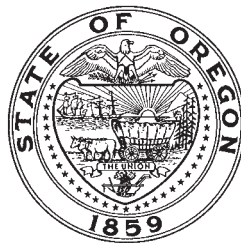


# OREGON BULLETIN

*Supplements the 2017 Oregon Administrative Rules Compilation*

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# 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, rule-making 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 Administrative 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.

## Administrative 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 rule-making 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 ORDERS

## EXECUTIVE ORDER 17 - 03

### PROCLAMATION OF STATE OF EMERGENCY FOR MALHEUR COUNTY REGARDING EFFECTS OF SEVERE WINTER STORMS AND DELEGATION OF EMERGENCY AUTHORITY PURSUANT TO ORS 401.035(2) TO SUSPEND STATE ADMINISTRATIVE RULES THAT PREVENT, HINDER OR DELAY MITIGATION OF THE EFFECTS OF THESE WINTER STORMS

Pursuant to ORS 401.165, I find that a state of emergency exists in Malheur County, which has been ravaged by severe winter storms. There exists imminent need to remove and dispose of debris related to these storms; delays to such removal and disposal present an ongoing risk to public safety.

I issued Executive Order 17-02 on January 11, 2017, and declared a statewide emergency in Oregon due to severe winter storms. In Malheur County, the severe winter storms have left behind historic levels of wreckage. Local and state officials estimate that 100 or more buildings in Malheur County have been damaged or have totally collapsed. Damaged or destroyed buildings include agricultural, commercial, and residential structures. The building collapses have also damaged or destroyed the contents of these buildings.

In consultation with the Department of Environmental Quality (DEQ) and Oregon Emergency Management (OEM), I have determined that debris removal and disposal efforts in Malheur County are being inhibited by certain DEQ permitting, material handling, and disposal requirements, and that this inhibition has occasioned a state of emergency in Malheur County.

Based on the information I have received from DEQ and OEM, and in accordance with my authority under ORS 401.168(2), I find that strict compliance with certain DEQ rules would prevent, hinder, or delay mitigation of the effects of this emergency.

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

1. Pursuant to ORS 401.035, I delegate to the Director of DEQ the authority conferred under ORS 401.168(2) to issue emergency orders that temporarily suspend such DEQ rules as the Director determines to be necessary in order to make possible or to expedite DEQ-approved operations in response to buildings collapsed as a result of severe winter storms in Malheur County, and to protect public health, safety, and the environment during those operations.
2. The Director of DEQ shall consult with the Governor's Natural Resources Office prior to issuing any order temporarily suspending a DEQ rule pursuant to the authority provided in this Executive Order. The Director of DEQ shall provide a written report to the Governor's Natural Resources Office and to the Environmental Quality Commission concerning the nature and basis of any emergency order issued pursuant to this Executive Order.

The authority delegated by this Executive Order will automatically terminate August 1, 2017, unless otherwise extended or terminated by supplemental order.

This order was made by verbal proclamation at 11:48 am the 31st day of January 2017, and signed this 2nd day of February, 2017.

/s/ Kate Brown  
Kate Brown  
GOVERNOR

## ATTEST

/s/ Dennis Richardson  
Dennis Richardson  
SECRETARY OF STATE

## EXECUTIVE ORDER 17 - 04

### RENEWING OREGON'S COMMITMENT TO PROTECTING ITS IMMIGRANT, REFUGEE, AND RELIGIOUS-MINORITY RESIDENTS

WHEREAS, Oregon is and must remain a welcoming, inclusive, and compassionate place for all contributing members of our civic community, including immigrants and refugees; and

WHEREAS, immigrants and refugees contribute to the health, prosperity, and general welfare of our State; and

WHEREAS, the Oregon Revised Statutes forbid state and local law enforcement agencies from using "moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws," ORS 181A.820(1), subject to exceptions, ORS 181A.820(2)-(4); and

WHEREAS, under the U.S. Constitution, the immigration power to exclude and deport is reserved exclusively to the federal government; and

WHEREAS, the Oregon Revised Statutes declare it to be the public policy of the State that discrimination on the basis of religion "threatens the rights and privileges of its inhabitants" and "menaces the institutions and foundation of a free democratic state," ORS 659A.006(1); and

WHEREAS, the Oregon Constitution, in Article I, sections 2 and 20, guarantees freedom of religion and protects against discrimination on the basis of religion;

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

1. Definition. For purposes of this Executive Order, "state agency" shall be defined as any agency within the Executive Department as defined in ORS 174.112, other than the Oregon Secretary of State, Oregon State Treasury, Oregon Department of Justice, and Oregon Bureau of Labor and Industries.
2. Statement of Policy. It is the policy of this State that Oregon be an inclusive jurisdiction that embraces, celebrates, and welcomes its immigrant and refugee residents and recognizes their contributions to the collective prosperity of all Oregonians.
3. Non-discrimination. No state agency may condition the provision of services or benefits upon a resident's immigration status, except as required by federal or state law or as otherwise authorized by the Governor or her designee.
4. No State Expenditure for Federal Enforcement.

A. No state agency may use moneys, equipment, or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws, except as required by federal or state law or as otherwise authorized by the Governor or her designee.

B. The requirements of this section, as applied to all state agencies, are coextensive with ORS 181A.820, subject to the exceptions stated herein and in ORS 181A.820(2)-(4).

## EXECUTIVE ORDERS

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5. Non-participation in Religious Registry. No state agency may use moneys, equipment, or personnel to assist in or facilitate the creation of a registry the purpose of which is to identify members of a religious group, except as required by federal or state law.

6. This Executive Order is intended to be consistent with the State's obligations under federal and state law, including 8 U.S.C. §§ 1373 and 1644; accordingly, this Executive Order shall be interpreted as to not violate any requirement of federal or state law. Should federal or state law change so as to give rise to a conflict with any provision of this Executive Order, such provision shall be of no further effect, notwithstanding paragraph 8.

7. This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State of Oregon, its subdivisions, its officers, employees, or agents, or any other person.

