate information for inclusion in the clinical record;

(i) To help the practitioner, provider, or clinic obtain clinical records from other providers that may include signing an authorization for release of information;

(j) To ask questions about conditions, treatments, and other issues related to the member's care that is not understood;

(k) To use information to make informed decisions about treatment before it is given;

(L) To help in the creation of a treatment plan with the provider;

(m) To follow prescribed, agreed upon treatment plans;

(n) To tell the practitioner or provider that the member's health care is covered under OHP before services are received and, if requested, to show the practitioner or other provider the Division Medical Care Identification form;

(o) To tell the Authority worker of a change of address or phone number;

(p) To tell the Authority worker if the member becomes pregnant and to notify the Authority worker of the birth of the member's child;

(q) To tell the Authority worker if any family members move in or out of the household;

(r) To tell the Authority worker if there is any other insurance available;

(s) To pay for non-covered services under the provisions described in OAR 410-120-1200 and 410-120-1280;

(t) To pay the monthly OHP premium on time if so required;

(u) To assist the PHP in pursuing any third party resources available and to pay the PHP the amount of benefits it paid for an injury from any recovery received from that injury;

(v) To bring issues or complaints or grievances to the attention of the PHP; and

(w) To sign an authorization for release of medical information so that the Authority and the PHP can get information that is pertinent and needed to respond to an administrative hearing request in an effective and efficient manner.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.651
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 25-1997, f. & cert. ef. 10-1-97; 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 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0340
Oregon Health Plan Prepaid Health Plan Financial Solvency

(1) Prepaid Health Plans (PHPs) shall assume the risk for providing capitated services under their contracts and agreements with the Division of Medical Assistance Programs (Division). PHPs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports for submission to the Division:

(a) PHPs shall comply with solvency requirements specified in contracts and agreements with the Division. Solvency requirements of PHPs shall include the following components:

(A) Maintenance of restricted reserve funds with balances equal to amounts specified in contracts and agreements with the Division. If the PHP has contracts and agreements with the Division, separate restricted reserve fund accounts shall be maintained for each contract and agreement;

(B) Protection against catastrophic and unexpected expenses related to capitated services for PHPs. The method of protection may include the purchase of stop loss coverage, reinsurance, self-insurance, or any other alternative determined acceptable by the Division. Self-insurance must be determined appropriate by the Division;

(C) Maintenance of professional liability coverage of not less than $1,000,000 per person per incident and not less than $1,000,000 in the aggregate either through binder issued by an insurance carrier or by self-insurance with proof of same, except to the extent that the Oregon Tort Claims Act, ORS 30.260 to 30.300 is applicable;

(D) Systems that capture, compile, and evaluate information and data concerning financial operations. Such systems shall provide for the following:

(i) Determination of future budget requirements for the next three quarters;

(ii) Determination of incurred but not reported (IBNR) expenses;

(iii) Tracking additions and deletions of members and accounting for capitation payments;

(iv) Tracking claims payment;

(v) Tracking all monies collected from third party resources on behalf of members; and

(vi) Documentation of and reports on the use of incentive payment mechanisms, risk-sharing, and risk-pooling, if applicable.

(b) PHPs shall submit the following applicable reports as specified in agreements with the Division:

(A) An annual audit performed by an independent accounting firm containing, but not limited to:

(i) A written statement of opinion by the independent accounting firm, based on the firm's audit regarding the PHP's financial statements;

(ii) A written statement of opinion by an independent actuarial firm about the assumptions and methods used in determining loss reserve, actuarial liabilities, and related items;

(iii) Balance Sheets;

(iv) Statement of Revenue, Expenses and Net Income, and Change in Fund Balance;

(v) Statements of Cash Flows;

(vi) Notes to Financial Statements;

(vii) Any supplemental information deemed necessary by the independent accounting firm or actuary; and

(viii) Any supplemental information deemed necessary by the Division.

(B) PHP-specific quarterly financial reports. Such quarterly reports shall include, but are not limited to:

(i) Statement of Revenue, Expenses and Net Income;

(ii) Balance Sheet;

(iii) Statement of Cash Flows;

(iv) Incurred But Not Reported (IBNR) Expenses;

(v) Fee-for-service liabilities and medical and hospital expenses that are covered by risk-sharing arrangements;

(vi) Restricted reserve documentation;

(vii) Third party resources collections (MHO Contractor); and

(viii) Corporate Relationships of Contractors (FCHPs, DCOs, and PCOs) or Incentive Plan Disclosure and Detail (MHOs).

(C) PHP-specific utilization reports;

(D) PHP-specific quarterly documentation of the Restricted Reserve. Restricted reserve funds of FCHPs, PCOs, and DCOs shall be held by a third party. Restricted reserve fund documentation shall include the following:

(i) A copy of the certificate of deposit from the party holding the restricted reserve funds;

(ii) A statement showing the level of funds deposited in the restricted reserve fund accounts;

(iii) Documentation of the liability that would be owed to creditors in the event of PHP insolvency;

(iv) Documentation of the dollar amount of that liability that is covered by any identified risk-adjustment mechanisms.

(2) MHOs shall comply with the following additional requirements regarding restricted reserve funds:

(a) MHOs that subcapitate any work described in agreements with the Division may require subcontractors to maintain a restricted reserve fund for the subcontractor's portion of the risk assumed or may maintain a restricted reserve fund for all risk assumed under the agreement with the Division. Regardless of the alternative selected, MHOs shall assure that the combined total restricted reserve fund balance meets the requirements of the agreement with the Division;

(b) If the restricted reserve fund of the MHO is held in a combined account or pool with other entities, the MHO and its subcontractors, as applicable, shall provide a statement from the pool or account manager that the restricted reserve fund is available to the MHO or its subcontractors, as applicable, and has not been obligated elsewhere;

(c) If the MHO must use its restricted reserve fund to cover services under its agreement with the Division, the MHO shall provide advance notice to the Division of the amount to be withdrawn, the reason for withdrawal, when and how the restricted reserve fund will be replenished, and steps to be taken to avoid the need for future restricted reserve fund withdrawals;

(d) MHOs shall provide the Division access to restricted reserve funds if insolvency occurs;

(e) MHOs shall have written policies and procedures to ensure that if insolvency occurs, members and related clinical records are transitioned to other MHOs or providers with minimal disruption.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.651
Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0420
Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

(1) Providers shall submit all billings for members following these timeframes:

(a) Submit billings within 12 months of the date of service in the following cases:

(A) Pregnancy;

(B) Eligibility issues such as retroactive deletions or retroactive enrollments;

(C) When Medicare is the primary payer, except where the MCO is responsible for the Medicare reimbursement;

(D) Other cases that could have delayed the initial billing to the MCO, which does not include failure of the provider to certify the member's eligibility; or

(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the

Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.

(b) Submit billings within four months of the date of service for all other cases.

(2) Providers must be enrolled with the Division to be eligible for Authority fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), shall be approved by the Local Mental Health Authority (LMHA) and the Division before enrollment with the Authority or to be eligible for PHP payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260 (Provider Enrollment).

(3) Providers including mental health providers shall be enrolled with the Authority as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the encounter is accepted.

(4) Providers shall verify before providing services that the member is eligible for the Division's programs on the date of service using the Authority and PHP's tools, as applicable, and that the service to be provided is covered under the member's OHP Benefit Package. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider shall complete and have the member sign an Authority 3165, or facsimile, as described in OAR 410-120-1280.

(5) PHPs shall pay for all capitated services. These services shall be billed directly to the PHP, unless the PHP or the Authority specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider except as follows:

(a) PHPs shall have written procedures for processing preauthorization requests received from any provider and written procedures for processing claims submitted from any source. The procedures shall specify time frames for:

(A) Date stamping preauthorization requests and claims when received;

(B) Determining within a specific number of days from receipt whether a preauthorization request or a claim is valid or non-valid;

(C) The specific number of days allowed for follow-up on pended preauthorization requests or pended claims to obtain additional information;

(D) The specific number of days following receipt of the additional information that a redetermination shall be made;

(E) Providing services after office hours and on weekends that require preauthorization;

(F) Sending notice of the decision with appeal rights to the member when the determination is a denial of the requested service as specified in OAR 410-141-0263.

(b) PHPs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs shall be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP shall provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHPs shall notify providers of such determination within two working days of receipt of the request;

(c) For expedited preauthorization requests in which the provider indicates or the PHP determines that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(A) The PHP shall make an expedited authorization decision and provide notice as expeditiously as the member's health condition requires and no later than three working days after receipt of the request for service;

(B) The PHP may extend the three working day time period no more than 14 calendar days if the member requests an extension or if the PHP justifies to the Authority a need for additional information and how the extension is in the member's best interest.

(d) For all other preauthorization requests, PHPs shall notify providers of an approval, denial, or need for further information within 14 calendar days of receipt of the request as outlined in OAR 410-141-0263. PHPs shall make reasonable efforts to obtain the necessary information during the 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information if the PHP justifies to the Authority upon request the need for additional information and how the delay is in the member's best interest. If the PHP extends the timeframe, it shall give the member written notice of the reason for the extension as outlined in OAR 410-141-0263. The PHP shall make a determination as the member's health condition requires but no later than the expiration of the extension;

(e) PHPs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(f) PHPs shall provide written notification of PHP determinations when the determinations result in a denial of payment for services as outlined in OAR 410-141-0263;

(g) PHPs may not require providers to delay billing to the PHP;

(h) PHPs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare and may not require non-Medicare approved providers to bill Medicare;

(i) PHPs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(j) PHPs may not delay or deny payments because a co-payment was not collected at the time of service.

(7) FCHPs, PCOs, and MHOs shall pay for Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the member receives within the PHP for authorized referral care and for urgent care services or emergency services the member receives from non-participating providers. FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers.

(8) FCHPs and PCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for out-of-state services that the FCHP and PCO have arranged and authorized when those services are available within the state, unless otherwise approved by the Authority.

(9) PHPs shall pay for covered services provided by a non-participating provider that were not preauthorized if the following conditions exist:

(a) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(b) The covered service was delivered in good faith without the preauthorization; and

(c) It was a covered service that would have been preauthorized with a participating provider if the PHP's referral protocols had been followed;

(d) The PHP shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(10) For Type A or Type B hospitals transitioning from Cost-Based Reimbursement (CBR) to an Alternative Payment Methodology (APM):

(a) Sections (10)–(12) only apply to services provided by Type A or Type B hospitals to clients or members that are enrolled in a PHP;

(b) In accordance with ORS 414.653, the Authority may upon evaluation by an actuary retained by the Authority on a case-by-case basis require PHPs to continue to fully reimburse a rural Type A or Type B hospital determined to be at financial risk for the cost of covered services based on a cost-to-charge ratio.

(11) Redetermination of which Type A or Type B hospitals will transition off of CBR:

(a) No later than April 30, 2015, the Authority shall update the algorithm for calculation of the CBR methodology with the most recent data available;

(b) After recalculation for each Type A and Type B hospital, any changes in a hospital's status from CBR to APM or from APM to CBR shall be effective January 1, 2016;

(c) The reimbursement methodology for each hospital shall be recalculated every two years thereafter;

(d) Type A and Type B hospitals located in a county that is designated as "Frontier" will not be subject to redetermination via the algorithm and shall remain on CBR.

(12) Non-contracted Type A or Type B hospital rates for those transitioning off of CBR:

(a) Charges shall be discounted for both inpatient and outpatient services. The initial reimbursement rate effective January 1, 2015 shall be based on the individual hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services;

(b) Reimbursement rates effective for the calendar year beginning January 1, 2016 shall be based on the hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services and further adjusted by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increases during FY 2014–FY 2015 and the Authority's global budget rate increase as defined by the CMS 1115 waiver using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(c) Subsequent year reimbursement rates shall be adjusted and calculated by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increase and the Authority's global budget rate increase as defined by the CMS 1115 waiver using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(d) ASU shall contact hospitals regarding price increases during March of each year;

(e) Inpatient and outpatient reimbursement rates shall be calculated separately;

(f) A volume adjustment shall also be applied. ASU shall develop a risk corridor on the volume adjustment on a hospital specific basis. The Authority shall determine when the volume adjustment might sunset on a hospital specific basis;

(g) Non-contracted Type A or Type B hospital reimbursement rates for those transitioning off of CBR can be found in the Rate Table section at the following: http://www.oregon.gov/oha/healthplan/Pages/hospital.aspx.

(13) Members enrolled with PHPs may receive certain services on a FFS basis:

(a) Certain services shall be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though the services are paid by the Authority on a FFS basis. Before providing services, providers shall verify a member's eligibility via the web portal or AVR;

(b) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Authority administrative rules and supplemental information including rates and billing instructions;

(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the contracts, billing instructions, and Authority administrative rules and supplemental information;

(e) The Authority may not pay a provider for providing services for which a PHP has received a capitation payment unless otherwise provided for in rule;

(f) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the, Division or PHP except as provided for in Authority administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate); and

(g) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the FCHP or PCO would make for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of Balanced Budget Act (BBA) 4712(b)(2).

(14) Coverage of services through the OHP Benefit package of covered services is limited by OAR 410-141-0500 (Excluded Services and Limitations for Clients).

(15) All members enrolled with a PCO receive inpatient hospital services on a FFS basis:

(a) May receive services directly from any enrolled provider;

(b) All services shall be billed directly to the Authority in accordance with FFS billing instructions contained in the Authority administrative rules and supplemental information;

(c) The Authority shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Authority administrative rules and supplemental information.

(16) Clients not enrolled with a PHP receive services on a FFS basis:

(a) Services may be received directly from any appropriately enrolled provider;

(b) All services shall be billed directly to the Authority in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(c) The Authority shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Authority administrative rules and supplemental information.

Stat. Auth.: ORS 413.042, 414.065, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.065 & 414.610 - 414.685

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 29-2011, f. 10-19-11, cert. ef. 10-20-11; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; Administrative correction, 8-1-12; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 66-2014(Temp), f. 11-13-14, cert. ef. 12-28-14 thru 6-25-15; DMAP 71-2014, f. 12-8-14, cert. ef. 1-1-15; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-0860

Oregon Health Plan Patient Centered Primary Care Home Provider Qualification and Enrollment

CCOs shall administer the Patient Centered Primary Care Home program and receive program required reporting as supposed by OAR 409-055-0000 through 409-055-0090 and the 2016 CCO contract.

Stat. Auth.: ORS 413.042, 414.065;

Stats. Implemented: ORS 414.065

Hist.: 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 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; DMAP 28-2011, f. 9-30-11, cert. ef. 10-1-11; DMAP 14-2012, f. & cert. ef. 3-22-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 71-2015, f. & cert. ef. 12-10-15

410-141-3080

Disenrollment from Coordinated Care Organizations

(1) All member-initiated requests for disenrollment from a Coordinated Care Organization (CCO) or Dental Care Organization (DCO) shall be initiated orally or in writing by the primary person in the benefit group enrolled with a CCO or DCO, where primary person and benefit group are defined in OAR 461-001-0000, 461-001-0035, and 461-110-0750, respectively. For members who are not able to request disenrollment on their own, the request may be initiated by the member's representative.

(2) In accordance with 42 CFR 438.56(c)(2), the Authority, CCO, or DCO shall honor a member or representative request for disenrollment for the following:

(a) Without cause:

(A) Newly eligible members may change their CCO or DCO assignment within 12 months following the date of initial enrollment. The effective date of disenrollment shall be the first of the month following the Division's approval of disenrollment;

(B) At least once every 12 months;

(C) Existing members may change their CCO or DCO assignment within 30 days of the Authority's automatic assignment or reenrollment in a CCO or DCO;

(D) In accordance with ORS 414.645, members may disenroll from a CCO or DCO during their redetermination (enrollment period) or one additional time during their enrollment period based on the member's choice and with Authority approval. The disenrollment shall be considered "recipient choice."

(b) With cause:

(A) At any time;

(B) Due to moral or religious objections, the CCO or DCO does not cover the service the member seeks;

(C) When the 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 member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk; or

(D) 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 participating providers who are experienced in dealing with the member's health care needs. Examples of sufficient cause include, but are not limited to:

(i) The member moves out of the CCO or DCO's service area;

(ii) The 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 OAR 410-141-3060 or this rule. Participation in the Oregon Health Plan, including coordinated care or dental care, does not guarantee that any member has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care shall be denied if the basis for this request is primarily for the convenience of a member 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 CCO or DCO;

(iv) As specified in ORS 414.645, the Authority may approve the transfer of 500 or more members from one CCO or DCO to another CCO or DCO if:

(I) The member's provider has contracted with the receiving CCO or DCO and has stopped accepting patients from or has terminated providing services to members in the transferring CCO or DCO; and

(II) Members are offered the choice of remaining enrolled in the transferring CCO or DCO; and

(III) The member and all family (case) members shall be transferred to the provider's new CCO or DCO; and

(IV) The transfer shall take effect when the provider's contract with their current CCO or DCO contractual relationship ends or on a date approved by the Division; and

(V) Members may not be transferred under section (2)(E)(vi) until the Division has evaluated the receiving CCO or DCO and determined that the CCO or DCO meets criteria established by the Division as stated in rule including, but not limited to, ensuring that the CCO or DCO maintains a network of providers sufficient in numbers, areas of practice and geographically distributed in a manner to ensure that the health services provided under the contract are reasonably accessible to members; and

(VI) The Division shall provide notice of a transfer to members that will be affected by the transfer at least 90 days before the scheduled date of the transfer.

(E) If a member's disenrollment is denied, notice of denial shall be sent to the member pursuant to OAR 410-141-0263 and 410-141-3263 of their right to file a grievance or request a hearing.

(c) If the following conditions are met:

(A) The applicant is in the third trimester of 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 CCO or DCO within the past three months; and

(B) The new CCO or DCO the member is enrolled with does not contract with the member's current OB provider and the member wishes to continue obtaining maternity services from that non-participating OB provider; and

(C) The request to change CCO or DCO or return to FFS is made prior to the date of delivery.

(d) For purposes of a member's right to file a grievance or request a hearing, disenrollment does not include the following:

(A) Transfer of a member from a PHP to a CCO or DCO.

(B) Involuntary transfer of a member from a CCO or DCO to another CCO or DCO; or

(C) Automatic enrollment of a member in a CCO or DCO.

(e) Member disenrollment requests are subject to the following requirements:

(A) The member shall join another CCO or DCO, unless the member resides in a service area where enrollment is voluntary, or the member meets the exemptions to enrollment set forth in OAR 410-141-3060(4) or 410-141-0060(4), the member meets disenrollment criteria state in 42 CFR 438.56(c)(2), or there is not another CCO or DCO in the service area;

(B) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless the Division approves retroactively;

(C) If the Authority fails to make a disenrollment determination by the first day of the second month following the month in which the member files a request for disenrollment, the disenrollment is considered approved.

(3) The CCO or DCO may not disenroll members solely for the following reasons:

(a) Because of a physical, intellectual, developmental, or mental disability;

(b) Because of an adverse change in the member's health;

(c) Because of the member's utilization of services, either excessive or lack thereof;

(d) Because the member requests a hearing;

(e) Because the member exercises their option to make decisions regarding their medical care with which the CCO or DCO disagrees;

(f) Because of uncooperative or disruptive behavior resulting from the member's special needs.

(4) Subject to applicable disability discrimination laws, the Division may disenroll members for cause when the CCO or DCO requests it for cause that includes, but is not limited to, the following:

(a) The member commits fraudulent or illegal acts related to the member's participation in the OHP such as: permitting the use of their medical ID card by others, altering a prescription, theft, or other criminal acts. The CCO or DCO shall report any illegal acts to law enforcement authorities and, if appropriate, to DHS Fraud Investigations Unit at 888-Fraud01 (888-372-8301) or http://www.oregon.gov/DHS/aboutdhs/fraud/ as appropriate, consistent with 42 CFR 455.13;

(b) The member became eligible through a hospital hold process and placed in the Adults and Couples category as required under OAR 410-141-3060(4)

(c) Requests by the CCO for routine disenrollment of specific members shall include the following procedures to be followed and documented prior to requesting disenrollment of a member:

(A) A request shall be submitted in writing to the Coordinated Account Representative (CAR). The CCO or DCO shall 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 shall be followed and documented prior to requesting disenrollment of a member;

(B) There shall be notification from the provider to the CCO or DCO at the time the problem is identified. The notification shall describe the problem and allow time for appropriate resolution by the CCO or DCO. Such notification shall be documented in the member's clinical record. The CCO or DCO shall conduct provider education or training regarding the need for early intervention, disability accommodation, and the services available to the provider;

(C) The CCO or DCO shall contact the member either verbally or in writing if it is a severe problem to inform the member of the problem that has been identified and attempt to develop an agreement with the member regarding the issue. Any contact with the member shall be documented in the member's clinical record. The CCO or DCO shall inform the member that their continued behavior may result in disenrollment from the CCO or DCO;

(D) The CCO or DCO shall provide individual education, disability accommodation, counseling, or other interventions with the member in a serious effort to resolve the problem;

(E) The CCO or DCO shall contact the member's care team regarding the problem and, if needed and with the agreement of the member, involve the care team and other appropriate individuals working with the member in the resolution within the laws governing confidentiality;

(F) If the severity of the problem warrants, the CCO or DCO shall develop a care plan that details how the problem is going to be addressed and coordinate a care conference with the member, their care team, and other individuals chosen by the member. If necessary, the CCO or DCO shall obtain an authorization for release of information from the member for the providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it shall be documented in the member's record;

(G) The CCO or DCO shall submit any additional information or assessments requested by the Division CAR;

(H) The Authority shall notify the member in writing of a disenrollment made as defined in the section above;

(I) If the member's behavior is uncooperative or disruptive including, but not limited to, threats or acts of physical violence as the result of his or her special needs or disability, the CCO or DCO shall also document each of the following:

(i) A written description 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 member poses a direct threat to the health or safety of others, the CCO or DCO shall 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 shall actually occur, and whether reasonable modifications of policies, practices, or procedures shall mitigate the risk to others;

(ii) A CCO or DCO-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist and other health care professionals who have the appropriate clinical expertise in treating the 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 and why the accommodations haven't worked;

(v) Documentation of the CCO or DCO's rationale for concluding that the member's continued enrollment in the CCO or DCO seriously impairs the CCO's or DCO's ability to furnish services to either this particular member or other members;

(vi) If a Primary Care Provider (PCP) terminates the provider/patient relationship, the CCO or DCO shall attempt to locate another PCP on their panel who will accept the member as their patient. If needed, the CCO or DCO shall obtain an authorization for release of information from the member in order to share the information necessary for a new provider to evaluate whether they can treat the member. All terminations of provider/patient relationships shall be according to the CCO or DCO's policies and shall be consistent with CCO or DCO or PCP's policies for commercial members and with applicable disability discrimination laws. The CCO or DCO shall determine whether the PCP's termination of the provider/patient relationship is based on behavior related to the member's disability and shall provide education to the PCP about disability discrimination laws.

(d) In addition to the requirements in subsection (c), requests by the CCO or DCO for an exception to the routine disenrollment process shall include the following:

(A) In accordance with 42 CFR 438.56 the CCO or DCO shall submit a request in writing to the CAR for approval. An exception to the disenrollment process may only be requested for members who have committed an act of or made a credible threat of physical violence directed at a health care provider, the provider's staff, other patients, or the CCO or DCO's staff so that it seriously impairs the CCO or DCO's ability to furnish services to either this particular member or other members. A credible threat means that there is a significant risk that the member will cause grievous physical injury to others (including but not limited to death) in the near future, and that risk cannot be eliminated by a modification of policies, practices, or procedures. The CCO or DCO shall document the reasons for the request and provide written evidence to support the basis for the request prior to requesting an exception to the disenrollment process of a member;

(B) Providers shall immediately notify the CCO or DCO about the incident with the member. The notification shall describe the problem and be maintained for documentation purposes;

(C) The CCO or DCO shall attempt and document contact with the member and their care team regarding the problem and, if needed, involve the care team and other appropriate individuals in the resolution within the laws governing confidentiality;

(D) The CCO or DCO shall provide any additional information requested by the CAR, the Authority, or Department of Human Services assessment team;

(E) If the member's behavior could reasonably be perceived as the result of their special needs or disability, the CCO or DCO shall also document each of the following:

(i) A written description of the relationship between the behavior to the special needs or disability of the individual and whether the individual's behavior poses a credible threat of physical violence as defined in section (2)(b)(C)(i) of this rule;

(ii) In determining whether a member poses a credible threat to the health or safety of others, the CCO or DCO shall 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;

(F) Documentation shall exist that verifies the provider or CCO or DCO immediately reported the incident to law enforcement. The CCO or DCO shall submit a copy of the police report or case number. If a report is not available, submit a signed entry in the member's clinical record documenting the report to law enforcement or other reasonable evidence;

(G) Documentation shall exist that verifies what reasonable modifications were considered and why reasonable modifications of policies, practices, or procedures will not mitigate the risk to others;

(H) Documentation shall exist that verifies any past incidents and attempts to accommodate similar problems with this member;

(I) Documentation shall exist that verifies the CCO or DCO's rationale for concluding that the member's continued enrollment in the CCO or DCO seriously impairs the CCO or DCO's ability to furnish services to either this particular member or other members.

(e) Approval or denial of disenrollment requests shall include the following:

(A) If there is sufficient documentation, the request shall be evaluated by the CCO or DCO's CAR or a team of CARs who may request additional information from Ombudsman Services or other agencies as needed. If the request involves the member's mental health condition or behaviors related to substance abuse, the CAR shall also confer with the Division's substance use disorder specialist;

(B) In cases where the member is also enrolled in the CCO or DCO's Medicare Advantage plan, the CCO or DCO shall provide proof to the Division of CMS' approval to disenroll the member. If approved by the Division, the date of disenrollment from both plans shall be the disenrollment date approved by CMS;

(C) If there is insufficient documentation, the CAR shall notify the CCO or DCO within two business days of initial receipt what supporting documentation is needed for final consideration of the request;

(D) The CARs shall review the request and notify the CCO or DCO of the decision within ten working days of receipt of sufficient documentation from the CCO or DCO;

(E) Written decisions shall be sent to the CCO or DCO within 15 working days from receipt of request and sufficient documentation from the CAR.

(5) The following procedures apply to all denied disenrollment requests:

(a) The CAR shall send the member a notice within five days after the decision for denial with a copy to the CCO or DCO and the member's care team;

(b) The notice shall give the disenrollment date, the reason for disenrollment, and the notice of the member's right to file a complaint (as specified in 410-141-0260 through 410-141-0266) and to request an administrative hearing and the option to continue enrollment in the PHP pending the outcome of the hearing in accordance with 42 CFR 438.420. If the member requests a hearing, the disenrollment will proceed unless the member requests continued enrollment pending a decision;

(c) If disenrollment is approved, the CAR shall contact the member's care team to arrange enrollment in a different plan. The Division may require the member to obtain services from FFS providers until such time as they can be enrolled with another CCO or DCO;

(d) If no other CCO or DCO is available to the member, the member will be exempt from enrollment in that type of managed care plan for 12 months. If a member who has been disenrolled for cause is re-enrolled in the CCO or DCO, the CCO or DCO may request a disenrollment review by the CAR. A member may not be involuntarily disenrolled from the same CCO or DCO for a period of more than 12 months. If the member is re-enrolled after the 12-month period and the CCO or DCO again requests disenrollment for cause, the request shall be referred to the Authority assessment team for review.

(6) The following procedures apply to all approved disenrollment requests:

(a) The CAR shall send the member a notice within five days after the request was approved with a copy to the CCO or DCO and the member's care team.

(b) The notice shall give the disenrollment date, the reason for disenrollment, and the notice of member's right to file a complaint (as specified in OAR 410-141-3260 through 410-141-3266) and to request an administrative hearing and the option to continue enrollment in the CCO or DCO pending the outcome of the hearing in accordance with 42 CFR 438.420. If the member requests a hearing, the disenrollment shall proceed unless the member requests continued enrollment pending a decision;

(c) The disenrollment effective date will be ten calendar days after the disenrollment notice is sent to the member unless the member requests a hearing and ongoing enrollment pending a hearing decision. The disenrollment shall become effective immediately upon the issuing of an Administrative Law Judge's decision to uphold disenrollment;

(d) If disenrollment is approved, the CAR shall contact the member's care team to arrange enrollment in a different plan. The Division may require the member to obtain services from FFS providers until such time as they can be enrolled with another CCO or DCO;

(e) If no other CCO or DCO is available to the member, the member shall be exempt from enrollment in that type of managed care plan for 12 months. If a member who has been disenrolled for cause is re-enrolled in the CCO or DCO, the CCO or DCO may request a disenrollment review by the CAR. A member may not be involuntarily disenrolled from the same CCO or DCO for a period of more than 12 months. If the member is re-enrolled after the 12-month period and the CCO or DCO or the member again requests disenrollment for cause, the request shall be referred to the Authority's assessment team for review.

(7) Other reasons for the CCO or DCO's requests for disenrollment may include the following:

(a) If the member is enrolled in the CCO or DCO on the same day the member is admitted to the hospital, the CCO or DCO shall be responsible for the hospitalization. If the member is enrolled after the first day of the inpatient stay, the member shall be disenrolled and enrolled on the next available enrollment date following discharge from inpatient hospital services;

(b) The member has surgery scheduled at the time their enrollment is effective with the CCO or DCO, the provider is not on the CCO or DCO's provider panel, and the 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 CCO or DCO;

(d) Excluding the DCOs, if the CCO determines that the member or MHO member has Third Party Liability (TPL), the CCO will contact the Health Insurance Group (HIG) to request disenrollment;

(e) If a CCO or DCO has knowledge of a member's change of address, the CCO or DCO shall notify the member's care team. The care team shall verify the address information and disenroll the member from the CCO or DCO if the member no longer resides in the CCO or DCO's service area. Members shall be disenrolled if out of the CCO or DCO's service area for more than three months unless previously arranged with the CCO or DCO. The effective date of disenrollment shall be the date specified by the Division, and if a partial month remains, the Division shall recoup the balance of that month's capitation payment from the CCO or DCO;

(f) The 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 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 CCO or DCO shall identify the members and provide sufficient proof of incarceration to the Division for review of the disenrollment request. The Division shall approve requests for disenrollment from CCO or DCOs for members who have been taken into custody;

(g) The member is in a state psychiatric institution.

(8) The Division may initiate and disenroll members as follows:

(a) If informed that a member has TPL, the Division shall refer the case to the HIG for investigation and possible exemption from CCO or DCO enrollment. The Division shall disenroll members who have TPL effective the end of the month in which HIG makes such a determination. In some situations, the Division may approve retroactive disenrollment;

(b) If the member moves out of the CCO or DCO's service area, the effective date of disenrollment shall be the date specified by the Division, and the Division shall recoup the balance of that month's capitation payment from the CCO or DCO;

(c) If the member is no longer eligible for OHP, the effective date of disenrollment shall be the date specified by the Division;

(d) If the member dies, the last date of enrollment shall be the date of death.

(9) Unless specified otherwise in these rules or in the Division notification of disenrollment to the CCO or DCO, all disenrollments are effective the end of the month the Authority approves the disenrollment with the following exceptions:

(a) The Authority may retroactively disenroll or suspend enrollment when the member is taken into custody. The effective date shall be the date the member was incarcerated;

(b) The Authority may retroactively disenroll enrollment if the member has TPL pursuant to this rule. The effective date shall be the end of the month in which HIG makes the determination.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 47-2012(Temp), f. & cert. ef. 10-16-12 thru 4-13-13; DMAP 55-2012(Temp), f. & cert. ef. 11-15-12 thru 4-13-13; Administrative correction 4-22-13; DMAP 19-2013, f. & cert. ef. 4-23-13; DMAP 25-2013, f. & cert. ef. 6-11-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 8-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14; DMAP 30-2014, f. 5-23-14, cert. ef. 6-1-14; DMAP 71-2015, f. & cert. ef. 12-10-15

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Oregon Health Authority, Health Policy and Analytics
Chapter 409

Rule Caption: Specifies percentage of low-income patients a facility must serve to qualify for J-1 Visa physician.
Adm. Order No.: OHP 9-2015
Filed with Sec. of State: 11-24-2015
Certified to be Effective: 11-24-15
Notice Publication Date: 11-1-2015
Rules Amended: 409-035-0020
Rules Repealed: 409-035-0020(T)
Subject: OAR 409-035-0020 is being amended to add specifications regarding the percentage of low income or Medicare patients a facility must serve in order to qualify for a J-1 Visa physician. The rule clarifies that at least 40 percent of patients must be Medicaid, Medicare or other low-income patients.
Rules Coordinator: Zarie Haverkate—(503) 931-6420

409-035-0020
Health Care Facility Participation Requirements

(1) Federally Qualified Health Centers with a:

(a) HPSA score at or above the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver either through the Authority or through the United State Department of Health and Human Services (see: http://www.global-health.gov/global-programs-and-initiatives/exchange-visitor-program);

(b) HPSA score below the requirements of 22 CFR 41.63 shall apply for a J-1 Waiver through the Authority.

(2) If a health care facility is located in a Medically Underserved Area (MUA) or Medically Underserved Population (MUP) that is not a Health Professional Shortage Area (HPSA), or if the request is for a flex option, then the facility must obtain prior approval from the Authority and provide documentation substantiating the area's need for a physician.

(3) In order to qualify for the Oregon Physician Visa Waiver Program the health care facility must:

(a) Identify the nature of the business entity seeking to employ the physician, including but not limited to domestic or foreign professional corporation, domestic or foreign private corporation, LLC, or partnership, and provide a certificate of existence or proof of authorization to do business in Oregon;

(b) Have provided care for a minimum of six months in Oregon, or supply evidence of stability such as HRSA funding, prior to submitting an application;

(c) Currently serve Medicare, Medicaid, and low income uninsured patients that are members of the population of the local HRSA designation. At least 40 percent of patients must be Medicaid, Medicare or other low income patients. Medicaid patients must represent a share of the overall facility's patient population equal to or greater than the statewide percentage of the population eligible for Medicaid.

(d) Post a sliding fee schedule in the primary languages of the population being served;

(e) Document attempts to actively recruit an American doctor for at least six months prior to submission of the application;

(f) Execute an employment contract with the physician that includes the following provisions:

(A) Duration of at least three years;

(B) Wages and working conditions comparable to those for a graduate from an American medical school;

(C) A signed U.S. Department of Labor Prevailing Wage Form (ETA-9035);

(D) May not include a non-compete clause or restrictive covenant that prevents or discourages the physician from continuing to practice in any designated area after the term of the contract expires;

(E) Specifies the geographic shortage area within Oregon in which the physician will practice or, if requesting a flex option, the shortage area or areas where prospective patients live;

(F) The physician shall treat all patients regardless of their ability to pay;

(G) The physician shall provide patient care on a full-time basis, a minimum of 40 hours per week;

(4) The health care facility shall submit to the Authority a fee of $2,000 and two original copies of the application packet for each waiver requested.

Stat. Auth.: ORS 413.248
Stats. Implemented: ORS 413.248
Hist.: PH 14-2003(Temp), f. 9-25-03 cert. ef. 10-1-03 thru 3-29-04; PH 11-2004, f. 3-25-04, cert. ef. 3-29-04; Renumbered from 333-005-0020 by OHP 7-2010, f. 12-29-10, cert. ef. 1-1-11; OHP 3-2013, f. 1-24-13, cert. ef. 2-1-13; OHP 1-2015, f. 1-15-15, cert. ef. 2-1-15; OHP 6-2015(Temp), f. & cert. ef. 9-22-15 thru 3-1-16; OHP 9-2015, f. & cert. ef. 11-24-15

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Oregon Health Authority, Oregon Prescription Drug Program
Chapter 431

Rule Caption: Authority to purchase prescription drugs through the program for recipients of medical assistance.
Adm. Order No.: OPDP 2-2015
Filed with Sec. of State: 12-7-2015
Certified to be Effective: 12-7-15
Notice Publication Date: 12-1-2015
Rules Amended: 431-121-2005
Subject: OAR 434-121-2005(7) is removed to implement the revisions adopted by HB 2638 Enrolled 2015, which deleted ORS 414.312 "(5) The Authority may not purchase prescription drugs directly or indirectly through the program for recipients of medical assistance."
Rules Coordinator: Betty Wilton—(503) 945-7834

431-121-2005
General Administration

(1) The Administrator, or designee, may:

(a) Negotiate price discounts and rebates on prescription drugs with prescription drug manufacturers and GPOs;

(b) Purchase prescription drugs on behalf of participating programs;

(c) Contract with a PDCP or PBM to adjudicate pharmacy claims and transmit program prices to pharmacies;

(d) Determine program prices and reimburse or replenish pharmacies for prescription drugs dispensed or transferred;

(e) Adopt and implement a PDL for the OPDP;

(f) Develop a system for allocating and distributing the operational costs of the program and any rebates obtained to participating programs; and

(g) Cooperate with any state or regional consortia in bulk purchasing of prescription drugs.

(2) The Administrator or designated entity shall oversee the implementation of the OPDP, including review of member eligibility information, participating program information, and pharmacy provider compliance with program requirements. The Administrator, or designated entity, shall review records or other information, including health information, necessary to perform oversight responsibilities.

(3) The Administrator shall establish processes, terms, and conditions describing how the entities identified in ORS 414.312(4) may participate in the OPDP as a participating program, including entities otherwise subject to ORS 731.036(6).

(4) The Administrator or designated entity may contract with a PBM and directly or indirectly with pharmacy providers as the Administrator or designated entity considers necessary to maintain statewide access for OPDP members including consideration for CAP providers.

(5) The Administrator or designated entity may contract with replenishment administrators, GPO's, 340B providers, and pharmacy providers as necessary to utilize discount purchasing programs.

(6) Annually, no later than November 1, the Office of Rural Health shall determine any Oregon pharmacies that meet CAP status and report them to the OPDP for CAP designation. OPDP shall send the current list of all Oregon retail pharmacies to the Office of Rural Health no later than October l each year.

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; Administrative Correction, 6-16-07; OHP 3-2007, f. & cert. ef. 8-3-07; OHP 3-2009, f. & cert. ef. 10-1-09; Renumbered from 409-030-0005 by DMAP 1-2011, f. 2-10-11, cert. ef. 3-1-11; DMAP 10-2012, f. 3-6-12, cert. ef. 3-13-12; Renumbered from 410-121-2005, OPDP 1-2015, f. & cert. ef. 2-18-15; OPDP 2-2015, f. & cert. ef. 12-7-15

Oregon Health Authority, Public Health Division
Chapter 333

Rule Caption: Drinking Water Services fee increases necessary to maintain the agency's current level of service
Adm. Order No.: PH 23-2015
Filed with Sec. of State: 12-8-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Amended: 333-061-0060, 333-061-0072, 333-061-0073, 333-061-0076, 333-061-0265
Subject: The Oregon Health Authority (Authority), Public Health Division is permanently amending Oregon Administrative Rules in chapter 333, division 61 relating to the fees for certification of backflow assembly testers, cross connection specialists and water system operators as well as for reviewing construction plans and inspection of public water systems.

Current fees were set in 1994, 2006 and 2008 and are no longer sufficient to support the current level of service provided by the Authority. The increased fees were approved by the 2015 Legislature as part of the Oregon Health Authority budget, and will allow the Authority to continue to provide the current level of service for certifying and renewing certifications for water system operators and backflow device testers/specialists, reviewing and approving construction plans, and inspecting public water systems.

The fee increases will be effective January 1, 2016, as approved by the 2015 Legislature.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-061-0060
Plan Submission and Review Requirements

(1) Plan Submission:

(a) Construction and installation plans shall be submitted to and approved by the Authority before construction begins on new systems or major additions or modifications, as determined by the Authority, are made to existing systems. Plans shall be drawn to scale;

(b) Preliminary plans, pilot studies, master plans and construction plans shall be prepared by a Professional Engineer registered in Oregon, and submitted to the Authority unless exempted by the Authority (See OAR 333-061-0060(4));

(c) Plans shall set forth the following:

(A) Sufficient detail, including specifications, to completely and clearly illustrate what is to be constructed and how those facilities will meet the construction standards set forth in these regulations. Elevation or section views shall be provided where required for clarity;

(B) Supporting information attesting to the quality of the proposed source of water;

(C) Vicinity map of the proposed project relative to the existing system or established landmarks of the area;

(D) Name of the owner of the water system facilities during construction and the name of the owner and operator of the facilities after completion of the project;

(E) Procedures for cleaning and disinfecting those facilities which will be in contact with the potable water.

(d) Prior to drilling a well, a site plan shall be submitted which shows the site location, topography, drainage, surface water sources, specifications for well drilling, location of the well relative to sanitary hazards, dimensions of the area reserved to be kept free of potential sources of contamination, evidence of ownership or control of the reserve area and the anticipated depth of the aquifer from which the water is to be derived. The Authority will review well reports from the area and in consultation with the local watermaster and the well constructor as appropriate will recommend the depth of placement of the casing seal. After the well is drilled, the following documents shall be submitted to the Authority for review and approval: Well driller's report, report of the pump test which indicates that the well has been pumped for a sufficient length of time to establish the reliable yield of the well on a sustained basis, including data on the static water level, the pumping rate(s), the changes in drawdown over the duration of the test, the rate of recovery after the pump was turned off, reports on physical, chemical and microbiological quality of the well water, performance data on the well pump, a plan of the structure for protecting above-ground

controls and appurtenances, and a plan showing how the well will be connected to the water system. (See OAR 333-061-0050(2)).

(e) Any community, non-transient non-community, or transient non-community water system that treats surface water or groundwater under the influence of surface water and that desires to make a significant change to its disinfection treatment process as defined by paragraphs (1)(e)(A) through (1)(e)(D) of this rule, is required to develop a disinfection profile and calculate a disinfection benchmark according to OAR 333-061-0036(4)(g). The water system must consult with and provide any additional information requested by the Authority prior to making such a change. The water system must develop a disinfection profile for Giardia lamblia and viruses, calculate a disinfection benchmark, describe the proposed change in the disinfection process, and analyze the effect(s) of the proposed change on current levels of disinfection according to the USEPA Disinfection Profiling and Benchmarking Guidance Manual or the USEPA LT1-ESWTR Disinfection Profiling and Benchmarking Technical Guidance Manual and submit the information to the Authority for review and approval. Significant changes to the disinfection treatment process include:

(A) Changes to the point of application:

(B) Changes to the disinfectants used in the treatment process;

(C) Changes to the disinfection process;

(D) Any other modification identified by the Authority.

(f) A water system that uses either chloramines, chlorine dioxide, or ozone for primary disinfection, and that is required to prepare a disinfection profile for Giardia lamblia as prescribed by subsection (1)(e) of this rule, must also prepare a disinfection profile for viruses and calculate the logs of inactivation for viruses using the methods specified in OAR 333-061-0036(4)(g).

(2) Plan review.

(a) Upon receipt of plans, the Authority shall review the plans and either approve them or advise that correction or clarification is required. When the correction or clarification is received, and the item(s) in question are resolved, the Authority shall then approve the plans;

(b) Upon completion of a project, a professional engineer registered in Oregon shall submit to the Authority a statement certifying that the project has been constructed in compliance with the approved plans and specifications. When substantial deviations from the approved plans are made, as-built plans showing compliance with these rules shall be submitted to the Authority;

(c) Plans shall not be required for emergency repair of existing facilities. In lieu of plans, written notice shall be submitted to the Authority immediately after the emergency work is completed stating the nature of the emergency, the extent of the work and whether or not any threats to the water quality exists or existed during the emergency.

(3) Plan review fees: Plans submitted to the Authority shall be accompanied by a fee as indicated in Table 47. Those plans not accompanied by a fee will not be reviewed. [Table not included. See ED. NOTE.]

(4) Plan review exemptions:

(a) Water suppliers may be exempted from submitting plans of main extensions, providing they:

(A) Have provided the Authority with a current master plan; and

(B) Certify that the work will be carried out in conformance with the construction standards of these rules; and

(C) Submit to the Authority an annual summary of the projects completed; and

(D) Certify that they have staff qualified to effectively supervise the projects.

(b) Those water suppliers certifying that they have staff qualified to effectively plan, design and supervise their projects, may request the Authority for further exemption from this rule. Such requests must be accompanied by a listing of staff proposed to accomplish the work and a current master plan. To maintain the exemption, the foregoing must be annually updated;

(c) At the discretion of the Authority, Community, Transient and Non-Transient Non-Community and State Regulated water systems may be exempted from submitting engineered plans. They shall, however, submit adequate plans indicating that the project meets the minimum construction standards of these rules.

(5) Master plans.

(a) Community water systems with 300 or more service connections shall maintain a current master plan. Master plans shall be prepared by a professional engineer registered in Oregon and submitted to the Authority for review and approval.

(b) Each master plan shall evaluate the needs of the water system for at least a twenty year period and shall include but is not limited to the following elements:

(A) A summary of the overall plan that includes the water quality and service goals, identified present and future water system deficiencies, the engineer's recommended alternative for achieving the goals and correcting the deficiencies, and the recommended implementation schedule and financing program for constructing improvements.

(B) A description of the existing water system which includes the service area, source(s) of supply, status of water rights, current status of drinking water quality and compliance with regulatory standards, maps or schematics of the water system showing size and location of facilities, estimates of water use, and operation and maintenance requirements.

(C) A description of water quality and level of service goals for the water system, considering, as appropriate, existing and future regulatory requirements, nonregulatory water quality needs of water users, flow and pressure requirements, and capacity needs related to water use and fire flow needs.

(D) An estimate of the projected growth of the water system during the master plan period and the impacts on the service area boundaries, water supply source(s) and availability, and customer water use.

(E) An engineering evaluation of the ability of the existing water system facilities to meet the water quality and level of service goals, identification of any existing water system deficiencies, and deficiencies likely to develop within the master plan period. The evaluation shall include the water supply source, water treatment, storage, distribution facilities, and operation and maintenance requirements. The evaluation shall also include a description of the water rights with a determination of additional water availability, and the impacts of present and probable future drinking water quality regulations.

(F) Identification of alternative engineering solutions, environmental impacts, and associated capital and operation and maintenance costs, to correct water system deficiencies and achieve system expansion to meet anticipated growth, including identification of available options for cooperative or coordinated water system improvements with other local water suppliers.

(G) A description of alternatives to finance water system improvements including local financing (such as user rates and system development charges) and financing assistance programs.

(H) A recommended water system improvement program including the recommended engineering alternative and associated costs, maps or schematics showing size and location of proposed facilities, the recommended financing alternative, and a recommended schedule for water system design and construction.

(I) If required as a condition of a water use permit issued by the Water Resources Department, the Master Plan shall address the requirements of OAR 690-086-0120 (Water Management and Conservation Plans).

(c) The implementation of any portion of a water system master plan must be consistent with OAR 333-061 (Public Drinking Water Systems, Oregon Health Authority), OAR 660-011 (Public Facilities Planning, Department of Land Conservation and Development) and OAR 690-086 (Water Management and Conservation Plans, Water Resources Department).

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

Stat. Auth.: ORS 448.131

Stats. Implemented: ORS 448.131

Hist.: HD 106, f. & ef. 2-6-76; HD 4-1980, f. & ef. 3-21-80; HD 17-1981(Temp), f. & ef. 8-28-81; HD 4-1982, f. & ef. 2-26-82; Renumbered from 333-042-0220, HD 2-1983, f. & ef. 2-23-83; HD 13-1985, f. & ef. 8-1-85; HD 9-1989, f. & cert. ef. 11-13-89; HD 3-1994, f. & cert. ef. 1-14-94; HD 11-1994, f. & cert. ef. 4-11-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; OHD 7-2000, f. 7-11-00, cert. ef. 7-15-00; OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 4-2009, f. & cert. ef. 5-18-09; PH 7-2010, f. & cert. ef. 4-19-10; PH 23-2015, f. 12-8-15, cert. ef. 1-1-16

333-061-0072

Backflow Assembly Tester Certification

(1) In order to be certified as a backflow assembly tester, individuals must successfully complete all the requirements of this rule for testing backflow prevention assemblies. Only the following individuals may perform the field-testing on backflow prevention assemblies required by these rules:

(a) Individuals certified by the Authority to test backflow prevention assemblies; and

(b) Journeyman plumbers defined as those who hold a certificate of competency issued under ORS Chapter 693 or apprentice plumbers, as defined under ORS 693.010.

(2) Journeyman plumbers or apprentice plumbers who test backflow prevention assemblies shall satisfactorily complete an Authority approved backflow assembly tester training course, according to rules adopted by the Director of Consumer and Business Services.

(3) Individuals certified as a backflow assembly tester must comply with ORS 448.279(2).

(4) All backflow assembly tester training courses must be approved by the Authority and taken at an Authority approved training facility.

(5) Satisfactory completion of an approved backflow assembly tester training course means:

(a) Completing the course;

(b) Scoring at least 70 percent on the written examination; and

(c) Scoring at least 90 percent on the physical-performance examination.

(6) In order to apply for initial backflow assembly tester certification, individuals must submit:

(a) A completed initial application with all required documentation as specified on the initial application form and in this rule, including but not limited to:

(A) Proof of high school graduation, GED, associate's degree, bachelor's degree, master's degree, or PhD; and

(B) Proof of satisfactory completion, as described in section (5) of this rule, of a backflow assembly tester initial training course within the 12 months prior to the Authority receiving the completed application; and

(b) The initial certification fee as specified in section (9) of this rule.

(7) Backflow assembly tester certification expires on December 31 every two years based upon the first letter in the last name of the individual. Certification for individuals with names beginning in the letters A–K expire in even numbered years, and certification for individuals with names beginning in the letters L–Z expire in odd-numbered years. Certification renewal fees may be prorated if individuals are required to renew their certification prior to the end of the most recent two-year certification period.

(a) Backflow assembly testers may only perform tests if they possess current, valid certification.

(b) In order to apply to renew backflow assembly tester certification, individuals must submit:

(A) A completed renewal application with all required documentation as specified on the renewal application form and in this rule, including but not limited to:

(i) Proof of satisfactory completion, as described in section (5) of this rule, of either a backflow assembly tester renewal course or a backflow tester initial training course within the two year period prior to the expiration date of the certification; and

(ii) Yearly test gauge accuracy verification or calibration reports performed in the same month every year, as determined by the backflow assembly tester; and

(B) The certification renewal fee, as specified in section (9) of this rule.

(c) The Authority may grant certification renewal without a reinstatement fee until January 31 in the year following the expiration date of the certification. A reinstatement fee as prescribed by section (9) of this rule is required in addition to the renewal fee for all renewal applications received after the grace period ending on January 31 following the expiration date of the certification.

(d) Backflow assembly testers that fail to renew their certification for one year following the expiration date of their certification must meet the requirements established for applicants as prescribed by sections (6) or (8) of this rule as applicable.