8. This Executive Order will remain in effect unless and until it is superseded by statute or another Executive Order.

Done at Salem, Oregon, this 2nd day of February, 2017.

/s/ Kate Brown  
Kate Brown  
GOVERNOR

ATTEST

/s/ Dennis Richardson  
Dennis Richardson  
SECRETARY OF STATE

## OTHER NOTICES

### REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT WITH RALEIGH HOUSING LIMITED PARTNERSHIP

**COMMENTS DUE:** 5 p.m., Friday, Mar. 31, 2017

**PROJECT LOCATION:** 1620 NW 14th Ave., Portland

**PROPOSAL:** DEQ seeks comments on its proposed consent order for a prospective purchaser agreement with Raleigh Housing Limited Partnership concerning its acquisition of real property at the north end of the Pearl District in Portland.

**HIGHLIGHTS:** The 10,000 square foot property covers the southwest quarter of Block 26 of the former Hoyt Street Railyard and has been undeveloped since at least the 1950s. Innovative Housing is proposing to construct affordable housing (apartments) on the property. Along with providing affordable housing and redeveloping the vacant property, the apartments will cap residual contaminated soils and be constructed with a passive sub-slab ventilation system to address potential sub-surface methane gas concerns at the 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 Raleigh Housing Limited Partnership 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 Innovative Housing with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Kevin Dana at 700 NE Multnomah St., Suite 600, Portland, OR, 97232-4100 or [dana.kevin@deq.state.or.us](mailto:dana.kevin@deq.state.or.us). For more information contact the project manager at 503-229-5369.

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>

Find the File Review Application form at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter 6103 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 6103 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/Webdocs/Forms/Output/FPController.aspx?SourceId=6103&SourceIdType=11>.

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 close of the comment period before making a final decision regarding the proposed prospective purchaser agreement.

**ACCESSIBILITY INFORMATION:** Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [DEQInfo@deq.state.or.us](mailto:DEQInfo@deq.state.or.us).

### REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR WAGSTAFF BATTERY PROPERTY

**COMMENTS DUE:** 5 p.m., Friday, March 31, 2017

**PROJECT LOCATION:** 2124 N Williams Ave., Portland, OR

**PROPOSAL:** The Department of Environmental Quality seeks comments on its proposed consent judgment for a prospective purchaser agreement with Port City LLC concerning its acquisition of real property located at 2124 N Williams Ave., Portland, OR. The

consent judgment includes a proposed remedial scope of work for Port City LLC to perform during redevelopment of the site as affordable housing for low-income households.

**HIGHLIGHTS:** The property was purchased by Wagstaff Battery Manufacturing Co., in the early 1960s and used for the manufacture and later the collection and distribution of industrial batteries. From 1972 until the early 1990s, wastewater and floor rinsate generated during battery reconstruction was discharged to sumps in two above ground settling tanks then discharged to an onsite drywell located beneath Building B. Contaminants historically discharged through the drywell included lead, sulfuric acid and solvents.

In 1992, the owner of the Property began cleanup of the drywell under DEQ oversight. Over 362 tons of soil were excavated, treated by chemical fixation and ultimately disposed of at a landfill in 1997. In February 1998, DEQ issued a No Further Action letter on the condition that additional action to address soil contamination left in place may be required if site conditions were to change in the future.

On Sept. 10, 1998 Port City Development Center entered into a PPA with DEQ to conduct additional investigation and remedial activities to develop the property for use as a vocational work center. Investigations performed between 2003 and 2004 detected lead-contaminated soils with concentrations as high as 14,500 parts per million in the northeast corner of the Property outside of Building B. Based on this information, DEQ withdrew the previous no further action determination for the Property. PCDC conducted additional soil removal in late 2004 to address the area outside of Building B. Areas of contaminated soil remaining beneath Building B (including a newly identified sump #), and soil between an asphalt parking area outside of the northwest corner of Building B were capped by either concrete or asphalt to prevent exposure to people working or living at the Property. PCDC recorded an Easement and Equitable Servitudes with Multnomah County on May 24, 2005 requiring that the building foundation and asphalt areas remain in place, serving as caps for the underlying soil contamination.

Due to financial hardship, PCDC ceased operations in 2013. PCDC conveyed the title of the Property to Multnomah County to repay the County for revenue bonds issued to finance PCDC's acquisition of the Property. The property continues to operate as a vocational center administrated by Albertina Kerr Centers. The County has maintained the property in compliance with the EE&S.

In cooperation with Multnomah County, City of Portland Housing Bureau and Home Forward, Port City LLC is proposing to enter into a PPA with DEQ to redevelop the property as affordable housing for low-income households. The scope of work for the consent judgment includes the following activities:

- Certified asbestos abatement and proper disposal of any ACM materials in buildings to be demolished
- Testing of all demolition debris for lead and proper disposal
- Proper management of soils and wastes generated during site excavation or development in accordance with a DEQ approved Contaminated Media Management Plan
- Institutional or engineering controls for any soil that remains with lead above DEQ's risk-based concentration for residential soil (400 ppm)

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 judgment will provide Port City 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 judgment will also provide Port City LLC with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Sarah Greenfield at 700 NE Multnomah Street, Suite 600 or [greenfield.sarah@deq.state.or.us](mailto:greenfield.sarah@deq.state.or.us). For more information contact the project manager at 503-229-5245.

## OTHER NOTICES

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 1243 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 1243 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/Webdocs/Forms/Output/FPController.ashx?SourceId=1243&SourceIdType=11>.

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 during the comment period before making a final decision regarding the proposed terms and scope of work for the Prospective Purchaser Agreement.

**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](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### PUBLIC NOTICE

#### DEQ REQUEST COMMENTS ON PROPOSED AGREEMENT WITH PORTLAND GENERAL ELECTRIC FOR WILLAMETTE RIVER CLEANUP IN PORTLAND

**COMMENTS DUE:** 5 p.m., Friday, March 31, 2017

**PROJECT LOCATION:** Willamette River Mile 13.1 and 13.5, Portland OR.

**PROPOSAL:** The Oregon Department of Environmental Quality proposes entering into a consent judgment with Portland General Electric (PGE). Under the judgment, PGE will implement environmental cleanup of in-water sediment contaminated primarily with polychlorinated biphenyls, commonly known as PCBs, at two locations located adjacent to the east bank of the Willamette River upstream of the Hawthorne Bridge.

**HIGHLIGHTS:** Historically PGE operated power generation Station L adjacent to the river in the vicinity of the Tilikum Crossing Bridge and conducted electrical equipment maintenance at the Hawthorne Building to which stormwater drains to the river via City of Portland stormwater Outfall 33. Operations at upland facilities in the Outfall 33 basin have resulted in sediment contamination in the Willamette River, through stormwater discharges. Environmental investigations conducted by PGE revealed elevated concentrations of PCBs, metals, dioxins/furans, polycyclic aromatic hydrocarbons, and pesticides in river sediments. PGE performed a remedial investigation of affected areas in 2010 through 2012 and completed a Feasibility Study in 2014. Following a 30-day public comment period, DEQ issued a Record of Decision in April 2015, selecting the following remedial actions:

- Installation of a cap over contaminated sediments at River Mile 13.1 adjacent to the City of Portland Stormwater Outfall 33, located directly upstream of the Hawthorne Bridge. The isolation cap is designed to cover contaminated sediment with clean sand and gravel armoring on top. Select portions of the cap overlying the most contaminated areas will include an additional adsorptive clay treatment layer.
- Installation of a cap over contaminated sediments at River Mile 13.1 adjacent to the former Station L power plant, located near the Tilikum Crossing Bridge. The isolation cap is designed to cap contaminated sediment with clean sand and gravel armoring on top.
- Long-term management and monitoring of the sediment cap remedies.

In July 2015 DEQ and PGE signed a Consent Order in which PGE agreed to perform the remedial design and implementation of the River Mile 13.5 remedy, and in the fall of 2015 PGE completed installation of the sediment cap at River Mile 13.5.

Under the proposed Consent Judgment PGE will design and implement the River Mile 13.1 remedial action. The Consent Judgment will also provide PGE a release from liability for claims by the State of Oregon under state law regarding matters addressed, which include both areas of sediment contamination subject to cleanup under the proposed settlement agreement.

This action is separate and distinct from studies and cleanup options being evaluated for the Portland Harbor Superfund site, which is located farther north on the Willamette River, between the Broadway Bridge and Sauvie Island.

**HOW TO COMMENT:** Send comments to DEQ Project Manager David Lacey at 700 NE Multnomah St., Suite 600, Portland, Oregon 97232 or [lacey.david@deq.state.or.us](mailto:lacey.david@deq.state.or.us). For more information contact the project manager at (503) 229-5354.

To view the draft Consent Judgment, site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx> select "Search complete ECSI database", then enter ECSI #5249 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #5249 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/Webdocs/Forms/Output/FPController.ashx?SourceIdType=11&SourceId=5249&Screen=Load>

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

**THE NEXT STEP:** Once the comment period closes, DEQ will consider any comments and sign the agreement with PGE to move forward with the cleanup design and implementation.

**ACCESSIBILITY INFORMATION:** Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

#### REQUEST FOR COMMENTS PROPOSED CERTIFICATE OF COMPLETION FOR MORNINGSIDE CAPITAL

**COMMENTS DUE:** 5 p.m., Monday, Apr. 3, 2017

**PROJECT LOCATION:** 8009 N. Kerby Ave., Portland

**PROPOSAL:** DEQ is preparing to certify that all actions required under a prospective purchaser agreement have been satisfactorily completed. This project has resulted in both environmental and economic benefits.

**HIGHLIGHTS:** In January 2016, Opal Creek Construction, LLC (former property owner) entered a Prospective Purchaser Agreement Consent Order with DEQ and agreed to complete a scope of work on the subject property, including submitting a contaminated media management plan (if necessary), filling a pit and trench with cement, and providing a full description of the stormwater system on the property. Prior to finalizing the scope of work, Defendant conducted subsurface investigations and a risk assessment to achieve a letter of No Further Action for the site. The site will be redeveloped for business purposes.

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 DEQ should issue a Certification of Completion.

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 Morningside Capital (new property owner) 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

## OTHER NOTICES

the property. The consent judgment and certification of completion also provide Morningside Capital with third party liability protection.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Rob Hood at 700 NE Multnomah Street, Ste. 600, Portland, Oregon 97232-4100 or hood.robert@deq.state.or.us. For more information contact the project manager at 503-229-5617.

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 ECSI #3390 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #3390 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/Webdocs/Forms/Output/FPController.aspx?SourceId=3390&SourceIdType=11>

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.

**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](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### REQUEST FOR COMMENTS PROPOSED CONSENT JUDGMENT FOR RB RECYCLING

**COMMENTS DUE:** 5 p.m., March 30, 2017

**PROJECT LOCATION:** 8501 N Borthwick Ave., Portland, OR.

**PROPOSAL:** The Department of Environmental Quality invites public comment on a proposed consent judgment with Dash Intermediary LLC, Dash Multi-Corp., and RB Recycling ("RB Recycling"); and property owners at the time of RB Recycling's operation: Arlene Glanz, Marcia Devalan and KELT Properties West, LLC.

The consent judgment will cover DEQ oversight and settlement of the parties' potential liability for contribution to sediment contamination in the lower Columbia Slough. The consent judgment will also document satisfaction of liability associated with State of Oregon natural resource damages for the Columbia Slough.

The consent judgment will provide the parties a release from liability for claims by the State of Oregon under state law regarding hazardous substance releases from the property to the Columbia Slough. The consent judgment will also provide parties with third party liability protection.