(8) In order to apply for backflow assembly tester certification based on reciprocity, individuals must submit:

(a) A completed reciprocity application form with all required documentation as specified on the application form and in these rules, including but not limited to:

(A) Proof of current certification from a state or entity having substantially equivalent certification training and testing standards to those set forth in these rules, as determined by the Authority;

(B) Proof of satisfactory completion, as described in section (5) of this rule, of a backflow assembly tester initial training course or a backflow tester renewal course within the 12 months prior to the Authority receiving the completed application;

(C) Proof of high school graduation, GED, associate's degree, bachelor's degree, master's degree, or PhD; and

(D) Yearly test gauge accuracy verification or calibration reports performed in the same month every year, as determined by the backflow assembly tester; and

(b) The reciprocity review and initial certification fees as specified in section (9) of this rule.

(9) Fees related to backflow assembly tester certification.

(a) Payments shall be made to the Oregon Health Authority, Public Health Division.

(b) The Authority will not refund any fees once it has initiated processing an application.

(c) Fees are:

(A) Initial Certification (2-years) $195;

(B) Certification Renewal (2-years) $195;

(C) Reciprocity Review $35;

(D) Reinstatement $50; and

(E) Combination Certification Renewal (2-years) $305.

(d) Initial certification fees may be prorated to the nearest year for the remainder of the 2-year certification period.

(e) The Combination Certification Renewal fee applies when applicants simultaneously renew their backflow assembly tester and cross connection specialist certifications.

(10) Enforcement related to Backflow Assembly Tester certification

(a) The Authority may deny an initial application for certification, an application for renewal of certification, an application for certification based on reciprocity, or revoke a certification if the Authority determines the applicant/backflow assembly tester:

(A) Provided false information to the Authority;

(B) Did not possess certification issued by another state or entity because it was revoked;

(C) Permitted another person to use their certificate number;

(D) Failed to properly perform backflow prevention assembly testing;

(E) Falsified a backflow assembly test report;

(F) Failed to comply with ORS 448.279(2);

(G) Failed to comply with these rules or other applicable federal, state or local laws or regulations; or

(H) Performed backflow assembly tests with a gauge that was not calibrated for accuracy within the 12-month period prior to testing the assembly.

(b) Applicants or backflow assembly testers who have been denied initial, renewal, or reciprocity certification or whose certifications have been revoked have the right to appeal according to the provisions of chapter 183, Oregon Revised Statutes.

(c) Applicants or backflow assembly testers who have been denied initial, renewal, or reciprocity certification or whose certifications have been revoked, may not reapply for certification for one year from the date of denial or revocation of certification.

(d) Applicants or backflow assembly testers may petition the Authority prior to one year from the date of denial or revocation and may be allowed to reapply at an earlier date, at the discretion of the Authority.

(e) Backflow assembly tester test reports shall be made available to the Authority upon request.

Stat. Auth.: ORS 448.131, 448.279

Stats. Implemented: ORS 448.131, 448.278, 448.279

Hist.: HD 1-1994, f. & cert. ef. 1-7-94; HD 1-1996, f. 1-2-96, cert. ef. 1-5-96; HD 14-1997, f. & cert. ef. 10-31-97; OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 7-2010, f. & cert. ef. 4-19-10; PH 3-2013, f. & cert. ef. 1-25-13; PH 14-2014, f. & cert. ef. 5-8-140; PH 23-2015, f. 12-8-15, cert. ef. 1-1-16

333-061-0073

Cross Connection Specialist Certification

(1) In order to be certified as a cross connection specialist, individuals must successfully complete all the applicable requirements of this rule. Only individuals certified by the Authority may administer cross connection control programs.

(2) Individuals certified as a cross connection specialist must comply with ORS 448.279(2).

(3) All training courses must be taken at an Authority approved training facility or be an Oregon Environmental Services Advisory Council approved course.

(4) Satisfactory completion of an approved cross connection specialist training course means:

(a) Completing the course; and

(b) Scoring at least 70 percent on the written examination.

(5) In order to apply for initial cross connection specialist certification, individuals must submit:

(a) A completed initial application with all required documentation as specified on the initial application form and in this rule, including but not limited to:

(A) Proof of high school graduation, GED, associate's degree, bachelor's degree, master's degree, or PhD; and

(B) Proof of satisfactory completion, as described in section (4) of this rule, of a cross connection specialist initial training course within the 12 months prior to the Authority receiving the completed application;

(C) Proof of one-year of experience working with public water systems as defined in OAR 333-061-0020 or plumbing as defined in ORS 447.010; and

(b) The initial certification fee as specified in section (8) of this rule.

(6) Cross connection specialist certification expires on December 31 every two years based upon the first letter in the last name of the individual. Certification for individuals with names beginning in the letters A-K expires in even numbered years, and certification for individuals with names beginning in the letters L-Z expires in odd numbered years Certification renewal fees may be prorated if individuals are required to renew their certification prior to the end of the most recent two-year certification period.

(a) In order to apply to renew cross connection specialist certification, individuals must submit:

(A) A completed renewal application with all required documentation as specified on the application form and in this rule, including but not limited to, proof of satisfactory completion of a total of at least 0.6 continuing education units from cross connection-related training courses or meetings taken within the two year period immediately prior to the date of the Authority receiving the completed application. Training courses and meetings must be attended at an Authority approved training facility or be approved by the Oregon Environmental Services Advisory Council; and

(B) The certification renewal fee, as specified in section (8) of this rule.

(b) The Authority may grant certification renewal without a reinstatement fee until January 31 in the year following the expiration date of the certification. A reinstatement fee as prescribed by section (8) of this rule is required in addition to the renewal fee for all renewal applications received after the grace period ending on January 31 following the expiration date of the certification.

(c) Cross connection specialists that fail to renew their certification for one year following the expiration date of their certification must meet the requirements established for applicants as prescribed by sections (5) or (7) of this rule.

(7) In order to apply for cross connection specialist certification based on reciprocity, individuals must submit:

(a) A completed reciprocity application form with all required documentation as specified on the application form and in this rule, including but not limited to:

(A) Proof of current certification from a state or entity having substantially equivalent certification training and testing standards to those set forth in these rules, as determined by the Authority;

(B) Proof of satisfactory completion, as described in section (4) of this rule, of a cross connection specialist initial training course or cross connection specialist renewal course within the 12 months prior to the Authority receiving the completed application;

(C) Proof of high school graduation, GED, associate's degree, bachelor's degree, master's degree, or PhD; and

(b) The reciprocity application fee as specified in section (8) of this rule.

(8) Fees related to Cross Connection Specialist certification.

(a) Payments shall be made to the Oregon Health Authority, Public Health Division.

(b) The Authority will not refund any fees once it has initiated processing an application.

(c) Fees are:

(A) Initial Certification (2-years) $195;

(B) Certification Renewal (2-years) $195;

(C) Reciprocity Review $35;

(D) Reinstatement $50; and

(E) Combination Certification Renewal (2-years) $305.

(d) Initial certification fees may be prorated to the nearest year for the remainder of the 2-year certification period.

(e) The Combination Certification Renewal fee applies when applicants simultaneously renew their backflow assembly tester and cross connection specialist certifications.

(9) Enforcement related to cross connection specialist certification.

(a) The Authority may deny an initial application for certification, an application for renewal of certification, an application for certification based on reciprocity, or revoke a certification if the Authority determines the applicant/cross connection specialist:

(A) Provided false information to the Authority;

(B) Did not possess certification issued by another state or entity because it was revoked;

(C) Permitted another person to use their certificate number;

(D) Falsified a survey/inspection/Annual Summary Report;

(E) Failed to comply with ORS 448.279(2); or

(F) Failed to comply with these rules or other applicable federal, state or local laws or regulations.

(b) Applicants or cross connection specialists who have been denied initial, renewal, or reciprocity certification or who have had their certification revoked have the right to appeal according to the provisions of Chapter 183, Oregon Revised Statutes.

(c) Applicants or cross connection specialists who have been denied initial, renewal, or reciprocity certification or who have had their certification revoked may not reapply for certification for one year from the date of denial or revocation of certification.

(d) Applicants or cross connection specialists may petition the Authority prior to one year from the date of denial or revocation and may be allowed to reapply at an earlier date, at the discretion of the Authority.

Stat. Auth.: ORS 448.131, 448.279

Stats. Implemented: ORS 448.131, 448.278, & 448.279

Hist.: OHD 4-1999, f. 7-14-99, cert. ef. 7-15-99; PH 34-2004, f. & cert. ef. 11-2-04; PH 7-2010, f. & cert. ef. 4-19-10; PH 3-2013, f. & cert. ef. 1-25-13; PH 14-2014, f. & cert. ef. 5-8-140; PH 23-2015, f. 12-8-15, cert. ef. 1-1-16

333-061-0076

Sanitary Surveys

(1) All sanitary surveys as defined by OAR 333-061-0020(165) and this rule shall be conducted by the Authority or contract county health department staff.

(2) Public water systems must provide the Authority, upon request, any existing information that will enable the Authority to conduct a sanitary survey.

(3) The sanitary survey report shall be completed by staff and sent to the water system following the site visit. The content of the sanitary survey report shall address, at a minimum, the following components of a water system: source of supply; treatment; distribution system; finished water storage; pumps, pump facilities and controls; monitoring, reporting and data verification; system management and operations; and operator certification compliance.

(4) The sanitary survey report must identify any significant deficiency prescribed in this section, or any violation of drinking water regulations, discovered in the on-site visit. For the purposes of sanitary surveys, significant deficiencies for all water systems are:

(a) Surface Water Treatment:

(A) Incorrect location for compliance turbidity monitoring;

(B) For systems serving more than 3,300 people, no auto-dial, call-out alarm or auto-plant shutoff for low chlorine residual;

(C) For conventional or direct filtration, no auto-dial, call-out alarm or auto-plant shutoff for high turbidity when no operator is on-site;

(D) For conventional filtration, settled water turbidity not measured daily;

(E) For conventional or direct filtration, turbidity profile not conducted on individual filters at least quarterly;

(F) For cartridge filtration, no pressure gauges before and after cartridge filter;

(G) For cartridge filtration, filters not changed according to manufacturer's recommended pressure differential; and

(H) For diatomaceous earth filtration, body feed not added with influent flow.

(b) Groundwater Well Construction:

(A) Sanitary seal and casing not watertight;

(B) Does not meet setbacks from hazards;

(C) Wellhead not protected from flooding;

(D) No raw water sample tap;

(E) No treated sample tap, if applicable; and

(F) If well vent exists, not screened.

(c) Groundwater Springbox Construction:

(A) Not constructed of impervious, durable material;

(B) No watertight access hatch/entry;

(C) No screened overflow;

(D) Does not meet setbacks from hazards;

(E) No raw water sample tap; and

(F) No treated sample tap, if applicable.

(d) Disinfection:

(A) No means to adequately determine flow rate on contact chamber effluent line;

(B) Failure to calculate CT values correctly; and

(C) No means to adequately determine disinfection contact time under peak flow and minimum storage conditions.

(e) Finished water storage:

(A) Hatch not locked;

(B) Roof and hatch not watertight;

(C) No flap-valve or equivalent over drain/overflow; and

(D) No screened vent.

(5) Sanitary survey fees. All community, non-transient non-community, transient non-community, and state regulated water systems are required to undergo a sanitary survey on a frequency determined by the Authority and are subject to a fee payable to the Authority on or before the due date specified in the invoice sent to the water system.

(a) For community water systems, the sanitary survey fee is based upon either the number of connections or the population served.

(A) For community water systems with more than 250 service connections, the sanitary survey fee shall be based upon the number of connections served by the system.

(B) For community water systems with 250 service connections or less, but serving more than 1,000 people, the sanitary survey fee shall be based upon the population served by the system. For wholesale community water systems in this category, the sanitary survey fee will be assessed as a community water system without water treatment (WT) as specified in the table below.

(b) Transient non-community water systems identified as campgrounds with multiple handpumps will be considered one water system and assessed a single fee for the purposes of this rule.

(c) Late fees. A late fee will be assessed to any water system which fails to pay its sanitary survey fee within 10 days of the due date in the invoice sent to the water system. The late fee may be waived at the discretion of the Authority. Fees for sanitary surveys are listed in Table 50 below: [Table not included. See ED. NOTE.]

(6) Response required to address sanitary survey deficiencies:

(a) Water systems that use surface water sources or groundwater sources under the direct influence of surface water must respond in writing to the Authority or county health department within 45 days of receiving the sanitary survey report.

(A) The response of the water system must include:

(i) The plan the water system will follow to resolve or correct the identified significant deficiencies;

(ii) The plan the water system will follow to resolve or correct any violations of drinking water regulations identified during the sanitary survey or at any other time; and

(iii) The schedule the water system will follow to execute the plan.

(B) The plans and schedules identified above in subparagraphs (6)(a)(A)(i) through (iii) of this rule must be approved by the Authority.

(b) Beginning on December 1, 2009, water systems that use only groundwater sources must consult with the Authority or county health department within 30 days of receiving written notice of a significant deficiency or a violation of a drinking water regulation identified during the sanitary survey. Water systems must have completed corrective action or be in compliance with an Authority-specified corrective action plan within 120 days of receiving written notice of a significant deficiency, as specified in OAR 333-061-0032(6)(e).

(7) Public water systems that fail to respond to the Authority or county health department within the timeframe specified, are required to issue a tier 2 public notice as prescribed in OAR 333-061-0042(2)(b)(D).

(8) Public water systems must correct the deficiencies or violations identified in the sanitary survey according to the Authority-approved schedule identified in section (6) of this rule. Failure to do so constitutes a violation of these rules.

[ED. NOTE: Tables, Figures & Publications referenced are available from the agency.]

Stat. Auth.: ORS 448.131, 448.150

Stats. Implemented: ORS 448.115, 448.131, 448.150

Hist.: OHD 23-2001, f. & cert. ef. 10-31-01; OHD 17-2002, f. & cert. ef. 10-25-02; PH 12-2003, f. & cert. ef. 8-15-03; PH 2-2008, f. & cert. ef. 2-15-08; PH 4-2009, f. & cert. ef. 5-18-09; PH 7-2010, f. & cert. ef. 4-19-10; PH 23-2015, f. 12-8-15, cert. ef. 1-1-16

333-061-0265

Fees

(1) All fees must be paid to the Oregon Health Authority or its designee.

(2) Application fees are not refundable unless:

(a) The Authority has taken no action on a certification application; or

(b) The Authority determines the wrong application has been filed.

(3) Applicants for certification by exam must submit the exam fee and application fee, along with an original signed and complete application. Examination fees may be refunded if:

(a) The application is denied, or

(b) The applicant notifies the Authority no less than one week in advance of the exam that the applicant is unable to sit for the exam.

(4) Applications will be accepted for processing only when accompanied by the appropriate fees as indicated in the fee schedule below:

(a) Certification Renewal — $140.

(b) Combination Certification-each additional — $70.

(c) Application Fee:

(A) Level 1 Distribution or Treatment — $90.

(B) Level 2 Distribution or Treatment — $125.

(C) Level 3 Distribution or Treatment — $160.

(D) Level 4 Distribution or Treatment — $195.

(E) Filtration Endorsement — $90.

(d) Reciprocity Review (each certification) — $100.

(e) Reinstatement — $50 + Certificate Renewal Fee.

(f) Document Replacement Fee — $25.

(5) Filtration endorsement certification is an extension of an operator's water treatment certification, and no additional annual fee is required to maintain the endorsement.

(6) A document replacement fee must be paid at the time of request for a replacement document.

Stat. Auth.: ORS 448.131, 448.450

Stats. Implemented: ORS 448.131, 448.450, 448.465

Hist.: HD 2-1988(Temp), f. & cert. ef. 2-10-88; HD 18-1988, f. & cert. ef. 7-27-88; HD 11-1989(Temp), f. & cert. ef. 12-29-89; HD 19-1990, f. 6-28-90, cert. ef. 7-2-90; OHD 3-2000, f. 3-8-00, cert. ef. 3-15-00; OHD 7-2002, f. & cert. ef. 5-2-02; PH 16-2004(Temp), f. & cert. ef. 4-9-04 thru 10-5-04; PH 20-2004, f. & cert. ef. 6-18-04; PH 33-2004, f. & cert. ef. 10-21-04; PH 2-2006, f. & cert. ef. 1-31-06; PH 2-2008, f. & cert. ef. 2-15-08; PH 7-2010, f. & cert. ef. 4-19-10; PH 14-2014, f. & cert. ef. 5-8-14; PH 23-2015, f. 12-8-15, cert. ef. 1-1-16

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Rule Caption: Oregon Farm Direct Nutrition Program Administration

Adm. Order No.: PH 24-2015

Filed with Sec. of State: 12-8-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 10-1-2015

Rules Amended: 333-052-0040, 333-052-0043, 333-052-0080, 333-052-0120

Subject: The Oregon Health Authority, Public Health Division is permanently amending administrative rules in chapter 333, division 52 pertaining to Oregon Farm Direct Nutrition Program (FDNP) participants and farmers that are authorized by the Oregon Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The permanent changes correct terminology that clarifies that civil money penalties may be imposed and not fines. References to the Food Stamp Program are removed as that program is now called the Supplemental Nutrition Assistance Program (SNAP). To reflect changes in the Affordable Care Act (Public Law 111-148) to the Medicaid income eligibility criterion, the Senior FDNP income limit is changed from 135% to 138% of the federal poverty level. Permanent changes include increasing the Senior participant minimum age to 62 years to maintain the current program budget. Office contact information is also being updated.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-052-0040

Definitions

(1) "Adequate Participant Access" means there are authorized farmers sufficient for participant need.

(2) "Agreement" means a written legal document binding the market or farmer and the Authority to designated terms and conditions.

(3) "AAA" means Area Agency on Aging.

(4) "ADRC" means Aging and Disability Resource Connection.

(5) "APD" means Department of Human Services, Aging and People with Disabilities.

(6) "Authority" means the Oregon Health Authority.

(7) "Authorized" or "authorization" means an eligible farmer or farmers' market has met the selection criteria and signed an agreement with the Authority allowing participation in FDNP, and is not currently disqualified.

(8) "Check" means a negotiable financial instrument by which FDNP benefits are provided to participants.

(9) "CMP" means a civil money penalty, which is a monetary penalty imposed against the farmer for noncompliance of FDNP rules.

(10) "Disqualification" means the act of terminating the agreement of an authorized farmers' market, or farmer from the FDNP for noncompliance with program requirements.

(11) "Eligible foods" means fresh, nutritious, unprepared, locally grown fruits and vegetables and culinary herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. For example, checks cannot be used for honey, maple syrup, cider, nuts, seeds, plants, eggs, meat, cheese and seafood.

(12) "Farm Direct Nutrition Program" or "FDNP" means the Oregon Farm Direct Nutrition Program (Oregon FDNP), which is composed of the collective Senior Farm Direct Nutrition Program and WIC Farm Direct Nutrition Program, regulated by the United States Department of Agriculture, Food and Nutrition Services and administered by the State of Oregon.

(13) "Farmer" means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.

(14) "Farmers' Market" means a group of farmers who assemble over the course of a year at a defined location for the purpose of selling their produce directly to consumers.

(15) "Farm Stand" means a location at which a farmer sells produce directly to consumers.

(16) "FDNP Participant" or "participant" means a senior participant or a WIC participant receiving FDNP benefits.

(17) "Locally grown" means grown in the state of Oregon or in the following counties of a contiguous state: California — Del Norte, Modoc, Siskiyou; Idaho — Adams, Canyon, Idaho, Owyhee, Payette, Washington; Nevada — Humboldt, Washoe; Washington — Asotin, Benton, Clark, Columbia, Cowlitz, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, Walla Walla.

(18) "Local WIC agency" means the agency or clinic where a WIC participant receives WIC services and benefits.

(19) "Market" means a farmers' market that has a signed agreement with the Authority to participate in the FDNP.

(20) "Market Coordinator" means an individual designated by the farmers' market manager (or market board members) responsible for overseeing the market's participation in the FDNP.

(21) "Market Season" means the time period in which FDNP checks may be transacted as determined by the Authority.

(22) "Senior Farm Direct Nutrition Program (SFDNP)" means the Senior Farmers' Market Nutrition Program funded by USDA that provides senior participants with checks that can be used to buy eligible foods from an authorized farmer.

(23) "Senior Participant" means an individual who meets all the eligibility components of the program and who receives FDNP checks.

(24) "SNAP" means the Supplemental Nutrition Assistance Program of the Food and Nutrition Services of the United States Department of Agriculture.

(25) "Trafficking" means the buying or exchanging of FDNP checks for cash, drugs, firearms or alcohol.

(26) "USDA" means the United States Department of Agriculture.

(27) "Validating" means stamping the FDNP check in the designated box with the farmer identification number using the stamp provided by the Authority or a replacement stamp purchased by the farmer.

(28) "Violation" means an activity that is prohibited by OAR 333-052-0030 through 333-052-0090 and classified in OAR 333-052-0080 through 333-052-0130.

(29) "WIC" or "WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C.§1786.

(30) "WIC Farm Direct Nutrition Program (WIC FDNP)" means the Farmers' Market Nutrition Program funded by USDA that provides WIC participants with checks that can be used to buy eligible foods from an authorized farmer.

(31) "WIC participant" means any pregnant, breastfeeding, or postpartum woman, infant, or child who meets all of the eligibility components of the WIC FDNP and receives WIC FDNP checks.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 8-2012(Temp), f. & cert. ef. 6-11-12 thru 12-7-12; PH 15-2012, f. & cert. ef. 12-20-12; PH 4-2014, f. & cert. ef. 1-30-14; PH 24-2015, f. 12-8-15, cert. ef. 1-1-16

333-052-0043
Senior Participant Eligibility and Benefits

(1) An individual is eligible for the Senior Farm Direct Nutrition Program (SFDNP) if the individual meets all of the following eligibility criteria on April 1 of the calendar year in which benefits are sought:

(a) Has income less than 138 percent of the Federal Poverty Level;

(b) Receives Medicaid or SNAP benefits;

(c) Is homeless or resides in their own home or rental property; and

(d) Is age 62 years or older.

(2) SFDNP benefits are limited and benefits will be distributed in an equitable manner but may not be distributed to all individuals who are eligible.

(3) The Authority shall inform eligible seniors each year of the available benefits and how the benefits will be distributed.

(4) SFDNP benefits are valid from June 1 through October 31 of the year in which benefits were issued.

(5) Lost or stolen SFDNP benefits will not be replaced.

(6) An individual who does not receive a benefit in any given year due to lack of sufficient funding to provide SFDNP benefits to all eligible seniors is not entitled to hearing rights.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 15-2012, f. & cert. ef. 12-20-12; PH 4-2014, f. & cert. ef. 1-30-14; PH 24-2015, f. 12-8-15, cert. ef. 1-1-16

333-052-0080
Farmer Participation Requirements, Violations and Sanctions

(1) An authorized farmer must:

(a) Comply with FDNP requirements contained in 7 CFR 248 and 7 CFR 249 and the terms and conditions of the farmer application/agreement;

(b) Accept training on FDNP requirements and ensure that all individuals working in the farmer's stall(s) at the farmers' market(s) or farm stand(s) are trained;

(c) Accept FDNP checks:

(A) For eligible foods only; and

(B) Within the valid dates of the program.

(d) Prominently display the official FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;

(e) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(f) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require;

(g) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(h) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(i) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(j) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;

(k) Reimburse the Authority for FDNP checks that are improperly transacted;

(l) Respond to requests, implement corrective action, and comply with the terms in final orders as directed by the Authority;

(m) Not provide credit in exchange for FDNP checks;

(n) Not charge sales tax on FDNP check purchases;

(o) Not seek restitution from FDNP participants for a check not paid by the Authority;

(p) Not give cash back for purchases that amount to less than the value of a check (providing change);

(q) Not use FDNP checks for any purpose other than deposit or cash at their financial institution; and

(r) Not accept FDNP checks from unauthorized farmers.

(2) A farmer is in violation of the FDNP if the farmer:

(a) Fails to:

(A) Comply with FDNP rules and the terms and conditions of the farmer application/agreement;

(B) Accept training on FDNP requirements and ensure that all individuals working in the farmer's stall(s) at the farmers' market(s) or farm stand(s) are trained;

(C) Prominently display the official FDNP sign provided by the Authority on each day of operation when at authorized farmers' markets or authorized farm stands;

(D) Provide FDNP clients with the full amount of product for the value of each FDNP check;

(E) Comply with all state or federal laws regarding non-discrimination, and applicable USDA instructions to ensure that no individual will, on the grounds of race, color, national origin, age, sex or handicap, be excluded from participation, be denied benefits, or be otherwise subjected to discrimination, under the FDNP;

(F) Ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(G) Assure that all FDNP checks are stamped with the farmer's Authority-assigned identification number and properly endorsed before cashing or depositing at the farmer's financial institution;

(H) Deposit or cash FDNP checks at the authorized farmer's financial institution by the date determined by the Authority;

(I) Reimburse the Authority for FDNP checks that are improperly transacted;

(J) Cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and provide information that the Authority or the Oregon Department of Agriculture may require;

(K) Respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.

(b) Accepts FDNP checks:

(A) For ineligible foods;

(B) For invalid dates; or

(C) From an unauthorized farmer.

(c) Provides credit in exchange for FDNP checks;

(d) Charges sales tax on FDNP check purchases;

(e) Seeks restitution from FDNP participants for a check not paid by the Authority;

(f) Gives cash back for purchases that amount to less than the value of a check (providing change);

(g) Uses FDNP checks for any purpose other than deposit or cash at their financial institution.

(3) Farmer sanctions:

(a) The Authority may issue a notification of non-compliance to an authorized farmer for an initial incident of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Failing to reimburse the Authority for FDNP checks that are improperly transacted;

(F) Charging sales tax on FDNP check purchases;

(G) Seeking restitution from FDNP participants for checks not paid by the Authority;

(H) Giving cash back for purchases less than the value of the checks (providing change);

(I) Accepting FDNP checks from an unauthorized farmer;

(J) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority;

(K) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution; and

(L) Failing to cooperate with staff from the Authority, the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information that the Authority or the Oregon Department of Agriculture may require.

(b) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year for an initial incident of providing credit in exchange for FDNP checks.

(c) The Authority may disqualify a farmer for four season months, which may cross from the year during which the violation occurred into the following year, for second or subsequent incidents of:

(A) Accepting FDNP checks for ineligible foods;

(B) Failing to prominently display the official sign provided by the Authority, each market day when at authorized farmers' markets or authorized farm stands;

(C) Failing to provide FDNP clients with the full amount of product for the value of each FDNP check;

(D) Failing to ensure that FDNP shoppers receive equitable treatment, including the availability of produce that is of the same quality and no greater price than sold to other shoppers;

(E) Charging sales tax on FDNP check purchases;

(F) Seeking restitution from FDNP participants for checks not paid by the Authority;

(G) Using FDNP checks for any purpose other than deposit or cash at the authorized farmer's financial institution;

(H) Charging FDNP participants higher prices than other customers;

(I) Giving cash back for purchases less than the value of the checks (providing change);

(J) Accepting FDNP checks from an unauthorized farmer; and

(K) Failing to respond to requests, implement corrective action, or comply with the terms in final orders as directed by the Authority.

(d) The Authority may not authorize farmers to accept FDNP checks the season following second or subsequent incidents of:

(A) Failing to reimburse the Authority for FDNP checks that are improperly transacted; or

(B) Failing to cooperate with staff from the Authority or the Oregon Department of Agriculture, or their designees in monitoring for compliance with program requirements and failing to provide information required to be submitted by the Authority or the Oregon Department of Agriculture.

(e) The Authority may immediately disqualify a farmer from the FDNP program for the remainder of the current season and the entire following season for an initial incident of:

(A) Trafficking in FDNP checks (exchanging checks for cash, controlled substances, tobacco products, firearms or alcohol) in any amount; or

(B) A USDA substantiated violation of laws regarding non-discrimination, and applicable USDA instructions.

(f) FDNP checks that are not stamped with the farmer's Authority-assigned identification number will be returned to the farmer without payment;

(g) FDNP checks redeemed outside the dates determined by the Authority will not be reimbursed; and

(h) FDNP checks redeemed by a farmer who has not been authorized will not be reimbursed.

(4) Farmers who do not comply with FDNP requirements are subject to sanctions, including civil money penalties, in addition to, or in lieu of, disqualification.

(a) Prior to disqualifying a farmer, the Authority may determine if disqualification of the farmer would result in inadequate participant access. If the Authority determines that disqualification of the farmer would result in inadequate participant access, the Authority may impose a CMP in lieu of disqualification in the amount of 5 percent of the farmer's previous season FDNP sales or $250, whichever is greater.

(b) The Authority must give written notice to a farmer of an action proposed to be taken against a farmer, not less than 15 days before the effective date of the action. The notice must state what action is being taken, the effective date of the action, and the procedure for requesting a hearing.

(c) A farmer that has been disqualified from the FDNP may reapply at the end of the disqualification period.

(d) The Authority may accept a farmer's voluntary withdrawal from the program as an alternative to disqualification. If a farmer chooses to withdraw in lieu of disqualification, the farmer may not apply for participation until the following year.

(e) The Authority will not reimburse farmers who have been disqualified or have withdrawn in lieu of disqualification.

(f) Civil money penalties must be paid to the Authority within the time period specified in the Notice.

(5) A farmer who commits fraud or abuse of the FDNP is subject to prosecution under applicable federal, state or local laws.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12; PH 24-2015, f. 12-8-15, cert. ef. 1-1-16

333-052-0120
Complaints

(1) Anyone wishing to file a complaint against a FDNP participant, an authorized farmer, an authorized market, or the FDNP may do so in the following manner:

(a) Send a written comment to the WIC Compliance Coordinator at PO Box 14450, Portland, Oregon, 97293; or

(b) Call the state WIC office at 971-673-0040.

(2) A local WIC clinic, APD office, ADRC, AAA office or market manager may file a complaint on behalf of an individual who does not want to file a complaint independently.

(3) When the Authority receives a complaint alleging discrimination on the basis of race, color, national origin, age, sex or disability the Authority must automatically forward the complaint to USDA for investigation.

(4) Individuals alleging discrimination on the basis of race, color, national origin, age, sex or disability may also write directly to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW, Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TTY).

(5) The Authority may refer complaints regarding farmers or markets to the Oregon Department of Agriculture for investigation.

(6) The identity of any individual filing a complaint will be kept confidential except to the extent necessary to conduct any investigation, hearing or judicial proceeding regarding the complaint.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 10-2006, f. & cert. ef. 6-5-06; PH 7-2008, f. & cert. ef. 4-3-08; PH 15-2012, f. & cert. ef. 12-20-12; PH 4-2014, f. & cert. ef. 1-30-14; PH 24-2015, f. 12-8-15, cert. ef. 1-1-16

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Rule Caption: WIC Vendor and Farmer Administration
Adm. Order No.: PH 25-2015
Filed with Sec. of State: 12-8-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 333-054-0010, 333-054-0020, 333-054-0050, 333-054-0060, 333-054-0070
Subject: The Oregon Health Authority, Public Health Division is permanently amending administrative rules in chapter 333, division 54 as they pertain to vendors and farmers that are authorized by the Oregon Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The amendments include a definition, clarifications, and violations for expired food to help ensure program integrity and prevent expired foods from being sold to WIC participants. A rule citation in OAR 333-054-0060(6) is being corrected. In compliance with United States Department of Agriculture changes, the maximum amount for civil money penalties is being updated and the Food Stamp Program is now called the Supplemental Nutrition Assistance Program (SNAP).
Rules Coordinator: Brittany Sande—(971) 673-1291

333-054-0010
Definitions

(1) "A50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50 percent of its total annual food sales from WIC food sales. The total food sales do not include alcohol, tobacco, lottery or any other non-food item.

(2) "Abbreviated administrative review" means a hearing that is held at the request of a vendor that has been issued an application denial, civil money penalty, civil penalty, or sanction by the Authority. Abbreviated reviews are facilitated by the Authority staff other than the staff person that imposed the sanction. A facilitated discussion is held in order to resolve the imposition of a sanction.

(3) "Adequate participant access" means there are authorized vendors sufficient for participant need using Authority criteria in OAR 333-054-0060.

(4) "Annual Food Sales" means sales of all Supplemental Nutrition Assistance Program (SNAP) eligible foods intended for home preparation and consumption including meat, fish, and poultry; bread and cereal products; dairy products; and fruits and vegetables. Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and non-carbonated drinks may be included in food sales when offered for sale along with foods in the categories identified above. Food sales do not include sales of any items that cannot be purchased with SNAP benefits, such as hot foods or food that will be eaten in the store.

(5) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors and farmers that reapply for authorization.

(6) "Authority" means the Oregon Health Authority.

(7) "Authorization" means the process by which the Authority assesses, selects, and enters into agreements with stores and farmers that apply or subsequently reapply to be vendors or authorized farmers.

(8) "Authorized food" means any supplemental foods approved by the Oregon WIC Program and listed on the WIC Authorized Food List or food instrument.

(9) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee. This includes any representative posing as a participant or participant designee as authorized by the Authority.

(10) "CFR" means Code of Federal Regulations.

(11) "CMP" means civil money penalty.

(12) "Cash Value Benefit" or "CVB" means a fixed-dollar benefit on a check, voucher, electronic benefit transfer (EBT) card or other document which is used by an authorized shopper to obtain WIC authorized fruits and vegetables.

(13) "Compliance buy" means a single covert, on-site visit in which an Authority authorized representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(14) "Disqualification" means cancelling the WIC program participation of a vendor or farmer, as a punitive action.

(15) "Educational buy" means a single, on-site visit used for training purposes in which an Authority authorized representative poses as an authorized shopper, redeems WIC food instruments, and provides the vendor with immediate feedback about compliance with WIC procedures.

(16) "Expired food" means WIC-authorized food or formula that is defective, spoiled, or has exceeded its sell by, best if used by, or other date on the package limiting the sale or use of the food or formula.

(17) "Farmer" means an individual who owns, leases, rents or sharecrops land to grow, cultivate or harvest crops on that land.

(18) "Farmer agreement" means a standard written legal contract between the farmer and the Authority that sets forth responsibilities of the parties.

(19) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(20) "Food instrument" or "FI" means a WIC Program voucher, check, coupon, electronic benefit transfer (EBT) card or other document, which is used to obtain authorized foods.

(21) "Full administrative review" means a formal hearing that is held before an assigned administrative law judge from the state Office of Administrative Hearings in accordance with 7 CFR § 246.18 and ORS Chapter 183.

(22) "Incentive item" means a food or non-food item offered free of charge to WIC shoppers, but not other shoppers, or eligibility to receive an item is structured where the majority of those meeting the criteria are WIC shoppers, to motivate them to shop at a particular store. Examples of incentive items include, but are not limited to, cash gifts/prizes in any amount for any reason, lottery tickets, transportation, sales/specials such as a buy-one-get-one free or free additional ounces offer not offered to other shoppers, and other free food or merchandise not offered to other shoppers.

(23) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from the Authority during a specific period of time.

(24) "Investigation" means a period of review, beginning with the start of an inventory audit or the first compliance buy and closing when the audit has been completed or a sufficient number of compliance buys have been completed to provide evidence of compliance or non-compliance, not to exceed 24 months, to determine a vendor or farmer's compliance with program rules and procedures.

(25) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(26) "Notice of Non-compliance" means a letter notifying vendors when they commit a program violation. This notice is an explanation of the violation and a warning about repercussions of subsequent violations.

(27) "Overcharge" means intentionally or unintentionally charging the Authority more for authorized foods than the actual shelf price or the price charged to other shoppers.

(28) "Participant" means any pregnant woman, breastfeeding woman, post-partum non-lactating woman, infant or child who has been certified to receive benefits from the WIC Program.

(29) "Pattern" means three or more findings of the same rule violation that occurs within a single investigation or over the course of one or more routine monitoring(s).

(30) "Peer group" means a group of vendors considered to be in the same category by the Authority based on factors such as store type, size or business model, number of cash registers and geography.

(31) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a Limited Liability Corporation, a sole proprietor, a government or a governmental instrumentality.

(32) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 10 percent interest or more in the business.

(33) "Pharmacy — in-store" means a pharmacy that is located within a WIC authorized grocery store and is affiliated with that business entity.

(34) "Pharmacy — stand alone" means a pharmacy that is operated independently from or is not located in a WIC authorized grocery store.

(35) "Price adjustment" means an adjustment made by the Authority, in accordance with the vendor/farmer agreement, to the amount paid to the vendor/farmer on a food purchase, to ensure that the payment complies with the Authority price limitations.

(36) "Prominently displayed" means immediately noticeable by persons entering the vendor or farmer location.

(37) "Routine monitoring" means an overt, on-site visit in which the Authority authorized representatives or federal officials identify themselves to vendor or farm personnel.

(38) "Shelf Price Survey" or "SPS" means a tool used by the Authority to collect a sample of a WIC authorized vendor's current shelf prices.

(39) "SNAP" means the Supplemental Nutrition Assistance Program of the Food and Nutrition Services of the U.S. Department of Agriculture. This program was formerly known as the Food Stamp Program or "FSP."

(40) "Termination" means the cancellation of a vendor or farmer agreement which may or may not be linked to a disqualification.

(41) "Trafficking" means buying or selling WIC food instruments for cash.

(42) "U.S.C." means United States Code.

(43) "Unauthorized food item" means foods, brands and sizes not allowed on the WIC Authorized Food List. It also means foods not specified on a food instrument as eligible for purchase for that participant, with WIC benefits.

(44) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by the Authority to participate in the WIC Program. Vendor may also refer to the authorized store location.

(45) "Vendor agreement" means a standard written legal contract between the vendor and the Authority that sets forth responsibilities of the parties.

(46) "Vendor Price List" means a form containing current authorized foods with current shelf prices completed by the vendor and submitted to the Authority and in which vendors document their shelf prices at the time of the application process.

(47) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050 and 333-054-0055.

(48) "WIC Authorized Food List" means the supplemental foods approved by the State of Oregon.

(49) "WIC food benefit" means supplemental foods issued to a participant for purchase at an authorized vendor.

(50) "WIC Program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. § 1786.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 9-2011, f. & cert. ef. 9-30-11; PH 11-2013, f. 11-6-13, cert. ef. 12-1-13; PH 25-2015, f. 12-8-15, cert. ef. 1-1-16

333-054-0020
How a Vendor Becomes WIC Authorized

(1) Only vendors authorized by the Authority may accept Oregon food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to the Authority, which includes:

(A) An application form;

(B) A Vendor Price List;

(C) A current SNAP authorization number; and

(D) Any other documents or information required by the Authority.

(b) The Authority may limit the periods during which applications for vendor authorization will be accepted and processed. The Authority will process applications, outside of the limited application period, if it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(c) The Authority may impose a moratorium on the authorization of new vendors. Notice will be provided to current vendors prior to such a moratorium. During the period of moratorium the Authority may choose to not accept applications, not process applications, and not to authorize new stores. A moratorium will not apply to a store that is necessary for participant access.

(3) Selection Criteria: In order for the Authority to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by the Authority based on the applicant's current existing shelf prices on the date of application, as charged to regular shoppers and as compared to data from the peer group appropriate to the applicant's characteristics. Such data may include redemption prices and shelf prices. If an applicant's store is necessary to ensure adequate participant access, it may be exempt from this requirement;

(b) Possess a current bank account number;

(c) Possess a current electronic mail address;

(d) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(e) Possess a current SNAP authorization number. Pharmacies, military commissaries, and stores that are determined by the Authority as necessary to provide adequate participant access shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(f) Not have a history of serious violations with either the WIC Program or SNAP;

(g) Not be currently disqualified from participation in another state's WIC Program. The Authority shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(h) Not be currently disqualified from participation in the SNAP. The Authority shall not authorize an applicant that has been assessed a SNAP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired unless this store has been determined necessary for participant access;

(i) Have a fixed location for each store that includes refrigeration and freezer equipment in the retail area;

(j) Carry foods intended for home preparation and consumption, in addition to WIC-required minimum stock items, that include:

(A) Fresh or frozen uncooked meat, fish, or poultry (or meat substitute);

(B) Bread and cereal products;

(C) Dairy products; and

(D) Fresh fruits and vegetables.

(k) Meet minimum stock requirements at the time of application to become an authorized vendor:

(A) A store that is applying for authorization must meet minimum stock requirements at the time of application, either on the shelf or with proof of order at the time of the on-site review;

(B) Expired foods will not be counted towards meeting minimum stock requirements.

(C) Stand-alone pharmacies and in-store pharmacies are exempt from minimum stock requirements; and

(D) Grocery stores with in-store pharmacies are required to meet all minimum stock requirements.

(l) Not have expired foods in three or more food categories that are on the minimum stock requirements.

(m) Obtain infant formula, including formula that requires a prescription, within 72 hours of an Authority, local agency or WIC shopper request if the vendor is a stand-alone pharmacy or has an in-store pharmacy.

(n) Purchase infant formula, which is to be sold to WIC shoppers, only from the Oregon WIC Program's list of approved manufacturers, wholesalers, distributors, and WIC-authorized retailers.

(A) Vendors must maintain and provide, when requested, documentation showing source(s) of infant formula purchases; and

(B) Vendors must not sell infant formula that is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date on the package limiting the sale or use of the infant formula.

(o) Maintain and provide documentation of SNAP-eligible food sales throughout the contract period. According to USDA, CFR 245.2, "Food sales" means sales of all foods that are eligible items under the SNAP. These foods are intended for home preparation and consumption and include:

(A) Meat, fish, and poultry;

(B) Bread and cereal products;

(C) Dairy products; and

(D) Fruits and vegetables;

(E) Food items such as condiments and spices, coffee, tea, cocoa, and carbonated and noncarbonated beverages may be included in food sales when offered for sale along with foods in the four primary categories. Food sales do not include sales of any items that are not approved for purchase with SNAP benefits, such as alcoholic beverages, hot foods, or foods that will be eaten on the store premises; and

(p) Be open for business at least eight hours per day for five days per week.

(4) Authorization Requirements:

(a) The Authority or its designated representative shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) The Authority may grant a written exception to minimum stock requirements for cases where there is no participant need in the vendor's area for a specific authorized food item. The Authority shall determine participant need based on:

(A) Local agency's input regarding a vendor request for exception;

(B) Vendor redemption data relative to the vendor's request; and

(C) Number of participants prescribed the specific food item in the vendor's store's zip code.

(c) If a vendor with a stock exception is notified of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within seven days of the request.

(d) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement.

(5) Application Denials: The Authority shall give the applicant written notification of denial, in conformance with ORS chapter 183. As otherwise provided in these rules, the Authority may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC program sanction. In making this determination, the Authority may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(c) The applicant's history of complaints, violations and sanctions;

(d) The applicant's refusal to accept training from the WIC program;

(e) The applicant's submission of prices to the Authority for WIC foods that are not the actual prices being charged to current customers;

(f) The applicant's submission of prices to the Authority for WIC foods that the vendor does not stock in the store;

(g) The applicant's failure to complete an application within an Authority-specified period of time, after notification of the application's deficiencies; or

(h) The applicant's misrepresentation of information on the application.

(6) Subsequent to authorization, an agreement may be terminated if it is found that the vendor provided false or omitted pertinent information during the authorization process.

(7) If the Authority denies an application it may require the applicant to wait some period of time before reapplying.

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 16-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 12-27-06; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 9-2011, f. & cert. ef. 9-30-11; PH 11-2013, f. 11-6-13, cert. ef. 12-1-13; PH 25-2015, f. 12-8-15, cert. ef. 1-1-16

333-054-0050
Vendor Violation Notifications and Sanctions

(1) The Authority must notify a vendor in writing when an investigation reveals an initial incidence of a violation for which a pattern of incidences must be established in order to impose a sanction, before another such incidence is documented, unless the Authority determines, in its discretion, on a case-by-case basis, that notifying the vendor would compromise an investigation.

(2) Prior to imposing a sanction for a pattern of violative incidences, the Authority must either provide such notice to the vendor, or document in the vendor file the reason(s) for determining that such a notice would compromise an investigation.

(3) If notification is provided, the Authority may continue its investigation after the notice of violation is received by the vendor, or presumed to be received by the vendor consistent with the Authority's procedures for providing such notice.

(4) All incidences of a violation occurring during the first compliance buy visit must constitute only one incidence of that violation for the purpose of establishing a pattern of incidences.

(5) A single violative incidence may only be used to establish the violations as written in OAR 333-054-0050(4)(d) and 333-054-0050(4)(e).

(6) Vendors shall receive a written "Notice of Non-compliance" for a single instance of:

(a) Failing to comply with the vendor's current vendor agreement;

(b) Failing to complete and return the Shelf Price Survey (SPS) by the deadline set by the Authority;

(c) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument;

(d) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement;

(e) Influencing an authorized shopper's selection of authorized foods;

(f) Failing to display prices;

(g) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(h) Failing to respond to a request issued by the Authority;

(i) Failing to accept training when required by the Authority;

(j) Using the "WIC" acronym or logos without prior authorization by the Authority;

(k) Failing to maintain or provide, to the Authority upon request, invoices or receipts to show source(s) of formula purchase;

(l) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than the Authority, its representatives or a federal official;

(m) Failing to comply with the terms in a final order issued by the Authority;

(n) Failing to comply with an investigation by federal or state officials;

(o) Refusing the Authority or a federal official access to food instruments negotiated on the day of review;

(p) Failing to provide, within two business days of the Authority's request, purchasing/receiving records to substantiate the volume and prices charged to the Authority;

(q) Failing to stock appropriate quantities of authorized foods and infant formula;

(r) Violating the nondiscrimination clause listed in the vendor agreement;

(s) Failing to maintain or provide, to the Authority upon request, documentation for each incentive item;

(t) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours;

(u) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes; or

(v) Stocking expired foods on the shelf in three or more food categories that are on the minimum stock requirements.

(7) The Authority shall issue the following civil penalties to vendors for program violations committed within a single contract period:

(a) The Authority shall issue a civil penalty of $100 to vendors for the first instance of seeking restitution from an authorized shopper or participant for a WIC transaction not reimbursed or partially reimbursed by the Authority, or for which the Authority has requested payment from the vendor.

(b) The Authority shall issue a civil penalty of $100 to vendors for second instances of the following violations:

(A) Failing to display prices for WIC-authorized items;

(B) Failing to stock appropriate quantities of authorized foods and infant formula;

(C) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(D) Requiring a cash purchase in addition to the WIC transaction;

(E) Requiring authorized shoppers to pay for authorized foods during a WIC transaction other than with a food instrument. It is permissible for a vendor to request payment over the dollar amount listed on a CVB if the cost of the authorized purchase exceeds the CVB amount.

(F) Using the "WIC" acronym or logos without prior authorization by the Authority;

(G) Failing to attend training when required by the Authority;

(H) Failing to maintain or provide, to the Authority upon request, documentation for each incentive item;

(I) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours;

(J) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes;

(K) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument; or

(L) Stocking expired foods on the shelf in three or more food categories that are on the minimum stock requirements.

(c) The Authority shall issue a civil penalty of $200 to vendors for a second instance of seeking restitution from an authorized shopper or participant for a WIC transaction not reimbursed or partially reimbursed by the Authority, or for which the Authority has requested payment from the vendor.

(d) The Authority shall issue a civil penalty of $200 to vendors for third instances of the following violations:

(A) Failing to display prices for WIC-authorized items;

(B) Using the "WIC" acronym or logos without prior authorization by the Authority;

(C) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(D) Requiring a cash purchase in addition to the WIC transaction;

(E) Requiring authorized shoppers to pay for authorized foods during a WIC transaction other than with a food instrument. It is permissible for a vendor to request payment over the dollar amount listed on a CVB if the cost of the authorized purchase exceeds the CVB amount.

(F) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours;

(G) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes; or

(H) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument.

(e) The Authority shall issue a civil penalty of $400 to vendors for the fourth offense of the following violations:

(A) Failing to display prices for WIC-authorized items;

(B) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument;

(C) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours; or

(D) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes.

(f) The Authority shall issue a civil penalty of $800 to vendors for the fifth offense of the following violations:

(A) Failing to display prices for WIC-authorized items;

(B) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument;

(C) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours; or

(D) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes.

(g) The Authority shall issue a civil penalty of $1600 to vendors for the sixth offense of the following violations:

(A) Failing to display prices for WIC-authorized items;

(B) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument;

(C) Failing to have at least one register that accepts WIC open during all of the vendor's operating hours; or

(D) Failing to display signs at registers to indicate where WIC is accepted, if the vendor doesn't accept WIC in all lanes.

(8) Sanctions:

(a) The Authority shall deny a vendor's application for authorization upon renewal and require a six-month waiting period before the vendor may reapply if a vendor fails for a third instance to attend training when required by the Authority.

(b) For the following violations, the Authority shall disqualify a vendor for one year:

(A) A pattern of providing unauthorized food items in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(C) A pattern of providing change when redeeming a food instrument;

(D) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(E) Providing WIC shoppers with incentive items or other merchandise or services not approved by the Authority;

(F) A pattern of failing to maintain or provide, to the Authority upon request, documentation for each incentive item;

(G) Failure to pay a civil penalty assessed by the Authority within the designated timeframe set forth in the notice of civil penalty;

(H) A pattern of failing to comply with the vendor's current vendor agreement; or

(I) A pattern of stocking expired foods on the shelf in three or more food categories that are on the minimum stock requirements.

(c) For the following violations, the Authority shall disqualify the vendor for three years:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) Failing an Authority inventory audit;

(C) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item, which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(D) A pattern of vendor overcharges;

(E) A pattern of receiving, transacting or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to use of an unauthorized vendor, use of an unauthorized person, or redemption of food instruments outside of an authorized store location;

(F) A pattern of seeking restitution from an authorized shopper or participant for a WIC transaction not reimbursed or partially reimbursed by the Authority, or for which the Authority has requested payment from the vendor;

(G) A pattern of charging for foods not received by the authorized shopper; or

(H) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(4)(d) and 333-054-0050(4)(e).

(d) For the following violations, the Authority shall disqualify the vendor for six years:

(A) One incident of buying or selling a food instrument for cash (trafficking); or

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument.

(e) The Authority shall permanently disqualify a vendor convicted of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument.

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

Stat. Auth.: ORS 413.500

Stats. Implemented: ORS 413.500

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 9-2011, f. & cert. ef. 9-30-11; PH 11-2013, f. 11-6-13, cert. ef. 12-1-13; PH 25-2015, f. 12-8-15, cert. ef. 1-1-16

333-054-0060

Vendor Disqualifications

(1) A vendor may not apply for authorization during a period of disqualification from the WIC Program.

(2) The Authority shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, the Authority may not use non-renewal as an alternative to disqualification.

(3) The Authority shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed.

(4) In order to participate in the WIC program after a vendor is disqualified, it must apply for authorization after the disqualification period has passed.

(5) The Authority shall disqualify a vendor for a period corresponding to the most serious sanction during the course of a single investigation when the Authority determines the vendor has committed multiple violations. The Authority shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after the hearing or appeal, the Authority may impose a sanction for any remaining violations.

(6) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(8)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(7) The Authority may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(a) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(b) If the Authority determines that disqualification of a vendor would result in inadequate participant access, the Authority shall impose a CMP in lieu of disqualification.