**HIGHLIGHTS:** RB Recycling leased a 2 acre property for tire recycling operations at the 8501 N Borthwick Ave. from 1999 to 2014. DEQ's Lower Slough sediment investigation in 2012 determined that sediment in the vicinity of the two outfalls where the Site stormwater discharged contains significantly elevated concentrations of metals and PCBs and is a high priority area for sediment cleanup. Various industrial uses have occurred on the property since approximately 1950.

In December 2012, DEQ notified RB Recycling it was liable for contributing to contamination in Columbia Slough sediment. RB Recycling vacated the site in 2013 and performed upland source control measures including removal of surface soil which contained elevated concentrations of PCBs and metals. On Oct. 20, 2014, DEQ issued a stormwater source control determination for the RB Recycling facility. RB Recycling and the property owners proposed to settle to address historical releases to the Columbia Slough sediment and natural resource damages.

DEQ is considering a \$261,000 sediment settlement and a \$39,000 natural resource settlement with RB Recycling parties for sediment impacts and natural resource damages.

**HOW TO COMMENT:** Email comments by 5 p.m., March 30, 2017 to DEQ Project Manager Sarah Miller or mail to 700 NE Multnomah St. Suite #600 Portland, Oregon 97232

To review the project file, call Brent Funk at 503-229-5321 for a file review appointment.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter 4157 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #4157 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/Webdocs/Forms/Output/FPController.aspx?SourceIdType=11&SourceId=4157&Screen=Load>

**THE NEXT STEP:** DEQ will review and consider all comments received during the comment period. If DEQ determines to enter the consent judgment, it will be executed by the parties and then filed with the Multnomah County Circuit Court. The court must approve the consent judgment for it to take effect.

**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](mailto:deqinfo@deq.state.or.us), or 711 for people with hearing impairments.

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION DETERMINATION FOR THE ABIGAIL APTS.

**COMMENTS DUE:** 5 p.m., Thursday, Mar. 30, 2017

**PROJECT LOCATION:** 1616 NW 13th Ave., Portland

**PROPOSAL:** DEQ proposes to issue a No Further Action determination for The Abigail Apartments at 1616 NW 13th Ave. in Portland, conditioned upon adherence to restrictions recorded in an Easement and Equitable Servitudes attached to the property deed.

**HIGHLIGHTS:** The Abigail Apartments were recently constructed on Block 27 of the former Hoyt Street Railyard. Restrictive covenants are in place requiring long-term maintenance of an engineered soil cap at the site. DEQ proposes to place additional covenants on the site requiring long-term operation and maintenance of a methane detection and mitigation system in the sub-grade parking garage. The two sets of restrictive covenants will protect residents from residual contamination beneath the site.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Kevin Dana at 700 NE Multnomah St., Suite 600, Portland, OR, 97232-4100 or [dana.kevin@deq.state.or.us](mailto:dana.kevin@deq.state.or.us). For more information contact the project manager at 503-229-5369.

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>

Find the File Review Application form at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter 5856 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5856 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/Webdocs/Forms/Output/FPController.aspx?SourceId=5856&SourceIdType=11>

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 close of the comment period before making a final decision regarding the proposed No Further Action determination.

**ACCESSIBILITY INFORMATION:** Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language,



## OTHER NOTICES

call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [DEQInfo@deq.state.or.us](mailto:DEQInfo@deq.state.or.us).

### REQUEST FOR COMMENTS PROPOSED NO FURTHER ACTION FOR MORRISON OIL FACILITY

**COMMENTS DUE:** 5 p.m., Friday March 31, 2017, 2016

**PROJECT LOCATION:** Former Morrison Oil facility at 3747 North Suttle Road, Portland, OR. (Tax Lot 800)

**PROPOSAL:** DEQ proposes a no further action determination for tax lot 800 since remaining contaminants do not present an unacceptable risk to human health or the environment. In addition, DEQ proposes a Certificate of Completion for completion of work under Order on Consent Number 15-02.

**HIGHLIGHTS:** Tax Lot 800 of the Morrison Oil site has been the subject of numerous environmental investigations since the early 1990's prior to the construction of North Marine Drive. Former operations resulted in the release of petroleum hydrocarbons and metals to soil and shallow groundwater. Former operations include the repackaging and distribution of petroleum products, which ceased in the 1990's. After construction of Marine drive, a large lead-contaminated soil stockpile was moved onto what is now tax lot 800. A remedial investigation and risk assessment was completed in 2013, addressing possible sources identified by Oregon DEQ, and found no unacceptable risks exceeding State standards for tax lot 800 as long as the site remained in industrial use. Groundwater does not pose risks for the beneficial use, recharge to the Columbia River. The current site tenant entered a prospective purchaser agreement with Oregon DEQ in 2015, and has completed all activities required under Administrative Order number 15-02 to remove and properly dispose the lead-contaminated soil stockpile and demonstrate remaining soil conditions are below acceptable levels. An on-site former well will be decommissioned prior to the issuance of a no further action determination for tax lot 800. Residual soil and groundwater conditions do not pose significant risks.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Paul Seidel at Oregon Dept. of Environmental Quality, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232 or [seidel.paul@deq.state.or.us](mailto:seidel.paul@deq.state.or.us). For more information contact Paul Seidel at 503-229-5614.

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

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.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter ECSI#800 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #800 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/Webdocs/Forms/Output/FPController.aspx?SourceIdType=11&SourceId=Enter ECSI number here&Screen=Load>

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 prior to making a final decision on the property and issuance of a no further action determination and issuance of a certificate of completion.  
**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](mailto:deqinfo@deq.state.or.us). People with hearing impairments may call 711.

### REQUEST FOR COMMENTS CONDITIONAL NO FURTHER ACTION ISSUED FOR UNION PACIFIC RAILROAD HINKLE RAIL YARD SITE

**COMMENTS DUE:** 5 p.m., Monday, March 31, 2017

**PROJECT LOCATION:** UPRR Hinkle Rail Yard, Hermiston

**PROPOSAL:** DEQ's Cleanup Program is proposing to issue a Conditional No Further Action determination for the UPRR Hinkle Rail Yard site.