(8) The Authority shall disqualify a vendor who has been disqualified from the SNAP. The disqualification shall be for the same length of time as the SNAP disqualification, although it may begin at a later date than the SNAP disqualification. Such disqualification by the WIC program shall not be subject to administrative or judicial review under the WIC program.

(a) The Authority may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the SNAP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the SNAP. The Authority shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for SNAP disqualification pursuant to section (8) of this rule or for any of the violations listed in this rule. If the Authority determines that disqualification of the vendor would result in inadequate participant access, the Authority shall not disqualify or impose a CMP in lieu of disqualification. The Authority shall include participant access documentation in vendor files.

(b) The Authority shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a SNAP CMP was assessed.

(9) Disqualification from the WIC Program may result in disqualification as a retailer in the SNAP. Such disqualification may not be subject to administrative or judicial review under the SNAP.

(10) Prior to disqualifying a vendor, the Authority shall determine if disqualification of the vendor would result in inadequate participant access.

(a) If the Authority determines that disqualification of the vendor would result in inadequate participant access, the Authority shall not disqualify the vendor and shall impose a CMP in lieu of disqualification.

(b) The Authority shall include documentation of its participant access determination and any supporting documentation in the vendor's file.

(c) The Authority shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access.

(d) The Authority shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(11) Pursuant to 7 CFR 246.12 (l)(1), the Authority shall use the following formula to calculate a CMP imposed in lieu of disqualification:

(a) Determine the vendor's average monthly redemptions for at least the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(b) Multiply the average monthly redemptions figure by 10 percent (.10); and

(c) Multiply the product from subsection (11)(b) of this rule by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed $11,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be $11,000. The Authority shall impose a CMP for each violation when during the course of a single investigation the Authority determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed $49,000.

(12) The Authority shall use the formula in subsections (11)(a) through (c) of this rule to calculate a CMP in lieu of disqualification for any violation under OAR 333-054-0050(4)(b). The Authority has the discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

(a) Whether the vendor had other WIC violations or complaints within the 12 months immediately preceding the month the notice of administrative action is dated;

(b) The degree of severity of the violations and complaints;

(c) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations; and

(d) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on the Authority recommendations.

(13) The Authority shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(14) A vendor who commits fraud or abuse of the program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than $25,000 or imprisonment for not more than five years or both, if the value of the funds is $100 or more. If the value is less than $100, the penalties are a fine of not more than $1,000 or imprisonment for not more than one year or both.

(15) A vendor may be subject to actions in addition to the sanctions in this rule, such as claims by the Authority of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(16) The Authority shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a 15-mile radius; and

(b) Geographic barriers.

(17) Any time the Authority uses criteria in section (16) of this rule, the Authority shall include participant access documentation in the vendor file.

(18) The Authority shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(19) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

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

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 9-2011, f. & cert. ef. 9-30-11; PH 11-2013, f. 11-6-13, cert. ef. 12-1-13; PH 25-2015, f. 12-8-15, cert. ef. 1-1-16

333-054-0070
Administrative Review

(1) The Authority shall provide a full administrative review in accordance with the provisions of ORS Chapter 183 for the following, as applicable:

(a) Denial of authorization based on a determination that the vendor or farmer is attempting to circumvent a sanction;

(b) Termination of an agreement for cause;

(c) Disqualification;

(d) Imposition of a civil penalty or a CMP in lieu of disqualification; and

(e) Denial of authorization based on the vendor selection criteria for competitive price or minimum variety and quantity of authorized WIC foods.

(2) The Authority may provide a vendor with an abbreviated or full administrative review in accordance with the provisions of ORS Chapter 183 for the following, as applicable:

(a) Denial of authorization based on selection criteria for business integrity or for a current SNAP disqualification or CMP penalty for hardship;

(b) Denial of authorization based on an Authority selection criteria for previous history of WIC sanctions or SNAP withdrawal of authorization or disqualification;

(c) Denial of authorization based on the Authority's limiting criteria;

(d) Termination of an agreement because of a change in ownership or location or cessation of operations;

(e) Disqualification based on a trafficking conviction;

(f) Disqualification based on the imposition of a SNAP CMP for hardship;

(g) Disqualification or CMP based on a USDA mandatory sanction from another state WIC agency; and

(h) Application of criteria used to determine whether a store is an A50.

(3) The vendor or farmer shall not be entitled to an administrative review for the following actions, as applicable:

(a) The validity or appropriateness of the Authority's limiting or selection criteria;

(b) The validity or appropriateness of the Authority's participant access criteria and the Authority's participant access determinations;

(c) The Authority's determination regarding whether an effective policy and program in effect to prevent trafficking regardless of the vendor or farmer's awareness, approval, or involvement in the violation activity;

(d) Denial of authorization if the Authority vendor authorization is subject to the procurement procedures applicable to the Authority;

(e) The expiration of the agreement;

(f) Disputes regarding food instrument payments and claims;

(g) Disqualification of a vendor as a result of disqualification from the SNAP;

(h) The Authority's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction;

(i) The Authority's determination to include or exclude an infant formula manufacturer, wholesaler, distributor, or retailer from the list required;

(j) The validity or appropriateness of the Authority's criteria used to determine whether or not a vendor is an A50 store; and

(k) The validity or appropriateness of the Authority's prohibition of incentive items and the Authority's denial of an A50 vendor's request to provide an incentive item to shoppers.

(4) A request for a hearing must be in writing and must be received within 30 days from the date of the notice describing the proposed action.

(5) The Authority may, at its discretion, permit the vendor or farmer to continue participating in the program pending the outcome of an administrative hearing. The vendor or farmer may be required to repay funds for FIs redeemed during the pendency of the hearing, depending on the hearing outcome.

(6) If an agreement expires during the appeal period, the Authority will accept application for renewal and delay determination until all appeals have been exhausted.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 16-2005, f. & cert. ef. 10-28-05; PH 30-2006, f. & cert. ef. 12-27-06; PH 5-2009, f. & cert. ef. 6-1-09; PH 9-2011, f. & cert. ef. 9-30-11; PH 11-2013, f. 11-6-13, cert. ef. 12-1-13; PH 25-2015, f. 12-8-15, cert. ef. 1-1-16

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Rule Caption: WIC Participant Administration
Adm. Order No.: PH 26-2015
Filed with Sec. of State: 12-8-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 333-053-0040, 333-053-0050, 333-053-0080
Subject: The Oregon Health Authority, Public Health Division is permanently amending administrative rules in chapter 333, division 53 as they pertain to participants in the Nutrition & Health Screening - Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These amendments include clarifying the definition of a WIC participant violation, adding "using a food instrument reported as lost or stolen," and adding "attempting to traffic a food instrument" to help ensure WIC program integrity. "And either reside within the local agency service area" is being deleted as Oregon WIC participants may choose which local agency in which to access services. Amendments also include removing the violation for "failing to notify local agency staff of change of eligibility information" to comply with United States Department of Agriculture (USDA) guidance.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-053-0040
Definitions

(1) "Adjunctively income eligible" means an applicant or participant who is eligible for WIC because they are:

(a) Certified and fully eligible to receive benefits for the:

(A) Food Distribution Program on Indian Reservations (FDPIR);

(B) Supplemental Nutrition Assistance Program (SNAP);

(C) Medicaid/Oregon Health Plan (OHP); or

(D) Temporary Assistance for Needy Families (TANF); or

(b) A member of a household with:

(A) A SNAP recipient;

(B) A pregnant woman or infant currently on Medicaid/OHP;

(C) A TANF recipient; or

(D) A FDPIR recipient.

(2) "Appeal" means review of an agency decision by a neutral third party.

(3) "Applicant" means any pregnant woman, post-partum woman, infant or child who is applying to receive WIC program benefits, and a breastfed infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are re-applying because their certification period is about to expire.

(4) "Authority" means the Oregon Health Authority.

(5) "Authorized food" means any supplemental foods approved by the Oregon WIC program and listed on the WIC Authorized Food List or food instrument.

(6) "Authorized shopper" means:

(a) The participant or any person designated by a participant who has been documented as such to act on the participant's behalf; and

(b) In the case of an infant or child, the caretaker or the caretaker's designee; or

(c) Any representative of the Authority posing as a participant or participant designee as authorized by the Authority.

(7) "Cardholder" means the person authorized by the WIC program to use the eWIC card to purchase WIC food benefits at WIC-authorized vendors.

(8) "Cash Value Benefit" or "CVB" means a fixed-dollar benefit on a check, voucher, electronic benefit transfer (EBT) card or other document which is used by an authorized shopper to obtain WIC authorized fruits and vegetables.

(9) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(10) "CFR" means Code of Federal Regulations.

(11) "Claim" means a demand for repayment for intentional misuse of WIC or FDNP benefits.

(12) "CSFP" means the Commodity Supplemental Food Program.

(13) "Disqualification" means termination of participation in the WIC program and cessation of WIC benefits due to a participant violation for a specific amount of time.

(14) "Dual participation" means simultaneous participation in more than one WIC program (more than one state or more than one local agency within Oregon) or participation in the WIC program and in the CSFP at the same time.

(15) "Electronic benefit account" or "EBA" means an account established for a WIC household administered by Oregon's eWIC banking contractor and where food benefits for all participants in the household are aggregated into that single account.

(16) "eWIC card" means the electronic benefit transfer (EBT) card used by cardholders to purchase WIC authorized foods or formulas from their electronic benefit account (EBA).

(17) "Fair hearing" means a proceeding before an administrative law judge to review actions proposed by the Authority.

(18) "Farm Direct Nutrition Program" or "FDNP" means the Farmers' Market Nutrition Program administered by the United States Department of Agriculture (USDA), Food and Nutrition Services and implemented by the State of Oregon, Oregon Health Authority.

(19) "First cardholder" means the required cardholder for an electronic benefit account. The first cardholder is either the woman participant or the parent or caretaker from the same household as the infant or child participant therefore sharing the same address.

(20) "Food instrument" means a WIC program voucher, check, coupon, electronic benefit transfer (EBT) card, or other document which is used to obtain authorized foods.

(21) "Hearing request" or "request for a hearing" means any clear expression by an individual, or the individual's parent, caretaker or representative, that he or she desires an opportunity to present his or her case to a higher authority.

(22) "Local agency" means:

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract with the Authority to provide services, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit in contract with the Authority to provide services;

(c) An Indian tribe, band or group recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior that operates a health clinic or is provided health services by an Indian Health Service unit.

(23) "Notice of Non-compliance" means a letter notifying participants, parents or caretakers of an infant or child participant when they commit a program violation. This notice is an explanation of the violation and a warning about repercussions of subsequent violations.

(24) "Participant" means any pregnant woman, breastfeeding woman, post-partum non-lactating woman, infant or child who has been certified to receive benefits from the WIC program.

(25) "Participant's caretaker" means a person who has significant responsibility for providing food to the infant or child. The caretaker is usually part of the family unit, for example the parent or legal guardian of the infant or child.

(26) "Restitution" means reimbursement to the Authority of the cash value of WIC program benefits received by a participant as a result of a violation.

(27) "Sanction" means a penalty imposed by the state WIC program because of a violation.

(28) "Second cardholder" means an individual authorized on a WIC electronic benefit account who has been issued their own eWIC card with the permission of the first cardholder.

(29) "Service area" means a local program or subdivision of a local agency that encompasses a specific geographic area.

(30) "Termination" means a participant's file is closed and WIC program benefits cease for any reason including, but not limited to, lack of eligibility, no longer breastfeeding, or transferring out of state, and participant violations.

(31) "Trafficking" means the buying or selling of a WIC food instrument for cash.

(32) "Violation" means any intentional action of a participant, parent or caretaker of an infant or child participant, or any eWIC cardholder, including actions listed in OAR 333-053-0080, that violates federal or state statutes, regulations, policies or procedures governing the WIC program.

(33) "WIC program" or "WIC" means the Special Supplemental Nutrition Program for Women, Infants and Children authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. § 1786.

(34) "WIC program benefits" mean benefits a participant receives that includes but are not limited to food, formula, and breast pumps.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 17-2008, f. & cert. ef. 11-5-08; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 10-2013, f. 11-6-13, cert. ef. 12-1-13; PH 26-2015, f. 12-8-15, cert. ef. 1-1-16

333-053-0050
Participant Eligibility

(1) In order to be eligible for the WIC program, at the time of application an applicant must:

(a) Be a pregnant woman, a breastfeeding woman less than one year after delivery, a non-lactating, post-partum woman less than six months after delivery, or a child through the end of the month he or she turns five years of age;

(b) Reside within the jurisdiction of the State of Oregon or within the Indian State jurisdiction;

(c) Meet the state's income eligibility criteria at the time of application; and

(d) Be at nutritional risk as defined by the Authority.

(2) In order to establish eligibility, a state or local agency shall require proof of residency, identity, and income and may require verification of pregnancy.

(3) Participants may only be enrolled in one local agency or clinic within a local agency in Oregon at a time.

(4) Participants may be enrolled in only one state WIC program at a time. If a participant moves to a new state they are no longer eligible to receive Oregon WIC program benefits.

(5) A participant may be terminated from the WIC program because they are no longer eligible.

(6) A participant may be disqualified from the WIC program for violations of program rules.

(7) A participant may voluntarily withdraw from participating in the WIC program at any time.

(8) A participant is eligible to receive FDNP benefits if the individual meets all of the following eligibility criteria on the date of FDNP benefit issuance:

(a) Is currently receiving benefits under the WIC program; and

(b) Belongs to any eligible WIC category described in subsection (1)(a) of this rule; and

(c) Is four months of age or older.

(9) A participant will be informed of and required to verify that he or she understands the rights and responsibilities of WIC participation at the time of their eligibility certification.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 17-2008, f. & cert. ef. 11-5-08; PH 10-2013, f. 11-6-13, cert. ef. 12-1-13; PH 26-2015, f. 12-8-15, cert. ef. 1-1-16

333-053-0080
Participant Violations

(1) During each certification visit, participants shall be informed of their rights and responsibilities, program rules and the sanctions issued should they intentionally violate a program rule.

(2) Whenever the Authority assesses a claim of misappropriated WIC program benefits of $100 or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the Authority shall disqualify the participant for one year.

(3) A participant shall be issued a Notice of Non-compliance for the first instance; a six month disqualification from the program and issued a claim for the second instance; and a one year disqualification from the program and issued a claim for the third and any subsequent instance of the following violations:

(a) Simultaneously using his or her own WIC benefits and acting as a store cashier for the transaction if employed by or owns store;

(b) Destruction of vendor or farmer property during a WIC transaction;

(c) Verbal abuse of store, farmer, or farm stand employees or owners during a WIC or FDNP transaction;

(d) Verbal abuse of state or local agency staff;

(e) Destruction of state or local agency property;

(f) Altering a food instrument;

(g) Returning foods purchased with a food instrument to a WIC vendor in exchange for money or different food unless they are receiving the identical item in exchange;

(h) Using or attempting to use a food instrument reported lost or stolen; or

(i) Redeeming a food instrument for unauthorized foods or formula.

(4) A participant shall be issued a Notice of Non-compliance and issued a claim for the first instance; and disqualified from the program for one year and issued a claim for the second and any subsequent instance of misrepresenting eligibility information to gain WIC or FDNP benefits.

(5) A participant shall be disqualified from the program for six months for the first instance and disqualified from the program for one year for the second or any subsequent instance of the following violations:

(a) Assaulting or using physical force, actual or threatened, against store, farmer, or farm stand employees or owners during a WIC or FDNP transaction; or

(b) Assaulting or using physical force, actual or threatened, against state or local agency staff.

(6) A participant shall be disqualified from the program for one year and issued a claim for the first and any subsequent instance of the following violations:

(a) Collusion with local agency staff to improperly obtain WIC program or FDNP benefits;

(b) Collusion with store staff to use a food instrument for the purchase of anything other than specifically indicated WIC program benefits;

(c) Theft of a food instrument;

(d) Buying, attempting to buy, exchanging, attempting to exchange, selling, or attempting to sell food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items;

(e) Trafficking or attempting to traffic a food instrument; or

(f) Collusion with store staff to accept the return of food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other non-food items.

(7) The Authority may decide not to impose a disqualification if, within 30 days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of 18, the Authority may approve the designation of a proxy in order to continue program benefits to these participants.

(8) Participants may reapply for benefits at any time after the disqualification period is over.

Stat. Auth.: ORS 413.500
Stats. Implemented: ORS 413.500
Hist.: PH 17-2008, f. & cert. ef. 11-5-08; PH 10-2013, f. 11-6-13, cert. ef. 12-1-13; PH 26-2015, f. 12-8-15, cert. ef. 1-1-16

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Rule Caption: Trauma Hospital Categorization and Resource Standards
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Rules Adopted: 333-200-0235, 333-200-0245, 333-200-0250, 333-200-0255, 333-200-0265, 333-200-0275, 333-200-0285, 333-200-0295, 333-200-0300
Rules Amended: 333-200-0000, 333-200-0010, 333-200-0020, 333-200-0030, 333-200-0035, 333-200-0040, 333-200-0050, 333-200-0060, 333-200-0070, 333-200-0080, 333-200-0090, 333-205-0000, 333-205-0010, 333-205-0020, 333-205-0040, 333-205-0050
Subject: The Oregon Health Authority (OHA), Public Health Division is permanently adopting and amending Oregon Administrative Rules in chapter 333, divisions 200 and 205 and Exhibits 1, 3, 4 and 5 relating to the Emergency Medical Services and Trauma System Program.

In accordance with ORS 431.609, the OHA is responsible for the development of a comprehensive statewide trauma system which includes the development of state trauma objectives and standards, and the criteria and procedures utilized in categorizing and designating trauma hospitals. The OHA is directed to categorize hospitals according to trauma care capabilities using standards modeled after the American College of Surgeons (ACS), Committee on Trauma Standards (COT). The OHA is updating these rules given passage of SB 728 (Oregon Laws 2013, chapter 605) relating to the State Trauma Advisory Board (STAB), updating and aligning Area Trauma Advisory Board requirements with statute, and providing better organization and identifying clearer processes and procedures for classifying and designating trauma hospitals. In 2014, the ACS COT published the 2014, Resources for Optimal Care of the Injured Patient and as such the OHA has amended Exhibits 3, 4 and 5 to align with this revised publication. Exhibit 1 has been revised to reflect changes that have occurred over time to geographic areas and referral patterns.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-200-0000
Purpose

The purpose of these rules is to establish the procedures and standards for the development and maintenance of a comprehensive statewide trauma system as set forth under ORS 431.575 through 431.671.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.575 – ORS 431.671
Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1987, f. & ef. 6-26-87; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0010
Definitions

As used in OAR 333-200-0000 through 333-200-0295:

(1) "Area Trauma Advisory Board" (ATAB) means an advisory group appointed by the Authority for each established trauma area to represent providers of trauma care and members of the public.

(2) "Authority" means the Oregon Health Authority.

(3) "Categorization" means a process for determining the level of a hospital's trauma care capability and commitment which allows any hospital which meets criteria to receive trauma patients.

(4) "Communications Coverage Area" means a geographic region representing a primary radio service area for emergency medical communications. When primary service areas substantially overlap they will be considered as one coverage area.

(5) "Coordinated Care Organization" has the meaning given that term in OAR 410-141-0000.

(6) "Designation" means a competitive process for determining the level of a hospital's trauma care capability and commitment, allowing the Division to select a limited number of hospitals which meet criteria to receive trauma patients.

(7) "Division" means the Public Health Division of the Oregon Health Authority.

(8) "Emergency Medical Condition" means a medical condition that manifests itself by symptoms of sufficient severity that a prudent layperson possessing an average knowledge of health and medicine would reasonably expect that failure to receive immediate medical attention would place the health of a person, or a fetus, in the case of a pregnant woman, in serious jeopardy.

(9) "Emergency Medical Services Agency" (EMS Agency) has the meaning given that term in OAR 333-265-0000.

(10) "Emergency Medical Responder" means a person who is licensed by the Division as an Emergency Medical Responder.

(11) "Emergency Medical Services Provider" (EMS Provider) means a person who is licensed by the Division as an Emergency Medical Responder or an Emergency Medical Technician.

(12) "Emergency Medical Technician" (EMT) means a person who is licensed by the Division as an Emergency Medical Technician.

(13) "Glasgow Coma Scale" (GCS) means an internationally recognized scoring system for the assessment of head injury severity and degree of coma.

(14) "Hospital" has the meaning set forth in ORS 442.015(15).

(15) "Hospital Catchment Area" means a geographic region representing a primary service area for hospitals. When primary service areas substantially overlap they shall be considered as one catchment area.

(16) "Injury Severity Score" (ISS) means a method for quantifying the degree of anatomic injury. As described in Baker, S.P., O'Neill B., Haddon W. Jr., et al: The Injury Severity Score, Journal of Trauma, 1974, 14: 187-196.

(17) "Level I (Regional) Trauma Hospital" means a hospital which is categorized or designated by the Division as having met the trauma hospital resource standards for a Level I hospital, as described in Exhibit 4. Level I hospitals manage severely injured patients, provide trauma related medical education and conduct research in trauma care.

(18) "Level II (Area) Trauma Hospital" means a hospital categorized or designated by the Division as having met the trauma hospital resource standards for a Level II hospital, as described in Exhibit 4. Level II hospitals manage the severely injured patient.

(19) "Level III (Local) Trauma Hospital" means a hospital categorized or designated by the Division as having met the trauma hospital resource standards for a Level III hospital, as described in Exhibit 4. Level III hospitals provide resuscitation, stabilization, and assessment of the severely injured patient and provide either treatment or transfer the patient to a higher level trauma system hospital as described in Exhibit 5.

(20) "Level IV (Community) Trauma Hospital" means a hospital categorized or designated by the Division as having met the hospital resource standards for a Level IV hospital, as described in Exhibit 4. Level IV hospitals provide resuscitation and stabilization of the severely injured patient prior to transferring the patient to a higher level trauma system hospital.

(21) "Managed Health Care Organization" means a health care provider or a group or organization of medical service providers that provide for the delivery of an agreed upon set of medical or referral services for an enrolled group of individuals and families in a defined geographic area at a fixed periodic rate paid per enrolled individual or family.

(22) "Medical Direction" means physician responsibility for the operation and evaluation of prehospital emergency medical care performed by emergency care providers.

(23) "Off-Line Medical Direction" means the direction provided by a physician to prehospital emergency medical care providers through communications such as written protocols, standing orders, education and quality improvement reviews.

(24) "On-Line Medical Direction" means the direction provided by a physician to prehospital emergency medical care providers through radio, telephone, or other real time communication.

(25) "Oregon Trauma Registry" means the trauma data collection and analysis system operated by the Division.

(26) "Prehospital Response Time" means the length of time between the notification of a provider and the arrival of that provider's emergency medical service unit(s) at the incident scene.

(27) "Stabilization" means that, within reasonable medical probability, no material deterioration of an emergency medical condition is likely to occur.

(28) "State Trauma Advisory Board" (STAB) means an advisory group appointed by the Authority to represent providers of trauma care.

(29) "Trauma Patient" means a person who at any time meets field triage criteria for inclusion in the Oregon Trauma System, as described in Exhibit 2 of these rules.

(30) "Trauma System Hospital" means a hospital categorized or designated by the Division to receive and provide services to trauma patients.

(31) "Trauma System Plan" means a document which describes the policies, procedures and protocols for a comprehensive system of prevention and management of traumatic injuries.

(32) "Triage Criteria" means the parameters established to identify trauma patients for treatment in accordance with the trauma system plan. These criteria are set forth in Exhibit 2.

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.611

Hist.: HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0020

Objectives of the Trauma System

The objective of the statewide trauma system is to reduce deaths and disabilities which result from traumatic injuries by:

(1) Identifying the causes of traumatic injuries and recommending, promoting, and coordinating prevention activities;

(2) Developing a statewide trauma system plan to assure timely, quality, definitive care through coordinated identification, transportation and treatment of trauma patients:

(a) The statewide trauma system plan shall be composed of seven area plans; and

(b) Each area trauma system plan shall consist of policies, procedures, and protocols which address each of the following trauma system components:

(A) Communication and dispatch;

(B) Responders and prehospital response times;

(C) Medical direction and treatment;

(D) Triage and transportation;

(E) Hospital resources;

(F) Inter-hospital transfers;

(G) Rehabilitation;

(H) Quality improvement;

(I) Education and research;

(J) Prevention; and

(K) Disaster management.

(3) Adopting the standards, policies and procedures necessary to unify area trauma system plans into a statewide trauma system; and

(4) Promoting quality treatment, education, research and prevention of traumatic injuries utilizing as a model **Resources for Optimal Care of the Injured Patient: Committee on Trauma, American College of Surgeons, 2014 and the Guidelines for Field Triage of Injured Patients, Recommendations of the National Expert Panel on Field Triage, 2011; Centers for Disease Control and Prevention, MMWR, January 13, 2012, Vol. 61, No. 1.**

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.575, 431.609, 431.611, 431.613 & 431.619Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0030

State Trauma Advisory Board Functions

(1) The STAB is established in accordance with ORS 431.580.

(2) The STAB shall:

(a) Advise the Division with respect to the development of a comprehensive emergency medical services and trauma system including meeting the objectives established in OAR 333-200-0020;

(b) Advise the Division on the adoption of rules, policies, and procedures regarding the trauma system;

(c) Analyze data related to prevention of injuries, monitoring of the trauma system and recommend improvements where indicated; and

(d) Suggest improvements to the emergency medical services and trauma system.

(3) In satisfying its duties described in section (2) of this rule, the STAB shall:

(a) Make evidence-based decisions that emphasize the standard of care attainable throughout the state and individual communities; and

(b) Seek the advice and input of coordinated care organizations or other managed care organizations.

(4) The Division shall seek the advice of the STAB concerning the approval of area trauma system plans and approval of subsequent protocols for major modifications.

(5) A majority of the members of the STAB shall constitute a quorum in order to conduct business.

(6) Official action taken by the STAB requires the approval of the majority of the members.

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.580 & 431.613

Hist.: HD 17-1985(Temp), f. & ef 9-20-85; HD 5-1987, f. & ef. 6-26-87-93, cert. ef. 71-93; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0035

State Trauma Advisory Board Appointments

(1) The STAB shall consist of a minimum of 17 members. These members shall represent each of the seven ATABs. A STAB member may also be a member of an ATAB.

(2) Members of the STAB shall be chosen in accordance with the provisions of ORS 431.580.

(3) Appointment for STAB members shall be as follows:

(a) Terms shall be for four years;

(b) Vacancies shall be filled by the Authority in concurrence with the Governor;

(c) Members may be reappointed but may not serve consecutive terms;

(d) With the exception of Level I trauma hospitals, members may not be appointed from the same trauma hospital in consecutive terms; and

(e) A member serves at the pleasure of the director of the Authority.

(4) The STAB may recommend to the Authority that:

(a) Membership be expanded to improve coordination of the trauma care system; and

(b) Provider specialty positions are considered for board appointment.

(5) A public member who has an economic interest in the provision of emergency medical services or trauma care may not be appointed to serve on the STAB.

Stat. Auth.: ORS 431.580 & 431.611
Stats. Implemented: ORS 431.609
Hist.: OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0040
Trauma System Areas

The Division has established seven trauma system areas utilizing county lines, zip codes, township and range, and roads for the purpose of developing, implementing and monitoring the trauma system and not for the purpose of restricting patient referrals. The trauma system areas are illustrated in Exhibit 1 and are:

(1) Area 1: Clackamas County; Clatsop County; Columbia County; Multnomah County; Tillamook County (except zip codes 97122, 97135 and 97149); Washington County; and Yamhill County (zip codes 97115, 97119, 97123, 97132, 97140 and 97148 only);

(2) Area 2: Benton County; Lincoln County; Linn County; Polk County; Marion County; Tillamook County (zip codes 97122, 97135 and 97149 only); and Yamhill County (except zip codes 97115, 97132 and 97148);

(3) Area 3: Coos County; Curry County (zip codes 97450, 97465, and 97476 only); Douglas County; and Lane County;

(4) Area 5: Curry County (zip codes 97406, 97415 and 97444 only); Jackson County; and Josephine County;

(5) Area 6: Gilliam County; Hood River County; Sherman County; and Wasco County (except zip codes 97001, 97057 and 97761);

(6) Area 7: Crook County; Deschutes County; Grant County; Harney County; Jefferson County; Klamath County; Lake County; Wasco County (zip codes 97001, 97057 and 97761 only); and Wheeler County; and

(7) Area 9: Baker County, Malheur County, Morrow County; Umatilla County; Union County; and Wallowa County.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609
Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1986, f. & ef. 6-26-87; HD 16-1987, f. & ef. 10-9-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0050
Area Trauma Advisory Board Functions

(1) Area Trauma Advisory Boards (ATAB) are established in accordance with ORS 431.613;

(2) Each ATAB shall:

(a) Act as liaison between the providers and general public in their area and the STAB and the Division for exchanging information about trauma system issues and developing an area-wide consensus;

(b) Advise the STAB and the Division on the adoption of rules, policies and procedures regarding area trauma system plans;

(c) Recommend to the Division an area trauma system plan which meets the standards and objectives of these rules;

(d) Participate in the promotion and function of the implemented area trauma system plan by making recommendations to the Division and the area trauma care providers; and

(e) Provide an annual report to the Division which describes a review and any recommended modifications of the area trauma system plan.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.613
Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0060
Area Trauma Advisory Board Appointments

(1) Each ATAB shall consist of at least 15 members who shall be broadly representative of the trauma area as a whole.

(2) Appointments to the ATABs shall be in accordance with the provisions of ORS 431.613.

(3) Terms of appointment for ATAB members shall be as follows:

(a) Terms shall be for a period of three years;

(b) Vacancies shall be filled by appointment by the Authority in concurrence with the Governor;

(c) Members may serve unlimited terms at the discretion of the Division; and

(d) Members are subject to removal with cause by the Division.

(4) ATABs may recommend to the Division that:

(a) Membership be expanded in order to improve coordination of the area trauma system; and

(b) Provider specialty positions are considered for ATAB appointments.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.613
Hist.: HD 17-1985(Temp), f. & ef. 9-20-85; HD 5-1987, f. & ef. 6-29-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0070
Approval of Area Trauma System Plans

(1) Each ATAB shall recommend to the Division an area trauma system plan and, when deemed necessary by the Division or the ATAB, modifications to the plan.

(2) Area trauma system plans shall meet the minimum standards established in OAR 333-200-0080.

(3) The Division may grant waivers from one or more standards contained in OAR 333-200-0080, in an area trauma system plan if the ATAB can demonstrate, or the Division finds that compliance with such standards is inappropriate because of special circumstances which would render compliance unreasonable, burdensome or impractical. Such waivers may be limited in time or may be conditioned as necessary to protect the public welfare.

(4) The Division shall seek the advice of the STAB concerning the approval of area trauma system plans and approval of subsequent proposals for major modifications.

(5) All approved area trauma system plans shall be considered the standard of care for the area covered by the plan.

(6) Each ATAB shall review its area trauma system plan at least once every five years and submit to the Division:

(a) A copy of the plan; and

(b) A description of any proposed changes including a statement about why such changes are necessary.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611, 431.613
Hist.: HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0080
Standards for Area Trauma System Plans

Area trauma system plans shall describe how each of the following standards are met or exceeded. Interpretation and implementation of the standards as set forth in this rule shall be in general accordance with the guidelines of the **Resources for Optimal Care of the Injured Patient: Committee on Trauma, American College of Surgeons, 2014**. For the purposes of section (4) of this rule, interpretation and implementation of standards shall be in general accordance with the **Guidelines for Field Triage of Injured Patients, Recommendations of the National Expert Panel on Field Triage, 2011; Centers for Disease Control and Prevention, MMWR, January 13, 2012, Vol. 61, No. 1**:

(1) Communications and Dispatch:

(a) System Access: Residents and visitors in a communications coverage area shall be able to access emergency medical services by calling 9-1-1 as set forth in ORS 403.115;

(b) Dispatch Response: Dispatchers for emergency medical care providers shall have protocols which include pre-arrival patient care instructions and which require the dispatch of the appropriate level of available responding units (Basic, Intermediate or Advanced Life Support) based on medical need;

(c) Special Resources: All emergency medical services dispatchers shall maintain an up-to-date list of available law enforcement agencies, fire departments, air and ground ambulance services, quick response units that respond to an ill or injured person to provide initial emergency medical care prior to transportation by an ambulance and special responders for extrication, water rescue, hazardous material incidents and protocols for their use;

(d) Prehospital/Hospital: Ambulances shall have either a UHF or VHF radio that will provide reliable communications between the ambulance and

central dispatch, the receiving hospital, and online medical direction. If the information has to be relayed through the dispatching agency, that agency shall be responsible to relay patient information to the hospital; and

(e) Training: There shall be training and certification standards for all tele-communicators that process telephone requests for or dispatch emergency care providers. The authorization to establish these standards is the responsibility of the Department of Public Safety Standards and Training in accordance with ORS 181.640.

(2) Responders and Prehospital Response Times:

(a) Ambulance Service Areas (ASAs): The existing ASAs shall be described as well as a summary of the ATAB's efforts to promote each county adopting an ASA plan in accordance with ORS 682.062;

(b) Prehospital Response Times: Trauma system patients shall receive prehospital emergency medical care within the following prehospital response time parameters 90 percent of the time:

(A) Urban area, an incorporated community of 50,000 or more population — 8 minutes;

(B) Suburban area, an area which is not urban and which is contiguous to an urban community. It includes the area within a 10-mile radius of that community's center. It also includes areas beyond the 10-mile radius which are contiguous to the urban community and have a population density of 1,000 or more per square mile — 15 minutes;

(C) Rural area, a geographic area 10 or more miles from a population center of 50,000 or more, with a population density of greater than six persons per square mile — 45 minutes;

(D) Frontier area, the areas of the state with a population density of six or fewer persons per square mile and are accessible by paved roads — 2 hours; and

(E) Search and rescue area, the areas of the state that are primarily forest, recreational or wilderness lands that are not accessible by paved roads or not inhabited by six or more persons on a year round basis. — No established prehospital response time.

(c) Field Command: A uniform policy shall assign responsibility for directing the care of the trauma patient in the prehospital setting in cases of response by multiple providers to assure scene control by the most qualified responder;

(d) Utilization of Air Ambulance: Protocols for the medical direction, activation and utilization of air ambulance service(s) shall be established;

(e) Prehospital Care Report Form: All prehospital emergency care providers shall use a patient care report form as defined in OAR 333-255-0000; and

(f) Utilization of Oregon Trauma System Identification Bracelet: All prehospital emergency medical care providers shall use the official Public Health Division numbered Trauma System Identification Bracelet when the patient meets trauma system entry criteria or is entered into the Trauma System and notify the receiving trauma hospital of the incoming patient. The prehospital emergency medical care provider shall record the number on the patient's prehospital care report.

(3) Medical Direction and Treatment:

(a) Protocols, Policies and Procedures: Providers in each trauma system area shall function under an effective and coordinated set of off-line prehospital trauma protocols and on-line medical direction trauma policies and procedures which address basic, intermediate and advanced levels of care. Off-line treatment protocols shall clearly describe all treatment and transportation procedures and identify those procedures which require on-line medical authorization. Medical direction policies and procedures must assure consistent area-wide coordination, data collection and area-wide quality improvement responsibility;

(b) Hospital Status: In the event that on-line medical direction serves two or more categorized or designated hospitals, there shall be a system for medical direction to continuously determine the current status of hospital trauma care capabilities; and

(c) Physician Qualifications: On-line medical direction physicians must be qualified for this role by virtue of training, experience and interest in prehospital trauma care as demonstrated through emergency medicine and Advanced Trauma Life Support (ATLS) training in accordance with the American College of Surgeons ATLS course.

(4)(a) Triage and Transportation: Triage and transportation protocols shall be written to ensure that patients who at any time meet field triage criteria as set forth in Exhibit 2 will be transported directly to a categorized trauma hospital as described under OAR 333-200-0090. The protocols must be based on field triage criteria (Exhibit 2) and identify the following:

(A) Which patients are appropriate for transport to a Level I, II, III or IV trauma hospital based on the capabilities of the hospitals in the ATAB;

(B) Conditions in which an ambulance may bypass a Level III or IV trauma hospital in order to transport directly to a Level I or II trauma hospital; and

(C) Conditions in which air transport should be considered for transport directly to a Level I or II trauma hospital.

(b) Triage and transportation protocols shall be followed unless otherwise advised by on-line medical direction or under the following circumstances:

(A) If unable to establish and maintain an adequate airway, the patient shall be taken to the nearest hospital to obtain definitive airway control. Upon establishing and maintaining airway control, the patient shall be immediately transferred to a Level I or Level II trauma hospital;

(B) If the scene time plus transport time to a Level I or Level II trauma hospital is significantly greater than the scene time plus transport time to a closer Level III or Level IV trauma hospital;

(C) If the hospital is unable to meet hospital resource standards as defined in Exhibit 4, when there are multiple patients involved, or the patient needs specialty care; or

(D) If on-line medical direction overrides these standards for patients with special circumstances, such as membership in a health maintenance organization, and if the patient's condition permits.

(E) Application of paragraphs (B), (C), and (D) of this subsection must not delay definitive medical or surgical treatment.

(5) Hospital Resources:

(a) Trauma System Hospital Identification: Either the categorization or designation method of identifying trauma system hospitals as described under OAR 333-200-0090(1), (3) and (4) shall be recommended to the Division; and

(b) Resource Criteria: Trauma system hospitals shall meet or exceed the trauma hospital resource standards as set forth in Exhibit 4 and hospital activation criteria as set forth in Exhibit 3. Area criteria that exceed the criteria set forth in Exhibit 4 shall be accompanied by an informational statement of the additional costs that a hospital will incur to meet these standards.

(6) Inter-hospital Transfers:

(a) Identification of Patients: ATAB-wide criteria which meet or exceed any of the criteria set forth in Exhibit 5 of these rules shall be established to identify patients who should be transferred to a Level I or II trauma system hospital or specialty care center.

(b) When it is determined that a patient transfer is warranted:

(A) The transfer shall take place after the stabilization of the patient's emergency medical condition has been provided within the capabilities of the local hospital, which may include operative intervention; and

(B) The transfer to a Level I or II trauma hospital shall not be delayed for diagnostic procedures that have no impact on the transfer process or the immediate need for resuscitation.

(c) In all situations regarding an inter-hospital transfer, the decision to retain or transfer the patient shall be based on medical knowledge, experience and resources available to the patient.

(d) The hospital's trauma performance improvement and patient safety process shall monitor all cases meeting inter-hospital transfer criteria. The Division, through annual reports and site surveys, shall monitor this performance category.

(7) Inter-hospital Transfers with Health Maintenance Organizations:

(a) Trauma system hospitals shall facilitate the transfer of a member of a health maintenance organization or other managed health care organization when the emergency medical condition of the member permits and no deterioration of that condition is likely to result from or occur during the transfer of the patient. Trauma system hospitals shall transfer a patient in accordance with the provisions of ORS 431.611(2)(a) and (b) and any other applicable laws or regulations.

(b) A patient will be deemed stabilized, if the treating physician attending to the patient in the trauma hospital has determined, within reasonable clinical confidence, that the emergency medical condition has been resolved.

(c) Hospitals or health maintenance organizations may not attempt to influence patients and families, prior to the patient's stabilization, into making decisions affecting their trauma treatment by informing them of financial obligations if they remain in the trauma facility.

(d) Health maintenance organizations and non-designated trauma facilities shall report follow-up information to the transferring trauma system hospital and all required data as set forth in the Oregon Trauma Registry Data Dictionary; and

(e) Hospitals or health maintenance organizations that receive or transfer trauma patients shall participate in regional quality improvement activities.

(8) Rehabilitation Resources:

(a) Capabilities for trauma rehabilitation in each trauma system area and transfer procedures to other rehabilitation facilities shall be described; and

(b) Rehabilitation resources for burns, pediatrics, neuro-trauma and extended care shall be included.

(9) Quality improvement:

(a) Provisions shall be made for at least quarterly review of medical direction, prehospital emergency medical care and hospital care of trauma cases:

(A) Area-wide criteria for identifying trauma cases for audit shall be described and shall include all trauma related deaths;

(B) Responsibility for identifying and reviewing all trauma cases meeting audit criteria shall be assigned; and

(C) Quarterly reports shall be submitted to the Division by the ATAB or its representative on confidential forms.

(b) The ATAB, STAB, all Area and State Quality Improvement Committee(s) and the Division shall meet in executive session as set forth in ORS 192.660 when discussing individual patient cases; and

(c) No member of any ATAB, the STAB, or any committee, subcommittee or task force thereof, shall disclose information or records protected by ORS 431.627 or 41.675 to unauthorized persons. Any person violating these rules shall be immediately removed by the Division from membership on any trauma system committee, subcommittee or task force thereof.

(10) Education and Research:

(a) Trauma Training: Trauma system hospitals shall provide or assist in the provision of prehospital trauma management courses to all EMS Providers involved in the prehospital emergency medical care of severely injured patients; and

(b) Research: In areas with Level I hospitals, clinical and basic research in trauma and publication of results involving surgical and non-surgical specialists, nurses, and allied health professionals engaged in trauma care, shall be promoted.

(11) Prevention:

(a) Public Education: Public education and awareness activities shall be developed by trauma system hospitals to increase understanding of the trauma system and injury prevention. These activities shall be appropriate to the size and resources of the area; and

(b) Development and Evaluation: Trauma prevention activities to identify and address area problems shall be supported.

(12) Disaster Management: Provisions for addressing triage of trauma system patients to non-trauma hospitals during a natural or manmade disaster must be addressed and include:

(a) Implementation and termination of the disaster management plan; and

(b) Reporting requirements of the Oregon Trauma Registry and Oregon Trauma Program.

[ED. NOTE: Exhibits & Publications referenced are available from the agency.]
Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609 & 431.611
Hist.: HD 5-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; HD 5-1997, f. & cert. ef. 3-12-97; OHD 6-2000, f. & cert. ef. 5-4-00; OHD 6-2001, f. & cert. ef. 4-24-01; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0090
Trauma Hospital Approval and Categorization

(1) The Division shall approve trauma system hospitals by levels of care capability as defined by the standards contained in Exhibit 4 and by any criteria contained in the approved area plan. Approval will be renewed every three years if the hospital submits an application for renewal, and if the Division's review finds that the hospital continues to meet the prescribed standards in Exhibit 4.

(2) Upon determining the level of a hospital's trauma care capability and whether prescribed hospital resource standards have been met in accordance with OAR 333-200-0080, the Division shall categorize a trauma system hospital as a Level I, Level II, Level III or Level IV trauma hospital. A trauma hospital may also be categorized as a Level I or Level II Pediatric Trauma Center and must meet prescribed pediatric trauma care standards in Exhibit 4. The Division may accept ACS verification in accordance with OAR 333-200-0250.

(3) For area trauma system plans prescribing categorization of hospitals, the Division shall approve all hospitals which meet the standards of the area trauma system plan.

(4) For area trauma system plans prescribing designation of hospitals, the Division shall approve selected hospitals which meet the standards of the area trauma system plan. The Division shall select hospitals based on the assessment that the best interests of the patients of the area are served by the particular applicant and expected patient volume. Competing applicants shall be judged on the on-site survey assessments of which hospital(s) provides the highest quality of compliance with the standards in Exhibit 4.

(5) A trauma system's hospital categorization may be transferable to a successor operator if the successor provides written acknowledgment that the successor will comply with all of the responsibilities and obligations imposed upon the transferor and under these rules including probationary status, and the successor agrees to be substituted in pending proceedings regarding the approval status. The Division may decline, at its discretion, to transfer approval if it reasonably believes the successor cannot meet the standards, rules, policies or protocols set forth in the approved area plan.

(6) A trauma system hospital may, without cause, terminate its trauma system hospital status upon 90-days written notice to the Division and the ATAB's list of interested parties.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: HD 5-1987, f. & ef. 6-26-87; HD 16-1987, f. & ef. 10-9-87; HD 9-1990, f. & cert. ef. 4-25-90; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; HD 5-1997, f. & cert. ef. 3-12-97; OHD 6-2000, f. & cert. ef. 5-4-00; PH 16-2012, f. 12-20-12, cert. ef. 1-1-13; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0235
Trauma Hospital Application

(1) Application for a hospital to be categorized as a Level I, II, III or IV trauma hospital shall be submitted in writing on a form prescribed by the Division.

(2) The application process shall provide for at least 60 days in which to complete and submit proposals to the Division with all supporting information and documents.

(3) The Division's evaluation of the application shall include:

(a) A review of the hospital's proposal by the Division or survey team; and

(b) An onsite survey by the Division and survey team of the hospital.

(4) The application shall become the property of the Division and upon completion of the approval process is not subject to disclosure in accordance with ORS 431.627.

(5) The applicant shall have the right to withdraw its application at any time prior to dispositive action by the Division.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0245
Trauma Survey and Survey Team

(1) In accordance with OAR 333-200-0235, the Division shall conduct an on-site survey using a survey team composed of persons selected by the Division.

(2) No person may serve as a member of the survey team that has any actual or potential personal, organizational or financial conflict of interest in the hospital under consideration.

(3) The Division shall provide the proposed list of survey team members to the applicant prior to conducting a survey. An applicant wishing to contest a member of the survey team shall provide written notice to the Division within 10 calendar days of receiving the proposed list. The written notice must identify concerns and provide information that demonstrates a clear and convincing basis for the concern.

(4) The quality of each hospital's compliance with the standards set forth in Exhibit 4 shall be evaluated during an on-site survey. Members of the survey team shall:

(a) Evaluate medical records, staff rosters and schedules, minutes from quality improvement committee meetings, and other documents relevant to trauma care;

(b) Evaluate equipment and premises;

(c) Conduct informal interviews with hospital personnel; and

(d) Report the findings and interpretations of the survey to the Division.

(5) During an on-site survey, administrative staff, faculty, medical staff, employees and representatives are prohibited from having any contact with any survey team member, except as directed by the Division. A violation of this provision may be grounds for immediate termination of the survey.

(6) The Division may review, inspect, evaluate, and audit patient trauma discharge summaries, trauma patient care logs, trauma patient care

records, trauma quality improvement committee minutes and other documents relevant to trauma care of any hospital at any time to verify compliance with trauma system standards as set forth in these rules. The confidentiality of such records shall be maintained by the Division in accordance with state law.

(7) Information gathered during an on-site survey by the survey team including oral and written reports and deliberations shall be confidential in accordance with ORS 431.627(3).

(8) A written report of the on-site survey findings will be provided to the applicant only within 60 days of completing the on-site survey and shall be confidential in accordance with ORS 431.627(3).

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609, 431.611 & 431.627

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0250

Hospitals Seeking Verification from American College of Surgeons

(1) Notwithstanding OAR 333-200-0235 and OAR 333-200-0245, a hospital seeking verification from the American College of Surgeons (ACS) shall submit the following information to the Division:

(a) Notification of intent to seek verification;

(b) Notification of the date and time of the site visit to be conducted by ACS;

(c) A copy of the ACS Preview Review Questionnaire; and

(d) Any additional information necessary to determine compliance with state specific standards.

(2) A Division representative shall be present at the verification site visit and may request additional information to determine compliance with state specific standards.

(3) In accordance with OAR 333-200-0295, the Division shall provide a written report of the on-site survey findings and a corrective action plan shall be submitted by the hospital, if applicable.

(4) A hospital shall submit a copy of the ACS verification report to the Division upon receipt.

(5) The Division may accept ACS verification if the verification is recognized by the Division as addressing the ACS trauma system standards and any additional state standards identified in these rules.

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609, 431.611 & 431.627

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0255

Waivers

(1) The Division may grant waivers from standards that are established in OAR 333-200-0080, OAR 333-200-0265 or Exhibit 4. Such waivers may be limited in time or may be conditioned as the Division considers necessary to protect the safety and welfare of the public.

(2) If a hospital seeks a waiver to the Division's rules, it must submit a request in writing that includes, at a minimum, the following information:

(a) The specific rule for which a waiver is requested;

(b) The special circumstances relied upon to justify the waiver;

(c) Any alternatives that were considered and the reasons those alternatives were not selected;

(d) How the proposed waiver will maintain or improve patient health and safety without jeopardizing patient health and safety; and

(e) The proposed duration of the waiver.

(3) After reviewing the written request, the Division shall issue its decision in writing.

(4) Applicants may not implement any waiver request until approved in writing by the Division.

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

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.611

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0265

Trauma System Hospital Responsibilities

A trauma system hospital shall:

(1) Be responsible for all expenses incurred by the hospital in planning, developing and participating in the trauma system, including attorney fees and costs;

(2) Be responsible for all expenses incurred when a re-survey of the hospital is conducted by the Division or its designee(s);

(3) Comply with all requirements in these rules, all current state and area trauma system standards, and all policies, protocols and procedures as set forth in the approved area trauma system plan;

(4) Meet or exceed the standards for hospital resources as set forth in Exhibit 4 and hospital activation and transfer criteria as set forth in Exhibits 3 and 5;

(5) Provide the resources, personnel, equipment and response required by these rules;

(6) Provide care to trauma system patients which is consistent with the standards advocated by the Advanced Trauma Life Support Course, American College of Surgeons, Committee on Trauma;

(7) Report to the Oregon Trauma Registry all required data as set forth in the Oregon Trauma Registry Abstract Manual for each and every trauma patient as defined in these rules:

(a) Data must be reported within 60 days of death or discharge of that patient; and

(b) Data shall be submitted in electronic media using a format prescribed by the Division.

(c) The Division may, at its sole discretion, permit data submission by alternative means where use of the Division's prescribed format would impose a severe hardship on the reporting institution.

(8) Participate in evaluation and research studies as prescribed by the Division;

(9) Record patient resuscitation data using the official state trauma resuscitation flow sheet. If using a form other than the official form, that form must contain at least the same information; and

(10) Identify and submit to the Division the name of the individual that will serve as the Trauma Registrar, Trauma Coordinator or Trauma Program Manager, and Trauma Medical Director. Any changes to persons serving in these roles must be reported to the Division within 60 days.

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

Stat. Auth.: ORS 431.611 & 431.623

Stats. Implemented: ORS 431.609, 431.611 & 431.623, 431.627

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0275

Division Responsibilities

When requested, the Division shall provide statistical reports in formats prescribed by the Division in consultation with the STAB, to the STAB and ATAB Quality Improvement Committees within 90 days of the close of the calendar quarter following receipt of the data submitted pursuant to OAR 333-200-0265(7).

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.611

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0285

Violations

(1) No person, emergency medical service, medical clinic, or hospital shall by any means advertise, assert, represent, offer, provide or imply that such person, service, clinic or hospital is a trauma system hospital or has the capabilities for providing treatment to trauma patients beyond the status for which the approval has been granted.

(2) No trauma system hospital shall in any manner advertise or publicly assert that its trauma approval affects the hospital's care capabilities for non-trauma system patients, nor that the approval should influence the referral of non-trauma system patients.