**HIGHLIGHTS:** Investigation and cleanup actions have been ongoing at the (UPRR) Hinkle Rail Yard located in Hermiston since 1971. Multiple releases of petroleum products have occurred at the rail yard from waste lagoons, leaking underground storage tanks, leaking locomotive fuel tanks, and spills. The primary contamination present at the site is diesel fuel and heavy oil. Cleanup action outlined in DEQ's Record of Decision dated June 20, 2005 and the Record of Decision Amendment No. 1 dated Jan. 19, 2006 have been completed. Soil and groundwater contamination remains on the Hinkle Rail Yard Property but do not present an unacceptable risk to human health, safety, welfare and the environment.

**HOW TO COMMENT:** Send comments to DEQ Project Manager Katie Robertson at 800 SE Emigrant Ave, Suite 330, Pendleton, OR 97801 or by email at [robertson.katie@deq.state.or.us](mailto:robertson.katie@deq.state.or.us). For more information contact the project manager at 541-278-4620.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/pages/index.aspx>, under the "Hazards and Cleanup" section, select "Environmental Cleanup Site Information Database" select "Search complete ECSI database", then enter 516 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 516 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.

If you would like to review the project file fill out the Public Records Request Form at: <http://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>.

**ACCESSIBILITY INFORMATION:** Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email [deqinfo@deq.state.or.us](mailto:deqinfo@deq.state.or.us).

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

Public comment may be submitted in writing directly to an agency or presented orally 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 Chiropractic Examiners**  
**Chapter 811**

**Rule Caption:** Transition to birth month renewal for assistants; require background checks at renewal for all licensees

Date:	Time:	Location:
3-23-17	1 p.m.	Morrow Crane Bldg. 3218 Pringle Rd. SE Salem, OR 97305

**Hearing Officer:** Jason Young DC

**Stat. Auth.:** ORS 684

**Stats. Implemented:** ORS 684.050, 684.052 & 684.155

**Proposed Amendments:** 811-010-0084, 811-010-0086, 811-010-0110

**Last Date for Comment:** 3-23-17, 5 p.m.

**Summary:** One amendment creates a transition from annual renewal to a birth month renewal for all chiropractic assistants, in line with existing birth month renewal for doctors. The other amendments propose to adopt language to require fingerprint background checks at renewal for all licensees.

**Rules Coordinator:** Kelly J. Beringer

**Address:** Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302

**Telephone:** (503) 373-1573

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**Board of Examiners for Engineering and Land Surveying**  
**Chapter 820**

**Rule Caption:** Amend registration rules and the agency's purchasing and contracting rules.

**Stat. Auth.:** ORS 670.310 & 672.255

**Stats. Implemented:** ORS 672.002-672.325

**Proposed Amendments:** 820-001-0025, 820-010-1000, 820-010-1010, 820-010-2000, 820-010-3000, 820-020-0035, 820-040-0030

**Last Date for Comment:** 4-5-17, Close of Business

**Summary:** OAR 820-001-0025 — To revise the rule for personal services consultant contracts with registered professional engineers,

registered professional land surveyors, and registered professional photogrammetrists.

OAR 820-010-1000 — To clarify that required examinations must have been passed by the applicant within five years prior to application and to clarify the process to add another branch of engineering to a current registration.

OAR 820-010-1010 — To include examinations previously recognized by the Board and to clarify which examinations are recognized as qualifying for the Forest branch of engineering.

OAR 820-010-2000 — To clarify that required examinations must have been passed by the applicant within five years prior to application.

OAR 820-010-3000 — To clarify that required examinations must have been passed by the applicant within five years prior to application.

OAR 820-020-0035 — Housekeeping; revise the term "falsify" to "misrepresent"

OAR 820-040-0030 — Housekeeping; removes invalid language referencing an outdated examination.

**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 Licensed Professional Counselors and Therapists**  
**Chapter 833**

**Rule Caption:** Examination and clinical experience requirements for reciprocity method applicants.

Date:	Time:	Location:
5-11-17	10 a.m.	3218 Pringle Rd. SE Salem, OR 97302

**Hearing Officer:** LaRee' Felton

**Stat. Auth.:** ORS 675.705-675.835

**Stats. Implemented:** ORS 675.715, 675.735, 675.785

**Proposed Amendments:** 833-020-0081, 833-030-0021, 833-040-0021

**Last Date for Comment:** 5-11-17, 5 p.m.

**Summary:** Firstly, the proposed amendment updates the competency examination requirement for reciprocity applicants. The current rule allows reciprocity applicants who passed the exam ten years or more prior to applying for licensure in Oregon to complete 40 hours of continuing education in lieu of retaking the exam. This will update the rule to reference Division 80, the continuing education requirements, which must be met for the applicant to qualify under this provision. Secondly, the proposal will no longer allow reciprocity applicants who do not have minimal post-license clinical experience to substitute 1,200 of the 2,400 required post-graduate direct client contact experience hours for supervision, consulting and reporting. Reciprocity applicants with five or more years of post-license clinical experience will continue to be allowed to substitute such experience for 1,000 hours of required supervised direct client contact.

**Rules Coordinator:** LaRee' Felton

**Address:** Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 250, Salem, OR 97302

**Telephone:** (503) 373-1196

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**Rule Caption:** Code of ethics for counselors, therapists, interns and applicants.

Date:	Time:	Location:
5-11-17	10 a.m.	3218 Pringle Rd. SE Salem, OR 97302

**Hearing Officer:** LaRee' Felton

**Stat. Auth.:** ORS 675.705-675.835

**Stats. Implemented:** ORS 675.755, 675.785

**Proposed Adoptions:** 833-100-0012

**Proposed Amendments:** 833-050-0031, 833-050-0041, 833-050-0091, 833-075-0050, 833-075-0070, 833-100-0011, 833-100-0021

# NOTICES OF PROPOSED RULEMAKING

**Proposed Repeals:** 833-100-0031, 833-100-0041, 833-100-0051, 833-100-0061, 833-100-0071

**Last Date for Comment:** 5-11-17, 5 p.m.

**Summary:** The proposed amendment repeals the Board's current code of ethics and adopts the 2014 American Counseling Association (ACA) Code of Ethics as the code of professional conduct applicable to licensed professional counselors, licensed marriage and family therapists, registered interns, and applicants. The proposal maintains several components of the current code, relocating those provisions to other locations in rules where they best fit. This includes the client bill of right details within the professional disclosure statement (PDS), informed consent waiver, supervisor competence and supervisee oversight, disclosure of client records during Board investigation, prohibition against withholding client records solely for nonpayment, and various reporting requirements. Some provisions are moved into a new preamble to the code. The proposal deletes the partial list of statutory exceptions to confidentiality, but maintains that licensees and interns must explain the exceptions to confidentiality to clients as a part of their PDS. There are also some minor revisions to improve rule consistency and clarity.

**Rules Coordinator:** LaRee' Felton

**Address:** Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 250, Salem, OR 97302

**Telephone:** (503) 373-1196

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## Board of Parole and Post-Prison Supervision Chapter 255

**Rule Caption:** Amend rule for exhausting administrative remedies by adding specifications for the request.

**Stat. Auth.:** ORS 144.140, 144.335

**Stats. Implemented:** ORS 144.335

**Proposed Amendments:** 255-080-0001

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** The Oregon Court of Appeals found in "Brown v. Board of Parole" (09/26/2016), that an inmate has exhausted administrative remedies from the Board merely by filing a timely request for administrative review pursuant to OAR 255-080-0005. The Board has a rule that establishes formatting requirements for administrative review requests (OAR 255-080-0008). This rule amendment will expressly incorporate the specifications rule into the administrative review exhaustion requirements in OAR 255-080-0001.

Adopted as a temporary rule 10-31-2016.

**Rules Coordinator:** Perry Waddell

**Address:** Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Parole Suite 100, Salem, OR 97301

**Telephone:** (503) 945-0946

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**Rule Caption:** Updating the Sex Offender Risk Assessment Scale, and Definitions and Criteria to reflect current methodologies.

**Stat. Auth.:** ORS 163A.100, 163A.115 & 2013 OL Ch. 708, Sec. 7

**Stats. Implemented:** ORS 163A.100, 163A.115 & 2013 OL Ch. 708, Sec. 7

**Proposed Amendments:** 255-085-0010, 255-085-0020, 255-060-0011, 255-060-0016

**Last Date for Comment:** 3-15-17, 5 p.m.

**Summary:** The Board uses the methodology in the Static-99R to perform sex offender risk assessments. The Static-99R uses risk factors that have been empirically shown to be associated with sexual recidivism and has explicit rules for scoring these factors and then combining them into a total risk score. The Board is amending Exhibits Q-1, the Sex Offender Risk Assessment Scale, and Q-2, the Sex Offender Risk Assessment Definitions and Criteria, in order to reflect the latest versions of the methodology as revised by the authors of the Static-99R in 2016. The changes incorporate the latest statistics on recidivism.

Adopted as a temporary rule 01-03-2017. Exhibits Q1 & Q2 to: 255-085-0010, 255-085-0020, 255-060-0011, 255-060-0016

**Rules Coordinator:** Perry Waddell

**Address:** Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Parole Suite 100, Salem, OR 97301

**Telephone:** (503) 945-0946

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**Rule Caption:** Define the term "reasonable cause."

**Stat. Auth.:** ORS 144.050, 144.101, 144.107, 144.122, 144.125, 144.126, 144.140, 144.228, 144.280, 144.285, 144.340, 144.346, 144.395, 144.637, 144.644, & 163A.125.

**Stats. Implemented:** ORS 144.050 & 144.140

**Proposed Amendments:** 255-005-0005

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** Define the term "reasonable cause" as it is used by the Board. Clean up of grammar and punctuation in Division 005.

**Rules Coordinator:** Perry Waddell

**Address:** Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Parole Suite 100, Salem, OR 97301

**Telephone:** (503) 945-0946

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

**Rule Caption:** Adopts minimum safety standards for recreational vehicles and clarifies types of recreational vehicles regulated

Date:	Time:	Location:
3-21-17	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 446.003, 446.155, 446.160, 446.176, 446.185, 446.230, 446.250, 446.255, 455.210, 455.220, 455.720

**Stats. Implemented:** ORS 183.335, 446.003, 446.155, 446.160, 446.170, 446.176, 446.185, 446.250, 446.255, 455.210, 455.220, 455.720

**Proposed Adoptions:** Rules in 918-098, 918-500, 918-525, 918-530

**Proposed Amendments:** Rules in 918-098, 918-500, 918-525, 918-530

**Proposed Repeals:** Rules in 918-098, 918-500, 918-525, 918-530

**Proposed Renumberings:** Rules in 918-098, 918-500, 918-525, 918-530

**Proposed Ren. & Amends:** Rules in 918-098, 918-500, 918-525, 918-530

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** These proposed rules make a variety of changes to the state's Recreational Vehicle Program. These changes include, but are not limited to, adopting current editions of the minimum safety standards for the construction of recreational vehicles, clarifying the types of recreational vehicles regulated by the state, eliminating the recreational vehicle repair program, changing plan review requirements for manufacturers, and clarifying the requirements for the manufacture and sale of recreational vehicles 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, Finance and Securities Regulation Chapter 441

**Rule Caption:** Implements NMLS licensing and renewal processes for collection agencies.

**Stat. Auth.:** ORS 697.085

**Stats. Implemented:** ORS 697.031

**Proposed Amendments:** Rules in 441-810

**Last Date for Comment:** 3-24-17, 5 p.m.

# NOTICES OF PROPOSED RULEMAKING

**Summary:** These proposed rules establish the process by which collection agency registrants and applicants submit applications, renewals, and other information through the Nationwide Multistate Licensing System and Registry (NMLS). Currently, registered collection agencies and applicants submit registration materials by paper documentation. The department found the current registration system needed for greater efficiency and to facilitate uniformity for multi-state entities. The NMLS creates efficiencies for the industry, consumers, and department as a replacement for the current system. These proposed rules modify and clarify the registration and application procedures to make the use of the NMLS mandatory. This includes all registration and renewal activity for collection agencies to the NMLS. These proposed rules are necessary to enact a uniform application process resulting in greater efficiencies to the state and industry.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Securities Regulation, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

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**Rule Caption:** Implements NMLS licensing and renewal processes for money transmitters.