(3) Where a hospital is greater than three months in arrears in reporting required trauma patient data, the Division may contract with an independent data collection and abstraction service to perform the data collection. The Division shall assess the trauma system hospital for all costs associated with such collection of required data.

Stat. Auth.: ORS 431.611

Stats. Implemented: ORS 431.609, 431.611 & 431.627

Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0295

Enforcement

(1) Following an on-site survey, a member of the survey team may conduct an exit conference with the applicant or his or her designee. During the exit conference, a survey team member shall:

(a) Inform the applicant or designee of the preliminary findings of the survey; and

(b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(2) Following the survey, a determination shall be made and Division staff shall prepare and provide the applicant or his or her designee specific and timely written notice of the findings. An applicant shall have 30 days from receipt of the survey report to request a reconsideration of the categorization.

(3) If during a survey, the survey team documents non-compliance with trauma rules or laws, the deficiencies will be identified in the survey report and the laws alleged to have been violated and the facts supporting the allegation.

(a) A corrective action plan must be mailed to the Division within 45 to 60 calendar days from the date the survey report was received by the applicant.

(b) The Division shall prescribe the time frame an applicant has to correct all deficiencies. The time frame shall be based on the seriousness of the deficiencies and whether any deficiencies affect patient safety.

(c) The Division may determine that a focused review is necessary within one year of the date of the on-site survey in order to determine that the deficiencies identified in the survey report have been corrected.

(4) Upon receipt of the Division's written survey report, an applicant shall be provided an opportunity to dispute any findings including identified deficiencies. If an applicant desires an informal conference to dispute the survey findings, the applicant shall notify the Division in writing within 10 calendar days after receipt of the written survey report. The written request must include a detailed explanation of why the applicant believes the findings are inaccurate.

(5) The Division shall determine if a corrective action plan is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the applicant in writing or by telephone:

(a) Identifying which provisions in the plan the Division finds unacceptable;

(b) Citing the reasons the Division finds them unacceptable; and

(c) Requesting that the plan of correction be modified and resubmitted no later than 30 calendar days from the date the letter of non-acceptance was received by the applicant.

(6) The Division may re-survey a trauma system hospital, immediately suspend or revoke a trauma system hospital approval or place a hospital on probation under any of the following circumstances:

(a) Substantial failure, for any reason, of a hospital to comply with these rules, all current state and area trauma system standards, and all policies, protocols and procedures as set forth in the approved area trauma system plan; or

(b) Submission of reports to the Division that are incorrect or incomplete in any material aspect.

(7) Except as set forth in OAR 333-200-0285(3), occasional failure of a trauma system hospital to meet its obligations will not be grounds for probation, suspension or revocation by the Division if the circumstances under which the failure occurred:

(a) Do not reflect an overall deterioration in quality of and commitment to trauma care; and

(b) Are corrected immediately by the hospital.

(8) Failure of a trauma system hospital to timely and accurately report to the Division all data required by rule or statute is grounds for suspension or revocation as a trauma hospital.

(9) A hospital which is dissatisfied with the decision of the Division regarding revocation, suspension, or probation in section (6) or (8) of this rule may request a contested case hearing pursuant to ORS chapter 183.

Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-200-0300
Applicability

(1) A trauma hospital categorized as a Level I, Level II, Level III or Level IV trauma hospital as of January 1, 2016 shall comply with the resource standards prescribed in Exhibit 4 no later than January 1, 2017.

(2) An area trauma system plan shall include revised triage and transportation standards in accordance with OAR 333-200-0080(4) no later than January 1, 2017.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth.: ORS 431.611
Stats. Implemented: ORS 431.611
Hist.: PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-205-0000
Purpose

These rules establish standards for the approval and designation of Level I trauma system hospitals in Trauma Area #1. These rules establish standards in addition to OAR 333-200-0000 through 333-200-0295. For all standards addressed in both OAR 333-200-0000 through 333-200-0295 and 333-205-0000 through 333-205-0050, the rules contained in OAR 333-205-0000 through 333-205-0050 shall apply.

Stat. Auth: ORS 431.611
Stats. Implemented: ORS 431.575 – 431.635
Hist.: HD 6-1987, f. & ef. 6-26-87; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-205-0010
Designation

(1) The designation method of selecting Level I trauma system hospitals shall be implemented in accordance with the provisions of OAR 333-200-0090(1) and (4), 333-200-0235, and 333-200-0245.

(2) Written notification of the trauma system hospital designation shall be provided to the applicant by the Division. An applicant shall have 30 days from the receipt of notification of non-designation to file a request with the Division for reconsideration.

Stat. Auth: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: HD 6-1987, f. & ef. 6-26-87; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-205-0020
Hospital Resource Criteria

Trauma system hospitals shall meet or exceed the standards for Hospital Resources as set forth in OAR 333-200-0090, Exhibit 4.

[ED. NOTE: Exhibits referenced are available from the agency.]
Stat. Auth: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: HD 6-1987, f. & ef. 6-26-87; HD 7-1995, f. & cert. ef. 11-6-95; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-205-0040
Number of Facilities

(1) The Division shall designate a sufficient number of Level I trauma system hospitals to assure resources within ATAB 1 are routinely available to treat at least four major trauma patients within a 90-minute time period. Major trauma means serious injury caused by external forces which results in death or an injury severity score of 16 or greater, a three day hospital length of stay, or requires intensive care admission or major surgical procedure within six hours of hospital admission.

(2) The Division shall designate a maximum of two Level I hospitals and shall not designate any Level III or Level IV hospitals in Clackamas, Multnomah and Washington Counties.

Stat. Auth: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: HD 6-1987, f. & ef. 6-26-87; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

333-205-0050
Hospital Designation Criteria

(1) The Division shall utilize criteria as set forth in OAR 333-200-0090(4) and may, in addition, utilize the following criteria for selecting trauma system hospitals:

(a) Locations of major trauma incidents; and

(b) Geographical barriers which impede air or ground transportation.

(2) The Division shall consider the information contained in **Resources for Optimal Care of the Injured Patient: Committee on Trauma American College of Surgeons, 2014**, when interpreting the standards for the purpose of designating trauma system hospitals. This publication is not adopted as part of these rules.

[Publications: Publications referenced are available from the agency.]
Stat. Auth: ORS 431.611
Stats. Implemented: ORS 431.609, 431.611 & 431.627
Hist.: HD 6-1987, f. & ef. 6-26-87; HD 8-1988, f. & cert. ef. 4-28-88; HD 9-1993, f. 6-22-93, cert. ef. 7-1-93; HD 7-1995, f. & cert. ef. 11-6-95; OHD 6-2000, f. & cert. ef. 5-4-00; PH 27-2015, f. 12-8-15, cert. ef. 1-1-16

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Expands definition for non-residential to include live-work space and eligible taxing districts for opting out
Adm. Order No.: OHCS 19-2015(Temp)
Filed with Sec. of State: 11-30-2015
Certified to be Effective: 11-30-15 thru 5-27-16
Notice Publication Date:
Rules Amended: 813-013-0001, 813-013-0005, 813-013-0010, 813-013-0015, 813-013-0020, 813-013-0035, 813-013-0040, 813-013-0050, 813-013-0054
Subject: The rules govern the Vertical Housing Tax Exemption Program administered by Oregon Housing and Community Services. The program is designed to encourage the development of housing in commercial corridors. These rule changes are the result of HB 2126, passed by the 2015 Legislature. The changes include an expansion of the definition for non-residential to include live-work space,

and expand eligible taxing districts that can opt out of the program to include all local taxing districts.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-013-0001
Purpose and Objectives

(1) OAR chapter 813, division 013, is promulgated to carry out the provisions of ORS 307.841 to 307.867 (the "Act") as they pertain to the administration by the Housing and Community Services Department (the "department") of the Vertical Housing Program described herein (the "program"). The Act, this division and other applicable rules of the department, related documents, and applicable department determinations and orders constitute the program. The basic purpose of the program is to encourage construction or rehabilitation of eligible properties in areas of communities appropriately targeted under the program in order to augment the availability of suitable housing and to revitalize involved communities. Division 13 sets forth relevant aspects of the program, including processes and criteria for the designation of vertical housing development zones ("VHDZs"), for the application and approval of certified projects, for the calculation of any applicable partial property tax exemptions, and for the monitoring and maintenance of properties as qualifying certified projects.

(2) Division 013 is not meant to interfere with the direct administration of property tax assessments by county assessors and does not supersede administrative rules of the Department of Revenue in OAR chapter 150 pertaining to the valuation of property for purposes of property tax assessments, including as adopted or amended in the future.

Stat. Auth.: : ORS 456.555, 307.841 - 307.867
Stats. Implemented: ORS 456.555, 307.841 - 307.867
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0005
Definitions

As used in this division 013, unless the context indicates otherwise:

(1) "Certified project" or "project" means a multi-story development within a VHDZ that the department certifies as a vertical housing development project qualifying for a vertical housing partial property tax exemption under the Act based on a proposal and description from a project applicant that conforms to department requirements. Certified projects approved by Business Oregon (formerly known as the Economic and Community Development Department of the state of Oregon or "OECDD") prior to November 4, 2005, continue as certified projects notwithstanding assumption of administration of the program by the department on November 4, 2005. Such prior OECDD certified projects continue to maintain their accompanying partial property tax exemptions throughout their original terms unless all or part of such certified projects are subsequently modified or decertified by the department. The prior OECDD certified projects are subject to the ongoing reporting and other requirements of this division 013.

(2) "Construction" means the development of land, and the new construction of improvements to land as further described in this division 13.

(3) "Core area of an urban center" or "core area" means the central business district or downtown area of a community of any size, whether or not that community is incorporated. While VHDZs need not include a core area of an urban center, an application to establish a VHDZ should identify whether or not the proposed VHDZ includes a core area and describe the core areas so included. Among other factors determined to be relevant by the department, the department may consider such information or the failure to provide same in determining the merits of the proposed VHDZ. It also may consider the core area's proximity and relationship to the needs and activities of VHDZ project residents. Core areas of urban centers typically consist of one or more of the following:

(a) An existing central business district or downtown area according to the jurisdiction's zoning ordinances, the U.S. Census Bureau, or comparable sources of definition or designation;

(b) A defined central city, regional center, town center, main street and/or a station community in the Portland Metro 2040 Regional Growth Concept or a nodal development area in the Eugene-Springfield Metropolitan Area Transportation Plan;

(c) An area satisfying the definition for a commercial node, commercial center, community center, special transportation area or urban business area in the Oregon Highway Plan;

(d) A transit-oriented development or pedestrian/restricted-access district in the acknowledged comprehensive plan of the jurisdiction; or

(e) A similar type of area under official criteria, designation or standards.

(4) "Department" means the Housing and Community Services Department of the state of Oregon.

(5) "Director" means the director of the department or someone within the department authorized to act on behalf of the director for purposes of the program.

(6) "District" means a local taxing district

(7) "Equalized floor" means the quotient that results from the division of the total square footage of a certified project, excluding land and ancillary improvements (as determined by the department) by the number of actual floors of the non-ancillary improvements of the project that are at least 500 square feet per floor unless the department, in its discretion, increases the minimum square footage or otherwise qualifies the actual floors of a project eligible to be used as a divisor in determining the equalized floor quotient. Factors that the department may consider in determining whether or not to increase the square footage minimum or to impose other conditions for a qualifying divisor floor include, but are not limited to the following:

(a) The proximity of the actual floor under consideration to other floors in the project;

(b) The extent of construction or rehabilitation on the actual floor under consideration;

(c) The use intended for the actual floor under consideration;

(d) The availability of the actual floor under consideration for use by prospective project tenants;

(e) No partial property tax exemption will be awarded for a partial equalized floor of residential housing and the maximum number of equalized floors in a project is four (4). Accordingly, the department will determine the number of residential equalized floors in a project available for calculating a corresponding property tax exemption by capping potential equalized floors at four and by rounding down to the next complete equalized floor of residential housing. In other words, a certified project will contain exactly 1, 2, 3, or 4 residential equalized floors reflecting the number of complete equalized floors of residential housing in a project up to the maximum four(4) equalized floors;

(f) Land, patios, deck space, parking, and other ancillary improvements normally will not be included by the department in the determination of equalized floors. The department may include any or all of such space in its determination of equalized floors if it concludes that such space is critical for the viability of the project. Factors that the department may consider in reaching such a conclusion include, but are not limited to the following:

(A) The effect of such spaces upon the economic viability of the project;

(B) The degree to which such spaces are integral to the habitability of residential housing in the project;

(C) The benefit of such spaces with respect to the revitalization of the community in which the project is located; and

(D) The degree to which inclusion of such spaces modifies the calculation of equalized floors.

(8) "Light rail station area" means, consistent with ORS 307.603(3), an area defined in regional or local transportation plans to be within a one-half mile radius of an existing or planned light rail station. While VHDZs need not necessarily include a light rail station area, a VHDZ applicant must identify in a VHDZ application what part of the VHDZ, if any, does or will include a light rail station area. The department may consider such information or the failure to provide same in determining the merits of a proposed VHDZ and its potential relationship to overall transportation needs.

(9) "Low-income residential housing" means housing that is restricted to occupancy by persons or families whose initial income at occupancy or initial certification of the project is no greater than 80 percent of area median income, adjusted for family size, as determined by the department. Owners must provide evidence satisfactory to the department of such resident eligibility as required by the department.

(10) "Non-residential areas" means square footage within a certified project used other than primarily for residential use or as common areas available primarily for residential use by residents of the residential housing within a certified project. Non-residential areas may include but are not limited to building features that are elements of construction including corridors, elevators, stairways, lobbies, mechanical rooms, and community rooms. Non-residential areas may include units designated as live-work spaces in accordance with local zoning requirements.

(11) "Project applicant" means an owner of property within a VHDZ, who applies in a manner consistent with this division, to have any or all such property approved by the department as a certified project.

(12) "Rehabilitation" means the substantial repair or replacement of improvements (including fixtures) or land developments. In determining whether or not proposed or completed rehabilitation is satisfactory or substantial, the department may consider factors including, but not limited to:

(a) The quality and adequacy of design, materials and workmanship;

(b) The quantity of rehabilitation in proportion to the total cost of the project and between the area devoted to residential use and area devoted to non-residential use;

(c) The distribution of rehabilitation throughout the project, including as it relates to the habitability of residential areas, and particularly low-income residential housing areas; and

(d) The value of the improvements on a project. Generally, the value of the improvements must be at least 20% of the real market value of the entire project on the last certified assessment roll before the department, in consideration of other factors, will deem rehabilitation to be "substantial" in nature.

(13) "Residential use" means regular, sustained occupancy of a residential unit in the project by a person or family as the person's or family's primary domicile, including residential units used primarily for transitional housing purposes, but not units and related areas used primarily as:

(a) Hotels, motels, hostels, rooming houses, bed & breakfast operations or other such temporary or transient accommodations; or

(b) Nursing homes, hospital-type in-patient facilities or other living arrangements, even of an enduring nature, where the character of the environment is predominately care-oriented rather than solely residential.

(14) "Transit oriented area" means, consistent with ORS 307.603(6), an area defined in regional or local transportation plans to be within one-quarter mile of a fixed route transit service. While VHDZs need not include a transit oriented area, a VHDZ applicant must describe what parts of the proposed VHDZ, if any, includes a transit oriented area. The department may consider such information, or the failure to provide same, in determining the merits of the proposed VHDZ and its potential relationship to established transit systems within the relevant community.

(15) "Vertical housing development project" or "project" means the construction or rehabilitation of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the project may be dedicated to residential uses and a portion of the project may be dedicated for use as non-residential areas.

(16) "Vertical housing development zone" or "VHDZ" or "zone" means an area that has been and remains designated by the department as a vertical housing development zone or an area that was officially designated by Business Oregon (formerly known as the "Economic and Community Development Department" (OECDD) prior to November 4, 2005, as a vertical housing development zone and which remains so designated.

(17) "VHDZ applicant" means one or more cities or counties or a combination thereof, or their authorized agent(s) that seek the designation of a VHDZ within an area of their jurisdiction by making application to the department.

Stat. Auth.:ORS 456.555, 307.841 - 307.867
Stats. Implemented: ORS 456.555, 307.841 - 307.867
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0010
Local Taxing Districts and Zone Applications

(1) To elect not to participate in a VHDZ, a district shall, within 45 days after the date on which proper written notification is mailed by the VHDZ applicant to the district advising of the application to form a VHDZ:

(a) Inform the VHDZ applicant in writing of its decision to opt out of the VHDZ designation; and

(b) Furnish to the VHDZ applicant a copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.

(2)(a) Not later than 30 days after filing the application with the department, and not later than 30 days after receiving a notice provided in 813-013-0010(4), the VHDZ applicant must submit to the department, a final or supplemental statement, satisfactory to the department identifying the districts (if any) that have opted out of the VHDZ designation.

(b) The statement required in paragraph (2)(a) shall specifically list each district opting out of the VHDZ designation, together with a copy of the instrument(s) provided to the VHDZ applicant by each such district.

(c) Simultaneously with the submission of the statement in paragraph (2)(a), the VHDZ applicant also shall send a copy of each statement by a district opting out of a VHDZ designation to the Special Districts Association of Oregon ("SDAO"), in Salem (Attn: 'Vertical Housing Development Zone') and to other affected districts within the proposed VHDZ that are not part of SDAO

(3) A district that fails to respond according to 813-013-0010(1) will be subject to the VHDZ designation and excluded from being listed as described in 813-013-0010(2).

(4) A district that forms after the approval of a VHDZ may opt out of participating in a VHDZ. To opt out, the district must provide:

(a) Written notice post-marked to the assessor and VHDZ applicant on or before July 1 of the first tax year in which it would impose a tax on the project; and

(b) A copy of a resolution or other appropriate official instrument duly adopted and issued by the governing body of the district affirming its decision to opt out of the VHDZ designation.

(5) The decision by a district to opt out of a VHDZ will be effective for the tax year that begins on the next July 1, after notification to the county assessor by the department pursuant to OAR 813-013-0020(1), or by a new district pursuant to 813-013-0010(4).

Stat. Auth.:ORS 456.555, 307.841 - 307.867
Stats. Implemented: ORS 456.555, 307.841 - 307.867
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0015
Content and Processing of Zone Applications

(1) A VHDZ applicant may apply to the department for the designation of a VHDZ as long as the VHDZ applicant has provided notification of such intended action to districts within the proposed VHDZ in form satisfactory to the department not less than 15 calendar days prior to filing the application.

(2) The application must be made in such form and with such detail and information as the department may require. The department may require a VHDZ applicant to provide supplemental information to and clarification of its application, as the department deems appropriate.

(3) Applications must be delivered to the department at the following address: Oregon Housing and Community Services, 725 Summer Street NE, Suite B, Attn: Vertical Housing Program, Housing Finance Division, Salem, Oregon 97301.

(4) An application, at a minimum, must contain:

(a) Copies of the resolutions adopted by the governing body of each city and/or county comprising the VHDZ applicant and requesting (or as applicable, consenting to) designation of the proposed VHDZ;

(b) A listing of all districts within the proposed VHDZ, a copy of the written notification mailed to them, and a signed certification of mailing by the VHDZ applicant to the districts in accordance with 813-013-0015(1);

(c) A description of the area sought by the VHDZ applicant to be designated as the VHDZ, including but not limited to a scale map clearly showing the proposed VHDZ boundary and a complete list of property tax accounts with corresponding tax lot numbers to be encompassed by the VHDZ. A designated VHDZ may include separate, non-contiguous property areas. VHDZ boundaries also may be designated vertically to limit the height and/or the number of floors of structures that may qualify as part of a certified project within various parts of the VHDZ; and

(d) Documentation satisfactory to the department establishing that the area proposed for VHDZ designation is within the jurisdiction(s) of the VHDZ applicant.

(5) The department will act reasonably to review applications submitted by a VHDZ applicant.

(6) The department may conduct its own investigation, including the procurement and review of materials and information outside of the application, to assist it in its review or reconsideration of an application.

(7) The director will endeavor to approve or deny applications within 60 days of the department's receipt of a complete application, the receipt of such other information or clarification as it may require of the VHDZ applicant, and the completion of any department investigation. The department will not approve any application before receiving statements required under 813-013-0015(4). The department may decline further consideration of or deny any application if it determines that the VHDZ applicant has been untimely or unresponsive with respect to providing required or requested information.

(8) If an application is denied in whole or in part, the department will send a written explanation to the VHDZ applicant of such determination.

(9) The department may approve or deny any application, in whole or in part, based upon factors including but not limited to:

(a) The VHDZ applicant's compliance with the requirements of this division 013;

(b) The proposed VHDZ's location inside or outside of the jurisdiction(s) of the VHDZ applicant;

(c) The accuracy and completeness of the application and any other information requested from the VHDZ applicant by the department;

(d) Conformance by the VHDZ applicant and the proposed VHDZ with applicable law; and

(e) The department's determination of the suitability of the proposed VHDZ, or parts thereof, for accomplishing the purposes of the program.

(10) A department determination to approve or deny any or all of an application is final and not subject to further administrative or judicial review. The department may reconsider such determinations at any time and to the degree that it determines to be appropriate.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 307.844 - 307.851
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0020
Zone Designations

(1) The department will send a copy of any designation of a VHDZ to the VHDZ applicant, the Department of Revenue and to any affected county assessor(s) office. The department will include with the notification to the county assessor:

(a) Copies of materials delineating the area of the VHDZ; and

(b) The name of any district that opted out of the VHDZ.

(2) Once designated, a VHDZ shall continue to exist indefinitely, except as provided otherwise in this division 013.

(3) The boundary of a VHDZ may be modified. To modify a VHDZ, the VHDZ applicant must apply for such modification to the department in accordance with the same procedures established herein for the approval of a VHDZ, except the notice to districts required under OAR 813-013-0015(4) is only required for any districts that are included in new territory added by the boundary modification. A certified project will continue to have its associated tax exemptions throughout the initial designated term of those exemptions, regardless of any subsequent modification of the VHDZ.

(4) VHDZ applicants may seek to have the department approve multiple VHDZs within their jurisdictions.

(5) The boundaries of VHDZs may not overlap. A property may only be in one VHDZ.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 307.844 - 307.851
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0035
Project Certification Applications

(1) A project applicant may file an application for certification of a project by completing the vertical housing project application form, as prescribed by and available from the department, and by delivering it during normal business hours or by mail to: Oregon Housing and Community Services, Attn: Vertical Housing Program, Housing Finance Division 725 Summer Street NE, Suite B, Salem, Oregon 97301.

(2) Projects must be described in terms of entire tax lots. Projects may not include partial tax lots.

(3) The project applicant must provide both a legible and scaled site plan and a legal description of the land for the proposed project.

(4) To be for 'residential use' or for 'non-residential use' does not mean that a building floor is actually being occupied accordingly, but rather that it is at least intended and ready for such use and is not converted or occupied for a contrary use.

(5) Low-income residential housing floors or units must be set-aside as such for the entire tax year and occupied only by people who are income eligible in order for the project to qualify for the low income vertical housing exemptions on land.

(6) The non-residential use of a particular floor or floors may be satisfied even if the entire floor is not devoted to that use.

(7) The department will review applications upon their appropriate delivery subject to, but not limited to:

(a) Applications being complete and consistent with department requirements; and

(b) Delivery to the department of an application processing charge, monitoring charge and any other related charges. In determining charges for each project applicant, the department may consider factors including, but not limited to, known and expected costs in processing the application, effecting appropriate monitoring of the project and otherwise administering the program with respect to the project. Payment of charges may be made by check or money order payable to the department and must be submitted along with the project application or as otherwise required by the department.

(8) For new construction projects to qualify for certification, the application must be delivered to the department before:

(a) The relevant permitting authority has issued a permanent certificate of occupancy; or

(b) If no certificate of occupancy is required, then occupancy otherwise is effectively prevented because the proposed certified project has not yet been completed.

(9) For rehabilitation projects to qualify for certification, the application must be delivered to the department at any stage of the rehabilitation, but not after rehabilitation work on the project is complete. The department may provide a preliminary certification of the project pending completion of the rehabilitation of the project. Notification of the project's completion, together with appropriate documentation of the actual costs of the rehabilitation and the real market value of the pre-rehabilitated project must be forwarded by the project applicant to the department within 90 days of project completion. The department may certify all or part of a rehabilitated project or of a project where the rehabilitation is still in progress as a certified project.

(10) Project applicants must provide the following information in a manner satisfactory to the department:

(a) The address and boundaries of the proposed project including the tax lot numbers, a legible and scaled site plan of the proposed project, and a legal description of the land involved in the project for which a partial tax exemption is sought by the project applicant;

(b) A description of the existing condition of the proposed project property;

(c) A description of the proposed project including, but not limited to current architectural plans that include verifiable square footage measurements, verified statements of rehabilitation costs; and designation of the number of project floors;

(d) A description of all non-residential areas with related and total square footages, and identification of all non-residential uses;

(e) A description of all residential uses and residential areas with related and total residential square footages;

(f) A description of the number and nature of low-income residential housing units with related and total low-income residential housing square footages;

(g) Confirmation that the project is entirely located in an established VHDZ;

(h) A commitment from the project applicant, acceptable to the department, that the project will be maintained and operated in a manner consistent with the project application and the program for a time period acceptable to the department and not less than the term of any related property tax exemption;

(i) A calculation quantifying the various uses of the project in total and by each equalized floor including allocations to residential uses, the allocations to low-income residential housing uses, and the allocations to non-residential areas; and;

(j) Such other information as the department, in its discretion, may require.

(11) The project application must be submitted and received by the department on or before the new construction residential units are ready for occupancy or the project rehabilitation is complete;

(12) The department may request such other information from a project applicant and undertake any investigation that it deems appropriate in processing any project application or in the monitoring of a certified project. By filing an application, a project applicant irrevocably agrees to allow the department reasonable access to the project and to project-related documents, including the right to enter onto and inspect the project property and to copy any project-related documents.

(13) To qualify to be a certified project, the rehabilitation of any existing improvement must substantially alter and enhance the utility, condition, design or nature of the structure. In its application, the project applicant must verify such substantial alteration and enhancement. The following actions, by themselves, are not sufficient to satisfy this substantial alteration and enhancement requirement irrespective of cost or implementation throughout a project:

(a) Ordinary maintenance and repairs;

(b) Refurbishment or redecoration that merely replaces, updates or restores certain fixtures, surfaces or components; or

(c) Similar such work of a superficial, obligatory or routine nature.

(14) Unless an exception is granted by the department, projects "in progress" at the time of application may include only costs incurred within

six (6) months of the application date. Factors that the department may consider in determining whether or not to grant an exception to the six (6)-month limitation on costs include, but are not limited to the following:

(a) Delay due to terrorism or acts of God;

(b) Delay occasioned by requirements of the department;

(c) Resultant undue hardship to the project applicant;

(d) The complexity of the project; and

(e) The benefit of the project to the community.

(15) For applications filed before project completion, the department may provide a conditional letter of prospective certification of the project pending its completion. To obtain a final certification of the project, the project applicant must provide timely notification to the department of the project's completion, together with a copy of the certificate of occupancy and other information as the department may require. A project applicant must provide the notice and required documentation to the department within 90 days of project completion which is typically the date of the certificate of occupancy unless the department determines that another date is more appropriate.

(16) If an application is rejected for failure to meet department review requirements, then:

(a) The department will notify the project applicant that the application has been rejected; and

(b) The department, at its own discretion, may allow the resubmission of a rejected application for project certification ("as is" or with appropriate corrections or supplementations) or may reconsider a determination by it to reject an application. Factors that the department may consider in allowing a resubmission of a rejected application or the reconsideration of a determination by it to reject an application include, but are not limited to the following:

(A) Whether or not rejection results in undue hardship to the project applicant;

(B) The best interests of the community;

(C) The level of cooperation from the project applicant;

(D) The level and materiality of initial non-compliance by the project applicant, and;

(E) Mitigation of any initial non-compliance by the project applicant.

(c) If the department accepts for review a previously rejected application, it may do so, at its sole discretion, on a prospective basis or based upon the original date of filing. Factors that the department may consider in determining the date to apply to a previously rejected application include, but are not limited to the following:

(A) Whether or not occupancy or readiness to occupy residential units in the project has occurred since the original application;

(B) Whether or not undue hardship would result to the project applicant;

(C) The best interests of the community; and

(D) The level and materiality of non-compliance in the initial application.

(17) The department will evaluate each accepted application to determine whether or not to certify the proposed project.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844 & 307.857

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 1-2015(Temp), f. & cert. ef 2-26-15 thru 8-24-15; OHCS 4-2015, f. & cert. ef. 7-9-15; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0040

Project Criteria

(1) A project, to qualify for department certification, must satisfy each of the following criteria:

(a) The project must be entirely located within an approved VHDZ;

(b) The project must be comprised of a multiple-story building, or a group of buildings, including at least one multiple-story building, so that a portion of the project is to be used for non-residential uses and a portion of the project is to be used for residential use;

(c) A portion of the project must be committed, to the department's satisfaction, for residential use and a portion of the project must be committed, to the department's satisfaction, for use as non-residential use.

(d) The commitment to non-residential use must be accomplished as follows:

(A) For a project site that has frontage on one public street, at least 50% of the project's public street-fronting ground floor facades must be committed for non-residential use;

(B) For a project site that has frontage on more than one public street, the developer must designate one of the public streets as the project's primary public street. One-hundred percent (100%) of the project's primary public street-fronting ground floor facades must be committed for non-residential use;

(C) "Committed for non-residential use" means that all interior spaces adjacent to the public street-frontage exterior facade are constructed to building code standards for commercial use, are planned for commercial use and/or live-work use upon completion, or both;

(D) For purposes of this rule, "public streets" include all publicly-owned streets, but does not include alleys.

(E) For purposes of this rule, "live-work" spaces mean those areas within a project combining space for a commercial or light manufacturing business allowed by local zoning code with a residential living space for the owner of the business and space comprising that owner's household. Any live-work space is deemed to be committed for non-residential use under the program. The work portion of a live-work unit must have direct access to street level entrances of the project.

(e) Each phase of a phased development, whether vertical or horizontal, will be treated as a separate project for application purposes.

(f) Each project must be on its own independent legal tax lot(s).

(g) Construction or rehabilitation must be or have been undertaken with respect to each building or associated structure included in the project, including but not limited to, additions that expand or enlarge an existing building;

(h) The project application must be complete and fully satisfactory to the department;

(i) The project application must be received by the department on or before the residential units are ready for occupancy (certificate of occupancy). For rehabilitation not involving tenant displacement, the project application must be filed before the rehabilitation work is complete;

(j) Calculation of equalized floors is adequately documented;

(k) Documentation, satisfactory to the department, establishes the costs of construction or rehabilitation of project land developments and improvements, as applicable; and

(l) The project square footage calculations do not include parking, patio, or porch areas unless these elements can be demonstrated by project applicant to the satisfaction of the department that they are economically necessary to the project and the department otherwise determines that it is appropriate to grant an exception for the inclusion of any or all of such areas in the project;

(2) Certified projects with at least one equalized floor of low-income residential housing may qualify for a partial property tax exemption with respect to the land contained within the tax lot upon which the certified project stands, but will not qualify for a partial property tax exemption under the program for land adjacent to or surrounding the certified project contained in separate tax lots. Excess or surplus land that is not necessary for the project, as determined by the department, will not be eligible for partial exemption; and

(3) Low-Income residential housing units in the certified project must continue to meet the income eligibility requirements for the definition of low-income residential housing for the entire period for which the vertical housing project is certified.

Stat. Auth.: ORS 456.555

Stats. Implemented: ORS 307.844, 307.857

Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0050

Project Monitoring/Decertification

(1) A monitoring charge shall be paid by the project applicant to the department at the time of project application, or as otherwise directed by the department, to cover the department's actual and anticipated costs of monitoring and otherwise addressing compliance by the certified project with program requirements including, without limitation ORS 307.841 to 307.861 and other applicable law. The department may consider factors including but not limited to the following in determining the amount of this monitoring charge:

(a) The size of the project;

(b) The number of residential housing units;

(c) The amount of commercial space, including any live-work units;

(d) Project uses;

(e) Project location;

(f) The duration and complexity of compliance requirements;

(g) The level and amount of staff or other services involved;

(h) The use of supplies, equipment or fuel; and

(i) The number of separate sites and/or buildings.

(2) If the project includes low-income residential housing, the project applicant must pay a supplemental monitoring charge to the department at

the time of project application, or as otherwise directed by the department, to cover the department's actual and anticipated costs of monitoring and otherwise addressing compliance by the certified project with program requirements including, without limitation ORS 307.841 to 307.861 and other applicable law. The department may consider factors including, but not limited to those in 813-013-0050(1) and the nature of the low-income residential housing population in determining the amount of this supplemental monitoring charge.

(3) The department may condition its approval of a certified project upon payment by project applicant of the applicable charges described above in 813-013-0050(1) and (2). The department may void or terminate the certification of all or a portion of a certified project if such charges, or any part thereof, are not timely paid.

(4) Modifications to or transfers of ownership of a certified project must receive prior written approval from the department. The department will not unreasonably withhold its approval of such modifications to or transfers of ownership. The department may void or terminate the certification of all or a portion of a certified project if modifications to or transfers of ownership are made without its prior written approval except where such modifications or transfers occur by operation of law following death or divorce.

(5) If there are proposed or actual modifications to or transfers of ownership of the certified project, the certified project owner shall notify both the county assessor and the department of the new owner's name, contact person, mailing address and phone number within 30 days of the change.

(6) The department may require the certified project owner to pay an administrative charge to cover the department's actual and anticipated costs of reviewing and processing such modification or transfer including, without limitation, effecting the legal review, amendment, execution or recording of related documents. The department may consider factors including, but not limited to those in 813-013-0050(1) in determining the amount of this administrative charge.

(7) The department may condition its approval of a modification to or transfer of ownership in a certified project upon payment by the certified project owner of the administrative charge described above in 813-013-0050(6). The department may void or terminate the certification of all or a portion of a certified project if such an administrative charge, or any part thereof, is not timely paid.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 307.857, 307.861
Hist.: OHCS 1-2006(Temp), f. & cert. ef. 1-5-06 thru 7-4-06; OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

813-013-0054
Monitoring; Investigations; Remedies; Decertifications

(1) The department may monitor and investigate certified projects for compliance with program requirements and other applicable law as it deems appropriate. By making application for approval of a certified project, project applicants irrevocably agree and give their consent that the department may enter onto the premises of and inspect all portions of the project as well as review and copy project documents in the course of its monitoring and investigatory actions. Project applicants further agree to cooperate fully with such department monitoring and investigatory actions.

(2) The department may undertake any remedial action that it determines to be necessary or appropriate to enforce department interests or program requirements including, without limitation, commitments provided by project applicants in the final application and certification. Remedial actions may include, but are not limited to:

(a) The requesting of project documentation;

(b) The issuance of orders and directives with respect to the project or otherwise:

(c) The initiation and prosecution of claims or causes of action, whether by administrative hearing, civil action or otherwise (including, without limitation, actions for specific performance, appointment of a receiver for the certified project, injunction, temporary restraining order, recovery of damages, collection of charges, etc.); and

(d) The decertification of all or a portion of a certified project.

(3) Prior to decertifying all or part of a certified project and directing the county assessor to disqualify all or part of the project for partial property tax exemption treatment, the department shall issue a decertification notice to the certified project owner identifying relevant factors among the following:

(a) The property decertified from the project;

(b) The number of equalized floors that have ceased qualifying as residential housing for purposes of the program;

(c) The number of equalized floors that have ceased qualifying as low-income residential housing for purposes of the program;

(d) The remaining number of equalized floors of residential housing in the project and a description of the property of each remaining equalized floor;

(e) The remaining number of equalized floors of low-income residential housing in the project and a description of the property of each remaining equalized floor of low-income residential housing;

(f) If the project no longer includes commercial space consistent with the intent of the program; and

(g) Such other information as the department may determine to provide.

(4) Prior to issuance of a notice of decertification, the department will provide the certified project owner with notice of an opportunity to correct first-time program non-compliance within a reasonable amount of time as determined by the department. The department also may elect to provide the certified project owner with notice of an opportunity to correct repeat program non-compliance within a reasonable amount of time as determined by the department. In deciding whether or not to provide the certified project owner with notice of an opportunity to correct repeat program non-compliance and in determining how much time to provide the certified project owner to correct any noticed program non-compliance, the department may consider factors including, but not limited to:

(a) The severity of the non-compliance;

(b) The impact of non-compliance upon project tenants and patrons;

(c) The public interest in appropriate and affordable housing;

(d) The public interest in the revitalization of relevant communities;

(e) The cost and time reasonably necessary to correct program non-compliance; and

(f) The past history of compliance and non-compliance by the project owner.

(5) For those instances where the department has elected to provide notice to a certified project owner of its non-compliance, if the department determines that the certified project owner has failed to correct any noticed program non-compliance within the time allowed by the department in its notice, the department may issue the notice of decertification identified above in 813-013-0054(3) and direct the county assessor to disqualify all or a portion of the project from property tax exemption under the program. The department also may issue a notice of decertification and direct the county assessor to disqualify all or a portion of a project from property tax exemption under the program with respect to program non-compliance for which it determines not to provide prior notice and an opportunity for non-compliance correction.

(6) The effective date of a decertification is the effective date of same provided in the notice of decertification identified above in 813-013-0054(3). The effective date of a decertification may be retroactive from the date of the actual notice of decertification only to the commencement of the non-compliance for which the decertification is issued as determined by the department. In determining whether or not to make the decertification retroactive, the department may consider factors including, but not limited to those identified above in 813-013-0054(4), the intentional nature of the non-compliance, and when the owner or its agents became aware or reasonably should have become aware of the non-compliance.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 307.861, 307.864
Hist.: OHCS 8-2006, f. & cert. ef. 6-28-06; OHCS 19-2015(Temp), f. & cert. ef. 11-30-15 thru 5-27-16

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Temporary rules to implement Measure 91 and House Bill 3400.
Adm. Order No.: OLCC 3-2015(Temp)
Filed with Sec. of State: 12-3-2015
Certified to be Effective: 1-1-16 thru 6-28-16
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Subject: On November 4, 2014, Oregon voters passed the "Control, Regulation and Taxation of Marijuana and Industrial Hemp Act of 2014" ("Measure 91"). This measure tasks the Oregon Liquor Control Control with regulating the production and sale of recreational marijuana items within the state. From approximately January through June 2015, the Oregon legislature considered numerous pieces of legislation to revise Measure 91. On June 30, 2015, Oregon's Governor Kate Brown signed House Bill 3400 ("HB 3400") into law, which amended a substantial amount of Measure 91's provisions. Further, HB 3400 effectively set the scope of the Commission's authority and responsibilities to implement a recreational marijuana regulatory system.

HB 3400 directed the Commission to, no later than January 1, 2016, adopt administrative rules necessary to carry out the legislation and protect the health and safety of the public. HB 3400 charges the Commission to adopt a number of rules, including: establishing licensee fees, canopy limits, a seed-to-sale tracking system, testing requirements, qualifications for marijuana handler permits, and qualifications for research certificates. HB 3400 also grants discretionary rule authority over a broad range of subjects such as pre-approval of labels, industry best practices and security requirements.

These temporary rules lay the initial foundation for the regulation of the recreational market. The Commission developed these rules in concert with the marijuana industry, government actors and in accordance with the responsibilities placed upon the Commission by Measure 91 and HB 3400. The Commission will continue its outreach efforts, as it engages in permanent rulemaking in the coming year.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-1000
Applicability

(1) A person may not produce, process, transport, sell, test, or deliver marijuana for commercial recreational use without a license from the Commission or as otherwise authorized under these rules.

(2) Nothing in these rules exempts a licensee or licensee representative from complying with any other applicable state or local laws.

(3) Licensure under these rules does not protect a person from possible criminal prosecution under federal law.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 12, 14, 15, 16, 33, 38, 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1015
Definitions

For the purposes of OAR 845-025-1000 to 845-025-8590, unless otherwise specified, the following definitions apply:

(1) "Adulterated" means to make a marijuana item impure by adding foreign or inferior ingredients or substances. A marijuana item may be considered to be adulterated if:

(a) It bears or contains any poisonous or deleterious substance in a quantity rendering the marijuana item injurious to health, including but not limited to tobacco or nicotine;

(b) It bears or contains any added poisonous or deleterious substance exceeding a safe tolerance if such tolerance has been established;

(c) It consists in whole or in part of any filthy, putrid, or decomposed substance, or otherwise is unfit for human consumption;

(d) It is processed, prepared, packaged, or is held under improper time-temperature conditions or under other conditions increasing the probability of contamination with excessive microorganisms or physical contaminants;

(e) It is processed, prepared, packaged, or held under insanitary conditions increasing the probability of contamination or cross-contamination;

(f) It is held or packaged in containers composed, in whole or in part, of any poisonous or deleterious substance rendering the contents potentially injurious to health;

(g) Any substance has been substituted wholly or in part therefor;

(h) Damage or inferiority has been concealed in any manner; or

(i) Any substance has been added thereto or mixed or packaged therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(2) "Authority" means the Oregon Health Authority.

(3) "Business day" means Monday through Friday excluding legal holidays.

(4) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(5) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(6) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

(7) "Cannabinoid extract" means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the Commission, in consultation with the authority, by rule.

(8) Cannabinoid Product

(a) "Cannabinoid product" means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(b) "Cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.300.

(9) "Cannabis Tracking System" or "CTS" means the system for tracking the transfer of marijuana items and other information as authorized by section 23, chapter 614, Oregon Laws 2015.

(10) "Compliance transaction" means a single covert, on-site visit in which a Commission authorized representative poses as an authorized representative of a licensee or a consumer and attempts to purchase or purchases a marijuana item from a licensee, or attempts to sell or sells a marijuana item to a licensee.

(11) "Container" means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed prior to being sold to a consumer.

(12)"Commission" means the Oregon Liquor Control Commission.

(13) "Consumer" means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

(14) "Date of Harvest" means the date the mature marijuana plants in a harvest lot were cut, picked or removed from the soil or other growing media. If the harvest occurred on more than one day, the "date of harvest" is the day the last mature marijuana plant in the harvest lot was cut, picked or removed from the soil or other growing media.

(15) "Financial consideration" means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(16) "Financial interest" means having an interest in the business such that the performance of the business causes, or is capable of causing, an

individual, or a legal entity with which the individual is affiliated, to benefit or suffer financially, and such interests include but are not limited to:

(a) Receiving, as an employee or agent, out-of-the-ordinary compensation, either in the form of overcompensation or undercompensation;

(b) Lending money, real property or personal property to an applicant or licensee for use in the business at a commercially unreasonable rate;

(c) Giving money, real property or personal property to an applicant or licensee for use in the business; or

(d) Being the spouse or domestic partner of an applicant or licensee. For purposes of this subsection, "domestic partners" includes adults who qualify for a "domestic partnership" as defined under ORS 106.310.

(17) "Harvest lot" means marijuana that is uniform in strain, cultivated utilizing the same growing practices and harvested at the same time.

(18) "Immature marijuana plant" means a marijuana plant that is not flowering.

(19) "Intended for human consumption" means intended for a human to eat, drink, or otherwise put in the mouth but does not mean intended for human inhalation.

(20) "Laboratory" means a laboratory certified by the Authority under ORS 438.605 to 438.620 and authorized to test marijuana items for purposes specified in these rules.

(21) "Licensee" means any person who holds a license issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015.

(22) "License holder" includes:

(a) Each applicant listed on an application that the Commission has approved;

(b) Each individual who meets the qualification described in OAR 845-025-1045 and who the Commission has added to the license under OAR 845-025-1030; or

(c) Each individual who has a financial interest in the licensed business and who the Commission has added to the license under OAR 845-025-1030.

(23) "Licensee representative" means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent that the person acts in a representative capacity.

(24) "Limited access area" means a building, room, or other contiguous area on a licensed premises where a marijuana item is produced, processed, stored, weighed, packaged, labeled, or sold, but does not include a point of sale area on a licensed retailer premises.

(25) "Marijuana":

(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(26) "Marijuana flowers" means the flowers of the plant genus Cannabis within the plant family Cannabaceae.

(27) "Marijuana items" means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(28) "Marijuana leaves" means the leaves of the plant genus Cannabis within the plant family Cannabaceae.

(29) "Marijuana processor" means a person who processes marijuana items in this state.

(30) "Marijuana producer" means a person who produces marijuana in this state.

(31) "Marijuana retailer" means a person who sells marijuana items to a consumer in this state.

(32) "Marijuana wholesaler" means a person who purchases marijuana items in this state for resale to a person other than a consumer.

(33) "Mature marijuana plant" means a marijuana plant that is not an immature marijuana plant.

(34) "Minor" means any person under 21 years of age.

(35) "Non-Toxic" means not causing illness, disability or death to persons who are exposed.

(36) "Permittee" means any person who holds a Marijuana Handlers Permit.

(37) "Person" has the meaning given that term in ORS 174.100.

(38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:

(a) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(b) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and

(c) For a location that the Commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.

(d) "Premises" or "licensed premises" does not include a primary residence.

(39) "Primary Residence" means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

(40) "Processes":

(a) "Processes" means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts;

(b) "Processes" does not include packaging or labeling.

(41) "Process lot" means:

(a) Any amount of cannabinoid concentrate or extract of the same type and processed at the same time using the same extraction methods, standard operating procedures and batches from the same harvest lot; or

(b) Any amount of cannabinoid products of the same type and processed at the same time using the same ingredients, standard operating procedures and batches from the same harvest lot or process lots of cannabinoid concentrate or extract.

(42) "Producer" means a marijuana producer licensed by the Commission.

(43) "Produces":

(a) "Produces" means the manufacture, planting, cultivation, growing or harvesting of marijuana.

(b) "Produces" does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler or marijuana retailer if the marijuana processor, marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(44) "Propagate" means to grow immature marijuana plants or to breed or produce the seeds of the plant Cannabis family Cannabaceae.

(45) "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.

(46) "Regulatory specialist" means a full-time employee of the Commission who is authorized to act as an agent of the Commission in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing chapter 471, ORS 474.005 to 474.095 and 474.115, Commission rules and any other statutes the Commission considers related to regulating liquor or marijuana.

(47) "Retailer" means a marijuana retailer licensed by the Commission.

(48) "Safe" means:

(a) A metal receptacle with a locking mechanism capable of storing all marijuana items on a licensed premises that:

(A) Is rendered immobile by being securely anchored to a permanent structure of an enclosed area; or

(B) Weighs more than 750 pounds.

(b) A "vault"; or

(c) A refrigerator or freezer capable of being locked for storing marijuana items that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of an enclosed area; or

(B) Weighs more than 750 pounds.

(49) "Shipping Container" means any container or wrapping used solely for the transport of a marijuana items in bulk to a marijuana licensee as permitted in these rules.

(50) "These rules" means OAR 845-025-1000 to 845-025-8590.

(51) "UID" means unique identification.

(52) "Usable Marijuana"

(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

(53) "Vault" means an enclosed area or room that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

(54) "Wholesaler" means a marijuana wholesaler licensed by the Commission.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 1, 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1030
Application Process

(1) On or after 8:30 a.m. Pacific Time January 4, 2016, a person may submit an application to the Commission, on a form prescribed by the Commission, for a marijuana producer, processor, wholesaler, retail, or laboratory license.

(2) An application for a license and all documentation required in the application instructions and in section (4) of this rule must be submitted electronically, via the Commission's website. The application fee specified in OAR 845-025-1060 must also be paid through the Commission's on-line payment system at the time of application.

(3) An application must include the names and other required information for all individuals who are applicants as described in OAR 845-025-1045 and who are not applicants but who have a "financial interest" in the business, as defined in 845-025-1015.

(4) In addition to submitting the application form the following must be submitted:

(a) For an individual listed as an applicant:

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form and any information identified in the form that is required to be submitted; and

(C) Proof of residency documented by providing:

(i) Oregon full-year resident tax returns for the last two years; or

(ii) Utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the applicant dated at least two years prior to the date of application and from the most recent month.

(b) For an individual listed as a person with a financial interest who holds or controls an interest of ten percent or greater in the business proposed to be licensed, or an individual who is a partner, member or corporate officer of a legal entity with a financial interest in the business proposed to be licensed:

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form and any information identified in the form that is required to be submitted; and

(c) A map or sketch of the premises proposed for licensure, including the defined boundaries of the premises and the location of any primary residence located on the same tax lot or parcel as the licensed premises;

(d) A floor or plot plan sketch of all enclosed areas with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas;

(e) Proof of lawful possession of the premises proposed for licensure;

(f) An operating plan that demonstrates at a minimum, how the applicant's proposed premises and business will comply with the applicable laws and rules regarding:

(A) Security;

(B) Employee qualifications and training;

(C) Transportation of product;

(D) Preventing minors from entering the licensed premises; and

(E) Preventing minors from obtaining or attempting to obtain marijuana items.

(g) For producers:

(A) The proposed canopy size and tier as described in OAR 845-025-2040 and a designation of the canopy area within the license premises.

(B) A report describing the applicant's electrical and water usage, on a form prescribed by the Commission. The report must describe the estimated water usage taking into account all portions of the premises and expected requirements of the operation.

(C) A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.

(D) A water right permit or certificate number; a statement that water is supplied from a public or private water provider, along with the name and contact information of the water provider; or proof from the Oregon Water Resources Department that the water to be used for production is from a source that does not require a water right.

(h) For processors:

(A) On a form prescribed by the Commission, the proposed endorsements as described in OAR 845-025-3210.

(B) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.

(5) In addition to submitting the application form and the items described in (4) of this rule the Commission may require the following to be submitted:

(a) For an individual listed as a person with a financial interest, who holds or controls an interest of less than ten percent in the business proposed to be licensed:

(A) Information or fingerprints for a criminal background check in accordance with OAR 845-025-1080;

(B) An Individual History Form and any information identified in the form that is required to be submitted; and

(b) Any additional information if there is a reason to believe that the information is needed to determine the merits of the license application.

(6) The Commission must review an application to determine if it is complete. An application will be considered incomplete if an application form is not complete, the full application fee has not been paid, or some or all of the additional information required under section (4) of this rule is not submitted.

(7) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was mailed to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(8) If, prior to an application being acted upon by the Commission, there is a change with regard to who is an applicant or who is a person with a financial interest in the proposed business, the new applicant or person with a financial interest must submit a form, prescribed by the Commission, that:

(a) Identifies the individual or person;

(b) Describes the individual's or person's financial interest in the business proposed for licensure; and

(c) Includes any additional information required by the Commission, including but not limited to information and fingerprints required for a criminal background check.

(9) Failure to comply with subsection (6) of this rule may result in an application being denied.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sections 7, 8, 11, 12, 14, 15, 16, 93 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1045
Qualifications of an Applicant

(1) The following are considered applicants for purposes of these rules:

(a) Any individual that has a financial interest in the business for which licensure is sought and who is directly involved in controlling the ordinary course of business for the business that is proposed to be licensed; and

(b) Any legal entity that has a financial interest in the business for which licensure is sought and is directly involved in controlling the ordinary course of business for the business that is proposed to be licensed;

(2) If an applicant is an individual the individual must also:

(a) Be at least 21 years of age; and

(b) Until January 1, 2020, have been a resident of Oregon for at least two consecutive years prior to the date the initial or renewal application was submitted.