**Stat. Auth.:** ORS 717.205 and 717.310

**Stats. Implemented:** ORS 717.205

**Proposed Amendments:** Rules in 441-745

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** These proposed rules establish the process by which money transmitter licensees and applicants submit applications, renewals, and other information through the Nationwide Multistate Licensing System and Registry (NMLS). Currently, licensed money transmitters and applicants submit registration materials by paper documentation. The department found the current registration system needed for greater efficiency and to facilitate uniformity for multi-state entities. The NMLS creates efficiencies for the industry, consumers, and department as a replacement for the current system. These proposed rules modify and clarify the licensing and application procedures to make the use of the NMLS mandatory. This includes all registration and renewal activity, including surety bonds, for money transmitters to the NMLS. These proposed rules are necessary to enact a uniform application process resulting in greater efficiencies to the state and industry.

**Rules Coordinator:** Shelley Greiner

**Address:** Department of Consumer and Business Services, Finance and Securities Regulation, 350 Winter St. NE, Rm. 410, Salem, OR 97301

**Telephone:** (503) 947-7484

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## Department of Consumer and Business Services, Health Insurance Marketplace Chapter 945

**Rule Caption:** 2018 Health Insurance Marketplace Qualified Health Plan and Stand Alone Dental Plan Annual Assessment Rates

Date:	Time:	Location:
3-16-17	10 a.m.	Basement Rm. E 350 Winter St. NE Salem, 97301

**Hearing Officer:** Victor Garcia

**Stat. Auth.:** ORS 741.102

**Stats. Implemented:** ORS 741.105

**Proposed Amendments:** 945-030-0030

**Last Date for Comment:** 3-24-17, Close of Business

**Summary:** The amendment to OAR 945-030-0030 establishes the assessment rate for qualified health plans and stand alone dental plans for 2018. ORS 741.105 requires the Department of Consumer and Business Services (DCBS) to establish assessment rates for qualified health plans and stand alone dental plans sold through the health insurance marketplace. These rates are reviewed annually, adjusted

based on budget and enrollment projections, and updated by amending 945-030-0030.

**Rules Coordinator:** Victor Garcia

**Address:** Department of Consumer and Business Services, Health Insurance Marketplace, 350 Winter St. NE, Salem, OR 97301

**Telephone:** (971) 283-1878

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## Department of Consumer and Business Services, Insurance Regulation Chapter 836

**Rule Caption:** Repeals market assistance plan for construction contractors general liability insurance.

**Stat. Auth.:** ORS 735.210, 735.215 & 735.260

**Stats. Implemented:** ORS 735.215

**Proposed Repeals:** 836-014-0400

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** In 2002, the department learned of difficulties in the construction contractors market. Contractors, required to have general liability insurance were having difficulty obtaining coverage. The department determined that there was a likelihood of consumer harm if contractors were unable to acquire general liability insurance coverage to support their license. The department and the Construction Contractors Board (CCB) formed a workgroup to develop possible solutions. The workgroup developed an outline for the Market Assistance Plan (MAP) website. The website was hosted by the CCB from 2004 until 2016. In 2016 CCB identified the site as unsecure and took it off-line. During discussions about the website, the department and CCB, in conjunction with an advisory committee, determined that the site was outdated and might not be continuing to serve the purpose for which it was first developed. The department determined that the market for general liability coverage for contractors is now well developed. This repeal is necessary to remove the rule related to the successful, but now unnecessary, market assistance plan related to construction contractor general liability coverage.

**Rules Coordinator:** Karen Winkel

**Address:** Department of Consumer and Business Services, Insurance Regulation, 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 2016.

**Stat. Auth.:** ORS 731.244, 731.574, 733.210

**Stats. Implemented:** ORS 731.574, 733.210

**Proposed Amendments:** 836-011-0000

**Proposed Repeals:** 836-011-0000(T)

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** This rulemaking prescribes, for reporting year 2016, 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.

This rulemaking repeals and replaces the current unexpired temporary rule of the same number.

**Rules Coordinator:** Karen Winkel

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

**Rule Caption:** Adopt federal OSHA and state amendments: Walking-Working Surfaces and PPE (Fall Protection Systems).

Date:	Time:	Location:
3-29-17	11 a.m.	Oregon OSHA, Red Oaks Sq. 1230 NE Third St., Suite A-115 Bend, OR 97701-4374

## NOTICES OF PROPOSED RULEMAKING

4-3-17	10 a.m.	Oregon OSHA, Durham Plaza 16760 SW Upper Boones Ferry Rd., Suite 200 Tigard, OR 97224
4-12-17	10 a.m.	Eugene City Library, Bascom Rm. 100 W 10th Ave. Eugene, OR 97401
4-13-17	10 a.m.	City of Medford Lausmann Annex, Rm. 151 200 S. Ivy Medford, OR 97501

**Hearing Officer:** Sue Joye

**Stat. Auth.:** ORS 654.025(2) & 656.726(4)

**Stats. Implemented:** ORS 654.001–654.295 & 654.412–654.423 & 654.750–654.780

**Proposed Adoptions:** 437-002-2021, 437-002-2022, 437-002-2027, 437-002-2031

**Proposed Amendments:** 437-002-0005, 437-002-0020, 437-002-0022, 437-002-0026, 437-002-0032, 437-002-0033, 437-002-0060, 437-002-0120, 437-002-0134, 437-002-0182, 437-002-0220, 437-002-0300, 437-002-0309, 437-002-0310, 437-002-0311, 437-002-0312, 437-002-0314, 437-002-2306, 437-002-2307