(3) If a legal entity is designated as an applicant, the following individuals must also be listed as applicants on an application:

(a) All partners in a limited partnership;

(b) All members of a limited liability company; and

(c) All directors and principal officers of a corporate entity.

(d) Any individual who owns or controls at least 10% of the legal entity.

(4) At least one applicant or the sum of applicants listed on a license application must be a legitimate owner of the business proposed to be licensed or subject to renewal.

(5) An individual or legal entity will not be considered by the Commission to be directly involved in the ordinary course of business for the business proposed to be licensed solely by virtue of:

(a) Being a shareholder, director, member or limited partner;

(b) Being an employee or independent contractor; or

(c) Participating in matters that are not in the ordinary course of business such as amending organizational documents of the business entity, making distributions, changing the entity's corporate structure, or approving transactions outside of the ordinary course of business as specified in the entity's organizational documents.

(6) An applicant will be considered by the Commission to be a legitimate owner of the business if:

(a) The individual applicant or legal entity applicant owns at least 51% of the business proposed to be licensed; or

(b) One or more individual applicants in sum own at least 51% of the business proposed to be licensed.

(7) The following factors, in and of themselves, do not constitute ownership:

(a) Preferential rights to distributions based on return of capital contribution;

(b) Options to purchase an ownership interest that may be exercised in the future;

(c) Convertible promissory notes; or

(d) Security interests in an ownership interest.

(8) For purposes of this rule, "ownership" means direct or indirect ownership of the shares, membership interests, or other ownership interests of the business proposed to be licensed.

(9) The Commission may consider factors other than those listed in this rule when determining whether an individual or legal entity is directly involved in the operation or management of the business proposed to be licensed or licensed, or is a legitimate owner.

(10) An individual listed as an applicant on an initial or renewal application, or identified by the Commission as an applicant must maintain Oregon residency while the business is licensed.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 8, 12, 14, 15, 16, 93 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1060
Fees

(1) At the time of initial license or certificate application an applicant must pay a $250 non-refundable application fee.

(2) If the Commission approves an application and grants an annual license, the following fees must be paid, prorated for an initial license that is issued for six months or less:

(a) Producers:

(A) Tier I $3,750;

(B) Tier II $5,750.

(b) Processors: $4,750;

(c) Wholesalers: $4,750;

(d) Retailers: $4,750;

(e) Laboratories: $4,750.

(3) At the time of license or certificate application renewal, an applicant must pay a $250 non-refundable application fee. If the Commission approves an application and grants a research certificate, the fee shall be $4,750 for a three-year term.

(4) If the Commission approves a renewal application the renewal license or certificate fees must be paid in the amounts specified in subsections (2) and (3) of this rule.

(5) If the Commission approves an initial or renewal application and grants a marijuana handler permit, the individual must pay a $100 permit fee.

(6) The Commission shall charge the following fees:

(a) Criminal background checks: $50 per individual (if the background check is not part of an initial or renewal application).

(b) Change of ownership review: $1000 per license.

(c) Change in business structure review: $1000 per license.

(d) Transfer of location of premises review: $1000 per license.

(e) Packaging preapproval: $100.

(f) Labeling preapproval: $100.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sections 2, 12, 14, 15, 16, 20, 93, 102, 104, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1070
Late Renewal Fees

(1) If the Commission receives a completed license, permit or certificate renewal application less than 20 days before the date the existing license, permit or certificate expires, the Commission will charge a late renewal fee of $150 for licenses and certificates and $50 for marijuana handler permits.

(2) If the Commission receives a completed license, permit or certificate renewal application within 30 days after the date the existing license, permit or certificate expires, the Commission will charge a late renewal fee equal to $300 for licenses and certificates and $100 for marijuana handler permits.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1080
Criminal Background Checks

(1) If an individual is required by the Commission to undergo a criminal background check, the individual must provide to the Commission:

(a) A criminal background check request form, prescribed by the Commission that includes but is not limited to:

(A) First, middle and last name;

(B) Any aliases;

(C) Date of birth;

(D) Driver's license information; and

(E) Address and recent residency information.

(b) Fingerprints in accordance with the instructions on the Commission's webpage.

(2) The Commission may request that an applicant disclose his or her Social Security Number if notice is provided that:

(a) Indicates the disclosure of the Social Security Number is voluntary; and

(b) That the Commission requests the Social Security Number solely for the purpose of positively identifying the applicant during the criminal records check process.

(3) An applicant's criminal history must be evaluated by the Commission in accordance with ORS 670.280 and section 29(2) and (3), chapter 1, Oregon Laws 2015.

(4) The Commission may conduct a criminal background checks in accordance with this rule every year at the time of application renewal.

(5) Records concerning criminal background checks must be kept and handled by the Commission in accordance with ORS 181.534(15).

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 10, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1090
Application Review

(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, and these rules.

(2) The Commission:

(a) Must, prior to acting on an application, request a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located or request verification that a land use compatibility statement submitted by an applicant is valid and accurate

(b) May, in its discretion, prior to acting on an application:

(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and

(B) Verify any information submitted by the applicant.

(3) The Commission must inspect the proposed premises prior to issuing a license.

(4) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.

(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.

(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.

(5) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.

(6) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.

(7) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 8, 30, 34, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1100
Approval of Application and Issuance of License

(1) If, after the application review and inspection, the Commission determines that an applicant is in compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015 and these rules, the Commission must notify the applicant in writing that the application has been approved and after payment by the applicant of the license fee, provide the applicant with proof of licensure that includes a unique license number, the effective date of the license, date of expiration, and a description of premises for which the license was issued.

(2) A licensee:

(a) May not operate until on or after the effective date of the license.

(b) Must display proof of licensure in a prominent place on the premises.

(c) May not use the Commission name or logo on any signs at the premises, on the business' website, or in any advertising or social media, except to the extent that information is contained on the proof of licensure.

(3) Licensure is only valid for the premises indicated on the license and is only issued to the individuals or entities listed on the application or subsequently approved by the Commission.

(4) A license may not be transferred except as provided in OAR 845-025-1160.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 5, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1115
Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident or Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) At the same physical location or address as a:

(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;

(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(iii) Medical marijuana dispensary registered under ORS 475.314.

(C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.

(d) The proposed licensed premises of a producer applicant is:

(A) On public land; or

(B) On the same tax lot or parcel as another producer licensee under common ownership.

(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(f) The proposed licensed premises of a retail applicant is located:

(A) Within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.

(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the Commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Is not of good repute and moral character.

(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015;

(ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or

(iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

(F) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.

(4) The Commission will not deny an application under subsections (1)(c)(B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.

(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.

(6) A notice of denial must be issued in accordance with ORS 183.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 7, 8, 12, 14, 15, 16, 34, 93, 133, 134, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1130
Withdrawal of Application

An applicant may withdraw an initial or renewal application at any time prior to the Commission acting on the application unless the Commission has determined that the applicant submitted false or misleading information in which case the Commission may refuse to accept the withdrawal and may issue a notice of proposed denial in accordance with OAR 845-025-1115.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 8, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1145
Communication With Commission

(1) If an applicant or licensee is required to or elects to submit anything in writing to the Commission, unless there is a more specific rule that

states otherwise, the applicant or licensee may submit the writing to the Commission via:

(a) Mail;

(b) In-person delivery;

(c) Facsimile; or

(d) E-mail.

(2) If a written notification must be submitted by a particular deadline it must be received, regardless of the method used to submit the writing, by 5:00 p.m. Pacific Time.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1160
Notification of Changes

(1) An applicant or licensee must notify the Commission in writing within 10 calendar days of any of the following:

(a) A change in any contact information for anyone listed in an application or subsequently identified as an applicant or an individual with a financial interest;

(b) The arrest or conviction for any misdemeanor or felony of an individual listed in an application or subsequently identified as an applicant, licensee or individual with a financial interest;

(c) A disciplinary proceeding or licensing enforcement action by another governmental entity that may affect the licensee's business;

(d) The filing of bankruptcy;

(e) The closure of bank accounts or credit cards by a financial institution;

(f) The temporary closure of the business for longer than 30 days; or

(g) The permanent closure of the business.

(2) A licensee must notify the Commission as soon as reasonably practical and in no case more than 24 hours from the theft of marijuana items or money from the licensed premises.

(3) Changes in Financial Interest or Business Structure. A licensee that proposes to change its corporate structure, ownership structure or change who has a financial interest in the business must submit a form prescribed by the Commission, and any information identified in the form to be submitted, to the Commission, prior to making such a change.

(a) The Commission must review the form and other information submitted under subsection (1) of this rule, and will approve the change if the change would not result in an initial or renewal application denial under OAR 845-025-1115, or serve as the basis of a license suspension or revocation.

(b) If the Commission denies the change but the licensee proceeds with the change the licensee must surrender the license or the Commission will propose to suspend or cancel the license.

(c) The Commission will not accept a form for a change in corporate structure or financial interest if the license is expiring in less than 90 days, the licensee is under investigation by the Commission, or has been issued a Notice by the Commission following an alleged violation and the alleged violation has not been resolved.

(d) If a licensee has a change in ownership that is 51% or greater, a new application must be submitted in accordance with OAR 845-025-1030.

(4) Change of Location. A licensee who wishes to change the location of the licensed premises must submit an application form and the fee specified in OAR 845-025-1060 but does not need to submit information and fingerprints required for a criminal background check or individual history forms if there are no changes to the individuals listed on the initial application.

(a) A licensee must submit an operating plan as described in OAR 845-025-1030 if the business operations will change at the proposed new location.

(b) The Commission must approve any change of location prior to licensee beginning business operations in the new location.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 5, 7, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1175
Changing, Altering, or Modifying Licensed Premises

(1) A licensee may not make any physical changes to the licensed premises that materially or substantially alter the licensed premises or the usage of the licensed premises from the plans originally approved by the Commission without the Commission's prior written approval.

(2) A licensee who intends to make any material or substantial changes to the licensed premises must submit a form prescribed by the Commission, and submit any information identified in the form to be submitted, to the Commission, prior to making any such changes.

(3) The Commission must review the form and other information submitted under subsection (2) of this rule, and will approve the changes if the changes would not result in an initial or renewal application denial under OAR 845-025-1115.

(4) If the Commission denies the change the licensee must not make the proposed changes. If the licensee makes the proposed changes, the licensee must surrender the license or the Commission will propose to suspend or cancel the license.

(5) For purposes of this rule a material or substantial change requiring approval includes, but is not limited to:

(a) Any increase or decrease in the total physical size or capacity of the licensed premises;

(b) The sealing off, creation of or relocation of a common entryway, doorway, passage or other such means of public ingress or egress, when such common entryway, doorway or passage alters or changes limited access areas, such as the areas in which cultivation, harvesting, processing, or sale of marijuana items occurs within the licensed premises; or

(c) Any physical change that would require the installation of additional video surveillance cameras or a change in the security system.

(d) Any addition or change of location of a primary residence located on the same tax lot or parcel as a licensed premises.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 12, 14, 15, 16, 93 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1190
License Renewal

Renewal Applications:

(1) Any licensee who files a completed renewal application with the Commission at least 20 days before the date the license expires may continue to operate as if the license were renewed, pending a decision by the Commission;

(2) Any licensee who does not file a completed renewal application at least 20 days before the existing license expires must stop engaging in any licensed activity when the license expires. However:

(a) If the Commission receives a completed license renewal application less than 20 days before the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee in OAR 845-025-1070, issue a letter of authority to operate beyond the expiration of the license, pending a decision by the Commission;

(b) A licensee must not engage in any licensed activity after the license expires. If the Commission receives a completed license renewal application within 30 days after the date the existing license expires, the Commission will, upon receipt of the appropriate late renewal fee in OAR 845-025-1070, issue a letter of authority to resume operation, pending a decision by the Commission.

(3) The Commission will not renew a license if the Commission receives the renewal application more than 30 days after the license expires. A person who wants to resume licensed activity in this circumstance:

(a) Must submit a completed new application, including the documents and information required by the Commission; and

(b) Must not engage in any licensed activity unless and until they receive authority to operate from the Commission after submitting the completed new application.

(4) A person relicensed under section (1)(c) of this rule who engaged in any activity that would require a license while not licensed in violation of section (1)(b)(B) of this rule may be subject to administrative and criminal sanctions.

(5) A person who engages in any activity that requires a license but is not licensed may be subject to criminal prosecution.

(6) For purposes of this rule, a completed application:

(a) Is considered filed when received by the Commission; and

(b) Is one that is completely filled out, is signed by all applicants and includes the appropriate fee.

Stat. Auth.: Sections 2, 12, 14, 15, 16, 93, Ch 614, OL 2015
Stats. Implemented: Sec 7, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1200
Financial and Business Records

In addition to any other recordkeeping requirements in these rules, a marijuana licensee must have and maintain records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained for a three-year period and

must be made available for inspection if requested by an employee of the Commission:

(1) Purchase invoices and supporting documents for items and services purchased for use in the production, processing, research, testing and sale of marijuana items that include from whom the items were purchased and the date of purchase;

(2) Bank statements for any accounts relating to the licensed business;

(3) Accounting and tax records related to the licensed business;

(4) Documentation of all financial transactions related to the licensed business, including contracts and agreements for services performed or received that relate to the licensed business; and

(5) All employee records, including training.

Stat. Auth.: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Stats. Implemented: Sec 46, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1215
Standardized Scales

A licensee must use an Oregon Department of Agriculture licensed weighing device of appropriate size and capacity as defined in ORS chapter 618 and OAR 603, Division 27:

(1) Whenever marijuana items are bought and sold by weight;

(2) Whenever marijuana items are packaged for sale by weight; and

(3) Whenever marijuana items are weighed for entry into CTS.

Stat. Auth.: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Stats. Implemented: Sections 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1230
Licensed Premises Restrictions and Requirements

(1) A licensed premises may not be located:

(a) On federal property; or

(b) At the same physical location or address as a:

(A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;

(B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(C) Medical marijuana dispensary registered under ORS 475.314.

(D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(2) The licensed premises of a producer applicant may not be on:

(a) Public land; or

(b) The same tax lot or parcel as another producer licensee under common ownership.

(3) The licensed premises of a retailer may not be located:

(a) Within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(b) In an area that is zoned exclusively for residential use.

(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.

(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.

(6) A licensee may not permit:

(a) Any minor on a licensed premises except as described in section (7) and (8) of this rule; or

(b) On-site consumption of a marijuana item, alcohol, or other intoxicant by any individual, except that an employee who has a current registry identification card issued under ORS 475.309 may consume marijuana during his or her work shift on the licensed premises as necessary for his or her medical condition, if the employee is alone, in a closed room and not visible to others outside the room. An employee who consumes a marijuana item as permitted under this subsection may not be intoxicated while on duty.

(7) Notwithstanding section (6)(a) of this rule, a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.

(8) Notwithstanding section (6)(a) of this rule, a minor who resides on the tax lot or parcel where a marijuana producer is licensed may be present on those portions of a producer's licensed that do not contain usable marijuana or cut and drying marijuana plants.

(9) A licensee must clearly identify all limited access areas in accordance with OAR 845-025-1245.

(10) A licensee must keep a daily log of all employees, contractors and license representatives who perform work on the licensed premises. All employees, contractors and licensee representatives must wear clothing or a badge issued by the licensee that easily identifies the individual as an employee, contractor or licensee representative.

(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:

(a) Laboratory personnel, if the laboratory is licensed by the Commission;

(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;

(c) Another licensee or that licensee's representative;

(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or

(e) Tour groups as permitted under section (14) of this rule.

(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.

(13) A licensee must maintain a log of all visitor activity. The log must contain the first and last name and date of birth of every visitor and the date they visited.

(14) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.

(a) The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.

(b) The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.

(15) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.

(16) A licensee may not sublet any portion of a licensed premises.

(17) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission.

(18) A licensed wholesaler or retailer who sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles must also be licensed by the Oregon Department of Agriculture under ORS 616.706.

Stat. Auth.: Sec 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 52 and 54, Chapter 1, OL 2015; Sec 14, 15, 16, 25, 35, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1245
Signage

(1) A licensee must post:

(a) At every licensed premises signs that read:

(A) "No Minors Permitted Anywhere on This Premises"; and

(B) "No On-Site Consumption of Marijuana"; and

(b) At all areas of ingress or egress to a limited access area a sign that reads: "Do Not Enter — Limited Access Area — Access Limited to Licensed Personnel and Escorted Visitors."

(2) All signs required by this rule must be:

(a) Legible, not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height;

(b) In English and Spanish; and

(c) Posted in a conspicuous location where the signs can be easily read by individuals on the licenses premises.

Stat. Auth.: Sec 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 25, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1260
Standards for Authority to Operate a Licensed Business as a Trustee, a Receiver, a Personal Representative or a Secured Party

(1) The Commission may issue a temporary authority to operate a licensed business to a trustee, the receiver of an insolvent or bankrupt licensed business, the personal representative of a deceased licensee, or a person holding a security interest in the business for a reasonable period of time to allow orderly disposition of the business.

(a) The trustee, receiver or personal representative must provide the Commission with the following information:

(A) Proof that the person is the legal trustee, receiver or personal representative for the business; and

(B) A written request for authority to operate as a trustee, receiver or personal representative, listing the address and telephone number of the trustee, receiver or personal representative.

(b) The secured party must provide the Commission with the following information:

(A) Proof of a security interest in the licensed business;

(B) Proof of the licensee's default on the secured debt;

(C) Proof of legal access to the real property; and

(D) A written request for authority to operate as a secured party listing the secured party's address and telephone number.

(2) The Commission may cancel or refuse to issue or extend authority for the trustee, receiver, personal representative, or secured party to operate:

(a) If the trustee, receiver, personal representative or secured party does not propose to operate the business immediately or does not begin to operate the business immediately upon receiving the temporary authority;

(b) For any of the reasons that the Commission may cancel or refuse to issue or renew a license;

(c) If the trustee, receiver, personal representative or secured party operates the business in violation of chapters 1 and 614, Oregon Laws 2015, or these rules; or

(d) If a reasonable time for disposition of the business has elapsed.

(3) No person or entity described in section (1) of this rule may operate the business until a certificate of authority has been issued under this rule, except that the personal representative of a deceased licensee may operate the business for up to 10 days after the death provided that the personal representative submits the information required in section (1)(a) of this rule and obtains a certificate of authority within that time period.

(4) A certificate of authority under this rule is initially issued for a 60-day period and may be extended as reasonably necessary to allow for the disposition of the business.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 5, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1275
Closure of Business

(1) A license expires upon death of a licensee unless the Commission issues an order as described in subsection (2) of this rule.

(2) The Commission may issue an order providing for the manner and condition under which:

(a) Marijuana items left by a deceased, insolvent or bankrupt person or licensee, or subject to a security interest, may be foreclosed, sold under execution or otherwise disposed.

(b) The business of a deceased, insolvent or bankrupt licensee may be operated for a reasonable period following the death, insolvency or bankruptcy.

(3) A secured party, as defined in ORS 79.0102, may continue to operate a business for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015 for a reasonable period after default on the indebtedness by the debtor.

(4) If a license is canceled the Commission must address in its order the manner and condition under which marijuana items held by the licensee may be transferred or sold.

(5) If a license is surrendered or expires the Commission may address by order the manner and condition under which marijuana items held by the licensee may be transferred or sold.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 5, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1290
Licensee Responsibility

A licensee is responsible for:

(1) The violation of any administrative rule of the Commission; sections 3 to 70, chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; or chapter 699, Oregon Laws 2015 affecting the licensee's license privileges.

(2) Any act or omission of a licensee representative in violation of any administrative rule of the Commission; sections 3 to 70, chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; or chapter 699, Oregon Laws 2015 affecting the licensee's license privileges.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stat. Auth.: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1295
Local Ordinances

The Commission may impose a civil penalty, suspend or cancel any licensee for failure to comply with an ordinance adopted by a city or county pursuant to section 34, chapter 614, Oregon Laws 2015 if the city or county:

(1) Has provided the licensee with due process substantially similar to the due process provided to a licensee under the Administrative Procedures Act, ORS 183.413 to 183.470; and

(2) Provides the Commission with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes that the licensee has violated the local ordinance.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 33, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1300
Licensee Prohibitions

(1) A licensee may not:

(a) Import into this state or export from this state any marijuana items;

(b) Give marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or game of skill, or competition of any kind;

(c) Sell, give or otherwise make available any marijuana items to any person who is visibly intoxicated;

(d) Make false representations or statements to the Commission in order to induce or prevent action by the Commission;

(e) Maintain a noisy, disorderly or insanitary establishment or supply adulterated marijuana items;

(f) Misrepresent any marijuana item to a customer or to the public;

(g) Sell any marijuana item through a drive-up window;

(h) Deliver marijuana to any consumer off the licensed premises except as permitted by OAR 845-025-2880;

(i) Sell or offer to sell a marijuana item that does not comply with the minimum standards prescribed by the statutory laws of this state; or

(j) Use or allow the use of a mark or label on the container of a marijuana item that is kept for sale if the container does not precisely and clearly indicate the nature of the container's contents or in any way might deceive a customer as to the nature, composition, quantity, age or quality of the marijuana item.

(2) No licensee or licensee representative may be under the influence of intoxicants while on duty.

(a) For purposes of this rule "on duty" means:

(A) The beginning of a work shift that involves the handling or sale of marijuana items, checking identification or controlling conduct on the licensed premises, to the end of the shift including coffee and meal breaks;

(B) For an individual working outside a scheduled work shift, the performance of acts on behalf of the licensee that involve the handling or sale of marijuana items, checking identification or controlling conduct on the licensed premises, if the individual has the authority to put himself or herself on duty; or

(C) A work shift that includes supervising those who handle or sell marijuana items, check identification or control the licensed premises.

(b) Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sections 48, 49, 50, 51, 52, 53, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1400
Security Plans

(1) A licensee may, in writing, request that the Commission waive one or more of the security requirements described in OAR 845-025-1400 to 845-025-1470 by submitting a security plan for Commission approval. The security plan must include:

(a) The specific rules and subsections of a rule that is requested to be waived;

(b) The reason for the waiver;

(c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver;

(d) An explanation of how and why the alternative safeguard accomplishes the goals of the security rules, specifically public safety, prevention of diversion, accountability, and prohibiting access to minors.

(2) The Commission may, in its discretion and on a case by case basis, approve the security plan if it finds:

(a) The reason the licensee is requesting the waiver is because another state or local law prohibits the particular security measure that is required; or

(b) The licensee cannot, for reasons beyond the licensee's control or because the security measure is cost prohibitive, comply with the particular security measure that is required; and

(c) The alternative safeguard that is proposed meets the goals of the security rules.

(3) The Commission must notify the licensee in writing whether the security plan has been approved. If the security plan is approved the notice must specifically describe the alternate safeguards that are required and, if the security plan is time limited, must state the time period the security plan is in effect.

(4) The Commission may withdraw approval of the security plan at any time upon a finding that the previously-approved alternative measures are not sufficient to accomplish the goals of the security rules. If the Commission withdraws its approval of the security plan, the licensee will be given a reasonable period of time to come into compliance with the security requirement that was waived.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1410
Security Requirements

(1) A licensee is responsible for the security of all marijuana items on the licensed premises, including providing adequate safeguards against theft or diversion of marijuana items and records that are required to be kept.

(2) The licensee must ensure that commercial grade, non-residential door locks are installed on every external door of a licensed premises where marijuana items are present.

(3) During all hours when the licensee is not operating a licensee must ensure that:

(a) All entrances to and exits from a licensed premises are securely locked and any keys or key codes to the enclosed area remain in the possession of the licensee, licensee representative, or authorized personnel;

(b) All marijuana items on a licensed retailer's premises are kept in a safe or vault as those terms are defined in OAR 845-025-1015; and

(c) All marijuana items on the licensed premises of a licensee other than a retailer are kept in a locked, enclosed area within the licensed premises that is secured with a door that contains a multiple-position combination lock or the equivalent and a relocking device or the equivalent.

(4) A licensee must:

(a) Have an encrypted network infrastructure;

(b) Have an electronic back-up system for all electronic records; and

(c) Keep all video recordings and archived required records not stored electronically in a locked storage area. Current records may be kept in a locked cupboard or desk outside the locked storage area during hours when the licensed business is open.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1420
Alarm System

(1) A licensed premises must have a fully operational security alarm system, activated at all times when the licensed premises is closed for business on all:

(a) Entry or exit points to and from the licensed premises; and

(b) Perimeter windows, if applicable.

(2) The security alarm system for the licensed premises must:

(a) Be able to detect movement within any indoor area on the licensed premises;

(b) Be programmed to notify a security company that will notify the licensee, licensee representative or authorized personnel in the event of a breach or if unavailable, law enforcement; and

(c) Have at least two operational "panic buttons" located inside the licensed premises that are linked with the alarm system that immediately notifies a security company and law enforcement.

(3) Upon request, licensees shall make all information related to security alarm systems, monitoring and alarm activity available to the Commission.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1430
Video Surveillance Equipment

(1) A licensed premises must have a fully operational video surveillance recording system.

(2) Video surveillance equipment must, at a minimum:

(a) Consist of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 845-025-1450 and this rule;

(C) Video monitors;

(D) Digital archiving devices;

(E) A minimum of one monitor on premise capable of viewing video; and

(F) A printer capable of producing still photos.

(b) Be equipped with a failure notification system that provides, within one hour, notification to the licensee or an authorized representative of any prolonged surveillance interruption or failure; and

(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(3) A licensee's video surveillance system must be capable of recording all pre-determined surveillance areas in any lighting conditions.

(4) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the licensee, licensee representatives, or authorized personnel, and the Commission.

(5) In limited access areas, as that term is defined in OAR 845-025-1015, all cameras shall have minimum resolution of 1280 x 720 px and record at 10 fps (frames per second).

(6) In exterior perimeter and non-limited access area, cameras shall have a minimum resolution of 1280 x 720 px and record at least 5 fps, except where coverage overlaps any limited access areas such as entrances or exits and in those overlap areas cameras must record at 10 fps.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1440
Required Camera Coverage and Camera Placement

(1) A licensed premises must have camera coverage, as applicable, for:

(a) All limited access areas as that term is defined in OAR 845-025-1015;

(b) All point of sale areas;

(c) All points of entry to or exit from limited access areas; and

(d) All points of entry to or exit from the licensed premises.

(2) A licensee must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:

(a) Within 15 feet both inside and outside of all points of entry to and exit from the licensed premises; and

(b) Anywhere within secure or limited access areas on the licensed premises.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1450
Video Recording Requirements for Licensed Facilities

(1) A licensee must have cameras that continuously record, 24 hours a day, in all areas with marijuana items on the licensed premises.

(2) A licensee must:

(a) Use cameras that record at a minimum resolution of 1280 x 720 px;

(b) Keep all surveillance recordings for a minimum of 30 calendar days and in a format approved by the Commission that can be easily accessed for viewing and easily reproduced;

(c) Have a surveillance system that has the capability to produce a still photograph from any camera image;

(d) Have the date and time embedded on all surveillance recordings without significantly obscuring the picture;

(e) Archive video recordings in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place;

(f) Keep surveillance recordings for periods exceeding 30 days upon request of the Commission and make video surveillance records and recordings available immediately upon request to the Commission for the purpose of ensuring compliance with the Act and these rules; and

(g) Immediately notify the Commission of any equipment failure or system outage lasting 30 minutes or more.

(3) Failure to comply with subsections (2)(e) or (f) of this rule is a Category I violation and may result in license revocation.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1460
Location and Maintenance of Surveillance Equipment

(1) A licensee must:

(a) Have the surveillance room or surveillance area in a limited access area; and

(b) Have the surveillance recording equipment housed in a designated, locked, and secured room or other enclosure with access limited to:

(A) The licensee, licensee representatives, and authorized personnel

(B) Employees of the Commission;

(C) State or local law enforcement agencies for a purpose authorized under the Act, these rules, or for any other state or local law enforcement purpose; and

(D) Service personnel or contractors.

(c) Back up all required video surveillance recordings off-site and such off-site storage must be secure and the recordings must be easily accessed for viewing and easily reproduced.

(2) A licensee must keep a current list of all authorized employees and service personnel who have access to the surveillance system and room on the licensed premises.

(3) Licensees must keep a surveillance equipment maintenance activity log on the licensed premises to record all service activity including the identity of any individual performing the service, the service date and time and the reason for service to the surveillance system.

(4) Off-site monitoring of the licensed premises by a licensee or an independent third-party is authorized as long as standards exercised at the remote location meet or exceed all standards for on-site monitoring.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1470
Producer Security Requirements

(1) In addition to the security requirements in OAR 845-025-1400 to 845-025-1460, a producer must effectively prevent public access and obscure from public view all areas of marijuana production. A producer may satisfy this requirement by:

(a) Submitting a security plan as described in OAR 845-025-1400;

(b) Fully enclosing indoor production on all sides so that no aspect of the production area is visible from the exterior satisfies; or

(c) Erecting a solid wall or fence on all exposed sides of an outdoor production area that is at least eight (8) feet high.

(2) If a producer chooses to dispose of usable marijuana by any method of composting, as described in OAR 845-025-7750, the producer must prevent public access to the composting area and obscure the area from public view.

Stat. Auth.: Sec 2, 12, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1600
State and Local Safety Inspections

(1) All marijuana licensees may be subject to inspection of licensed premises by state or local government officials to determine compliance with state or local health and safety laws.

(2) A licensee must contact any utility provider to ensure that the licensee complies with any local ordinance or utility requirements such as water use, discharge into the sewer system, or electrical use.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 2, 12, 14, 15 and 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-1620
General Sanitary Requirements

(1) A marijuana licensee must:

(a) Prohibit any individual working on a licensed premises who has or appears to have a communicable disease, open or draining skin lesion infected with Staphylococcus aureus or Streptococcus pyogenes, or any illness accompanied by diarrhea or vomiting for whom there is a reasonable possibility of contact with marijuana items from having contact with a marijuana item until the condition is corrected;

(b) Require all persons who work in direct contact with marijuana items conform to hygienic practices while on duty, including but not limited to:

(A) Maintaining adequate personal cleanliness; and

(B) Washing hands thoroughly in an adequate hand-washing area before starting work, prior to having contact with a marijuana item and at any other time when the hands may have become soiled or contaminated;

(c) Provide hand-washing facilities adequate and convenient, furnished with running water at a suitable temperature and provided with effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying device;

(d) Properly remove all litter and waste from the licensed premises and maintain the operating systems for waste disposal in an adequate manner so that they do not constitute a source of contamination in areas where marijuana items are exposed;

(e) Provide employees with adequate and readily accessible toilet facilities that are maintained in a sanitary condition and good repair; and

(f) Hold marijuana items that can support pathogenic microorganism growth or toxic formation in a manner that prevents the growth of these pathogenic microorganism or formation toxins.

(2) For purposes of this rule "communicable disease" includes but is not limited to: diphtheria, measles, Salmonella enterica serotype Typhi infection, shigellosis, Shiga-toxigenic Escherichia coli (STEC) infection, hepatitis A, and tuberculosis.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sec 51, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2000
Definitions

As used in OAR 845-025-2000 to 845-025-2080:

(1) "Canopy" means the surface area utilized to produce mature marijuana plants calculated in square feet and measured using the outside boundaries of any area that includes mature marijuana plants including all of the space within the boundaries.

(2) "Indoor production" means producing marijuana in any manner:

(a) Utilizing artificial lighting on mature marijuana plants; or

(b) Other than "outdoor production" as that is defined in this rule.

(3) "Outdoor production" means producing marijuana:

(a) In an expanse of open or cleared ground; or

(b) In a greenhouse, hoop house or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources.

Stat. Auth.: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Stats. Implemented: Sections 2, 12, 14, 15, 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2020
Producer Privileges

(1) A producer may only plant, cultivate, grow, harvest and dry marijuana in the manner approved by the Commission and consistent with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015 and these rules.

(2) A producer may engage in indoor or outdoor production of marijuana, or a combination of the two.

(3) A producer may sell or deliver:

(a) Usable marijuana to the licensed premises of a marijuana processor, wholesaler, retailer, laboratory, or research certificate holder;

(b) Dried mature marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana processor or research certificate holder; or

(c) Immature marijuana plants and seeds to the licensed premises of a marijuana producer, wholesaler, retailer or research certificate holder.

(4) A producer may not sell a mature marijuana plant other than as provided in section (3)(b) of this rule.

(5) A producer may provide a sample of usable marijuana to a marijuana wholesaler, retailer or processor licensee for the purpose of the licensee determining whether to purchase the product. The sample product

may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

Stat. Auth.: Sections 2, 12, 13, Ch 614, OL 2015
Stats. Implemented: Sec 12, 13, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2030
Licensed Premises of Producer

(1) The licensed premises of a producer authorized to cultivate marijuana indoors includes all public and private enclosed areas used in the business operated at the location and any areas outside of a building that the Commission has licensed.

(2) The licensed premises of a producer authorized to cultivate marijuana outdoors includes the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has the right to occupy.

(3) A producer may not engage in any privileges of the license within a primary residence.

(4) The licensed premises of a producer may not be located at the same physical location or address as a marijuana grow site registered under ORS 475.304 unless the producer is also a person responsible for a marijuana grow site and has been issued a license by the Commission in accordance with section 116, chapter 614, Oregon Laws 2014, and OAR 845-025-1100.

Stat. Auth.: Sections 2, 12, ,Ch 614, OL 2015
Stats. Implemented: Sec 12, 116, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2040
Production Size Limitations

(1) Cultivation Batches and Cultivate Batch Sizes.

(a) A producer must establish cultivation batches and assign each cultivation batch a unique identification number.

(b) A cultivation batch may not have more than 100 immature plants.

(c) A producer may have an unlimited number of cultivation batches at any one time.

(2) Canopy Size Limits.

(a) Indoor Production.

(A) Tier I: Up to 5,000 square feet.

(B) Tier II: 5,001 to 10,000 square feet.

(b) Outdoor production.

(A) Tier I: Up to 20,000 square feet.

(B) Tier II: 20,001 to 40,000 square feet.

(c) Mixed production. If a producer intends to have a mixture of indoor and outdoor production the Commission will determine the producer's tiers and canopy sizes by applying the ratio in section (4) of this rule.

(d) For purposes of this section, square footage of canopy space is measured starting from the outermost point of the furthest mature flowering plant in a designated growing space and continuing around the outside of all mature flowering plants located within the designated growing space.

(e) A producer may designate multiple grow canopy areas at a licensed premises but those spaces must be separated by a physical boundary such as an interior wall or by at least 10 feet of open space.

(f) If a local government adopts an ordinance that would permit a producer to have a higher canopy size limit than is permitted under this rule, the local government may petition the Commission for an increase in canopy size limits for that jurisdiction. If the Commission grants such a petition, the Commission may amend this rule in addition to considering changes to the license fee schedule.

(g) On an annual basis, the Commission will evaluate market demand for marijuana items, the number of person applying for producer licenses or licensed as producers and whether the availability of marijuana items in this state is commensurate with the market demand. Following this evaluation the Commission may amend this rule as needed.

(3) Canopy Size Limit — Designation and Increases.

(a) A producer must clearly identify designated canopy areas and proposed canopy size in the initial license application. A producer may change a designated canopy area within a production type at any time with prior written notice to Commission, but a producer may only change canopy tiers at the time of renewal in accordance with subsection (b) of this section.

(b) A producer may submit a request to change canopy tiers at the time the producer submits an application for renewal of the license. The Commission will grant a request to increase the canopy tier for the producer's next licensure term if:

(A) The producer's renewal application is otherwise complete;

(B) There are no bases to deny or reject the producer's renewal application;

(C) The producer has not already reached the applicable maximum canopy size set forth in section (2) of this rule; and

(D) During the preceding year of licensure, the producer has not been found to be in violation, and does not have any pending allegations of violations of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules.

(c) The Commission shall give a producer an opportunity to be heard if a request is rejected under this section.

(4) Mixed cultivation methods.

(a) A producer may produce marijuana indoors and outdoors at the same time on the same licensed premises. The Commission must be notified of a producer's plan to engage in the indoor and outdoor production of marijuana at the time of initial licensure or at renewal, and not at any other time. A producer who utilizes mixed production may only change designated canopy areas from one production type to another at the time the producer submits a renewal application.

(b) The Commission must approve the canopy size applicable to each method.

(c) The Commission will use a 4:1 ratio, for outdoor and indoor respectively, to allocate canopy size limits under this section, not to exceed the sum canopy size limits set forth in section (2) of this rule. For example, if a Tier II producer in the first year of licensure has 5,000 square feet of indoor canopy space, then the producer may have up to 20,000 square feet of outdoor canopy space at the same time.

(5) Violations. An intentional violation of this rule is a Category I violation and may result in license revocation. All other violations are Category III violations.

Stat. Auth.: Sections 2, 12, 13 Ch 614, OL 2015
Stats. Implemented: Sec 13, 116, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2050
Operating Procedures

(1) A producer must:

(a) Establish written standard operating procedures for the production of marijuana. The standard operating procedures must, at a minimum, include when, and the manner in which, all pesticide and or other chemicals are to be applied during the production process; and

(b) Maintain a copy of all standard operating procedures on the licensed premises.

(2) If a producer makes a material change to its standard operating procedures it must document the change and revise its standard operating procedures accordingly. Records detailing the material change must be maintained on the licensed premises by the producer.

Stat. Auth.: Sections 2, 12, Ch 614, OL 2015
Stats. Implemented: Sec 12, 116, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2060
Start-up Inventory

(1) Marijuana producers may not receive immature marijuana plants or seeds from any source other than from another licensee, except that between January 1, 2016 and December 31, 2016, a marijuana producer may receive immature marijuana plants and seeds from any source within Oregon for up to 90 days following initial licensure by the Commission.

(2) The marijuana producer shall, through CTS, report receipt of the number of immature marijuana plants or seeds received under this section within 48 hours of the plants or seeds arriving at the licensed premises. A producer does not have to document the source of the immature plants or seeds during the 90 day start-up period.

(3) Failure to comply with this rule is a Category I violation and could result in license revocation.

Stat. Auth.: Sections 2, 12, Ch 614, OL 2015
Stats. Implemented: Sec 12, 23, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2070
Pesticides, Fertilizers and Agricultural Chemicals

(1) Pesticides. A producer may only use pesticides in accordance with ORS chapter 634 and OAR 603, Division 57.

(2) Fertilizers, Soil Amendments, Growing Media. A producer may only use fertilizer, agricultural amendments, agricultural minerals and lime products in accordance with ORS Chapter 633.

(3) A producer may not treat or otherwise adulterate usable marijuana with any chemical, biologically active drug, plant, substance, including nicotine, or other compound that has the effect or intent of altering the usable marijuana's color, appearance, weight or smell.

(4) In addition to other records required by these rules, a producer must maintain, at all times and on the licensed premises:

(a) The material safety data sheet (MSDS) for all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana;

(b) The original label or a copy thereof for all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana; and

(c) A log of all pesticides, fertilizers or other agricultural chemicals used by the producer in the production of marijuana. The log must include:

(A) The information required to be documented by a pesticide operator in ORS 634.146; and

(B) The unique identification tag number of the cultivation batch or individual mature marijuana plant to which the product was applied, or if applied to all plants on the licensed premises a statement to that affect.

(5) A producer may maintain the records required under this rule in electronic or written form. If electronic, a producer shall maintain a back-up system or sufficient data storage so that records are retained for no less than two years after harvest of any marijuana on which documented products were used. If written, a producer shall ensure that the records are legible and complete, shall keep them in a safe and secure location, and shall retain the records for no less than two years after harvest of any marijuana on which documented products were used.

(6) A producer must make the records required under this rule immediately available during an premises inspection by a Commission regulatory specialist. If the Commission requests copies of the records at any time other than during a premises inspection, a producer shall produce the records upon request.

(7) A violation of sections (1) to (4) of this rule is a Category 1 violation and could result in license revocation.

(8) A failure to keep complete records as required by this rule is a Category III violation. A failure to keep records on the licensed premises, or failure to timely produce records, is a Category III violation.

Stat. Auth.: Sections 2, 12, Ch 614, OL 2015
Stats. Implemented: Sec 12, 76 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2080
Harvest Lot Segregation

(1) A producer must, within 45 days of harvesting a harvest lot, physically segregate the harvest lot from other harvest lots, place the harvest lot in a receptacle or multiple receptacles and assign a UID tag to each receptacle that is linked to each plant that was harvested.

(2) A producer may not combine harvest lots that are of a different strain, were produced using different growing practices or harvested at a different time.

Stat. Auth.: Sections 2, 12 Ch 614, OL 2015
Stats. Implemented: Sec 12, 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2400
Medical Marijuana Grow Site Opt-In

(1) For purposes of this rule:

(a) "Grower" means a person responsible for a marijuana grow site as that term is defined in OAR 333-008-0010.

(b) "Grow site" has the meaning given that term in OAR 333-008-0010.

(c) "Patient" has the same meaning given that term in OAR 333-008-0010.

(2) A grower may apply for a producer license to produce marijuana at the same location as a grow site only if all growers producing marijuana at that address are listed on the application.

(3) In addition to the requirements of OAR 845-025-1030, the applicants must provide proof that each patient for whom the applicants are producing marijuana at the grow site proposed to be licensed has granted permission for the applicants to apply for a license and sell excess usable marijuana and immature plants to licensees of the Commission.

(4) If the Commission approves the application and issues a producer license, the licensees may not possess more than the amount of usable marijuana or marijuana plants permitted under ORS 475.300 to 475.346 unless the licensed premises ceases to be registered as a grow site with the Oregon Health Authority (OHA).

(5) If the licensed premises ceases to be registered as a grow site with the Oregon Health Authority, the licensee must notify the Commission within 5 days and provide proof that no growers or patients are registered by OHA at the licensed premises.

(6) A licensee licensed under this rule must record in CTS within five days of initial licensure, all mature and immature marijuana plants and usable marijuana on the licensed premises.

(7) A producer, licensed under this rule:

(a) Is subject to these rules with the exception of OAR 845-025-2060;

(b) Must comply with the duties, functions and powers of a grower under ORS 475.300 to 475.346 and any rule adopted thereunder, except that a grower is not subject to OHA's requirements related to the reporting or tracking of mature marijuana plants and usable marijuana;

(c) May sell usable marijuana or immature plants in excess of amounts produced for a patient, to other licensees, in accordance with these rules; and

(d) May, notwithstanding section 6, chapter 614, Oregon Laws 2015, transfer marijuana and usable marijuana to other registrants under ORS 475.300 to 475.346 in accordance with any rules adopted by the OHA.

Stat. Auth.: Sec 116, Ch 614, OL 2015
Stats. Implemented: Sec 116, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2800
Retailer Privileges

A retailer is the only licensee that is authorized to sell a marijuana item to a consumer 21 years of age or older.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 12, 16 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2820
Retailer Operational Requirements

(1) A retailer may:

(a) Only receive marijuana items from a producer, wholesaler, processor or laboratory;

(b) Only sell marijuana items to a consumer from the licensed premises, unless sale is made pursuant to a bona fide order as described in OAR 845-025-2880;

(c) Only sell up to the following amounts at any one time to a consumer within one day:

(A) One ounce of usable marijuana;

(B) 16 ounces of a cannabinoid product in solid form;

(C) 72 ounces of a cannabinoid product in liquid form;

(D) Five grams of cannabinoid extracts or concentrate, whether sold alone or contained in an inhalant delivery system;

(E) Four immature marijuana plants; and

(F) Ten marijuana seeds;

(d) Refuse to sell marijuana items to a consumer; and

(e) Only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.

(2) A retailer may not:

(a) Provide free samples of a marijuana item to a consumer;

(b) Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts;

(c) Require a consumer to purchase other products or services as a condition of purchasing a marijuana item or receiving a discount on a marijuana item;

(d) Sell a marijuana item for less than the cost of acquisition;

(e) Provide coupons or offer discounts, except that uniform volume discounts are permitted;

(f) Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 7:00 a.m. local time the following day; or

(g) Sell any product derived from industrial hemp, as that is defined in ORS 571.300, that is intended for human consumption, ingestion, or inhalation, unless it has been tested, labeled and packaged in accordance with these rules.

(3) A retailer's pricing on marijuana items must remain consistent during each day.

(4) Prior to completing the sale of a marijuana item to a consumer, a retailer must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:

(a) Passport;

(b) Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;

(c) Identification card issued under ORS 807.400;

(d) United States military identification card; or

(e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

(5) Marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until such time as the final sale to the consumer is completed.

(6) For purposes of this rule, "coupon" means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with the acquisition or purchase of a marijuana item.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 15, Ch 1, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2840
Retailer Premises

(1) The licensed premises of a retailer:

(a) May not be located in an area that is zoned exclusively for residential use.

(b) May not be located within 1,000 feet of:

(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(c) Must be enclosed on all sides by permanent walls and doors.

(2) A retailer must post in a prominent place signs at every:

(a) Point of sale that read:

(A) "No Minors Permitted Anywhere on the Premises"; and

(B) "No On-Site Consumption".

(b) Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".

(3) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.

(4) All inventory must be stored on the licensed premises.

(5) For purposes of determining the distance between a retailer and a school referenced in subsection (1)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 1,000 feet of a school as described subsection (1)(b) of this rule an applicant will not be licensed.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 6 & 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2860
Consumer Health and Safety Information

A retailer must:

(1) Post at the point of sale the following posters prescribed by the Commission, measuring 22 inches high by 17 inches wide that can be downloaded at www.oregon.gov/olcc/marijuana:

(a) A Pregnancy Warning Poster; and

(b) A Poisoning Prevention Poster.

(2) Post at the point of sale a color copy of the "Educate Before You Recreate" flyer measuring 22 inches high by 17 inches wide that can be downloaded at WHATSLEGALOREGON.COM.

(3) Distribute to each individual at the time of sale, a Marijuana Information Card, prescribed by the Commission, measuring 3.5 inches high by 5 inches long that can be downloaded at www.oregon.gov/olcc/marijuana.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 6 & 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2880
Delivery of Marijuana Items by Retailer

(1) A marijuana retailer may deliver a marijuana item to a residence in Oregon subject to compliance with this rule. For purposes of this rule, "residence" means a dwelling such as a house or apartment but does not include a dormitory, hotel, motel, bed and breakfast or similar commercial business.

(2) Delivery Approval Process.

(a) The retailer must request approval from the Commission prior to undertaking delivery service of marijuana items, on a form prescribed by the Commission that includes a statement that the retailer:

(A) Understands and will follow the requirements for delivery listed in this rule; and

(B) Has taken steps to ensure the personal safety of delivery personnel, including providing any necessary training.

(b) The retailer must receive written approval from the Commission prior to making any deliveries.

(c) The Commission may refuse to review any request for approval that is not complete and accompanied by the documents or disclosures required by the form.

(d) If the Commission denies approval the Commission shall give a retailer the opportunity to be heard.

(e) The Commission may withdraw approval for delivery service at any time if the Commission finds that the retailer is not complying with this rule, the personal safety of delivery personnel is at risk, the retailer's delivery service has been the target of theft, or the delivery service is creating a public safety risk.

(3) Bona Fide Orders.

(a) A bona fide order must be received by an approved retailer from the individual requesting delivery, before 4:00 p.m. on the day the delivery is requested.

(b) The bona fide order must contain:

(A) The individual requestor's name, date of birth, the date delivery is requested and the address of the residence where the individual would like the items delivered;

(B) A document that describes the marijuana items proposed for delivery and the amounts; and

(C) A statement that the marijuana is for personal use and not for the purpose of resale.

(4) Delivery Requirements.

(a) Deliveries must be made before 9:00 p.m. local time and may not be made between the hours of 9:00 p.m. and 8:00 a.m. local time.

(b) The marijuana retailer may only deliver to the individual who placed the bona fide order and only to individuals who are 21 years of age or older.

(c) At the time of delivery the individual performing delivery must check the identification of the individual to whom delivery is being made in order to determine that it is the same individual who submitted the bona fide order, that the individual is 21 years of age or older, and must require the individual to sign a document indicating that the items were received.

(d) A marijuana retailer may not deliver a marijuana item to an individual who is visibly intoxicated at the time of delivery.

(e) Deliveries may not be made more than once per day to the same physical address or to the same individual.

(f) Marijuana items delivered to an individual's residence must:

(A) Comply with the packaging rules in OAR 845-025-7000 to 845-025-7060; and

(B) Be placed in a larger delivery receptacle that has a label that reads: "Contains marijuana: Signature of person 21 years of age or older required for delivery".

(g) A retailer may not carry or transport at any one time more than a total of $100 in retail value worth of marijuana items designated for retail delivery.

(h) All marijuana items must be kept in a lock-box securely affixed inside the delivery vehicle.

(i) A manifest must be created for each delivery or series of deliveries and the individual doing the delivery may not make any unnecessary stops between deliveries or deviate substantially from the manifest route.

(5) Documentation Requirements. A marijuana retailer must document the following regarding deliveries:

(a) The bona fide order and the date and time it was received by the retailer;

(b) The date and time the marijuana items were delivered;

(c) A description of the marijuana items that were delivered, including the weight or volume and price paid by the consumer;

(d) Who delivered the marijuana items; and

(e) The name of the individual to whom the delivery was made and the delivery address.

(6) A retailer is only required to maintain the name of an individual to whom a delivery was made for one year.

(7) Prohibitions.

(a) A retailer may deliver marijuana items only to a location within:

(A) The city in which the licensee is licensed, if a licensee is located within a city; or

(B) Unincorporated areas of the county in which the licensee is licensed, if a licensee is located in an unincorporated city or area within the county.

(b) A retailer may not deliver marijuana items to a residence located on publicly-owned land.

(8) Sanction. A violation of any section of this rule that is not otherwise specified in OAR 845-025-8590 is a Category III violation.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 6 & 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-2890
Collection of Taxes

(1) A retailer must collect, at the point of sale, the tax imposed on the consumer under section 2, chapter 699, Oregon Laws 2015, and remit the tax to the Oregon Department of Revenue in accordance Department of Revenue rules.

(2) A violation of this rule is a Category III violation.

(3) An intentional violation of this rule is a Category I violation.

Stat. Auth.: Sections 2, 16 Ch 614, OL 2015
Stats. Implemented: Sec 6 & 16, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3200
Definitions

For purposes of OAR 845-025-3200 to 845-025-3290:

(1) "Cannabinoid topical" means a cannabinoid product intended to be applied to skin or hair.

(2) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 2 & 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3210
Endorsements

(1) A marijuana processor may only process and sell cannabinoid products, concentrates or extracts if the processor has received an endorsement from the Commission for that type of processing activity. Endorsements types are:

(a) Cannabinoid edible processor;

(b) Cannabinoid topical processor;

(c) Cannabinoid concentrate processor; and

(d) Cannabinoid extract processor.

(2) An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time following licensure.

(3) In order to apply for an endorsement an applicant or processor licensee must submit a form prescribed by the Commission that includes a description of the type of products to be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.

(4) Only one application and license fee is required regardless of how many endorsements an applicant or licensee requests or at what time the request is made.

(5) An individual processor licensee may hold multiple endorsements.

(6) For the purposes of endorsements any cannabinoid product that is intended to be consumed orally is considered a cannabinoid edible.

(7) If a processor is no longer going to process the product for which the processor is endorsed the processor must notify the Commission in writing and provide the date on which the processing of that product will cease.

(8) The Commission may deny a processor's request for an endorsement if the processor cannot or does not meet the requirements in OAR 845-025-3200 to 845-025-3290 for the endorsement that is requested. If the Commission denies approval the processor has a right to a hearing under the procedures of ORS chapter 183.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14 & 18, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3220
General Processor Requirements

(1) A processor must:

(a) Use equipment, counters and surfaces for processing that are food-grade and do not react adversely with any solvent being used.

(b) Have counters and surface areas that are constructed in a manner that reduce the potential for development of microbials, molds and fungi and that can be easily cleaned.

(c) Maintain the licensed premises in a manner that is free from conditions which may result in contamination and that is suitable to facilitate safe and sanitary operations for product preparation purposes.

(d) Store all marijuana items not in use in a locked area, including products that require refrigeration in accordance with OAR 845-025-1410.

(e) Assign every process lot a unique identification number and enter this information into CTS.

(2) A processor may provide a sample of a cannabinoid product, concentrate or extract to a marijuana wholesaler or retailer for the purpose of the wholesaler or retailer licensee determining whether to purchase the product but the product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

(3) A processor may not process or sell a marijuana item:

(a) That by its shape and design is likely to appeal to minors, including but not limited to:

(A) Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or

(B) Products in the shape of an animal, vehicle, person or character.

(b) That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3230
Processor Policies and Procedures

A processor must create and maintain written, detailed standard policies and procedures that include but are not limited to:

(1) Instructions for making each cannabinoid concentrate, extract or product.

(2) The ingredients and the amount of each ingredient for each process lot;

(3) The process for making each product;

(4) The number of servings in a process lot;

(5) The intended amount of THC per serving of the product;

(6) The process for making each process lot homogenous;

(7) If processing a cannabinoid concentrate or extract:

(a) Conducting necessary safety checks prior to commencing processing;

(b) Purging any solvent or other unwanted components from a cannabinoid concentrate or extract;

(8) Procedures for cleaning all equipment, counters and surfaces thoroughly;

(9) Procedures for preventing growth of pathogenic organisms and toxin formation;

(10) Proper handling and storage of any solvent, gas or other chemical used in processing or on the licensed premises in accordance with material safety data sheets and any other applicable laws;

(11) Proper disposal of any waste produced during processing in accordance with all applicable local, state and federal laws, rules and regulations;

(12) Quality control procedures designed to maximize safety and minimize potential product contamination;

(13) Appropriate use of any necessary safety or sanitary equipment; and

(14) Emergency procedures to be followed in case of a fire, chemical spill or other emergency.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3240
Processor Training Requirements

(1) A processor must have a comprehensive training program that includes, at a minimum, the following topics:

(a) The standard operating policies and procedures;

(b) The hazards presented by all solvents or other chemicals used in processing and on the licensed premises as described in the material safety data sheet for each solvent or chemical; and

(c) Applicable Commission statutes and rules.

(2) At the time of hire and prior to engaging in any processing, and once yearly thereafter, each employee involved in the processing of a

cannabinoid concentrate, extract or product must be trained in accordance with the processor's training program.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3250
Cannabinoid Edible Processor Requirements

(1) A cannabinoid edible processor may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR 603, Division 21, Division 22, Division 24, Division 25, with the exception of OAR 603-025-0020(17) and Division 28.

(2) A cannabinoid edible processor may not:

(a) Engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant, single-event temporary restaurant, commissary, mobile unit, bed or breakfast, or warehouse licensed under ORS 624;

(b) Share a food establishment with a person not licensed and endorsed by the Commission as a cannabinoid edible processor;

(c) Process food intended for commercial sale that does not contain cannabinoids, at the licensed premises; or

(d) Use a cannabinoid concentrate or extract to process food unless that concentrate or extract was made by a processor licensed by the ODA under ORS 616.706.

(3) A cannabinoid edible processor may share a food establishment with another cannabinoid edible processor if:

(a) The schedule, with specific hours and days that each processor will use the food establishment, is prominently posted at the entrance to the food service establishment and has been approved by the Commission:

(A) The schedule must be submitted to the Commission in writing and will be approved if it demonstrates that use of a shared food establishment by multiple cannabinoid edible processors does not create an increased compliance risk.

(B) A processor licensee may only change the schedule with prior written approval from the Commission.

(b) Each licensee designates a separate area to secure, in accordance with OAR 845-025-1410, any marijuana, cannabinoid products, concentrates or extracts that a licensee stores at the food establishment. If a cannabinoid edible processor does not store marijuana, cannabinoid products, concentrates or extracts at the food establishment those items must be stored on a licensed premises.

(4) A food establishment used by a cannabinoid edible processor is considered a licensed premises and must meet the security and other licensed premises requirements in these rules.

(5) A cannabinoid edible processor is strictly liable for any violation found at a shared food establishment during that processor's scheduled time or within that processor's designated area in the food establishment.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14 & 18 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3260
Cannabinoid Concentrate and Extract Processor Requirements

(1) Cannabinoid Concentrates or Extracts. A processor with a cannabinoid concentrate or extract endorsement:

(a) May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 FR 67377).

(b) Must:

(A) Only use a hydrocarbon-based solvent that is at least 99 percent purity.

(B) Only use a non-hydrocarbon-based solvent that is food-grade.

(C) Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(D) Use only potable water and ice made from potable water in processing.

(E) If making a concentrate or extract that will be used in a cannabinoid edible, be endorsed as a cannabinoid edible processor and comply with OAR 845-025-3250.

(2) Cannabinoid Extracts. A processor with an endorsement to make cannabinoid extracts:

(a) May not use pressurized canned butane.

(b) Must:

(A) Process in a:

(i) Fully enclosed room clearly designated on the current diagram of the licensed premises.

(ii) Spark proof room equipped with evacuation fans and lower explosive limit (LEL) detectors.

(B) Use a commercially manufactured professional grade closed loop extraction system designed to recover the solvents and built to codes of recognized and generally accepted good engineering practices, such as:

(i) The American Society of Mechanical Engineers (ASME);

(ii) American National Standards Institute (ANSI);

(iii) Underwriters Laboratories (UL); or

(iv) The American Society for Testing and Materials (ASTM).

(C) If using CO2 in processing, use a professional grade closed loop CO2 gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch.

(D) Have equipment and facilities used in processing approved for use by the local fire code official;

(E) Meet any required fire, safety, and building code requirements specified in:

(i) Applicable Oregon laws;

(ii) National Fire Protection Association (NFPA) standards;

(iii) International Building Code (IBC);

(iv) International Fire Code (IFC); and

(F) Have an emergency eye-wash station in any room in which cannabinoid extract is being processed; and

(G) Have all applicable material safety data sheets readily available to personnel working for the processor.

(3) Cannabinoid Concentrates. A processor with an endorsement to make cannabinoid concentrates:

(a) May not:

(A) Use denatured alcohol.

(B) If using carbon dioxide, apply high heat or pressure.

(b) Must only use or store dry ice in a well-ventilated room to prevent against the accumulation of dangerous levels of CO2.

(c) May use:

(A) A mechanical extraction process;

(B) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol; or

(C) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use heat over 180 degrees or pressure.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3280
Cannabinoid Topical Processor

A processor with a cannabinoid topical endorsement may not engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS 624.

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3290
Recordkeeping

(1) A processor must keep records documenting the following:

(a) How much marijuana is in each process lot;

(b) If a product is returned by a licensee, how much product is returned and why;

(c) If a defective product was reprocessed, how the defective product was reprocessed; and

(d) Each training provided in accordance with OAR 845-025-3240, the names of employees who participated in the training, and a summary of the information provided in the training.

(2) A processor must obtain a material safety data sheet for each solvent used or stored on the licensed premises and maintain a current copy of the material safety data sheet and a receipt of purchase for all solvents used or to be used in an extraction process on the licensed premises.

(3) If the Commission requires a processor to submit or produce documents to the Commission that the processor believes falls within the definition of a trade secret as defined in ORS 192.501, the processor must mark each document "confidential" or "trade secret".

Stat. Auth.: Sec 2 & 14, Ch 614, OL 2015
Stats. Implemented: Sec 14, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-3500
Wholesale License Privileges; Prohibitions

(1) License Privileges. A wholesale licensee may:

(a) Purchase marijuana items from a producer, processor or wholesale licensee.

(b) Sell, including sale by auction:

(A) Any type of marijuana item to a retail, wholesale or research certificate holder.

(B) Only immature marijuana plants and seeds to a producer licensee.

(C) Only usable marijuana to a processor licensee.

(c) Transport and store marijuana items on behalf of other licensees, pursuant to the requirements of OAR 845-025-7500 to OAR 845-025-7590.

(d) Provide a sample of usable marijuana or a cannabinoid product, concentrate or extract to a marijuana wholesaler, retailer or processor licensee for the purpose of the licensee determining whether to purchase the product. The product may not be consumed on a licensed premises. Any sample provided to another licensee must be recorded in CTS.

(2) Prohibited Conduct. A wholesale licensee may not:

(a) Receive marijuana items from any source other than a producer, processor or wholesale licensee.

(b) Sell or otherwise transfer a marijuana item to consumers or any entity other than a licensee of the Commission.

(3) For purposes of this rule, "marijuana item" does not include a mature marijuana plant.

Stat. Auth.: Sec 2 & 15, Ch 614, OL 2015
Stats. Implemented: Sec 15 & 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5000
Laboratory License Privileges

A licensed marijuana testing laboratory may:

(1) Obtain samples of marijuana items from licensees for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490;

(2) Transport and dispose of samples as provided in these rules; and

(3) Perform testing on marijuana items in a manner consistent with the laboratory's accreditation by the Oregon Health Authority, these rules and OAR 333-007-0300 to 333-007-0490.

Stat. Auth.: Sec 93, Ch 614, OL 2015
Stats. Implemented: Sec 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5030
Laboratory Licensing Requirements

(1) General Requirements

(a) A laboratory that intends to test marijuana items for producer, processor, wholesale or retail licensees must be licensed by the Commission.

(b) An applicant for a license under this rule must comply with all applicable application requirements in OAR 845-025-1030 and pay the required application and license fees, except that a laboratory licensee is not subject to any residency requirements.

(c) A laboratory application is subject to the same application review procedures as other applicants.

(d) In addition to the denial criteria in OAR 845-025-1115, the Commission may refuse to issue a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.

(e) Laboratory application and license fees are established in OAR 845-025-1060.

(2) Accreditation by the Oregon Health Authority

(a) In addition to the requirements listed in section (1) of this rule, an applicant for a laboratory license must be accredited by the Authority with a scope of accreditation that includes the sampling and testing analysis required in OAR 333-007-0300 to 333-007-0490 prior to exercising the licensed privileges in 845-025-5000.

(b) An applicant for a license under this rule may apply for licensure prior to receiving accreditation, but the Commission will not issue a license until proof of accreditation is received.

(c) The Commission may make efforts to verify or check on an applicant's accreditation status during the licensing process, but an applicant bears the burden of taking all steps needed to secure accreditation and present proof of accreditation to the Commission.

(d) In addition to the denial criteria in OAR 845-025-1115, the Commission may consider an application incomplete if the applicant does not obtain accreditation from the Authority within six months of applying for a license. The Commission shall give an applicant an opportunity to be heard if an application is declared incomplete under this section, but an applicant is not entitled to a contested case proceeding under ORS chapter 183. An applicant whose application is declared incomplete may reapply at any time.

(e) A licensed laboratory must maintain accreditation by the Authority at all times while licensed by the Commission. If a laboratory's accreditation lapses, is canceled or is suspended at any time for any reason while licensed by the Commission, the laboratory may not engage in any activities permitted under the license until accreditation is reinstated.

(f) Exercising license privileges while accreditation is suspended or canceled is a Category I violation and could result in license cancellation.

(3) Renewal.

(a) A laboratory must renew its license annually and pay the required renewal fees in accordance with OAR 845-025-1190.

(b) A laboratory renewal application may be denied for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.

Stat. Auth.: Sec 93, Ch 614, OL 2015
Stats. Implemented: Sec 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5045
Laboratory Tracking and Reporting

(1) A laboratory licensee is required to utilize CTS and follow all requirements established by OAR 845-025-7500 to OAR 845-025-7590.

(2) A laboratory licensee is responsible for tracking and entering the following information into CTS:

(a) Receipt of samples for testing, including:

(A) Size of the sample;

(B) Name of licensee from whom the sample was obtained;

(C) Date the sample was collected; and

(D) UID tag information associated with the harvest or process lot from which the sample was obtained.

(b) Tests performed on samples, including:

(A) Date testing was performed;

(B) What samples were tested for;

(C) Name of laboratory responsible for testing; and

(D) Results of all testing performed.

(c) Disposition of any testing sample material.

Stat. Auth.: Sec 93, Ch 614, OL 2015
Stats. Implemented: Sec 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5060
Laboratory Transportation and Waste Disposal

(1) A laboratory licensee must follow all rules regarding transportation of marijuana items established in OAR 845-025-7700.

(2) A laboratory licensee must follow all rules regarding disposal of samples from marijuana items established in OAR 845-025-7750.

Stat. Auth.: Sec 93, Ch 614, OL 2015
Stats. Implemented: Sec 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5075
Laboratory Licensee Prohibited Conduct

(1) In addition to the prohibitions set forth in OAR 845-025-8520, a laboratory licensee may not:

(a) Perform any required marijuana testing using any testing methods or equipment not permitted under the laboratory's accreditation through the Authority;

(b) Perform any required marijuana testing for any licensed marijuana producer, processor, wholesaler or retailer in which the laboratory licensee has a financial interest; or

(c) Engage in any activity that violates any provision of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, OAR 333-007-0300 through 333-007-0490 or OAR 333, Division 64 as applicable or these rules.

(2) The Commission may suspend or cancel a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, or these rules. The licensee has a right to a hearing under the procedures of ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.

(3) A violation of this rule is a Category I violation and could result in license revocation.

Stat. Auth.: Sec 93, Ch 614, OL 2015
Stats. Implemented: Sec 93, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5300
Application for Marijuana Research Certificate

(1) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:

(a) The proposed research would benefit the state's cannabis industry, medical research or public health and safety; and

(b) The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.

(2) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under OAR 845-025-1030 to 845-025-1115 except that an applicant for a Marijuana Research Certificate is not subject to the residency requirements in OAR 845-025-1045(2)(b).

(3) In addition to the application requirements in OAR-025-1030 the applicant must also provide:

(a) A clear description of the research proposal;

(b) A description of the researchers' expertise in the scientific substance and methods of the proposed research;

(c) An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant's proposed research to Oregon's cannabis industry, medical research, or to public health and safety;

(d) Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;

(e) A clear statement of the applicant's access to funding and the estimated cost of the proposed research;

(f) A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;

(g) A description of the research methods demonstrating an unbiased approach to the proposed research; and

(h) If the applicant intends to research the use of pesticides, an experimental use permit issued by Oregon Department of Agriculture pursuant to OAR 603-057-0160.

(4) Research certificates will be granted for up to a three-year term.

(5) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.

(6) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:

(a) The specific rule and subsection of a rule that is requested to be waived;

(b) The reason for the waiver;

(c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and

(d) An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.

(7) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:

(a) The reason the certificate holder is requesting the waiver is because another state or local law prohibits compliance; or

(b) The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or

(c) Because of the nature of the research, the Commissions finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.

(8) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.

(9) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.

Stat. Auth.: Sec 113, Ch 614, OL 2015
Stats. Implemented: Sec 113, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5350
Marijuana Research Certificate Privileges and Prohibitions

(1) A certificate holder may receive marijuana items from a licensee or a registrant under ORS 475.300 to 475.346.

(2) A certificate holder may not sell or otherwise transfer marijuana items to any other person except when disposing of waste pursuant to OAR 845-025-7750, or transferring to another certificate holder.

(3) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46.

(4) All administrative rules adopted by Commission for the purpose of administering and enforcing chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this rule.

Stat. Auth.: Sec 113, Ch 614, OL 2015
Stats. Implemented: Sec 113, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5500
Marijuana Handler Permit and Retailer Requirements

(1) A marijuana handler permit is required for any individual who performs work for or on behalf of a marijuana retailer if the individual participates in:

(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;

(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued;

(c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015; or

(d) The direct supervision of a person described in subsections (a) to (c) of this section.

(2) An individual who is required by section (1) of this rule to hold a marijuana handler permit must carry that permit on his or her person at all times when performing work on behalf of a marijuana retailer.

(3) A person who holds a marijuana handler permit must notify the Commission in writing within 10 days of any conviction for a misdemeanor or felony.

(4) A marijuana retailer must verify that an individual has a valid marijuana handler permit issued in accordance with OAR 845-025-5500 to 845-025-5590 before allowing the individual to perform any work at the licensed premises.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5520
Marijuana Handler Applications

(1) In order to obtain a marijuana handler permit an individual must submit an application on a form prescribed by the Commission. The application must contain the applicant's:

(a) Name;

(b) Mailing address;

(c) Date of birth;

(d) Signature; and

(e) Response to conviction history questions.

(2) In addition to the application an applicant must submit:

(a) A copy of a driver's license or identification card issued by one of the fifty states in the United States of America or a passport;

(b) The applicable fee as specified in OAR 845-025-1060; and

(c) Proof of having completed a marijuana handler education course and passed the examination.

(3) If an application does not contain all the information requested or if the information and fee required in section (2) of this rule is not provided to the Commission, the application will be returned to the individual as incomplete, along with the fee.

(4) If an application is returned as incomplete, the individual may reapply at any time.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5540
Marijuana Handler Permit Denial Criteria

(1) The Commission must deny an initial or renewal application if the applicant:

(a) Is not 21 years of age or older; or

(b) Has not completed the marijuana handler education course and passed the examination.

(2) The Commission may deny a marijuana handler permit application, unless the applicant shows good cause to overcome the denial criteria, if the applicant:

(a) Has been convicted of a felony, except for a felony described in section 20(4)(a), chapter 614, Oregon Laws 2015;

(b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or

(c) Makes a false statement to the Commission.

(3) If the Commission denies an application under subsection (2)(b) or (c) of this rule the individual may not reapply within two years of the date the Commission received the application.

(4) A Notice of Denial must be issued by the Commission in accordance with ORS 183.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5560
Marijuana Handler Course Education and Examination Requirements

(1) An individual must, prior to applying for a marijuana handler permit, complete an approved marijuana handler education course, pass the required examination, and pay the fee specified in OAR 845-025-1060.

(2) An individual must score at least 70 percent on the marijuana handler course examination in order to pass.

(a) An individual who does not pass the examination may retake the examination up to two times within 90 days of the date the individual took the course.

(b) If the individual fails to pass both retake examinations, the individual must retake the handler education course.

(3) An individual must take a marijuana handler education course at least every five years prior to applying for renewal of a marijuana handler permit.

(4) The Commission may require additional education or training for permit holders at any time, with adequate notice to permit holders.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5580
Marijuana Handler Renewal Requirements

(1) An individual must renew his or her marijuana handler permit every five years by submitting a renewal application, on a form prescribed by the Commission and the applicable fee specified in OAR 845-025-1060.

(2) Renewal applications will be reviewed in accordance with OAR 845-025-5520 and 845-025-5540.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5590
Suspension or Revocation

(1) The Commission may suspend or cancel the permit of any marijuana handler if the handler:

(a) Has been convicted of a felony, except for a felony described in section 20, chapter 614, Oregon Laws 2015(4)(a);

(b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or

(c) Makes a material false statement to the Commission.

(2) If an individual's permit is canceled under sections (1)(b) or (c) of this rule the individual may not reapply within two years from the date a final order of revocation is issued.

(3) A notice of suspension or revocation must be issued by the Commission in accordance with ORS 183.

Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Stat. Auth.: Sec 19 & 20, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5700
Licensee Testing Requirements

(1) Licensees are required to test marijuana items in accordance with OAR 333-007-0300 to 333-007-0490.

(2) A licensee may not sell or transfer a marijuana item:

(a) That is required to be tested before being sold or transferred unless the required testing has been performed by a licensed laboratory; or

(b) That is from a batch that has failed a test and the batch has not been retested in accordance with OAR 333-007-0460 and subsequently passed the required testing.

(3) A violation is this rule is a Category I violation.

Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5720
Labeling, Storage, and Security of Pre-Tested Marijuana Items

(1) Following samples being taken from a harvest or process lot a licensee must:

(a) Label the harvest or process lot with the following information:

(A) The laboratory doing the samples;

(B) The test batch samples numbers, once known;

(C) The date the samples were taken;

(D) The harvest or process lot number;

(E) The licensee's license number; and

(F) In bold, capital letters, no smaller than 12 point font, "PRODUCT NOT TESTED".

(b) Store and secure the harvest or process lot in a manner that prevents the product from being tampered with or sold prior to test results being reported.

(2) A harvest or process lot may be stored in more than one receptacle as long as the labeling requirements are met.

(3) If the samples pass testing the product may be sold in accordance with the applicable Commission rules.

(4) If the samples do not pass testing the licensee must comply with OAR 845-025-5740.

Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5740
Failed Test Samples

(1) If a sample fails any initial test the licensee may have samples retested in accordance with OAR 333-007-0460.

(2) Failed microbiological contaminant testing.

(a) If a sample from a batch of usable marijuana fails microbiological contaminant testing the batch may be used to make a cannabinoid concentrate or extract if the processing method effectively sterilizes the batch such as a method using a hydrocarbon-based solvent or a CO2 closed loop system.

(b) If a sample from a batch of a cannabinoid concentrate or extract fails microbiological contaminant testing the batch may be further processed if the processing method effectively sterilizes the batch such as a method using a hydrocarbon-based solvent or a CO2 closed loop system.

(c) A batch that is sterilized in accordance with subsection (a) or (b) of this section must be resampled and retested in accordance with OAR 333-007-0460 and must be tested, if not otherwise required for that product, for microbiological contaminants, solvents and pesticides.

(3) Failed solvent testing.

(a) If a sample from a batch fails solvent testing the batch may be re-processed using procedures that would reduce the concentration of solvents to less than the action level.

(b) A batch that is re-processed in accordance with subsection (a) of this section must be resampled and retested in accordance with OAR 333-007-0460 and must be tested, if not otherwise required for that product, for microbiological contaminants, solvents and pesticides.

(4) Failed water activity testing.

(a) If a sample from a batch of usable marijuana fails for water activity, the batch from which the sample was taken may continue to dry or cure.

(b) A batch that undergoes additional drying or curing as described in subsection (a) of this section must be resampled and retested in accordance with OAR 333-007-0460.

(5) Failed pesticide testing. If a sample from a batch fails pesticide testing the batch must be destroyed, in accordance with OAR 845-025-7750, or re-tested in accordance with OAR 333-007-0460.

(6) If a sample fails a retest required under sections (2), (3) and (5) of this rule for microbiological contaminants, solvents or pesticides a licensee must destroy or dispose of the batch.

(7) A regulatory specialist must witness the destruction or disposal of a batch if destruction or disposal is required by this rule.

(8) A licensee must inform a laboratory prior to samples being taken that the batch is being resampled and retested after an initial failed test.

(9) A licensee must, as applicable:

(a) Have detailed procedures for sterilization processes to remove microbiological contaminants and for reducing the concentration of solvents or pesticides; and

(b) Document, in CTS, all resampling, retesting, sterilization, re-processing, remediation and destruction or disposal.

Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-5760
Audit Testing or Compliance Testing

(1) The Commission may require a licensee to have samples from a harvest or process lot submitted to a laboratory for testing in order to determine whether the licensee is in compliance with OAR 333-007-0300 to 333-007-0490 and these rules, at the licensee's expense.

(2) Audit testing must comply with OAR 333-007-0300 to 333-007-0490 and any applicable Oregon Environmental Laboratory Accreditation Program rules.

(3) The Commission may initiate an investigation of a licensee upon receipt of a tentatively identified compounds report from a laboratory, reported in accordance with OAR 333-064-0100 and may require the licensee to submit samples for additional testing, including testing for analytes that are not required by OAR 333-007-0300 to 333-007-0490, at the licensee's expense.

Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Stat. Auth.: Sec 91 & 92, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7000
Definitions

For the purposes of OAR 845-025-7000 to 845-025-7060:

(1) "Attractive to minors" means packaging, labeling and marketing that features:

(a) Cartoons;

(b) A design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;

(c) Features symbols or celebrities that are commonly used to market products to minors.

(2) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(3) "Cannabinoid concentrate or extract" means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.

(4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(5)(a) "Cannabinoid product" means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.

(b) "Cannabinoid product" does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate or extract by itself; or

(C) Industrial hemp, as defined in ORS 571.300.

(6) "Cartoon" means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:

(a) The use of comically exaggerated features;

(b) The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or

(c) The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.

(7) "Child resistant" means packaging that is:

(a) Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly as defined by 16 CFR 1700.20 (1995); and

(b) Resealable for any cannabinoid concentrate or extract, or cannabinoid product, intended for more than a single use or containing multiple servings.

(8) "Consumer":

(a) Has the meaning given that term in section 1, chapter 614, Oregon Laws 2015; or

(b) Means a patient or designated primary caregiver receiving a transfer from a medical marijuana dispensary.

(9) "Container" means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed prior to being sold to a consumer.

(10) "Exit Package" means a sealed container provided at the retail point of sale in which any marijuana items already within a container are placed.

(11) "Licensee" has the meaning given that term in OAR 845-025-1015.

(12) Marijuana.

(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300.

(13) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.

(14) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.

(15) "Producing" means:

(a) Planting, cultivating, growing, trimming or harvesting marijuana; or

(b) Drying marijuana leaves and flowers.

(16) "Registrant" means a person registered with the Authority under ORS 475.304, 475.314, or section 85, chapter 614, Oregon Laws 2015.

(17) Usable Marijuana.

(a) "Usable marijuana" means the dried leaves and flowers of marijuana.

(b) "Usable marijuana" does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Stat. Auth.: Sec 103, Ch 614, OL 2015
Stat. Auth.: Sec 103 & 100 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7020
Packaging for Sale to Consumer

(1) The purpose of this rule is to set the minimum standards for the packaging of marijuana items that are sold to the consumer, applicable to:

(a) A licensee; or

(b) On and after April 1, 2016, a registrant who is not exempt from the labeling requirements.

(2) Containers or packaging for marijuana items must protect a marijuana item from contamination and must not impart any toxic or deleterious substance to the marijuana item.

(3) Marijuana items for ultimate sale to a consumer must:

(a) Be packaged in a container that is child-resistant;

(b) Not be packaged or labeled in a manner that is attractive to minors; and

(c) Be labeled in accordance with OAR 333-007-0010 to 333-007-0100.

(4) Packaging may not contain any text that makes an untruthful or misleading statement.

(5) Nothing in this rule:

(a) Prevents the re-use of packaging that is capable of continuing to be child-resistant, as permitted by rules established by the Commission or the Authority; or

(b) Prohibits the Commission or the Authority from imposing additional packaging requirements in their respective rules governing licensees and registrants.

Stat. Auth.: Sec 103, Ch 614, OL 2015
Stat. Auth.: Sec 12, 14, 15, 16 103 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7040
Wholesaler and Retailer Packaging and Labeling Compliance Requirements

(1) If a wholesaler or a retailer receives a marijuana item that is not packaged or labeled in accordance with OAR 845-025-7000 to 845-025-7060 or 333-007-0010 to 333-007-0100, the wholesaler or retailer must notify the Commission and return the marijuana item to the licensee who transferred the wholesaler or retailer the marijuana item. The wholesaler or retailer must document the return and the reason for the return in the tracking system.

(2) Sale of a marijuana item that is not packaged and labeled in accordance with OAR 845-025-7000 to 845-025-7060 and 333-007-0010 to 333-007-0100 is a category III violation.

Stat. Auth.: Sec 103, Ch 614, OL 2015
Stat. Auth.: Sec 15, 16 103 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7060
Packaging and Labeling Pre-approval Process

(1) Prior to a marijuana item being sold to a consumer, a licensee or a registrant, if pre-approval is required by the Authority, packaging marijuana items for ultimate sale to a consumer must submit a prototype of the packaging complete with labels affixed to the package for pre-approval by the Commission, subject to the exceptions in sections (6) to (8) of this rule, the packaging and labels must be accompanied by the following:

(a) A fee as specified in OAR 845-025-1060; and

(b) Information including but not limited to:

(A) The licensee's license number or the registrant's registration number; and

(B) A picture of and description of the item to be placed in the package.

(2) The Commission will evaluate the packaging and label in order to determine whether:

(a) The packaging:

(A) Is child resistant.

(B) Is marketed in a manner attractive to minors.

(C) Contains untruthful or misleading content.

(D) If the packaging is for a cannabinoid edible or other cannabinoid products, is attractive to minors.

(b) The label complies with the Authority's labeling rules, OAR 333-007-0010 to 333-007-0100.

(3) The Commission must review the packaging and labeling and notify the licensee or registrant whether the packaging and labeling is approved, and if not approved, a description of the packaging or labeling deficiencies.

(4) If a licensee or registrant's packaging or labeling is deficient it must correct the deficiencies and resubmit the packaging for pre-approval, but the licensee or registrant is not required to submit an additional fee unless the packaging is found deficient for a second time in which case the licensee must resubmit the packaging or labeling in accordance with subsection (1) of this rule.

(5) If the label affixed to the package is not compliant with OAR 333-007-0010 to 333-007-0100 the package will not be approved.

(6) Packages and labels that have been previously approved do not need to be resubmitted if the only changes to the packaging or label are:

(a) Changes in the:

(A) Harvest or processing date;

(B) Strain;

(C) Test results;

(D) Net weight or volume; or

(E) Harvest or process lot numbers.

(b) The deletion of any non-mandatory label information.

(c) The addition, deletion or change in the:

(A) UPC barcodes or 2D mobile barcodes (QR codes); or

(B) Website address, phone number, fax number, or zip code of the licensee or registrant.

(d) The repositioning of any label information on the package.

(7) The Commission must publish a list of previously-approved commercially available packaging. Packaging identified on this list as approved for certain product types does not need to be submitted for approval if used for the type of product for which it is approved and the packaging does not contain any graphics, pictures or logos.

(8) Labels for marijuana items do not require pre-approval if they contain only the information required by OAR 333-007-0010 to 333-007-0100 and have no graphics, pictures or logos.

(9) Notwithstanding any provisions of this rule, the Commission may permit or require electronic submission of labels and packaging for approval.

Stat. Auth.: Sec 102 & 104, Ch 614, OL 2015
Stat. Auth.: Sec 102 & 104, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7500
CTS Requirements

(1) A licensee must:

(a) Use CTS as the primary inventory and recording keeping system.

(b) Have a CTS account activated and functional prior to operating or exercising any privileges of the license and must maintain an active account while licensed.

(2) A licensee must have at least one license holder who is a CTS administrator and a licensee may authorize additional license holders or licensee representatives to obtain Administrator accounts.

(3) In order to obtain a CTS administrator account, a license holder must attend and successfully complete all required CTS training. The Commission may also require additional ongoing, continuing education for an individual to retain his or her CTS administrator account.

(4) A licensee may designate licensee representatives as CTS users. A designated user must be trained by a CTS administrator in the proper and lawful use of CTS.

(5) A licensee must:

(a) Maintain an accurate and complete list of all CTS administrators and CTS users for each licensed premises and must update the list when a new CTS user is trained.

(b) Train and authorize any new CTS users before those users are permitted to access CTS or input, modify, or delete any information in CTS.

(c) Cancel any CTS administrator or user from an associated CTS account if that individual is no longer a licensee representative or the administrator or user has violated OAR 845-025-7500 to 845-025-7590.

(d) Correct any data that is entered into CTS in error.

(6) A licensee is accountable for all actions licensee representatives take while logged into CTS or otherwise conducting inventory tracking activities.

(7) Nothing in this rule prohibits a licensee from using secondary separate software applications to collect information to be used by the business including secondary inventory tracking or point of sale systems. Secondary software applications must use CTS data as the primary source of data and must be compatible with updating to CTS. If a licensee uses a separate software application it must get approval from the vendor contracting with the Commission to provide CTS and the software application must:

(a) Accurately transfer all relevant CTS data to and from CTS for the purposes of reconciliations with any secondary systems.

(b) Preserve original CTS data when transferred to and from a secondary application.

(8) If at any point a licensee loses access to CTS for any reason, the licensee must keep and maintain comprehensive records detailing all tracking inventory activities that were conducted during the loss of access.

(a) Once access is restored, all inventory tracking activities that occurred during the loss of access must be entered into CTS.

(b) A licensee must document when access to the system was lost and when it was restored.

(c) A licensee may not transport any marijuana items to another licensed premises until such time as access is restored and all information is recorded into CTS.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7520
Unique Identification (UID) Tags

A licensee must:

(1) Use UID tags issued by a Commission-approved vendor that is authorized to provide UID tags for CTS. Each licensee is responsible for the cost of all UID tags and any associated vendor fees.

(2) Have an adequate supply of UID tags at all times.

(3) Properly tag all inventory that is required to have a UID tag.

(4) Place tags in a position that can be clearly read by an individual standing next to the item and the tag must be kept free from dirt and debris.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7540
CTS User Requirements

(1) A licensee and any designated CTS administrator or user shall enter data into CTS that fully and transparently accounts for all inventory tracking activities.

(2) A licensee is responsible for the accuracy of all information entered into CTS.

(3) An individual entering data into the CTS system may only use that individual's CTS account. Each CTS administrator and CTS user must have a unique log-on and password, which may not be used by any other person.

(4) A violation of this rule is a Category III violation. Intentional misrepresentation of data entered into the CTS system is a Category I violation.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7560
System Notifications

A licensee must:

(1) Monitor all compliance notifications from CTS and resolve the issues detailed in the compliance notification in a timely fashion. A licensee may not dismiss a compliance notification in CTS until the licensee resolves the compliance issues detailed in the notification.

(2) Take appropriate action in response to informational notifications received through CTS, including but not limited to notifications related to UID billing, enforcement alerts, and other pertinent information.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7580
Reconciliation with Inventory

A licensee must:

(1) Use CTS for all inventory tracking activities at a licensed premises.

(2) Reconcile all on-premises and in-transit marijuana item inventories each day in CTS at the close of business.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 23 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7590
Inventory Audits

The Commission may perform a physical audit of the inventory of any licensee at the agency's discretion and with reasonable notice to the licensee. Variances between the physical audit and the inventory reflected in CTS at the time of the audit, which cannot be attributed to normal moisture variation in usable marijuana, are violations. The Commission may impose a civil penalty, suspend or cancel a licensee for violation of this section.

Stat. Auth.: Sec 2, 12, 14, 15, 16 & 93 , Ch 614, OL 2015
Stat. Auth.: Sec 6 Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7700
Transportation and Delivery of Marijuana Items

(1) Marijuana items may only be transferred between licensed premises by a licensee or licensee representative.

(2) An individual authorized to transport marijuana items must have a valid Oregon Driver's License.

(3) A licensee must:

(a) Use a vehicle for transport that is:

(A) Insured at or above the legal requirements in Oregon;

(B) Capable of securing (locking) the marijuana items during transportation; and

(C) Capable of being temperature controlled if perishable marijuana items are being transported.

(b) Using CTS, generate a printed transport manifest that accompanies every transport of marijuana items that contains the following information:

(A) The name, contact information of a licensee representative, licensed premises address and license number of the licensee transporting the marijuana items;

(B) The name, contact information of the licensee representative, licensed premises address, and license number of the licensee receiving the delivery;

(C) Product name and quantities (by weight or unit) of each marijuana item contained in each transport, along with the UIDs for every item;

(D) The date of transport and approximate time of departure;

(E) Arrival date and estimated time of arrival;

(F) Delivery vehicle make and model and license plate number; and

(G) Name and signature of the licensee's representative accompanying the transport.

(4) A licensee or licensee representative may transport marijuana items from an originating location to multiple licensed premises as long as each transport manifest correctly reflects specific inventory in transit and each recipient licensed premises provides the licensee with a printed receipt for marijuana items delivered

(5) All marijuana items must be packaged in shipping containers and labeled in accordance with OAR 845-025-2880 prior to transport.

(6) A licensee must provide a copy of the transport manifest to each licensed premises receiving the inventory described in the transport manifest, but in order to maintain transaction confidentiality, may prepare a separate manifest for each receiving licensed premises.

(7) A licensee must provide a copy of the printed transport manifest and any printed receipts for marijuana items delivered to law enforcement officers or other representatives of a government agency if requested to do so while in transit.

(8) A licensee must contact the Commission immediately, or as soon as possible under the circumstances, if a vehicle transporting marijuana items is involved in any accident that involves product loss.

(9) Upon receipt of inventory a receiving licensee must ensure that the marijuana items received are as described in the transport manifest.

(10) A receiving licensee must separately document any differences between the quantity specified in the transport manifest and the quantities received. Such documentation shall be made in CTS and in any relevant business records.

(11) A licensee must provide temperature control for perishable marijuana items during transport.

(12) Any vehicle transporting marijuana items must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other licensed premises receiving inventory.

(13) A licensee may transport marijuana for other licensees if the transporting licensee holds a wholesale license.

Stat. Auth.: Sec 2, 12, 14, 15, 16 , Ch 614, OL 2015
Stat. Auth.: Sec 2, 12, 14, 15, 16 , Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-7750
Waste Management

(1) A licensee must:

(a) Store, manage and dispose of solid and liquid wastes generated during marijuana production and processing in accordance with applicable state and local laws and regulations which may include but are not limited to:.

(A) Solid waste requirements in ORS 459 and OAR 340 Divisions 93 to 96;

(B) Hazardous waste requirements in ORS 466 and OAR 340, Divisions 100 to 106; and

(C) Wastewater requirements in ORS 468B and OAR 340, Divisions 41 to 42, 44 to 45, 53, 55 and 73.

(b) Store marijuana waste in a secured waste receptacle in the possession of and under the control of the licensee.

(2) A licensee may give or sell marijuana waste to a producer, processor or wholesale licensee or research certificate holder. Any such transaction must be entered into CTS pursuant to OAR 845-025-7500.

(3) In addition to information required to be entered into CTS pursuant to OAR 845-025-7500, a licensee must maintain accurate and comprehensive records regarding waste material that accounts for, reconciles, and evidences all waste activity related to the disposal of marijuana.

Stat. Auth.: Sections 2, 12, 14, Ch 614, OL 2015
Stats. Implemented: Sections 12, 14, 15, 23, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8000
Purpose and Application of Rules

(1) The Commission serves the interests of the citizens of Oregon by regulating and prohibiting advertising marijuana items in a manner:

(a) That is attractive to minors;

(b) That promotes excessive use;

(c) That promotes activity that is illegal under Oregon law; or

(d) That otherwise presents a significant risk to public health and safety.

(2) The Commission also serves the interests of Oregonians by allowing advertising for the purpose of informing the public of the availability and characteristics of marijuana.

(3) All marijuana advertising by a licensee must conform to these rules.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8020
Definitions

As used in OAR 845-025-8000 through 845-025-8080:

(1) "Advertising" is publicizing the trade name of a licensee together with words or symbols referring to marijuana or publicizing the brand name of marijuana or a marijuana product.

(2) "Handbill" is a flyer, leaflet, or sheet that advertises marijuana.

(3) "Radio" means a system for transmitting sound without visual images, and includes broadcast, cable, on-demand, satellite, or internet programming. Radio includes any audio programming downloaded or streamed via the internet.

(4) "Television" means a system for transmitting visual images and sound that are reproduced on screens, and includes broadcast, cable, on-demand, satellite, or internet programming. Television includes any video programming downloaded or streamed via the internet.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8040
Advertising Restrictions

(1) Marijuana advertising may not:

(a) Contain statements that are deceptive, false, or misleading;

(b) Contain any content that can reasonably be considered to target individuals under the age of 21, including but not limited to cartoon characters, toys, or similar images and items typically marketed towards minors;

(c) Specifically encourages the transportation of marijuana items across state lines;

(d) Assert that marijuana items are safe because they are regulated by the Commission or have been tested by a certified laboratory or otherwise make claims that any government agency endorses or supports marijuana;

(e) Make claims that recreational marijuana has curative or therapeutic effects;

(f) Display consumption of marijuana items;

(g) Contain material that encourages the use of marijuana because of its intoxicating effect; or

(h) Contain material that encourages excessive or rapid consumption.

(2) A marijuana retailer may not make any deceptive, false, or misleading assertions or statements on any product, any sign, or any document provided to a consumer.

(3) A licensee must include the following statement on all advertising:

(a) "Do not operate a vehicle or machinery under the influence of this drug".

(b) "For use only by adults twenty-one years of age and older."

(c) "Keep out of the reach of children."

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8060
Advertising Media, Coupons, and Promotions

(1) The Commission prohibits advertising through handbills that are posted or passed out in public areas such as parking lots and publicly owned property.

(2) A licensee may not utilize television, radio, print media or internet advertising unless the licensee has reliable evidence that no more than 30 percent of the audience for the program, publication or internet web site in or on which the advertising is to air or appear is reasonably expected to be under the age of 21.

(3) A licensee may not engage in advertising via marketing directed towards location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8080
Removal of Objectionable and Non-Conforming Advertising

(1) A licensee must remove any sign, display, or advertisement if the Commission finds it violates these rules.

(2) The Commission will notify the licensee and specify a reasonable time period for the licensee to remove any sign, display or advertisement that the Commission finds objectionable.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8500
Responsibility of Licensee, Responsibility for Conduct of Others

Each licensee is responsible for violations of any provision of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2014, or chapter 699, Oregon Laws 2015, affecting the licensed privileges, or these rules and for any act or omission of a licensee representative that violates any law, administrative rule, or regulation affecting the licensed privileges.

xStat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Sec 2, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8520
Prohibited Conduct

(1) Sale to a Minor. A licensee or permittee may not sell, deliver, transfer or make available any marijuana item to a person under 21 years of age.

(a) Violation of this section for an intentional sale to a minor by a licensee, permittee or license representative is a Category II violation.

(b) Violation of this section for other than intentional sales is a Category III violation.

(2) Identification. A licensee or license representative must require a person to produce identification as required by Section 24, chapter 614, Oregon Laws 2015 before selling or providing a marijuana item to that person. Violation of this section is a Category IV violation.

(3) Access to Premises. A licensee or permittee may not:

(a) During regular business hours for the licensed premises, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and who enters or wants to enter a licensed premises to conduct an inspection to ensure compliance with chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2014; chapter 699, Oregon Laws 2015 affecting the licensed privileges; or these rules;

(b) Outside of regular business hours or when the premises appear closed, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and requests entry on the basis that there is a reason to believe a violation of chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2014; chapter 699, Oregon Laws 2015 affecting the licensed privileges; or these rules is occurring; or

(c) Once a regulatory specialist is on the licensed premises, ask the regulatory specialist to leave until the specialist has had an opportunity to conduct an inspection to ensure compliance with chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2014; chapter 699, Oregon Laws 2015 affecting the licensed privileges; or these rules.

(d) Violation of this section is a Category II violation.

(4) Use or Consumption of Intoxicants on Duty and Under the Influence on Duty.

(a) No licensee, licensee representative, or permittee may consume any intoxicating substances while on duty, except for employees as permitted under OAR 845-025-1230(5)(b). Violation of this subsection is a Category III violation.

(b) No licensee, licensee representative, or permittee may be under the influence of intoxicating substances while on duty. Violation of this subsection is a Category II violation.

(c) Whether a person is paid or scheduled for a work shift is not determinative of whether the person is considered "on duty."

(d) As used in this section:

(A) "On duty" means:

(i) From the beginning to the end of a work shift for the licensed business, including any and all coffee, rest or meal breaks; or

(ii) Performing any acts on behalf of the licensee or the licensed business outside of a work shift if the individual has the authority to put himself or herself on duty.

(B) "Intoxicants" means any substance that is known to have or does have intoxicating effects, and includes alcohol, marijuana, or any other controlled substances.

(5) Permitting Use of Marijuana at Licensed Premises. A licensee or permittee may not permit the use or consumption of marijuana, or any other intoxicating substance, anywhere in or on the licensed premises, or in surrounding areas under the control of the licensee, except for employees as permitted under OAR 845-025-1230(5)(b). Violation of this section is a Category III violation.

(6) Import and Export. A licensee or permittee may not import marijuana items into this state or export marijuana items out of this state. Violation of this section is a Category I violation and could result in license or permit revocation.

(7) Permitting, Disorderly or Unlawful Conduct. A licensee or permittee may not permit disorderly activity or activity that is unlawful under

Oregon state law on the licensed premises or in areas adjacent to or outside the licensed premises under the control of the licensee.

(a) If the prohibited activity under this section results in death or serious physical injury, or involves unlawful use or attempted use of a deadly weapon against another person, or results in a sexual offense which is a Class A felony such as first degree rape, sodomy, or unlawful sexual penetration, the violation is a Category I violation and could result in license or permit revocation.

(b) If the prohibited activity under this section involves use of a dangerous weapon against another person with intent to cause death or serious physical injury, it is a Category II violation.

(c) As used in this section:

(A) "Disorderly activities" means activities that harass, threaten or physically harm oneself or another person.

(B) "Unlawful activity" means activities that violate the laws of this state, including but not limited to any activity that violates a state criminal statute.

(d) The Commission does not require a conviction to establish a violation of this section except as section 13(1)(f), chapter 614, Oregon Laws 2015 requires.

(8) Marijuana as a Prize, Premium or Consideration. No licensee or permittee may give or permit the giving of any marijuana item as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises.

(9) Visibly Intoxicated Persons. No licensee or permittee may sell, give, or otherwise make available any marijuana item to any person who is visibly intoxicated. Violation of this section is a Category III violation.

(10) Additional Prohibitions. A licensee or permittee may not:

(a) Sell or deliver any marijuana item through a drive-up window.

(b) Sell or offer for sale any marijuana item for a price per item that is less than the licensee's cost for the marijuana item;

(c) Use any device or machine that both verifies the age of the consumer and delivers marijuana to the consumer; or

(d) Deliver marijuana to a consumer off the licensed premises, except that retail licensees may provide delivery as set forth in OAR 845-025-2880.

(e) Violation of this subsection is a Category III violation.

Stat. Auth.: Sections 2, 12, 14, 15 & 16, Ch 614, OL 2015
Stats. Implemented: Sections 12, 14, 15, 16, 48, 49 & 50, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8540
Dishonest Conduct

(1) False Statements. A licensee or permittee may not:

(a) Make a false statement or representation to the Commission or law enforcement in order to induce or prevent action or investigation by the Commission or law enforcement. Violation of this subsection is a Category II violation.

(b) If the Commission finds that the false statement or representation was intentional, the Commission may charge the violation as a Category I violation and could result in license or permit revocation.

(2) Marijuana Item Misrepresentations.

(a) A licensee or permittee may not misrepresent any marijuana item to a consumer, licensee, or the public, including:

(A) Misrepresenting the contents of a marijuana item;

(B) Misrepresenting the testing results of a marijuana item;

(C) Misrepresenting the potency of a marijuana item; or

(D) Making representations or claims that the marijuana item has curative or therapeutic effects.

(b) A licensee may not treat or otherwise adulterate usable marijuana with any chemical, biologically active drug, plant, substance, including nicotine, or other compound that has the effect or intent of altering the usable marijuana's color, appearance, weight or smell in violation of OAR 845-025-1300.

(c) A knowing or intentional violation of this section is a Category I violation and could result in license or permit revocation.

(d) Violation of this section in any manner other than knowing or intentional is a Category II violation.

(3) Supply of Adulterated Marijuana Items.

(a) A licensee may not supply adulterated marijuana items.

(b) Violation of this section is a Category I violation and could result in license revocation.

(4) Evidence. A licensee or permittee may not:

(a) Intentionally destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or ask or encourage another person to do so. Violation of this subsection is a Category I violation and could result in license cancellation.

(b) Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or ask or encourage another person to do so, in any manner other than intentional. Violation of this subsection is a Category II violation.

(c) Refuse to give, or fail to promptly give, a Commission regulatory specialist or law enforcement officer evidence when lawfully requested to do so. Violation of this subsection is a Category II violation.

Stat. Auth.: Sections 2, 12, 14, 15 & 16, Ch 614, OL 2015
Stats. Implemented: Sec 51, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8560
Inspections

(1) The Commission may conduct:

(a) A complaint inspection at any time following the receipt of a complaint that alleges a licensee or permittee is in violation of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, chapter 699, Oregon Laws 2015, or these rules;

(b) An inspection at any time if it believes, for any reason, that a licensee or permittee is in violation of chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; chapter 699, Oregon Laws 2015; or these rules; or

(c) Compliance transactions in order to determine whether a licensee or permittee is complying with chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; chapter 699, Oregon Laws 2015; or these rules.

(2) A licensee, licensee representative, or permittee must cooperate with the Commission during an inspection.

(3) If licensee, licensee representative or permittee fails to permit the Commission to conduct an inspection the Commission may seek an investigative subpoena to inspect the premises and gather books, payrolls, accounts, papers, documents or records.

Stat. Auth.: Sections 2, 12, 14, 15 & 16, Ch 614, OL 2015
Stats. Implemented: Sec 30 & 108, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8580
Suspended Licenses: Posting of Suspension Notice Sign, Activities Allowed During Suspension

(1) Before 7:00 a.m. on the date a license suspension goes into effect, and until the suspension is completed, Commission staff must ensure that a suspension notice sign is posted on each outside entrance or door to the licensed premises.

(2) The suspension notice sign must be posted in a way that allows any person entering the premises to read it. Licensees must use the suspension notice sign provided by the Commission. The sign will state that the license has been suspended by order of the Commission due to violations of the recreational marijuana laws (statutes or administrative rule) of Oregon. If there are multiple licenses at the location, the sign will specify which license privileges have been suspended.

(3) During the period of license suspension, the licensee is responsible for ensuring:

(a) Compliance with all applicable laws and rules; and

(b) That the suspension notice sign is not removed, altered, or covered.

(4) A licensee or licensee representative may not allow the sale, delivery to or from, or receipt of marijuana items at the licensed premises during the period of time that the license is under suspension. During a period of time that the license is under suspension, a recreational marijuana licensee may operate the business provided there is no sale, delivery to or from, or receipt of a marijuana item.

(5) Sanction:

(a) A violation of section (4) of this rule is a Category I violation.

(b) A violation of sections (2) or (3)(b) of this rule is a Category IV violation.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Stats. Implemented: Sec 29 & 108, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

845-025-8590
Suspension, Cancellation, Civil Penalties, Sanction Schedule

(1) The Commission may suspend or cancel:

(a) A license under section 9, chapter 614, Oregon Laws, 2015.

(b) A marijuana handlers permit under section 20, chapter 614, Oregon Laws, 2015.

(c) A research certificate under section 113, chapter 614, Oregon Laws, 2015.

(2) The Commission may impose a civil penalty not to exceed $5,000 under section 29, chapter 614, Oregon Laws 2015. Civil penalties will be calculated by multiplying:

(a) The number of days in a suspension, if suspension could be or is being imposed, by $165 for licensees or certificate holders; or

(b) The number of days in a suspension, if suspension could be or is being imposed, by $25 for permittees.

(3) Violation Categories:

(a) The Commission has the following violation categories:

(A) Category I — Violations that make licensee ineligible for a license;

(B) Category II — Violations that create a present threat to public health or safety;

(C) Category III — Violations that create a potential threat to public health or safety;

(D) Category IV — Violations that create a climate conducive to abuses associated with the sale or manufacture of marijuana items;

(E) Category V — Violations inconsistent with the orderly regulation of the sale or manufacture of marijuana items.

(b) A proposed sanction schedule for the first and subsequent violations within a two-year period within each violation category is listed in Exhibit 1, incorporated by reference.

(c) If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction from the proposed sanctions listed in Exhibit 1. Mitigating and aggravating circumstances include but are not limited to:

(A) Good faith efforts by a licensee, permittee or certificate holder to prevent a violation;

(B) Extraordinary cooperation from the licensee, permittee or certificate holder during the violation investigation that shows the licensee, permittee, or certificate holder accepts responsibility;

(C) A prior warning about compliance problems;

(D) Repeated failure to comply with laws;

(E) Efforts to conceal a violation;

(F) The violation involved more than one customer or employee;

(G) The violation involved an individual under the age of 18; or

(H) The violation resulted in injury or death.

(d) The Commission may always increase or decrease a sanction to prevent inequity or to take account of particular circumstances in the case.

(6) The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a licensee, permittee, or certificate holder who has committed one Category III violation and one Category IV violation within the past two years commits another Category III violation, the Commission assesses the sanction at the second level for the pending Class III violation. Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to control the premises so as to warrant cancellation of the license, permit or certificate.

(7) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by changing the corporate structure for example, by adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

Stat. Auth.: Sec 2, Ch 614, OL 2015
Stats. Implemented: Stats. Implemented: Sec 9, 29,93 & 108, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16

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Oregon Medical Board
Chapter 847

Rule Caption: Licensure for Distinguished Professors
Adm. Order No.: OMB 12-2015
Filed with Sec. of State: 12-4-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 847-020-0135
Subject: The new rule creates a new Distinguished Professor license, which may be issued to a physician who does not meet the qualifications for a full unlimited license but who is recognized as highly distinguished in his or her field of medicine and has received a full-time professor appointment at a school of medicine in Oregon. The applicant must also be licensed in another state or country and meet a set of additional criteria to demonstrate experience and achievement in his or her field of medicine.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-020-0135
Licensure for Distinguished Professors

(1) A physician who does not qualify for a medical license under the provisions of this chapter and who is offered by the dean of an approved medical school in this state a full-time professor of medicine position may apply for a license to practice medicine as a Distinguished Professor.

(2) A Distinguished Professor licensee may practice medicine only in conjunction with and pursuant to a full-time appointment as a professor of medicine. The license must be renewed annually. The license automatically expires if the full-time professor appointment ends or if the license is not renewed.

(3) To qualify for a license to practice medicine as a Distinguished Professor, an applicant must:

(a) Hold a degree of Doctor of Medicine, Doctor of Osteopathic Medicine, or the equivalent from an approved school of medicine as described in OAR 847-020-0120 or an international school of medicine as described in OAR 847-020-0130;

(b) Be appointed as a full-time professor at the Oregon Health and Science University or the Western University of Health Sciences College of Osteopathic Medicine of the Pacific-Northwest;

(c) Be licensed to practice medicine in another state or country;

(d) Be in good standing, with no restrictions or limitations upon, actions taken against, or investigation or disciplinary action pending against his or her license in any jurisdiction where the applicant is or has been licensed;

(e) Maintain active membership in at least two medical specialty societies that restrict membership based on academic or specialty area; and

(f) Have published two or more medical papers in peer-reviewed journals.

(4) An applicant for a license to practice medicine as a Distinguished Professor must submit documentation as required by OAR 847-020-0150.

(5) In addition to the requirements in OAR 847-020-0160, an applicant for a license to practice medicine as a Distinguished Professor must ensure that the following documents are sent directly to the Board:

(a) Certification of active membership and documentation of the qualifications for membership sent directly from at least two medical specialty societies; and

(b) Letters attesting to the applicant's distinguished status sent directly from:

(A) The dean of the school of medicine where the applicant has been appointed a full-time professor of medicine;

(B) The department chairpersons at the school of medicine who are directly involved in the applicant's faculty assignments; and

(C) At least five of the applicant's academic colleagues who work outside of this state and who are nationally or internationally recognized experts in the specialty area in which the applicant practices or are current or former deans of schools of medicine.

(6) A physician applying for a license to practice medicine as a Distinguished Professor who has not completed postgraduate training within the past 10 years or been certified or recertified by a specialty board within the past 10 years may be required to demonstrate clinical competency by:

(a) Completing at least 50 hours of Board-approved continuing medical education each year for the past three years; or

(b) Demonstrating ongoing participation in maintenance of certification with a specialty board as defined in 847-020-0100.

(7) The Board must ensure that at least two new licenses to practice medicine as a Distinguished Professor are available each year. However, the Board may not issue more than eight new licenses to practice medicine as a Distinguished Professor in a four-year period.

Stat. Auth.: ORS 677.265, SB 684 (2015)
Stats. Implemented: ORS 677.100, 677.132, 677.265
Hist.: OMB 12-2015, f. 12-4-15, cert. ef. 1-1-16

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Oregon Military Department, Office of Emergency Management
Chapter 104

Rule Caption: Implements HB 2426 (2015) for continued operation of the 9-1-1 emergency communications system.
Adm. Order No.: OEM 3-2015
Filed with Sec. of State: 12-1-2015
Certified to be Effective: 12-1-15
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Rules Amended: 104-080-0000
Rules Repealed: 104-080-0010, 104-080-0020, 104-080-0021, 104-080-0022, 104-080-0023, 104-080-0024, 104-080-0025, 104-080-0026, 104-080-0027, 104-080-0028, 104-080-0030, 104-080-0040, 104-080-0050, 104-080-0060, 104-080-0070
Subject: ORS chapter 403 provides for 9-1-1 services and the operation of the emergency communications system in the State of Oregon. House Bill (HB) 2426 (2015), amended ORS chapter 403 to authorize the Office of Emergency Management (OEM) to adopt standards for the emergency communications system by rule. Previously the statutes set forth the standards for the basic 9-1-1 and enhanced 9-1-1 system. OEM proposes to amend, or repeal and adopt, its rules to set out standards for the emergency communications system. OEM is also proposing to amend its rules to reflect the change in statute now authorizing OEM to pay for certain emergency communications services on behalf of a 9-1-1 jurisdiction in addition to reimbursement to a 9-1-1 jurisdiction.

OEM proposed rules also reorganize OAR 104, division 080.

OEM is amending OAR 104-080-0000 to clarify the purpose statement with the statutory requirements for support of statewide 9-1-1 service.

OEM is proposing to repeal 104-080-0010, 104-080-0020, 104-080-0021, 104-080-0022, 104-080-0023, 104-080-0024, 104-080-0025, 104-080-0026, 104-080-0027, 104-080-0028, 104-080-0030, 104-080-0040, 104-080-0050, 104-080-0060, 104-080-0070 due to the number of proposed amendments to those rules. OEM is proposing to adopt new rules with new numbers to address the subject matter of those rules.

OEM proposes to repeal and adopt new rules for the emergency communications systems to reorganize OAR 104, division 080, and clarify the substantive content. Specifically, OEM proposed changes relate to the following:

- OEM's requirements for collecting and maintaining contact information for 9-1-1 jurisdictions and public safety answering points (PSAPs).
- Requirements for a 9-1-1 jurisdiction's operation of a primary PSAP.
- Procedures for obtaining Automatic Number Identification (ANI) and Automatic Location Identification (ALI) information and performing reverse lookups.
- Use of non-published ANI and ALI information.
- Requirements for providers.
- Requirements for a 9-1-1 jurisdiction plan, including disaster plan, and the submission and review processes.
- Standards for the emergency communications system.
- Requirements for provision of services for the deaf or hard of hearing and speech impaired communities including Telephone Typewriter (TTY) services and text-to-9-1-1 services.
- Database requirements.
- Customer premises equipment.
- Funding the emergency communications system, including authorized expenditures from the Emergency Communications Account and the 9-1-1 Subaccount.
- Variance from the OAR 104, division 080, rules.

These proposed new rules would allow for a primary PSAP to provide text-to-9-1-1. All primary PSAPs must have a TTY in order to communicate with individuals with hearing or speech impairments. However, other devices for receiving these emergency calls are now available. Text-to-9-1-1 is defined as a way to communicate with individuals with hearing and speech impairments and is clarified within these proposed rules.

These proposed new rules would also define the use of Geographic Information Systems (GIS), along with the ALI database and the Master Street Address Guide (MSAG) database, in the primary PSAP mapping platform to assist with identifying the location of the emergency caller.

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104-080-0000
Purpose

The purpose of the State of Oregon's 9-1-1 program in establishing the emergency communications system is:

(1) To provide the continued operation of 9-1-1 and emergency communications services statewide.

(a) To provide consistent statewide access to police, fire, or emergency medical service through the emergency communications system when an emergency call is made to 9-1-1.

(b) To support 9-1-1 jurisdictions by continuing to pursue technologies and solutions that improve levels of service and promotes efficiencies in the statewide emergency communications system.

(2) To ensure reliable statewide operation and maintenance of the emergency communications system by providing a public safety answering point with:

(a) Access to the emergency communications system and network for use by the public safety answering point;

(b) Customer premises equipment with comparable functionality; and

(c) A mapping platform to assist with locating an emergency caller.

(3) To distribute and monitor the expenditure of 9-1-1 tax funds in all accounts including the tax funds distributed to 9-1-1 jurisdictions.

(4) To monitor, review and assess the efficiency of emergency communication services throughout the State of Oregon.

(5) To implement the policies and requirements of ORS 403.100 to 403.165 and ORS 403.235 to 403.250.

Stat. Auth.: ORS 403.120(1)(a)
Stats. Implemented: ORS 403.105 - 403.165
Hist.: EMD 2-1992, f. & cert. ef. 4-17-92; EMD 3-1992(Temp), f. & cert. ef. 7-15-92; EMD 3-1993(Temp), f. & cert. ef. 1-15-93; EMD 1-1997, f. & cert. ef. 8-15-97; OEM 1-2003, f. & cert. ef. 1-15-03; OEM 2-2010, f. & cert. ef. 2-5-10; OEM 1-2015(Temp), f. & cert. ef. 6-5-15 thru 12-1-15; OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0100
Definitions

The definitions in ORS 403.105 and the following definitions apply to OAR chapter 104, division 80:

(1) "Automatic Location Identification" (ALI) has the meaning set forth in ORS 403.105.

(2) "Automatic Number Identification" (ANI) has the meaning set forth in ORS 403.105.

(3) "Computer Aided Dispatch" (CAD) means a computer based system that aids PSAP telecommunicators by automating selected dispatching and record keeping activities.

(4) "Customer premises equipment" (CPE) means hardware and software required to process the data traveling on the network to allow the display of ANI and ALI information while enabling contact with the caller in a synchronous manner.

(5) "Database Management System" (DBMS) means the combination of manual procedures and computer programs used to create, store, manipulate and update data.

(6) "Emergency Communications System Interoperability" means the capability for two or more PSAPs or the Office to share resources received by a provider or when a PSAP or the Office obtains services from two or more providers.

(7) "Emergency Service Number" (ESN) means a 3 to 5 digit number that represents one or more ESZs.

(8) "Emergency Service Zone" (ESZ) means a defined geographical territory consisting of a specific combination of law enforcement, fire and emergency medical services coverage areas represented by an ESN.

(9) "Enhanced 9-1-1 telephone service" (E9-1-1) has the meaning set forth in ORS 403.105.

(10) "Geographic Information System" (GIS) means a combination of data, hardware, software, personnel, and procedures used for the development, maintenance, manipulation, and display of 9-1-1 mapping data at the PSAP.

(11) "Master Street Address Guide" (MSAG) means a database of street names containing address ranges with their associated communities that denotes emergency service numbers for the emergency communications system.

(12) "Network" includes:

(a) A system of interconnected equipment used to transmit or receive information;

(b) A series of connecting points that may be joined to create communications pathways intended to allow access into the emergency communications system;

(c) Connecting points that include all Oregon PSAPs, providers, facilities and services required to complete the emergency call and deliver data between points on the network; and

(d) Provider-based connections terminating on CPE within each primary PSAP.

(13) "Network Exchange Services" includes:

(a) Intrastate communications services required to deliver E9-1-1; and

(b) Any communications service in which the information transmitted originates and terminates within the boundaries of the State of Oregon.

(14) "Office" means the Office of Emergency Management.

(15) "P.01 Grade of Service" means emergency communications service in which no more than one call in 100 attempts receives a busy signal on the first attempt during the average busiest hour.

(16) "Position Location" means a point on the surface of the Earth described as "x, y" coordinates, and may also include a "z" coordinate, when available, that describes elevation in feet from Mean Sea Level.

(17) "Primary public safety answering point" (primary PSAP) has the meaning set forth in ORS 403.105.

(18) "Provisioning" means the process of providing or obtaining needed equipment or services.

(19) "Secondary public safety answering point" (secondary PSAP) has the meaning set forth in ORS 403.105.

(20) "Selective Routing" means the process of routing an emergency call to the appropriate primary PSAP based on the caller's number information (ANI), but may also include other factors, such as the caller's location information (ALI), time of day or call class of service.

(21) "Telecommunicator" means a person employed by a 9-1-1 jurisdiction whose primary duties are receiving, processing and transmitting public safety information received during an emergency call delivered through the emergency communications system.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0110
Requirements of the Office

(1) Upon written notice to the 9-1-1 jurisdiction and the primary PSAP, the Office may audit the 9-1-1 jurisdiction or the primary PSAP for compliance with the 9-1-1 jurisdiction plan, ORS 403.100 to 403.165 and ORS 403.235 to 403.250, and OAR chapter 104, division 080.

(2) The Office shall collect and maintain a list of contact information for each primary and secondary PSAP and make the list available on the Office's website, including:

(a) PSAP name;

(b) Physical or mailing address;

(c) 10-digit 24-hour emergency number;

(d) 10-digit 24-hour non-emergency number; and

(e) Name(s) and title of primary point of contact.

(3) The Office shall collect and maintain an itemized list of the CPE necessary to receive emergency calls through the 9-1-1 emergency communications system, including the equipment lifespan described by the manufacturer, and the equipment's update and maintenance schedule.

(4) The Office shall approve or reject all ESNs requested by a primary PSAP for use in the 9-1-1 GIS, MSAG and ALI databases. The Office will make a reasonable attempt to prevent duplication of these ESNs, validate that the number aligns with the designated block of ESN numbers, and ensure compatibility with the Oregon ALI Format. The Office may, as required, assign or direct reassignment of ESNs to prevent unnecessary duplication, confusion or misrouting of emergency calls.

(5) The Office shall coordinate and oversee the implementation of 9-1-1 GIS in Oregon, which may include the following activities:

(a) Identify and adopt technical standards and requirements;

(b) Identify and establish procedures for 9-1-1 GIS data maintenance;

(c) Identify and establish development of critical GIS data layers for use in current and future mapping systems and 9-1-1 functional elements; and

(d) Define and establish a standard GIS data model to be used for the development, transfer, and storage of critical GIS data layers.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0120
Requirements of a 9-1-1 jurisdiction in operation of a primary PSAP

(1) All emergency calls received in the State of Oregon must be answered by a telecommunicator.

(2) A telecommunicator at a primary PSAP must attempt to avoid multiple call transfers and must transfer an emergency call only when necessary.

(3) A telecommunicator at a primary PSAP must attempt to obtain the following information from the caller and not rely solely on the automatic display of ANI and ALI information, unless the information is not available at the time of the call:

(a) Location of caller;

(b) Location of the emergency;

(c) Nature of emergency; and

(d) The call back number of the device from which the caller is placing the call.

(4) An automated device may not access the emergency communications system if it does not provide for two-way communication. A primary PSAP is not required to receive, respond to, or process a call by any such automated device.

(5) Except as described in this rule, a primary PSAP may not use a device or program its CPE to offer a choice of options to a caller placing an emergency call without providing assistance from a telecommunicator, including the use of "Automatic Call Attendant" or "Voice Mail." This rule does not apply to calls received on 10-digit lines.

(6) A primary PSAP may:

(a) Use a queue device with a pre-recorded message informing the caller that all telecommunicators are currently busy and to remain on the line. These "queue" devices must be capable of sequencing calls in a manner that forces the oldest call in the queue to be answered first by the next available telecommunicator.

(b) Use an unintended wireless call screening system with prior written approval from the Office.

(7) A 9-1-1 jurisdiction may request an additional workstation for its primary PSAP by submitting a written request to OEM. A request must demonstrate a need for the increase in workstations based on work load, work flow or other efficiency gains that benefit the citizens of, and visitors to the 9-1-1 jurisdiction. The written request must include the following:

(a) The specific equipment, hardware and software, required for the functionality of the requested workstation;

(b) A description of how the request will meet the specific needs of the primary PSAP;

(c) A description of the expected outcomes;

(d) A staffing plan describing how the additional workstation will be used by the primary PSAP;

(e) The signature of an authorized representative of the 9-1-1 jurisdiction indicating approval of the request; and

(f) Any additional supporting documentation that describes the ongoing change in circumstances at the PSAP level requiring the additional workstation. The change in circumstances may not be based on a single occurrence, but may include circumstances such as an increase in work load, increase in service population, or an opportunity to leverage equipment or processes towards an efficiency gain.

(8) A 9-1-1 jurisdiction may request reimbursement for MSAG coordination and update services and GIS data layer development and maintenance. A 9-1-1 jurisdiction must meet the following requirements to receive reimbursement:

(a) A 9-1-1 jurisdiction must have a current agreement with a GIS or MSAG service provider that has been approved by the Office. The agreement must address the payment or reimbursement for GIS or MSAG services.

(b) Each GIS or MSAG provider seeking payment or reimbursement must provide documentation of its billing rates.

(c) Each 9-1-1 jurisdiction must complete signature cards for at least two individuals who are authorized to request and approve a request for reimbursement on behalf of the 9-1-1 jurisdiction.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0125
Obtaining ANI and ALI Information without an Emergency Call and performing a reverse lookup

(1) Queries of a provider's ANI and ALI database by a primary PSAP, in the absence of an emergency call, are limited to situations in which such action is necessary to locate an individual who may be at risk of death or

immediate serious physical harm, poll records to ensure accuracy, or verify MSAG, ANI and ALI data. Queries may include automated or manual reverse lookup, ANI and ALI dip, and the pinging of wireless devices.

(2) A database provider must provide access to ANI or ALI data upon request of a primary PSAP. The database provider must make ANI or ALI data available in a timely manner to meet the requirements of OAR 104, Division 080, and any applicable local or federal requirements.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0135
Use of Non-Published ANI and ALI Information

(1) When the automatic display of ANI and ALI is identified as non-published (NP) information that is not to be made publicly available in phone listings, a primary PSAP must obtain permission from the caller before such ANI or ALI information may be disclosed to the public. A caller grants permission only if the caller identifies him or herself as the person listed in the NP data source and indicates that the NP ANI and ALI information may be disclosed to the public. Any information obtained from a caller in an emergency call may be used for emergency dispatch purposes without permission or restriction. The provider of ANI and ALI shall provide a NP designation in its data sources and shall notify end users of privacy limitations associated with calls placed to the emergency communications system.

(2) All records and reports relating to an emergency call must be reviewed for confidential information prior to public disclosure. Upon determination that confidential information exists, disclosure may take place only after all data received from the NP data source is redacted in compliance with ORS 403.135(2).

(3) Upon receipt of ANI and ALI with a NP designation, the telecommunicator shall indicate that the information is from a NP data source when transferring the ANI and ALI to the dispatcher or a public or private safety agency.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0140
Requirements of providers

(1) A provider must first route emergency calls to the primary PSAP serving the 9-1-1 service area where the call originates.

(2) A provider must provide to the Office documentation, including a description of the process, demonstrating that the P.01 grade of service is met for each primary PSAP.

(3) A provider must provide annually a list of prices for the network exchange services necessary to provide the minimum P.01 grade of service. The list of prices must have been approved within a tariff schedule by the Oregon Public Utilities Commission.

(4) A provider shall develop and maintain a plan to monitor and maintain the quality of its services. On an annual basis or as requested by the Office or 9-1 1 jurisdiction, a provider shall provide documentation to the Office or 9-1-1 jurisdiction that its network is designed to a P.01 grade of service.

(5) A provider providing ANI and ALI must present uniform data streams identified in the Oregon ANI and ALI Format as required for PSAP operations. Such data streams must be transmitted in a manner permitting a PSAP's station terminal equipment to display ANI and ALI information in a predetermined format. Unless otherwise approved by the Office, a provider of ANI and ALI must use the Oregon ANI and ALI Format, hereby incorporated by reference. A provider of ANI and ALI shall search other vendors' ANI and ALI databases to respond to an ANI or ALI request from a PSAP when the requested data does not reside on the providers ANI and ALI database system.

(6) A provider providing ANI or ALI shall provide a complete copy of the ANI and ALI database to the PSAP, or its authorized MSAG Coordinator, on an annual basis or as agreed upon within the contract for service. The copy of the ANI and ALI shall be distributed by the provider of the ANI and ALI to the MSAG coordinator for the PSAP and made available to the Office for the purpose of performing data validation processes.

(7) A provider shall provide an updated MSAG to the designated MSAG coordinator for each PSAP either on a quarterly basis or as agreed upon within the contract for service.

(a) A provider shall provide access to the MSAG to the MSAG Coordinator of each primary PSAP, with full editing permissions to the MSAG database for the designated 9-1-1 service area.

(b) A provider shall provide access to the MSAG to the Office, with full viewing rights to the MSAG database.

[Publications: Publications referred to or incorporated by reference in this rule are available from the Office and are also available at http://www.oregon.gov/OMD/OEM/or911/docs/2004_02_19_oregonali_aliaqor1.pdf.]
Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0150
9-1-1 Jurisdiction Plans

(1) 9-1-1 Jurisdiction Plan. A 9-1-1 jurisdiction shall prepare and maintain a 9-1-1 Jurisdiction Plan.

(2) Requirements of a 9-1-1 Jurisdiction Plan. The 9-1-1 Jurisdiction plan must meet the requirements of ORS 403.130 and include:

(a) Name and contact information for the 9-1-1 Jurisdiction, including the physical and mailing addresses;

(b) A description of the 9-1-1 service area served by the 9-1-1 jurisdiction, including a map of the geographical area served and the current total population;

(c) Identification and description of the 9-1-1 jurisdiction's governing authority;

(d) Name and location of the primary PSAP serving the 9-1-1 jurisdiction, including the physical and mailing addresses, 10-digit emergency phone number, 10-digit non-emergency phone number, and the name and contact information for the PSAP's director or administrator;

(e) Name, address and contact information for all public and private safety agencies served by the 9-1-1 jurisdiction and primary PSAP as required by ORS 403.115; and

(f) Number of workstations funded from the 9-1-1 Subaccount;

(g) A disaster recovery plan meeting the requirements described in ORS 403.150.

(3) Submittal and Review of 9-1-1 Jurisdiction Plans. A 9-1-1 Jurisdiction must submit completed 9-1-1 jurisdiction plan to:

(a) The Office;

(b) All public and private safety agencies within the 9-1-1 service area; and

(c) Any other public or private entities within the 9-1-1 service area that may be affected by the 9-1-1 jurisdiction plan, including all secondary responders.

(d) By April 1, 2016, a 9-1-1 jurisdiction must complete and submit to the Office its 9-1-1 jurisdiction plan, in writing, signed by the primary point of contact for the 9-1-1 jurisdiction.

(e) The Office will review the 9-1-1 jurisdiction plan for completeness and compliance with these rules. If the 9-1-1 jurisdiction plan is approved, the Office will notify the 9-1-1 jurisdiction that the plan is approved. The Office will keep the 9-1-1 jurisdiction plan on file and review it on an annual basis or as otherwise deemed necessary by the Office;

(f) If the Office rejects the initial 9-1-1 jurisdiction plan, the Office will send the 9-1-1 jurisdiction written notice of the rejection, describing the deficiencies in the plan. The 9-1-1 jurisdiction has 90 days following issuance of the rejection to submit a revised 9-1-1 jurisdiction plan for review. The Office will review the revised 9-1-1 jurisdiction plan and if the revised 9-1-1 jurisdiction plan is unacceptable, the Office will work with the 9-1-1 jurisdiction to resolve any remaining deficiencies.

(4) Annual Review; Amendment of the 9-1-1 Jurisdiction Plan.

(a) Each 9-1-1 Jurisdiction shall review its 9-1-1 jurisdiction plan in January of each year and send the Office updates as necessary or a notice certifying that the plan has been reviewed for the year and no changes have been made.

(b) The 9-1-1 jurisdiction shall submit an amended plan to the Office 30 days prior to any consolidation, co-location, or physical move and within 30 days of any other change in the information included in the 9-1-1 jurisdiction plan.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0160
The Emergency Communications System

(1) The Office shall coordinate with all parties to ensure effective delivery of the emergency call using the emergency communications system, including providers, 9-1-1 Jurisdictions and PSAP staff.

(2) The delivery of an emergency call requires:

(a) A secure network for delivery of ALI;

(b) The secure delivery of ANI by the provider;

(c) CPE at each PSAP for emergency call processing and display;

(d) Mapping software and hardware showing the caller's location; and
(e) Equipment allowing direct communication with the caller.
Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0165
Requirements of the Emergency Communications System

The emergency communications system must include:

(1) Basic 9-1-1, including:

(a) A primary PSAP that is automatically accessible anywhere in the 9-1-1 jurisdiction service area by calling 9-1-1;

(b) Dispatch of public and private safety services in the 9-1-1 service area or relay or transfer of emergency calls to an appropriate public or private safety agency; and

(c) Two 9-1-1 circuits from each central office to each primary PSAP.

(2) Enhanced 9-1-1: In addition to the requirements for Basic 9-1-1 set forth in OAR 104-080-0165 (1), Enhanced 9-1-1 emergency communications system must provide at a minimum:

(a) A minimum of two workstations and staffing for at least one of the stations at all times;

(b) Automatic display of the incoming telephone number and address in the designated PSAP at the time of receiving an incoming emergency call;

(c) A network developed to transport address and telephone number information to the designated primary PSAP automatically when an emergency call is placed to 9-1-1; and

(d) Emergency telephone service that provides a P.01 grade of service or better. A primary PSAP may not have fewer than two 9-1-1 circuits.

(3) In addition to the requirements for Basic 9-1-1 and Enhanced 9-1-1, the emergency communications system must include:

(a) A PSAP shall have building security to restrict intentional disruption of operations. All emergency communications system equipment must be accessible only to authorized personnel.

(b) All emergency communications system components and CPE rooms at the PSAP must be protected and internally marked to prevent damage or tampering. For this section, "protected" includes maintaining the ambient room temperature in accordance with the CPE manufacturers' requirements.

(c) A 9-1-1 jurisdiction shall have its telecommunicators trained through the Basic Telecommunications Academy at the Department of Public Safety Standards and Training. A 9-1-1 jurisdiction may provide additional training to its telecommunicators but the 9-1-1 jurisdiction is not eligible for funding from the 9-1-1 Subaccount for such additional training.

(d) A PSAP shall have a battery powered Uninterruptible Power Supply (UPS) or holdover battery supply that must be capable of powering essential CPE at the primary PSAP for a period sufficiently long to enable the motor back-up power equipment recommended in OAR 104-080-0195 (q) to start and stabilize. No calls may be lost during the transition to the motor back-up power equipment.

(e) A PSAP must be equipped with a TTY to provide access to the emergency communications system. In addition to a TTY, a PSAP may provide access to the emergency communications through other devices capable of receiving an emergency call from individuals with hearing or speech impairments pursuant to OAR 104-080-0165 (4) below. Any other device used by the PSAP must comply with Americans with Disabilities Act (ADA) TITLE II, 28 CFR, Part 35, Subpart E, Section 35.161, 35.162.

(f) Workstations. A PSAP telecommunicator workstation must be approved by the Office and, at a minimum, must be equipped with the following:

(A) Emergency call answering device;
(B) ANI display;
(C) ALI display;
(D) Mapping display; and
(E) CAD interface for ANI and ALI.

(g) Recommended Equipment. The Office recommends that each PSAP have additional equipment as set forth in OAR 104-080-0195.

(4) If a PSAP provides text-to-9-1-1 service in addition to TTY, text-to-9-1-1 service must be provided as follows:

(a) A 9-1-1 jurisdiction that provides text-to-9-1-1 service must be capable of receiving Short Message Service (SMS) emergency messages.

(b) When a 9-1-1 jurisdiction provides text-to-9-1-1 services:

(A) A Text Control Center (TCC) must provide ANI and ALI in a uniform data stream along with the text-to-9-1-1 emergency call to the PSAP serving the 9-1-1 jurisdiction.

(B) The 9-1-1 jurisdiction shall ensure that each text-to-9-1-1 emergency call is handled according to the requirements set forth on ORS Chapter 403.

(C) When a PSAP receives a text-to-9-1-1 emergency call originating outside its jurisdictional boundaries, the telecommunicator shall attempt to determine the appropriate responding agency and complete the disposition of the emergency call.

(D) The 9-1-1 jurisdiction must complete testing of the text-to-9-1-1 service to ensure that equipment and services function properly.

Publications: Publications referenced in this rule are available from the Office.
Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0170
Databases

(1) When interoperability of the emergency communications system requires a provider to share its ANI and ALI information or any other database information with another provider, the provider shall do so, subject to an Office-approved implementation method.

(2) The selective routing database contained within each approved selective routing device must be maintained by the provider of the selective routing device in a manner that accurately reflects the most recent issuance or change of address, service or service account datum within 48 hours of the change.

(3) A provider is responsible for making subscriber information data available through an ANI and ALI database query to the requesting PSAP at the time the PSAP receives or handles an emergency call.

(4) Unless approved by the Office, a provider may not require a PSAP to query more than one ALI database for all emergency calls received by the PSAP.

(5) A provider of an ANI and ALI database is responsible for the provider-based MSAG process, including compilation and continued maintenance. A provider must incorporate into the MSAG changes submitted by a PSAP within 72 hours of the submission.

(6) A provider must make available ANI and ALI information to all PSAPs upon receipt of an emergency call and may not control or limit the PSAP's access.

(7) ALI information must include the following, if available:
(a) Area code and ANI information of caller;
(b) Date;
(c) Time in 24-hour format;
(d) Non-published designation when requested by the caller;
(e) Subscriber name;
(f) House number;
(g) House number suffix;
(h) Pilot or P-ANI number (if wireless);
(i) Prefix or post directional;
(j) Street name including type;
(k) Location information;
(l) Emergency service number;
(m) Community name;
(n) State;
(o) Office approved class of service;
(p) Caller's service provider;
(q) Latitude and longitude information of wireless caller location for Phase II wireless, or that of the cell tower for Phase I;
(r) Wireless confidence intervals and reliability factors;
(s) Caller's elevation, speed, and direction of travel if available;
(t) PSAP name; and
(u) Emergency service number English translation.

(8) Ownership of the MSAG is jointly held between the primary PSAP, the provider, and Office.

(9) The MSAG Coordinator in each 9-1-1 jurisdiction must coordinate with the ANI and ALI database provider to provide for MSAG updates into the ANI and ALI database. MSAG updates may be made as frequently as necessary for the 9-1-1 jurisdiction, but no less frequently than monthly.

(10) All 9-1-1 geographic information data shall be delivered to and shared with the Office. The Office may use, manipulate, process, and store all 9-1-1 GIS data according to industry best practices.

(11) All GIS data must be delivered to the Office in a standard data model, format, and method as set by the Office.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0180
Customer Premises Equipment

(1) Provisioning CPE is subject to approval by the Office and must meet emergency communications system interoperability requirements:

(a) A 9-1-1 jurisdiction may acquire CPE through the incumbent local exchange carrier or, in the alternative, the 9-1-1 jurisdiction may acquire CPE through any other provider providing the CPE meets the standards set by the Office.

(b) Maintenance must conform to the standards set by the Office and may be provided by a utility or other provider.

(2) CPE must include:

(a) Line hold and line indicators for emergency calls;

(b) Common control equipment and, when approved by the Office, Automatic Call Distribution equipment and call sequencers;

(c) Telephone sets used for primary interrogation;

(d) ANI and associated displays;

(e) ALI uniform data stream, data devices, data channels and displays used for primary interrogation;

(3) When a 9-1-1 jurisdiction elects to purchase CPE that is intended to be customer-owned and maintained premises equipment, the 9-1-1 jurisdiction must comply with the following:

(a) The equipment must be compatible with and functionally equivalent to the E9-1-1 network provided by the incumbent local exchange carrier.

(b) Mean time to repair the equipment must meet or exceed standards set by the Office.

(c) Equipment must provide noiseless supervised transfer and conferencing.

(4) A 9-1-1 jurisdiction is responsible for CPE maintenance and provisioning to meet standards set by the Office.

(5) A CPE installation must be capable of both analog and digital receipt of incoming emergency calls, including the ability to accept ANI and ALI on a single digital transport.

(6) The Office shall work with a 9-1-1 jurisdiction that has requested CPE replacement to determine the need for replacement, based on the equipment's anticipated lifespan. If the 9-1-1 jurisdiction is requesting reimbursement from the 9-1-1 Subaccount, the Office makes the final determination whether or not to replace CPE.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0190
Funding the Emergency Communications System

(1) The Office distributes Emergency Communications Account monies to 9-1-1 jurisdictions quarterly, pursuant to ORS 403.240.

(2) The Office shall maintain a current list of 9-1-1 jurisdictions eligible to receive and expend distributed 9-1-1 tax funds from the Emergency Communications Account.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0195
Emergency Communications Account expenditures

(1) Authorized expenditures from the Emergency Communications Account by the 9-1-1 jurisdiction for the operation of the primary PSAP are:

(a) Telecommunicators salaries;

(b) E9-1-1 telephone line charges;

(c) Components of the emergency communications system used in processing emergency calls;

(d) Transfer and relay telephone line charges to secondary PSAPs;

(e) Emergency Communications System maintenance costs;

(f) Receive only pagers if this is the primary means of notifying responders of an emergency call for service;

(g) Training expenses for telecommunicator training provided by the Department of Public Safety Standards and Training;

(h) Logging recording equipment used to record emergency calls, date and time of the call, and notice to responding agencies of emergency calls for service (recommended);

(i) Public education regarding 9-1-1 use and availability;

(j) Computer data links to responding agencies if this is the means used to notify responding agencies of emergency calls for service;

(k) Base rate charges for ten-digit emergency and non-emergency primary PSAP reporting numbers;

(l) Emergency Notification System;

(m) Radio base stations necessary to notify responders of an emergency call for service;

(n) Computer aided dispatch systems that handle emergency call processing and notification of responding agencies of emergency calls for service;

(o) Telephone and radio equipment;

(p) Administration and overhead (rent, utilities, and maintenance) of a multi-use primary PSAP that includes dispatching of public safety services;

(q) Backup power systems (generators) set for powering the primary PSAP during long term power outages (recommended);

(r) Alternate primary PSAP sites and circuit routing when used for disaster recovery;

(s) Planning and development costs for the 9-1-1 jurisdiction plan

(t) Transmit and receive pagers, portable or mobile radios and repeater stations when used as primary means of notice to responding agencies of an emergency call for service; and

(u) Any other item not covered by ORS 104-080-0195 that is necessary to provide emergency communication services in the primary PSAP service area, upon application by the 9-1-1 jurisdiction and approval by the Office.

(2) Except for the costs of transfer and relay telephone line charges to the secondary PSAP as set forth above, a 9-1-1 jurisdiction is not eligible to receive funding for the operation of a secondary PSAP from this account.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0200
Authorized expenditures from the 9-1-1 Subaccount

The Office shall use funds in the 9-1-1 Subaccount to reimburse or pay the costs of a 9-1-1 jurisdiction. Expenditures authorized to be paid or reimbursed by the Office are only those costs incurred for:

(1) The secure network and associated components that deliver an emergency call from the caller to the primary PSAP with corresponding ANI and ALI information;

(2) Workstation equipment:

(a) CPE for emergency call processing and display;

(b) An instant playback recorder to record each incoming emergency call, preferably of a digital voice storage type with no moving parts and capable of storing at least 10 minutes of emergency calls;

(c) Mapping software and hardware for displaying the caller's location; and

(d) Equipment allowing direct communication with the caller.

(3) Uninterruptible power supply systems for the components of an emergency communications system in the primary PSAP.

(4) Text-to-9-1-1 system upon prior approval by the Office.

(5) The Office will oversee reimbursement from the 9-1-1 Subaccount for work associated with GIS and MSAG maintenance.

(6) Subject to approval by the Office, reimbursement will be made available for MSAG coordination and update services, GIS data layer development and maintenance, and additional tasks associated with the support of GIS data needed for the mapping display in a PSAP.

(a) The Office is responsible for setting the funding levels and distribution model for GIS and MSAG reimbursement.

(b) The direct payment or reimbursement rate is determined by the Office and incorporates the hourly wage, direct and indirect benefits, overhead costs of employees, and, in the case of private vendors, a reasonable profit mark-up as agreed upon in a service contract.

(c) Any 9-1-1 jurisdiction or provider seeking reimbursement for MSAG or GIS work must first meet the following requirements:

(A) The 9-1-1 jurisdiction or provider must have a signed intergovernmental agreement or contract with the Office;

(B) The 9-1-1 jurisdiction or provider must submit the employee billing rate information to the Office; and

(C) The 9-1-1 jurisdiction or provider must provide the Office with authorized signature cards.

(d) A request for reimbursement must be made using process set by the Office and are subject to Office review for completeness, accuracy, and applicability.

(e) Failure to meet prerequisites or submit requests for direct payment or reimbursement in the manner required by the Office may result in delay or denial of payment.

(7) The following costs of providing emergency communications service are paid directly or reimbursed from the 9-1-1 Subaccount of the Emergency Communications Account, subject to available funds:

(a) Costs of the Network Exchange Services necessary to provide the minimum grade of service defined in ORS 403.115;

(b) Costs for CPE for a primary PSAP:

(A) Payment or reimbursement for CPE for a primary PSAP that is customer-owned and maintained is subject to the Office's review and approval;

(B) An Application Programming Interface to integrate ANI and ALI into a CAD system in use by a primary PSAP.

(C) On-going maintenance costs following the warranty period, if any;

(D) Payment of costs for on-going maintenance of CPE for the primary PSAP following the expiration of the equipment's warranty period must be made by submitting a copy of the maintenance contract with an itemized listing of hourly labor rates and equipment costs to the Office for approval; and

(E) The Office may make payment directly to the vendor upon verification that the charges are for the CPE for the primary PSAP and services originally contracted for and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.

(c) Costs of consulting services related to a regional or statewide emergency communications system pursuant to contracts approved and entered into by the Office. Consulting costs are paid by the Office directly to the consultant.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

104-080-0210
Variance

(1) A 9-1-1 jurisdiction may request a variance from these rules. Any variance from these rules, chapter 104, division 080, is subject to approval by the Office. Requests for a variance must identify from which division 080 rules, including rule section, the requester seeks a variance and include supporting documentation describing the equipment or services involved. The Office may require additional documentation or clarification at its discretion.

(2) The Office will review the request for a variance from these rules. The request for a variance must demonstrate how the equipment or services involved creates efficiency in business processes beyond the minimum service requirements for the 9-1-1 jurisdiction in the operation of the PSAP. The Office will notify the 9-1-1 jurisdiction in writing if the request for a variance is approved or rejected and describe the reason for the decision.

Stat. Auth.: ORS 403.120; 2015 HB 2426
Stats. Implemented: ORS 403; 2015 HB 2426
Hist.: OEM 3-2015, f. & cert. ef. 12-1-15

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Amend rules relating to the Optional Retirement Plan to reflect abolishment of Oregon University System.
Adm. Order No.: PERS 12-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15
Notice Publication Date: 10-1-2015
Rules Amended: 459-005-0001, 459-005-0310, 459-005-0350
Subject: Senate Bill 80 (Chapter 767, Oregon Laws 2015), became effective July 27, 2015. The bill requires amending the rules relating to the Optional Retirement Plan (ORP). Section 2 of SB 80 abolishes the Oregon University System as of July 1, 2015. Each of the seven public universities now has an independent governing board. The modifications to the rules reflect this change.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-005-0001
Definitions, Generally

The words and phrases used in OAR Chapter 459 have the same meaning given them in ORS chapters 237, 238, 238A, and 243 unless otherwise indicated. Specific and additional terms used in OAR Chapter 459 generally are defined as follows unless context requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515, which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515, which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Business day" means a day Monday through Friday when PERS is open for business.

(5) "Calendar month" means a full month beginning with the first calendar day of a month and ending on the last calendar day of that month.

(6) "Calendar year" means 12 consecutive calendar months beginning on January 1 and ending on December 31.

(7) "Casual worker" means an individual engaged for incidental, occasional, irregular, or unscheduled intervals or for a period of less than six consecutive calendar months.

(8) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(9) "Differential wage payment" means a payment made on or after January 1, 2009:

(a) By an employer to a member with respect to any period during which the member is performing service in the uniformed services, as defined in USERRA, while on active duty for a period of more than 30 consecutive days; and

(b) That represents all or a portion of the wages the member would have received from the employer if the member were performing service for the employer.

(10) "Effective date of withdrawal" means the later of:

(a) The first day of the calendar month in which PERS receives the last completed document required from a member who requested a withdrawal; or

(b) The first day of the second calendar month following the calendar month in which the member terminated employment with all participating employers and all employers in a controlled group with a participating employer.

(11) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0001.

(12) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(5).

(13) "Emergency worker" means an individual engaged in case of emergency, including fire, storm, earthquake, or flood.

(14) "Employee" has the same meaning as provided in ORS 238.005 and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor as determined in accordance with OAR 459-010-0032.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(6).

(15) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS Chapter 238.

(16) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee; and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(17) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides.

(18) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005 for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members who are not employed by a local government as defined in ORS 174.116;

(c) ORS 238.435(4) for all PERS Tier Two members who are employed by a local government as defined in ORS 174.116; or

(d) ORS 238.535(2) for judge members of PERS for service as a judge.

(19) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(20) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(21) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(22) "Judge member" has the same meaning as provided in ORS 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as provided in ORS 238.005.

(23) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS for their legislative service.

(24) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(25) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(26) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(27) "Public university" means a public university with a governing board as listed in ORS 352.002.

(28) "Qualifying position" has the same meaning as provided in ORS 238.005 and OAR 459-010-0003.

(29) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(30) "Salary" has the same meaning as provided in ORS 238.005.

(a) "Salary" includes a differential wage payment, as defined in this rule.

(b) For a Tier One member, a lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(c) For a Tier Two member, a lump sum payment for accrued vacation pay:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(31) "Seasonal worker" means an individual whose engagement is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(32) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(33) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(34) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(35) "USERRA" means the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301-4334, as in effect on the effective date of this rule.

(36) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer must report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(37) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(38) "Variable Annuity Account" means the account established in ORS 238.260(2).

(39) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed. The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(40) "Working day" means a day that the employer is open for business. Unless the employer communicates this information to PERS, PERS will presume an employer's "working day" is the same as a "business day," as defined in section (4) of this rule.

(41) "Year" means any period of 12 consecutive calendar months.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03; PERS 9-2004(Temp), f. 4-15-04 cert. ef. 5-21-04 thru 7-1-04; PERS 15-2004, f. & cert. ef. 6-15-04; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 4-2006, f. & cert. ef. 4-5-06; PERS 1-2009, f. & cert. ef. 2-12-09; PERS 3-2010, f. & cert. ef. 5-28-10; PERS 1-2012, f. & cert. ef. 2-1-12; PERS 13-2014, f. & cert. ef. 9-29-14; PERS 12-2015, f. & cert. ef. 11-20-15

459-005-0310

Date of Participation and Transfer of Employee Funds to the Optional Retirement Plan

(1) Definitions. For the purposes of this rule:

(a) "IAP account" means the member's employee, rollover, and employer accounts in the Individual Account Program, to the extent the member is vested in those accounts under ORS 238A.320.

(b) "OPSRP Pension account" means the member's transferable interest in the pension program under ORS 243.800(6)(d).

(c) "PERS member account" includes a "member account" as defined in ORS 238.005, an account established under ORS 238.440, and an account subject to ORS 238.095(4).

(2) The effective date of an election by an administrative or academic employee of a public university to participate in the Optional Retirement Plan (ORP) authorized under ORS 243.800 is the first day of the month following a period of six full calendar months of employment in an administrative or academic position.

(a) Unless otherwise agreed upon, notice of the effective date of the election will be provided to PERS by the public university within 30 days of the date of the election.

(b) If the employee is a member of PERS and elects to transfer funds from PERS to the Optional Retirement Plan pursuant to ORS 243.800(6), the public university will forward to PERS a copy of the ORP election form and a written transfer request from the employee at the time of the notification required in subsection (a) of this section.

(3) If an employee who is a member of PERS requests a transfer of funds pursuant to ORS 243.800(6):

(a) PERS must transfer the funds to the ORP within the 60-day period following the later of:

(A) The effective date of the employee's election to participate in the ORP; or

(B) The effective date of the transfer.

(b) The effective date of a transfer is the first of the month in which PERS completes reconciliation of the account to be transferred.

(c) PERS may not transfer funds to the ORP if the member is concurrently employed by a participating employer.

Stat. Auth: ORS 238A.450, 238.650
Stats. Implemented: ORS 243.800
Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005. f. & cert. ef. 1-31-05; PERS 10-2008, f. & cert. ef. 7-31-08; PERS 12-2015, f. & cert. ef. 11-20-15

459-005-0350
Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan

(1) For the purpose of this rule, concurrent employment means employment with two or more different employers participating in the Public Employees Retirement System (PERS) at the same time.

(2) If a person employed by a public university or by the Oregon Health and Science University is concurrently employed by another PERS or Oregon Public Service Retirement Plan (OPSRP) participating employer, eligibility for PERS or OPSRP membership shall be based on the following:

(a) If the person elects to participate in an Optional Retirement Plan offered by a public university under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers in a non-qualifying position(s) as defined in OAR chapter 459, the person:

(A) Shall not be eligible to establish membership in PERS or OPSRP as an employee of a public university or the Oregon Health and Science University, and

(B) Shall not be eligible to establish membership in PERS or OPSRP as an employee of the other concurrent PERS employer or employers.

(b) If the person elects to participate in an Optional Retirement Plan offered by a public university under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers is in a qualifying position(s) as defined in OAR chapter 459, the person:

(A) Shall not be eligible to establish membership in PERS or OPSRP as an employee of a public university or the Oregon Health and Science University; and

(B) Shall establish membership in OPSRP as an employee of the other concurrent PERS or OPSRP employer or employers.

(3) A member of PERS or OPSRP who is concurrently employed and establishes PERS or OPSRP membership under the provisions of paragraph (2)(b)(B) of this rule shall not be eligible to have the member's account transferred to an Optional or alternative retirement plan.

Stat. Auth: ORS 238.650
Stats. Implemented: ORS 238.015, 243.775 & 353.250(3)
Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005. f. & cert. ef. 1-31-05; PERS 12-2015, f. & cert. ef. 11-20-15

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Rule Caption: Amends "contribution start date" for new OPSRP and IAP members.
Adm. Order No.: PERS 13-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 459-080-0150
Subject: House Bill 3495 (Chapter 326, Oregon Laws 2015), amending ORS 238A.100 and 238A.330, becomes effective on January 1, 2016. This bill amends the "contribution start date" for new OPSRP and IAP members, such that employer contributions to fund the OPSRP pension and employee contributions to the IAP will be due for wages attributable to services performed by the employee during the first full pay period following the new member's six-month waiting time. The modifications to OAR 459-080-0150 implement this change for new members as of January 1, 2016.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-080-0150
Employee Contributions into the IAP Account

(1) Definitions. For the purposes of this rule:

(a) "Forfeiture account" means the account set up by PERS to administer overpayments of employee contributions.

(b) "Salary" has the same meaning provided in:

(A) ORS 238A.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(1); or

(B) ORS 238.005 for members who established membership in the Individual Account Program under the provisions of OAR 459-080-0010(2) or (3).

(2) Employee contributions under the OPSRP Individual Account Program ("IAP") are required from all eligible employees who qualify as members, as established under OAR 459-080-0010, who:

(a) Are working in a position designated as a "qualifying position" as defined in OAR 459-070 0001; or

(b) Perform a total of 600 or more hours in a calendar year with one or more participating employers in one or more classes the participating employer has designated as a participating class.

(3) Contributions for current members.

(a) For a member who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(b) Once a member meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted following the member's performance of 600 hours in the calendar year. Contributions are due for all pay periods assigned under OAR 459-070-0100 from the date of hire, or January 1 of the current year, whichever is later.

(4) Contributions for new employees who establish membership on or after January 1, 2016.

(a) For an eligible employee who meets the standard set forth in section (2)(a) of this rule, contributions of six percent of the member's salary are required to be transmitted for wages that are attributable to services performed by the employee during the first full pay period after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(b) Once an eligible employee meets the standard set forth in section (2)(b) of this rule, retroactive contributions of six percent of the member's salary are required to be transmitted for wages that are attributable to services performed by the employee during the first full pay period after the employee has established membership in the IAP as set forth under OAR 459-080-0010.

(5)(a) If contributions are submitted on behalf of an eligible employee who does not meet the standards set forth under section (2)(a) or (b) of this rule, the actual amount of those contributions will be returned after the end of the calendar year during which the pay period triggering those contributions ended.

(b) Any net earnings, losses, or administrative fees attributable to the returned contributions will be applied to the forfeiture account.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.330
Hist.: PERS 13-2004(Temp), f. 5-19-04, cert. ef. 6-21-04 thru 12-1-04; PERS 21-2004, f. & cert. ef. 9-22-04; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 4-2006, f. & cert. ef. 4-5-06; PERS 13-2015, f. 11-20-15, cert. ef. 1-1-16

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Rule Caption: Clarify application of partial year rules to Tier One and Tier Two academic employees.
Adm. Order No.: PERS 14-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15
Notice Publication Date: 10-1-2015
Rules Amended: 459-010-0012
Subject: PERS membership is based on employment in a "qualifying position," which generally requires 600 hours of employment in a year. ORS 238.074 provides specific conditions for determining whether an academic employee of a community college has worked 600 hours for all purposes under ORS Chapter 238 (.375 Full Time Equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis). The modifications to OAR 459-010-0012 clarify that, for academic employees of community colleges, a year shall be the 12-month period beginning July 1 and ending the following June 30, also known as an "academic year." Under PERS administration of the statute and rule, PERS uses an academic year rather than a calendar year as the standard of measure when determining qualifying position for academic employees of community colleges under OAR 459-010-0003, including during a partial year of employment.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-010-0012
Membership of Community College Employees

(1) For purposes of this rule, "academic year" means 12 consecutive calendar months beginning July 1 and ending the following June 30.

(2) For purposes of establishing membership in the system, effective July 1, 1988, an academic employee of a community college who is employed .375 full-time equivalent (FTE) on a 12-month basis or .50 FTE on a 9-month basis for the academic year is deemed to be employed 600 hours or more for purposes of determining a "qualifying position" under OAR 459-010-0003.

(3) For an academic employee of a community college, an FTE shall be measured against an academic year.

(4) For purposes of determining a "qualifying position" under OAR 459-010-0003 for an academic employee of a community college, the following definitions apply:

(a) "Partial year of hire" means a period in the academic year the employee begins employment after the first working day of the academic year, and continues employment through the last day of the academic year.

(b) "Partial year of separation" means a period in the academic year the employee is employed as of the beginning of the academic year, and separates from employment before the last working day of the academic year.

(c) "Short segment" means a period in the academic year during which the employee is hired after the first working day of the academic year, and separated from employment before the last working day of the same academic year.

(5) An academic employee of a community college is an instructor who teaches classes offered for college-approved credit or on a non-credit basis. Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of ORS 238.074; but are subject to the membership requirements under ORS 238.015.

(6) Each community college shall determine who is an academic employee in its employ under this rule. In making that determination, a community college shall consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(7) For persons concurrently employed in academic positions in two or more community colleges, the combined FTE shall be used in determining eligibility for membership. If the combined FTE is less than the criteria in section (2) of this rule, the combination of hours of service shall be considered in determining eligibility for membership pursuant to ORS 238.015.

(8) For academic employees concurrently employed in an academic and a non-academic position in one or more community colleges during an academic year, the combination of academic and non-academic duties shall be considered in determining eligibility for membership pursuant to ORS 238.015.

(9) Employment of retired members of the system in academic or non-academic positions is subject to the limitations in ORS 238.082.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.074
Hist.: PERS 3-1992, f. & cert. ef. 5-4-92; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 14-2015, f. & cert. ef. 11-20-15

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Rule Caption: Confirms that "sick time" under SB 454 does not constitute "sick leave" for PERS purposes.
Adm. Order No.: PERS 15-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15
Notice Publication Date: 10-1-2015
Rules Amended: 459-011-0500
Subject: Senate Bill 454 (Chapter 537, Oregon Laws 2015), which becomes effective on January 1, 2016, requires Oregon employers to provide a minimum rate of accrual of "sick time" to employees (up to 40 hours per year), whether paid or unpaid. The bill specifically amends sections within ORS Chapters 653 and 659 but makes no reference to ORS Chapter 238. ORS 238.350 allows employers to elect to participate in the unused sick leave program. Under that program, the rate at which the participating employer's covered group of employees may accrue sick leave for the purpose of the unused sick leave program is limited to the lowest rate in effect for the covered group. Staff received many questions from employers regarding the effect of SB 454 on the unused sick leave program. Staff's analysis of the bill concluded that it is highly unlikely that the employees who would benefit from SB 454 would be a part of a participating employer's group of employees covered by the unused sick leave program.

In addition, the language of SB 454 specifies that this law is not to be construed to "preempt, limit or otherwise impact any employer policy ... that provides for greater use of paid or unpaid sick time." This language indicates that the legislature specifically intended not to interfere with any similar, existing policy or program. Therefore, construing "sick time" in SB 454 as limiting the "sick leave" used for purposes of ORS 238.350 could have a limiting effect with respect to the number of hours accrued under the PERS program, contrary to the legislative intent.

For these reasons, PERS staff concluded that SB 454 does not impact the unused paid sick leave accrual available to Tier One and Tier Two members under ORS 238.350. The proposed amendments to OAR 459-011-0500 confirm this understanding by specifically stating that "sick time" (the term used by SB 454) does not constitute "sick leave" for PERS purposes.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-011-0500
Accumulated Unused Sick Leave

(1) Pursuant to ORS 238.350, a public employer may request that one or more groups of its employees be compensated for accumulated unused sick leave in the form of increased retirement benefits. The request, in writing and accompanied by certified copy of the public employer's governing body's official action, shall be effective not earlier than the first of the calendar month following date of the official action by the public employer.

(2) The Board shall determine the monetary value of 1/2 of the accumulated unused sick leave by the following procedure:

(a) For retiring employees not subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the monthly final average salary by 173.3 hours, multiplying this hourly rate times 1/2 of all accumulated unused sick leave hours reported, and adding this value to the final average salary calculation;

(b) For retiring employees subject to ORS 238.350(1)(b), the hourly rate used to establish the monetary value of the unused sick leave shall be determined by dividing the salary in the final contract of employment by the number of contract hours, multiplying this hourly rate times 1/2 of all unused sick leave hours reported for employment as described in ORS 238.350(1)(b) and adding this value to the final average salary calculation;

(c) The monetary value of the unused sick leave for retiring employees described in ORS 238.350(1)(b) who were employed under contracts for 12 months or earned 96 hours of sick leave in any of the three or less years used in determining final average salary will be valued as provided in subsection (a) of this section.

(3) Upon an employee's termination of employment from any PERS covered position, a public employer shall report the amount of accumulated unused sick leave on forms furnished by the Board. The public employer shall transmit the forms to the Board and provide a legible copy of the form or a facsimile thereof to each terminated employee immediately following final payment of salary. For PERS purposes, accumulated unused sick leave cannot exceed an accrual of more than eight hours per month worked less usage.

(4) To be eligible for the use of unused sick leave pursuant to ORS 238.350, a member must have been in the employ of a public employer and in a covered group on or after the effective date of an employer's election to extend the use of accumulated unused sick leave. A member retiring with an effective retirement date the same as the effective date of the election is deemed an employee on the effective date of the election if the member was employed during the month preceding the effective date of the employer's election.

(5) "Sick time" as provided in Chapter 537, Oregon Laws 2015 does not constitute "sick leave" for purposes of ORS 238.350.

Stat. Auth.: ORS 238.350 & 238.650
Stats. Implemented: ORS 238.350
Hist.: PER 3-1982(Temp), f. & ef. 12-13-82; PERS 1-1990(Temp), f. & cert. ef. 1-3-90; PERS 3-1990; f. & cert. ef. 2-12-90; PERS 1-1996, f. & cert. ef. 3-26-96, Renumbered from 459-010-0158; PERS 15-2015, f. & cert. ef. 11-20-15

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Rule Caption: Clarify tax remedy qualification and add information regarding the timing of EFT payments.

Adm. Order No.: PERS 16-2015
Filed with Sec. of State: 11-20-2015
Certified to be Effective: 11-20-15
Notice Publication Date: 10-1-2015
Rules Amended: 459-013-0060, 459-013-0310
Subject: ORS 238.372 prohibits PERS from paying "tax remedy" increases under SB 656 (Chapter 796, Oregon Laws 1991) or HB 3349 (Chapter 569, Oregon Laws 1995) if the benefit payments are not subject to Oregon personal income tax because the recipient is not an Oregon resident (as provided in ORS 316.127(9)). ORS 238.378 requires PERS and the Department of Revenue (DOR) to share information necessary to determine whether a member's benefit is subject to Oregon income tax. OAR 459-013-0310 explains how PERS uses the information provided by DOR, and residency status information provided by the recipient, to make residency status determinations.

One scenario the current administrative rule did not address is how to determine residency when a person files a partial year return (40P) for the tax year in which they submit a residency status form to PERS. The proposed rule modification in new paragraph (2)(a)(G) clarifies that, if a person filed a 40P according to DOR data query information and that person also submitted a residency status certification between January 1 and December 15 for the same calendar year, PERS will base residency on the recipient's form, since the form requires the recipient to certify under penalty of perjury that they are an Oregon resident for income tax purposes.

The modifications to OAR 459-013-0060 are housekeeping edits to conform the administrative rule to current business practice. In section (1), a new subsection was added to clarify that when the first day of the month falls on a weekend or a PERS holiday, retirement benefits processed through electronic funds transfer must be issued no later than the previous business day. A new section (3) was added stating the only exception applies for retirement benefits payable on January 1, which must always be paid in the month of January to avoid exceeding 12 monthly payments in a year.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-013-0060
Payment of Retirement Benefits

(1) Retirement benefits shall be payable each month as of the first day of the month following the effective date of retirement.

(a) When the first day of the month falls on a weekend or a PERS holiday, retirement benefits processed through electronic funds transfer shall be payable on the last PERS working day of the prior month.

(b) At the time of death, accrued benefits shall be payable as provided under OAR 459-014-0050(4).

(2) If a retiree elects to receive more than one installment payment as provided under ORS 238.305(4), the subsequent installment payments will be paid on the anniversary of the first day of the month that the initial installment payment was made.

(3) Notwithstanding section (1) of this rule, retirement benefits payable on January 1 shall always be paid in the month of January.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.300 & 238.305
Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0070; PERS 21-2005, f. & cert. ef. 11-1-05; PERS 6-2013, f. & cert. ef. 7-26-13; PERS 16-2015, f. & cert. ef. 11-20-15

459-013-0310
Payment of Increased Benefits under ORS 238.372 to 238.384

(1) For purposes of determinations under ORS 238.372 to 238.384:

(a) "Person" includes a member, an alternate payee, or a beneficiary.

(b) The increased benefit percentage to be added to a benefit paid to a beneficiary under ORS 238.390, 238.395, 238.400, 238.405, or under an optional form of retirement allowance under ORS 238.305 or 238.325 will be determined based on:

(A) The increased benefit percentage(s) for which the member is otherwise eligible under ORS 238.364, 238.366 and 238.368; and

(B) The residency of the beneficiary.

(2) PERS will make the following determinations on residency status for the purpose of determining increased benefit eligibility under ORS 238.372 to 238.384, based on the yearly Oregon personal income tax return information provided by the Department of Revenue.

(a) If the Department of Revenue notifies PERS that a person:

(A) Filed Oregon personal income tax as a resident, PERS will treat the person as a resident of Oregon.

(B) Filed Oregon personal income tax as a non-resident, PERS will treat the person as a non-resident of Oregon, except as provided in section (3) below.

(C) Did not file Oregon personal income tax, PERS will treat the person as a non-resident of Oregon, except as provided in section (3) below.

(D) Filed Oregon personal income tax as a partial-year resident and the prior year the person filed personal income tax as a resident, PERS will treat the person as a non-resident of Oregon, except as provided in section (3) below.

(E) Filed Oregon personal income tax as a partial-year resident and the prior year the person filed personal income tax as a non-resident, PERS will treat the person as a resident of Oregon.

(F) Filed Oregon personal income tax as a partial-year resident and the prior year the person did not file personal income tax, PERS will treat the person as a resident of Oregon.

(G) Filed Oregon personal income tax as a partial-year resident, and the person also submitted residency status information on a form provided by PERS received between January 1 and December 15 of the same calendar year, PERS will determine residency status based on the information provided on the form.

(b) If PERS cannot make a residency status determination based on information provided by the Department of Revenue or the person did not otherwise provide PERS with residency status information, PERS will treat the person as a non-resident of Oregon, except as provided in section (3) below.

(3) Residency status information submitted on a form provided by PERS and received between January 1 and December 15 of the current calendar year will, for purposes of determining increased benefit eligibility under ORS 238.372 to 238.384, supersede any Oregon personal income tax return information provided by the Department of Revenue pursuant to section (2) of this rule.

(4) Notwithstanding sections (2) and (3) of this rule, PERS will revoke increased benefit eligibility and seek repayment if it finds a person has submitted fraudulent residency status information under section (2) or (3) of this rule.

Stat. Auth.: ORS 238.650
Stats. Implemented: ORS 238.362, 238.364, 238.366, 238.368, 238.372 - 238.384
Hist.: PERS 6-2012, f. & cert. ef. 3-28-12; PERS 8-2013, f. & cert. ef. 9-27-13; PERS 16-2015, f. & cert. ef. 11-20-15

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Psychiatric Security Review Board
Chapter 859

Rule Caption: Amends previous rule: replaces "DSM IV-TR" with "DSM 5" for "mental disease or defect" diagnoses.
Adm. Order No.: PSRB 2-2015(Temp)
Filed with Sec. of State: 12-3-2015
Certified to be Effective: 12-3-15 thru 5-29-16
Notice Publication Date:
Rules Amended: 859-010-0005
Subject: OAR 859-010-0005 defines terms relevant and applicable to the Adult Psychiatric Security Review Board, including definitions of "mental disease or defect." Section 11 of the rule contains two references to a diagnostic tool—the Diagnostic and Statistical Manual of Mental Disorders IV, text revision (DSM IV-TR)—which the Oregon State Hospital ceased using in October 2015 in favor of the DSM 5. The broader treatment community is also either using the DSM 5 or in the process of transitioning to it. This rule modification will reflect the treatment community's update to the DSM 5 from the DSM IV-TR.
Rules Coordinator: Sid Moore—(503) 229-5596

859-010-0005
Definitions

(1) "Abscond" means a client on conditional release has departed without permission from the case manager or Board and the client's whereabouts are unknown.

(2) "Administrative Hearing" means a meeting of the Board where a quorum is present and a matter is reviewed (e.g. an outpatient supervisor request for modification to a client's conditional release plan). The Board shall consider information in the written record only and no oral testimony shall be received; If an objection is made to the administrative hearing, the

client or the state has the right to request a full hearing. On its own motion, the Board may require further information, testimony or the presence of the client and therefore, set the matter for a full hearing.

(3) "Administrative Meeting" is any meeting of the Board where a quorum is present for the purpose of considering matters relating to Board policy and administration. Minutes shall be taken during an administrative meeting and distributed to Board members and interested persons. Minutes shall be voted on and approved at subsequent administrative meetings;

(4) "Case Managers" are individuals designated in the conditional release order who are responsible for ensuring clients on conditional release receive the services and support they need and reporting to the PSRB a client's progress, activities and compliance with conditions of release or lack thereof.

(5) "Client" refers to any person under the jurisdiction of the Board and may be used interchangeably with person or patient or outpatient.

(6) "Conditional Release" is a grant by the court or the Board for a client, patient or defendant to reside outside a state hospital in the community under conditions mandated by the court or Board for monitoring and treatment of mental and physical health.

(7) "Danger"; "Substantial Danger"; or "Dangerousness" means a demonstration or previous demonstration of intentional, knowing, reckless or criminally negligent behavior which places others at risk of physical injury because of the person's mental disease or defect.

(8) "Escape" means:

(a) A client committed to a state hospital:

(A) Leaves the supervision of hospital staff without permission;

(B) Leaves the hospital without permission; or

(C) Fails to return at the appointed time to the hospital.

(b) Any client who leaves the State of Oregon without authorization of the Board;

(c) Any client who fails to return to the State of Oregon as directed by the Board.

(9) "Full Hearing" is a meeting of the Board where parties are present, testimony is taken and written findings on the issue(s) before the Board are made.

(10) "Insanity Defense", also known as "GEI", refers to a plea or finding of "Guilty Except for Insanity". Nomenclature. For offenses committed on or after January 1, 1984, a person is guilty except for insanity if, as a result of a mental disease or defect at the time of engaging in criminal conduct, the person lacked substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. The name of the insanity defense from January 1, 1978, through December 31, 1983, was "not responsible due to mental disease or defect." From January 1, 1971, through December 31, 1977, the insanity defense was known as "not guilty by reason of mental disease or defect." The name of the insanity defense prior to 1971 was "not guilty by reason of insanity."

(11) "Mental Disease or Defect"

(a) "Mental Defect" is defined as mental retardation, traumatic brain injury, brain damage or other biological dysfunction that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM-5) of the American Psychiatric Association.

(b) "Mental Disease" is defined as any diagnosis of a psychiatric condition which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the (c) Diagnostic and Statistical Manual of Mental Disorders (DSM-5) of the American Psychiatric Association. "Qualifying Mental Disease or Defect" or "Mental Disease or Defect" is defined as a mental disease or mental defect described in subsections (a) and (b), excluding those conditions described in subsection (d). A qualifying mental disease or defect includes:

(A) A mental disease or mental defect in a state of remission which could with reasonable medical probability occasionally become active; or

(B) A mental disease or mental defect that could become active as a result of a non-qualifying mental disease or defect.

(d) *"Non-Qualifying Mental Disease or Defect" is defined as a mental disease or defect where the condition is:

(A) A diagnosis solely constituting the ingestion of substances (e.g., chemicals or alcohol), including but not limited to alcohol-induced psychosis;

(B) An abnormality manifested solely by repeated criminal or otherwise antisocial conduct; or

(C) An abnormality constituting a personality disorder.

(12) "Party" means the State, which includes the Oregon Department of Justice or, if representing the State's interest, the District Attorney from the county where the GEI was adjudicated, client and client's counsel.

(13) "PSRB" or "Board" means the Oregon Psychiatric Security Review Board.

(14) "Quorum" means the presence of at least three members, in person or on the telephone, of the Adult Panel of the Board.

(15) "SHRP" means the State Hospital Review Panel. It is an entity established by OHA that supervises Tier Two GEI patients while they reside at the state hospital.

(16) "State Hospital" means any state institution or facility operated by the Oregon Health Authority.

(17) "Tier One or Tier Two Offender" means an individual adjudicated guilty except for insanity of a crime as defined in ORS 161.332.

(18) "Victim" means the person or persons who have suffered financial, social, psychological or physical harm as a result of a crime that brought the client under the Board's jurisdiction. In the case of a homicide or abuse of a corpse, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor. In no event shall the PSRB client be considered a victim of his/her own GEI case.

Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.295 - 161.400
Hist.: PSRB 1-1985, f. 1-3-85, ef. 1-15-85; PSRB 1-1987, f. & ef. 2-4-87; PSRB 1-1995, f. & cert. ef. 1-11-95; PSRB 2-2014, f. & cert. ef. 12-18-14; PSRB 2-2015(Temp), f. & cert. ef. 12-3-15 thru 5-29-16

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Adopts revisions to the Vote by Mail Manual
Adm. Order No.: ELECT 8-2015
Filed with Sec. of State: 12-11-2015
Certified to be Effective: 12-11-15
Notice Publication Date: 11-1-2015
Rules Amended: 165-007-0030
Subject: This rule amendment adopts the August 2015 revision of the Vote by Mail Manual as the processes, procedures and requirements for conducting an election by mail. The August 2015 revision incorporates updates to the procedures for voters lacking a residential address and the oath a voter is required to sign on the ballot return envelope. Non-substantive technical changes and clarifications were also incorporated into the Vote by Mail Manual revision.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0030
Designating the Vote By Mail Manual

The Secretary of State designates the Vote by Mail Manual and associated forms, as the procedures for conducting all vote by mail elections. All vote by mail elections shall be conducted following the requirements of ORS Chapters 246 through 260 and the *Vote By Mail Manual*.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 246.150, 254.465 & 254.470
Stats. Implemented: ORS 247 & 254
Hist.: ELECT 5-1989, f. & cert. ef. 8-16-89; ELECT 9-2003, f. & cert. ef. 9-3-03; ELECT 26-2003, f. & cert. ef. 12-31-03; ELECT 10-2007 f. & cert. ef. 12-31-07; ELECT 10-2012, f. & cert. ef. 4-24-12; ELECT 8-2015, f, & cert. ef. 12-11-15

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Water Resources Department
Chapter 690

Rule Caption: Temporary rule establishing procedures to consider pending applications to extend Burnt River Reservations.
Adm. Order No.: WRD 7-2015(Temp)
Filed with Sec. of State: 12-2-2015
Certified to be Effective: 12-2-15 thru 5-29-16
Notice Publication Date:
Rules Adopted: 690-079-0160
Rules Amended: 690-079-0010
Subject: The Oregon Water Resources Department adopted temporary rules at its November 19 meeting to establish the process for extending reservations of water for storage for future economic development. These rules are intended to provide guidance on how to process applications that were submitted in September to extend the North Fork Burnt River, South Fork Burnt River, and Burnt River

Subbasin Reservations. Prior to processing the applications, a process must first be established for the Department to consider the requests to extend. These reservations will expire in March of 2016, without further action by the Commission.

Rules Coordinator: Diana Enright—(503) 986-0874

690-079-0010
Purpose

(1) This Division establishes the procedure for state agencies to request reservations of water for future economic development pursuant to ORS 537.356.

(2) These rules shall apply to all reservation requests received by the Department after June 30, 1989. Notwithstanding the provisions of OAR 690-079-0040 to 690-079-0150, any reservation for which a request is received by the Department prior to June 5, 1992, and which is approved under these rules, shall receive a priority date of June 5, 1992, provided information that conforms to the provision of 690-079-0060 are received by the Department prior to January 1, 1995. For purposes of this rule, the request for a reservation of water in the Willamette Basin for municipal purposes and the request for a reservation of water in the Willamette Basin for agricultural purposes, both of which were referenced in the Commission's Willamette Basin Plan as adopted on January 31, 1992, shall be considered requests received by the Department prior to June 5, 1992.

(3) This Division also establishes temporary procedures to consider applications to extend reservations as provided in OAR 690-079-0160. Except as provided in 690-079-0160, 690-079-0010 to 690-079-0150 do not apply to requests for extensions of reservations received by the Department in September 2015, which were originally established pursuant to ORS 537.249.

Stat. Auth.: ORS 536.025, 536.027, 536.220, 536.300, 536.310, 537.170, 537.249, 537.338 & 537.356 - 537.358
Stats. Implemented:
Hist.: WRD 9-1992, f. & cert. ef. 7-1-92; WRD 7-1993, f. & cert. ef. 11-30-93; WRD 7-2015(Temp), f. & cert. ef. 12-2-15 thru 5-29-16

690-079-0160
Extension of Reservation Requests Received in September 2015

(1) This section was adopted by temporary rulemaking to establish a process to consider pending applications submitted in September 2015 to extend reservations established under ORS 537.249 that are set to expire in March 2016.

(2) Notwithstanding OAR 690-079-0020 to 690-079-0150, and except as specifically stated in this section, applications to extend reservations established in OAR chapter 690, division 509 that were received by the Department in September 2015, shall be processed according to the provisions in this section.

(3) Prior to termination of the approved term of reservation, the applicant may apply for a time extension of up to 20 years from the expiration date established in rule. An approved time extension shall retain the priority date of the original reservation.

(4) An application for an extension shall contain the information required in OAR 690-079-0060.

(5) If the applicant for an extension of a reservation made the election in ORS 537.249(2) to establish the reservation by rule, then an extension of a reservation must also occur by a rulemaking that amends the applicable basin program plan.

(6) The Department shall provide notification, accept public comment, and hold hearings as provided in ORS 183.335, 536.300(3), and OAR 690, division 1. Notice shall also be provided to Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, Oregon Parks and Recreation Department, and Business Oregon. The public comment period shall be no less than 30 days.

(7) In considering an application to extend a reservation, the Commission shall review information in the application, comments received, and information and recommendations provided by the Department.

Stat. Auth.: ORS 536.025, 536.027 & 537.249
Stats. Implemented: ORS 537.249
Hist.: WRD 7-2015(Temp), f. & cert. ef. 12-2-15 thru 5-29-16

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150-475B.710-(C)	1-4-2016	Adopt(T)	1-1-2016
150-305.792	12-7-2015	Adopt(T)	1-1-2016
165-007-0030	12-11-2015	Amend	1-1-2016
309-012-0130	11-25-2015	Amend(T)	1-1-2016
309-012-0210	11-25-2015	Amend(T)	1-1-2016
309-012-0220	11-25-2015	Amend(T)	1-1-2016
309-114-0005	11-24-2015	Amend(T)	1-1-2016
333-052-0040	1-1-2016	Amend	1-1-2016
333-052-0043	1-1-2016	Amend	1-1-2016
333-052-0080	1-1-2016	Amend	1-1-2016
333-052-0120	1-1-2016	Amend	1-1-2016
333-053-0040	1-1-2016	Amend	1-1-2016
333-053-0050	1-1-2016	Amend	1-1-2016
333-053-0080	1-1-2016	Amend	1-1-2016
333-054-0010	1-1-2016	Amend	1-1-2016
333-054-0020	1-1-2016	Amend	1-1-2016
333-054-0050	1-1-2016	Amend	1-1-2016
333-054-0060	1-1-2016	Amend	1-1-2016
333-054-0070	1-1-2016	Amend	1-1-2016
333-061-0060	1-1-2016	Amend	1-1-2016
333-061-0072	1-1-2016	Amend	1-1-2016
333-061-0073	1-1-2016	Amend	1-1-2016
333-061-0076	1-1-2016	Amend	1-1-2016
333-061-0265	1-1-2016	Amend	1-1-2016
333-200-0000	1-1-2016	Amend	1-1-2016
333-200-0010	1-1-2016	Amend	1-1-2016
333-200-0020	1-1-2016	Amend	1-1-2016
333-200-0030	1-1-2016	Amend	1-1-2016
333-200-0035	1-1-2016	Amend	1-1-2016
333-200-0040	1-1-2016	Amend	1-1-2016
333-200-0050	1-1-2016	Amend	1-1-2016
333-200-0060	1-1-2016	Amend	1-1-2016
333-200-0070	1-1-2016	Amend	1-1-2016
333-200-0080	1-1-2016	Amend	1-1-2016
333-200-0090	1-1-2016	Amend	1-1-2016
333-200-0235	1-1-2016	Adopt	1-1-2016
333-200-0245	1-1-2016	Adopt	1-1-2016
333-200-0250	1-1-2016	Adopt	1-1-2016
333-200-0255	1-1-2016	Adopt	1-1-2016
333-200-0265	1-1-2016	Adopt	1-1-2016
333-200-0275	1-1-2016	Adopt	1-1-2016
333-200-0285	1-1-2016	Adopt	1-1-2016
333-200-0295	1-1-2016	Adopt	1-1-2016
333-200-0300	1-1-2016	Adopt	1-1-2016
333-205-0000	1-1-2016	Amend	1-1-2016
333-205-0010	1-1-2016	Amend	1-1-2016
333-205-0020	1-1-2016	Amend	1-1-2016
333-205-0040	1-1-2016	Amend	1-1-2016
333-205-0050	1-1-2016	Amend	1-1-2016
340-012-0054	1-1-2016	Amend	1-1-2016
340-012-0135	1-1-2016	Amend	1-1-2016
340-012-0140	1-1-2016	Amend	1-1-2016
340-039-0001	12-10-2015	Adopt	1-1-2016
340-039-0003	12-10-2015	Adopt	1-1-2016
340-039-0005	12-10-2015	Adopt	1-1-2016
340-039-0015	12-10-2015	Adopt	1-1-2016
340-039-0017	12-10-2015	Adopt	1-1-2016
340-039-0020	12-10-2015	Adopt	1-1-2016
340-039-0025	12-10-2015	Adopt	1-1-2016
340-039-0030	12-10-2015	Adopt	1-1-2016
340-039-0035	12-10-2015	Adopt	1-1-2016
340-039-0040	12-10-2015	Adopt	1-1-2016
340-039-0043	12-10-2015	Adopt	1-1-2016
340-045-0075	1-1-2016	Amend	1-1-2016
340-071-0140	1-1-2016	Amend	1-1-2016
340-200-0040	12-10-2015	Amend	1-1-2016
340-215-0010	12-10-2015	Amend	1-1-2016
340-215-0020	12-10-2015	Amend	1-1-2016
340-215-0030	12-10-2015	Amend	1-1-2016
340-215-0040	12-10-2015	Amend	1-1-2016
340-215-0060	12-10-2015	Amend	1-1-2016
340-248-0250	1-1-2016	Amend(T)	1-1-2016
340-248-0270	1-1-2016	Amend(T)	1-1-2016
340-253-0000	1-1-2016	Amend	1-1-2016
340-253-0040	1-1-2016	Amend	1-1-2016
340-253-0060	1-1-2016	Amend	1-1-2016
340-253-0100	1-1-2016	Amend	1-1-2016
340-253-0200	1-1-2016	Amend	1-1-2016
340-253-0250	1-1-2016	Amend	1-1-2016

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340-253-0330	1-1-2016	Amend	1-1-2016
340-253-0340	1-1-2016	Amend	1-1-2016
340-253-0400	1-1-2016	Amend	1-1-2016
340-253-0450	1-1-2016	Amend	1-1-2016
340-253-0500	1-1-2016	Amend	1-1-2016
340-253-0600	1-1-2016	Amend	1-1-2016
340-253-0620	1-1-2016	Amend	1-1-2016
340-253-0630	1-1-2016	Amend	1-1-2016
340-253-0650	1-1-2016	Amend	1-1-2016
340-253-1000	1-1-2016	Amend	1-1-2016
340-253-1010	1-1-2016	Amend	1-1-2016
340-253-1020	1-1-2016	Amend	1-1-2016
340-253-1030	1-1-2016	Amend	1-1-2016
340-253-1050	1-1-2016	Amend	1-1-2016
340-253-2000	1-1-2016	Amend	1-1-2016
340-253-2100	1-1-2016	Amend	1-1-2016
340-253-2200	1-1-2016	Amend	1-1-2016
340-253-8010	1-1-2016	Amend	1-1-2016
340-253-8020	1-1-2016	Amend	1-1-2016
340-253-8030	1-1-2016	Amend	1-1-2016
340-253-8040	1-1-2016	Amend	1-1-2016
340-253-8050	1-1-2016	Amend	1-1-2016
340-253-8060	1-1-2016	Amend	1-1-2016
340-253-8070	1-1-2016	Amend	1-1-2016
340-253-8080	1-1-2016	Amend	1-1-2016
409-035-0020	11-24-2015	Amend	1-1-2016
409-035-0020(T)	11-24-2015	Repeal	1-1-2016
410-120-0006	1-1-2016	Amend	1-1-2016
410-123-1240	12-1-2015	Amend	1-1-2016
410-123-1240(T)	12-1-2015	Repeal	1-1-2016
410-130-0200	12-1-2015	Amend(T)	1-1-2016
410-141-0000	12-10-2015	Amend	1-1-2016
410-141-0080	12-10-2015	Amend	1-1-2016
410-141-0085	12-10-2015	Repeal	1-1-2016
410-141-0160	12-10-2015	Amend	1-1-2016
410-141-0220	12-10-2015	Amend	1-1-2016
410-141-0320	12-10-2015	Amend	1-1-2016
410-141-0340	12-10-2015	Amend	1-1-2016
410-141-0410	12-10-2015	Repeal	1-1-2016
410-141-0420	12-10-2015	Amend	1-1-2016
410-141-0660	12-10-2015	Repeal	1-1-2016
410-141-0680	12-10-2015	Repeal	1-1-2016
410-141-0700	12-10-2015	Repeal	1-1-2016
410-141-0720	12-10-2015	Repeal	1-1-2016
410-141-0740	12-10-2015	Repeal	1-1-2016
410-141-0760	12-10-2015	Repeal	1-1-2016
410-141-0780	12-10-2015	Repeal	1-1-2016
410-141-0800	12-10-2015	Repeal	1-1-2016
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410-141-0840	12-10-2015	Repeal	1-1-2016
410-141-0860	12-10-2015	Amend	1-1-2016
410-141-3080	12-10-2015	Amend	1-1-2016
411-004-0000	1-1-2016	Adopt	1-1-2016
411-004-0010	1-1-2016	Adopt	1-1-2016
411-004-0020	1-1-2016	Adopt	1-1-2016
411-004-0030	1-1-2016	Adopt	1-1-2016
411-004-0040	1-1-2016	Adopt	1-1-2016
411-032-0050	12-27-2015	Amend	1-1-2016
411-032-0050(T)	12-27-2015	Repeal	1-1-2016
411-355-0000	12-28-2015	Amend	1-1-2016
411-355-0000(T)	12-28-2015	Repeal	1-1-2016
411-355-0010	12-28-2015	Amend	1-1-2016
411-355-0010(T)	12-28-2015	Repeal	1-1-2016
411-355-0020	12-28-2015	Amend	1-1-2016
411-355-0020(T)	12-28-2015	Repeal	1-1-2016
411-355-0030	12-28-2015	Amend	1-1-2016
411-355-0030(T)	12-28-2015	Repeal	1-1-2016
411-355-0040	12-28-2015	Amend	1-1-2016
411-355-0040(T)	12-28-2015	Repeal	1-1-2016
411-355-0045	12-28-2015	Adopt	1-1-2016
411-355-0045(T)	12-28-2015	Repeal	1-1-2016
411-355-0050	12-28-2015	Amend	1-1-2016
411-355-0050(T)	12-28-2015	Repeal	1-1-2016
411-355-0060	12-28-2015	Repeal	1-1-2016
411-355-0070	12-28-2015	Repeal	1-1-2016
411-355-0075	12-28-2015	Adopt	1-1-2016
411-355-0075(T)	12-28-2015	Repeal	1-1-2016
411-355-0080	12-28-2015	Amend	1-1-2016
411-355-0080(T)	12-28-2015	Repeal	1-1-2016
411-355-0090	12-28-2015	Amend	1-1-2016
411-355-0090(T)	12-28-2015	Repeal	1-1-2016
411-355-0100	12-28-2015	Amend	1-1-2016
411-355-0100(T)	12-28-2015	Repeal	1-1-2016
411-355-0110	12-28-2015	Repeal	1-1-2016
411-355-0120	12-28-2015	Repeal	1-1-2016
413-030-0400	11-24-2015	Amend(T)	1-1-2016
413-040-0010	11-24-2015	Amend(T)	1-1-2016
413-070-0551	11-24-2015	Amend(T)	1-1-2016
413-080-0050	11-24-2015	Amend(T)	1-1-2016
413-080-0050(T)	11-24-2015	Suspend	1-1-2016
431-121-2005	12-7-2015	Amend	1-1-2016
436-001-0003	1-1-2016	Amend	1-1-2016
436-001-0004	1-1-2016	Amend	1-1-2016
436-001-0009	1-1-2016	Amend	1-1-2016
436-001-0019	1-1-2016	Amend	1-1-2016
436-001-0027	1-1-2016	Amend	1-1-2016
436-001-0030	1-1-2016	Amend	1-1-2016
436-001-0170	1-1-2016	Amend	1-1-2016
436-001-0240	1-1-2016	Amend	1-1-2016
436-001-0246	1-1-2016	Amend	1-1-2016
436-001-0259	1-1-2016	Amend	1-1-2016
436-001-0410	1-1-2016	Amend	1-1-2016
436-001-0420	1-1-2016	Amend	1-1-2016
436-001-0435	1-1-2016	Adopt	1-1-2016
436-001-0500	1-1-2016	Adopt	1-1-2016
436-009-0004	1-1-2016	Amend(T)	1-1-2016
436-009-0010	1-1-2016	Amend(T)	1-1-2016
441-855-0114	1-1-2016	Adopt	1-1-2016
441-865-0060	12-14-2015	Amend	1-1-2016
459-005-0001	11-20-2015	Amend	1-1-2016

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459-010-0012	11-20-2015	Amend	1-1-2016
459-011-0500	11-20-2015	Amend	1-1-2016
459-013-0060	11-20-2015	Amend	1-1-2016
459-013-0310	11-20-2015	Amend	1-1-2016
459-080-0150	1-1-2016	Amend	1-1-2016
461-135-0750	12-15-2015	Amend(T)	1-1-2016
461-180-0010	12-15-2015	Amend(T)	1-1-2016
461-180-0090	12-15-2015	Amend(T)	1-1-2016
461-180-0140	12-15-2015	Amend(T)	1-1-2016
461-190-0360	11-30-2015	Amend(T)	1-1-2016
603-025-0190	12-2-2015	Amend	1-1-2016
603-052-0052	11-18-2015	Adopt(T)	1-1-2016
603-057-0107	1-1-2016	Adopt(T)	1-1-2016
603-057-0155	1-1-2016	Adopt(T)	1-1-2016
603-057-0157	1-1-2016	Adopt(T)	1-1-2016
635-001-0030	12-9-2015	Adopt	1-1-2016
635-004-0275	11-25-2015	Amend(T)	1-1-2016
635-004-0275(T)	11-25-2015	Suspend	1-1-2016
635-005-0290	1-1-2016	Amend	1-1-2016
635-005-0305	1-1-2016	Amend	1-1-2016
635-005-0310	1-1-2016	Amend	1-1-2016
635-005-0350	1-1-2016	Amend	1-1-2016
635-005-0355	1-1-2016	Amend	1-1-2016
635-005-0385	1-1-2016	Amend	1-1-2016
635-005-0387	1-1-2016	Adopt	1-1-2016
635-005-0465	11-20-2015	Amend(T)	1-1-2016
635-008-0123	11-25-2015	Amend	1-1-2016
635-008-0123(T)	11-25-2015	Repeal	1-1-2016
635-010-0015	11-25-2015	Amend	1-1-2016
635-044-0200	12-9-2015	Repeal	1-1-2016
635-044-0205	12-9-2015	Repeal	1-1-2016
635-044-0210	12-9-2015	Repeal	1-1-2016
635-044-0215	12-9-2015	Repeal	1-1-2016
635-044-0240	12-9-2015	Repeal	1-1-2016
635-044-0245	12-9-2015	Repeal	1-1-2016
635-044-0250	12-9-2015	Repeal	1-1-2016
635-044-0255	12-9-2015	Repeal	1-1-2016
635-044-0280	12-9-2015	Repeal	1-1-2016
635-044-0300	12-9-2015	Repeal	1-1-2016
635-044-0305	12-9-2015	Repeal	1-1-2016
635-044-0310	12-9-2015	Repeal	1-1-2016
635-045-0000	11-25-2015	Amend	1-1-2016
635-045-0002	11-25-2015	Amend	1-1-2016
635-060-0000	11-25-2015	Amend	1-1-2016
635-060-0005	11-25-2015	Amend	1-1-2016
635-060-0018	11-25-2015	Amend	1-1-2016
635-062-0000	12-9-2015	Adopt	1-1-2016
635-062-0005	12-9-2015	Adopt	1-1-2016
635-062-0010	12-9-2015	Adopt	1-1-2016
635-062-0015	12-9-2015	Adopt	1-1-2016
635-062-0020	12-9-2015	Adopt	1-1-2016
635-062-0025	12-9-2015	Adopt	1-1-2016
635-062-0030	12-9-2015	Adopt	1-1-2016
635-062-0035	12-9-2015	Adopt	1-1-2016
635-062-0040	12-9-2015	Adopt	1-1-2016
635-062-0045	12-9-2015	Adopt	1-1-2016
635-062-0050	12-9-2015	Adopt	1-1-2016
635-062-0055	12-9-2015	Adopt	1-1-2016
635-062-0060	12-9-2015	Adopt	1-1-2016
635-067-0027	12-1-2015	Amend(T)	1-1-2016
635-435-0000	12-9-2015	Amend	1-1-2016
635-435-0005	12-9-2015	Amend	1-1-2016
635-435-0010	12-9-2015	Amend	1-1-2016
635-435-0010	12-9-2015	Amend(T)	1-1-2016
635-435-0015	12-9-2015	Amend	1-1-2016
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635-435-0025	12-9-2015	Amend	1-1-2016
635-435-0030	12-9-2015	Repeal	1-1-2016
635-435-0035	12-9-2015	Repeal	1-1-2016
635-435-0040	12-9-2015	Amend	1-1-2016
635-435-0045	12-9-2015	Amend	1-1-2016
635-435-0050	12-9-2015	Amend	1-1-2016
635-435-0055	12-9-2015	Amend	1-1-2016
635-435-0060	12-9-2015	Amend	1-1-2016
690-079-0010	12-2-2015	Amend(T)	1-1-2016
690-079-0160	12-2-2015	Adopt(T)	1-1-2016
715-013-0005	12-14-2015	Amend(T)	1-1-2016
734-020-0018	11-20-2015	Amend	1-1-2016
734-020-0019	11-20-2015	Amend	1-1-2016
735-032-0070	1-1-2016	Adopt	1-1-2016
735-150-0055	1-1-2016	Amend	1-1-2016
735-150-0140	1-1-2016	Amend	1-1-2016
738-001-0035	12-15-2015	Amend	1-1-2016
738-010-0025	12-15-2015	Amend	1-1-2016
738-010-0035	12-15-2015	Amend	1-1-2016
738-010-0040	12-15-2015	Repeal	1-1-2016
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738-010-0060	12-15-2015	Amend	1-1-2016
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738-080-0030	12-15-2015	Amend	1-1-2016
738-080-0040	12-15-2015	Repeal	1-1-2016
738-080-0045	12-15-2015	Adopt	1-1-2016
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738-140-0020	12-15-2015	Adopt	1-1-2016
738-140-0025	12-15-2015	Adopt	1-1-2016
738-140-0030	12-15-2015	Adopt	1-1-2016
738-140-0035	12-15-2015	Adopt	1-1-2016
738-140-0040	12-15-2015	Adopt	1-1-2016
741-520-0010	11-17-2015	Repeal	1-1-2016
806-010-0010	12-14-2015	Amend	1-1-2016
806-010-0020	12-14-2015	Amend	1-1-2016
806-010-0035	12-14-2015	Amend	1-1-2016
813-013-0001	11-30-2015	Amend(T)	1-1-2016
813-013-0005	11-30-2015	Amend(T)	1-1-2016
813-013-0010	11-30-2015	Amend(T)	1-1-2016
813-013-0015	11-30-2015	Amend(T)	1-1-2016

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813-013-0040	11-30-2015	Amend(T)	1-1-2016
813-013-0050	11-30-2015	Amend(T)	1-1-2016
813-013-0054	11-30-2015	Amend(T)	1-1-2016
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839-007-0005	1-1-2016	Adopt	1-1-2016
839-007-0007	1-1-2016	Adopt	1-1-2016
839-007-0010	1-1-2016	Adopt	1-1-2016
839-007-0012	1-1-2016	Adopt	1-1-2016
839-007-0015	1-1-2016	Adopt	1-1-2016
839-007-0020	1-1-2016	Adopt	1-1-2016
839-007-0025	1-1-2016	Adopt	1-1-2016
839-007-0030	1-1-2016	Adopt	1-1-2016
839-007-0032	1-1-2016	Adopt	1-1-2016
839-007-0035	1-1-2016	Adopt	1-1-2016
839-007-0040	1-1-2016	Adopt	1-1-2016
839-007-0045	1-1-2016	Adopt	1-1-2016
839-007-0050	1-1-2016	Adopt	1-1-2016
839-007-0055	1-1-2016	Adopt	1-1-2016
839-007-0060	1-1-2016	Adopt	1-1-2016
839-007-0065	1-1-2016	Adopt	1-1-2016
839-007-0100	1-1-2016	Adopt	1-1-2016
839-007-0120	1-1-2016	Adopt	1-1-2016
839-025-0700	1-1-2016	Amend	1-1-2016
845-025-1000	1-1-2016	Adopt(T)	1-1-2016
845-025-1015	1-1-2016	Adopt(T)	1-1-2016
845-025-1030	1-1-2016	Adopt(T)	1-1-2016
845-025-1045	1-1-2016	Adopt(T)	1-1-2016
845-025-1060	1-1-2016	Adopt(T)	1-1-2016
845-025-1070	1-1-2016	Adopt(T)	1-1-2016
845-025-1080	1-1-2016	Adopt(T)	1-1-2016
845-025-1090	1-1-2016	Adopt(T)	1-1-2016
845-025-1100	1-1-2016	Adopt(T)	1-1-2016
845-025-1115	1-1-2016	Adopt(T)	1-1-2016
845-025-1130	1-1-2016	Adopt(T)	1-1-2016
845-025-1145	1-1-2016	Adopt(T)	1-1-2016
845-025-1160	1-1-2016	Adopt(T)	1-1-2016
845-025-1175	1-1-2016	Adopt(T)	1-1-2016
845-025-1190	1-1-2016	Adopt(T)	1-1-2016
845-025-1200	1-1-2016	Adopt(T)	1-1-2016
845-025-1215	1-1-2016	Adopt(T)	1-1-2016
845-025-1230	1-1-2016	Adopt(T)	1-1-2016
845-025-1245	1-1-2016	Adopt(T)	1-1-2016
845-025-1260	1-1-2016	Adopt(T)	1-1-2016
845-025-1275	1-1-2016	Adopt(T)	1-1-2016
845-025-1290	1-1-2016	Adopt(T)	1-1-2016
845-025-1295	1-1-2016	Adopt(T)	1-1-2016
845-025-1300	1-1-2016	Adopt(T)	1-1-2016
845-025-1400	1-1-2016	Adopt(T)	1-1-2016
845-025-1410	1-1-2016	Adopt(T)	1-1-2016
845-025-1420	1-1-2016	Adopt(T)	1-1-2016
845-025-1430	1-1-2016	Adopt(T)	1-1-2016
845-025-1440	1-1-2016	Adopt(T)	1-1-2016
845-025-1450	1-1-2016	Adopt(T)	1-1-2016
845-025-1460	1-1-2016	Adopt(T)	1-1-2016
845-025-1470	1-1-2016	Adopt(T)	1-1-2016
845-025-1600	1-1-2016	Adopt(T)	1-1-2016
845-025-1620	1-1-2016	Adopt(T)	1-1-2016
845-025-2000	1-1-2016	Adopt(T)	1-1-2016
845-025-2020	1-1-2016	Adopt(T)	1-1-2016
845-025-2030	1-1-2016	Adopt(T)	1-1-2016
845-025-2040	1-1-2016	Adopt(T)	1-1-2016
845-025-2050	1-1-2016	Adopt(T)	1-1-2016
845-025-2060	1-1-2016	Adopt(T)	1-1-2016
845-025-2070	1-1-2016	Adopt(T)	1-1-2016
845-025-2080	1-1-2016	Adopt(T)	1-1-2016
845-025-2400	1-1-2016	Adopt(T)	1-1-2016
845-025-2800	1-1-2016	Adopt(T)	1-1-2016
845-025-2820	1-1-2016	Adopt(T)	1-1-2016
845-025-2840	1-1-2016	Adopt(T)	1-1-2016
845-025-2860	1-1-2016	Adopt(T)	1-1-2016
845-025-2880	1-1-2016	Adopt(T)	1-1-2016
845-025-2890	1-1-2016	Adopt(T)	1-1-2016
845-025-3200	1-1-2016	Adopt(T)	1-1-2016
845-025-3210	1-1-2016	Adopt(T)	1-1-2016
845-025-3220	1-1-2016	Adopt(T)	1-1-2016
845-025-3230	1-1-2016	Adopt(T)	1-1-2016
845-025-3240	1-1-2016	Adopt(T)	1-1-2016
845-025-3250	1-1-2016	Adopt(T)	1-1-2016
845-025-3260	1-1-2016	Adopt(T)	1-1-2016
845-025-3280	1-1-2016	Adopt(T)	1-1-2016
845-025-3290	1-1-2016	Adopt(T)	1-1-2016
845-025-3500	1-1-2016	Adopt(T)	1-1-2016
845-025-5000	1-1-2016	Adopt(T)	1-1-2016
845-025-5030	1-1-2016	Adopt(T)	1-1-2016
845-025-5045	1-1-2016	Adopt(T)	1-1-2016
845-025-5060	1-1-2016	Adopt(T)	1-1-2016
845-025-5075	1-1-2016	Adopt(T)	1-1-2016
845-025-5300	1-1-2016	Adopt(T)	1-1-2016
845-025-5350	1-1-2016	Adopt(T)	1-1-2016
845-025-5500	1-1-2016	Adopt(T)	1-1-2016
845-025-5520	1-1-2016	Adopt(T)	1-1-2016
845-025-5540	1-1-2016	Adopt(T)	1-1-2016
845-025-5560	1-1-2016	Adopt(T)	1-1-2016
845-025-5580	1-1-2016	Adopt(T)	1-1-2016
845-025-5590	1-1-2016	Adopt(T)	1-1-2016
845-025-5700	1-1-2016	Adopt(T)	1-1-2016
845-025-5720	1-1-2016	Adopt(T)	1-1-2016
845-025-5740	1-1-2016	Adopt(T)	1-1-2016
845-025-5760	1-1-2016	Adopt(T)	1-1-2016
845-025-7000	1-1-2016	Adopt(T)	1-1-2016
845-025-7020	1-1-2016	Adopt(T)	1-1-2016
845-025-7040	1-1-2016	Adopt(T)	1-1-2016
845-025-7060	1-1-2016	Adopt(T)	1-1-2016
845-025-7500	1-1-2016	Adopt(T)	1-1-2016
845-025-7520	1-1-2016	Adopt(T)	1-1-2016
845-025-7540	1-1-2016	Adopt(T)	1-1-2016
845-025-7560	1-1-2016	Adopt(T)	1-1-2016
845-025-7580	1-1-2016	Adopt(T)	1-1-2016
845-025-7590	1-1-2016	Adopt(T)	1-1-2016
845-025-7700	1-1-2016	Adopt(T)	1-1-2016

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OAR Number	Effective	Action	Bulletin
845-025-7750	1-1-2016	Adopt(T)	1-1-2016
845-025-8000	1-1-2016	Adopt(T)	1-1-2016
845-025-8020	1-1-2016	Adopt(T)	1-1-2016
845-025-8040	1-1-2016	Adopt(T)	1-1-2016
845-025-8060	1-1-2016	Adopt(T)	1-1-2016
845-025-8080	1-1-2016	Adopt(T)	1-1-2016
845-025-8500	1-1-2016	Adopt(T)	1-1-2016
845-025-8520	1-1-2016	Adopt(T)	1-1-2016
845-025-8540	1-1-2016	Adopt(T)	1-1-2016
845-025-8560	1-1-2016	Adopt(T)	1-1-2016
845-025-8580	1-1-2016	Adopt(T)	1-1-2016
845-025-8590	1-1-2016	Adopt(T)	1-1-2016
847-020-0135	1-1-2016	Adopt	1-1-2016
851-031-0005	1-1-2016	Amend	1-1-2016
851-031-0086	1-1-2016	Amend	1-1-2016
851-050-0138	11-24-2015	Amend(T)	1-1-2016
851-056-0000	11-30-2015	Amend(T)	1-1-2016
851-056-0020	11-30-2015	Amend(T)	1-1-2016
859-010-0005	12-3-2015	Amend(T)	1-1-2016
877-020-0005	12-15-2015	Amend	1-1-2016
877-020-0021	12-15-2015	Adopt	1-1-2016
918-020-0090	1-1-2016	Amend	1-1-2016
918-020-0090(T)	1-1-2016	Repeal	1-1-2016
918-271-0040	1-1-2016	Amend	1-1-2016

OAR Number	Effective	Action	Bulletin