**Proposed Repeals:** 437-002-0023, 437-002-0027, 437-002-0028, 437-002-0030, 437-002-0031, 437-002-0072, 437-002-0074, 437-002-0076

**Last Date for Comment:** 4-20-17, Close of Business

**Summary:** This rulemaking is to keep Oregon OSHA in harmony with recent changes to Federal OSHA's standards.

On November 18, 2016, federal OSHA published in the Federal Register their final rule titled: "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)". This general industry final rule revised the previous walking-working surfaces standards within 29 CFR part 1910, subpart D and created a new standard and two new non-mandatory appendixes for fall protection systems within 29 CFR part 1910, subpart I. In addition to the significant changes made to Subparts D and I, federal OSHA also amended standards in 29 CFR part 1910, subparts F, N, and R to create uniformity across all of the affected subparts where walking-working surfaces and personal fall protection systems are addressed. The final rule increases consistency between federal OSHA's general industry and construction standards, which will make compliance easier for employers who conduct operations in both industry sectors. Federal OSHA has also reorganized the requirements and incorporated plain language in order to make the final rule easier to understand and follow. The final rule uses performance-based language whenever possible to give employers greater compliance flexibility. The revised standards on walking-working surfaces are intended to prevent and reduce workplace slips, trips, and falls, as well as other injuries and fatalities associated with walking-working surface hazards. The final federal OSHA rule adds requirements on the design, performance, and use of personal fall protection systems. It also revises and creates new provisions addressing, for example, fixed ladders; rope descent systems; fall protection systems and criteria, including personal fall protection systems; and training on fall hazards and fall protection systems.

Oregon OSHA is proposing to adopt the federal OSHA final rules as published in the Federal Register with a few exceptions. These exceptions are addressed through new Oregon initiated rules which are at least equally as effective as the original federal language. Furthermore, several existing Oregon initiated rules were either removed or modified to remove any duplication with the new federal regulations.

In order to harmonize Oregon OSHA's existing Division 2 regulations with the new federal rule, Oregon OSHA made significant revisions to subdivision 2/D (Walking-Working Surfaces) and Subdivision 2/I (Personal Protective Equipment) of Chapter 437, Division 2. Subsequently, since many existing Oregon OSHA regulations are based on those within 2/D and 2/I, the following Division 2 subdivisions also must be amended: 2/F, 2/L, 2/N, 2/R, and 2/RR.

Recorded below is what Oregon OSHA has proposed in each Sub-division.

Division 2, Subdivision D (Walking- Working Surfaces)

1910.21 Definitions. Oregon OSHA maintained this rule number; however, the title "Definitions" and all associated rule language was removed and replaced in accordance with the new federal 1910.21 language as published in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Scope and Definitions". Oregon OSHA deviated once from the federal rule by not adopting the definition of "low-sloped roof". For years, Oregon OSHA has defined low-slope roof more conservatively than federal OSHA.

1910.22 General Requirements. Oregon OSHA maintained this rule number; however, all associated rule language was removed and replaced in accordance with the new federal 1910.22 language as published by federal OSHA in the Federal Register on November 18, 2016. The title did not change.

1910.23 Guarding Floor and Wall Openings and Holes. Oregon OSHA maintained this rule number; however, the title "Guarding Floors and Walls Openings and Holes" and all associated rule language was removed and replaced in accordance with the new federal 1910.23 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Ladders". Oregon OSHA deviated once from the federal rule by not adopting 1910.23(c)(2) which required stepladders and combination ladders used in a stepladder mode to be equipped with a metal spreader or locking device that securely holds the front and back sections in an open position. Since federal OSHA specifically defines "stepladder" in the new 1910.21(b), Oregon OSHA felt that limiting this requirements only to those portable ladders that meet the definition of a stepladder was not sufficiently protective. Oregon OSHA has proposed to address this concern in the existing Oregon initiated rule OAR 437-002-0026 which is discussed further below.

1910.24 Fixed Industrial Stairs. Oregon OSHA maintained this rule number; however, the title "Fixed Industrial Stairs" and all associated rule language was replaced in accordance with the new federal 1910.24 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Step Bolts and Manhole Steps". Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.25 Portable Wood Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Portable Wood Ladders - Repealed" and all associated rule language was removed and replaced in accordance with the new federal 1910.25 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Stairways". Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.26 Portable Metal Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Portable Metal Ladders - Repealed" and all associated rule language was removed and replaced in accordance with the new federal 1910.26 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Dockboards". Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.27 Fixed Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Fixed Ladders - Repealed" and all associated rule language was removed and replaced in accordance with the new federal 1910.27 language as published by federal

## NOTICES OF PROPOSED RULEMAKING

OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Scaffolds and Rope Descent Systems". 1910.27(a) now directs employers to see the scaffolding regulations in Oregon OSHA's Division 3, Subdivision L regulations. Oregon OSHA deviated significantly from the federal rule by not directly adopting 1910.27(b) Rope descent systems. Instead, Oregon OSHA has proposed creating a new Oregon initiated rule identified as 437-002-2027 Rope Descent and Rope Access Systems which is further discussed below under 437-002-2027. Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.28 Safety Requirements for Scaffolding. Oregon OSHA maintained this rule number; however, the title "Safety Requirements for Scaffolding" and all associated rule language was removed and replaced in accordance with the new federal 1910.28 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Duty to have Fall Protection and Falling Object Protection". Oregon OSHA deviated once from the federal rule by proposing to not adopt 1910.28(b)(1)(ii). Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.29 Manually Propelled Mobile Ladder Stands and Scaffolds (Towers). Oregon OSHA maintained this rule number; however, the title "Manually Propelled Mobile Ladder Stands and Scaffolds (Towers)" and all associated rule language was removed and replaced in accordance with the new federal 1910.29 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Fall Protection Systems and Falling Object Protection - Criteria and Practices". Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.30 Other Working Surfaces. Oregon OSHA maintained this rule number; however, the title "Other Working Surfaces" and all associated rule language was removed and replaced in accordance with the new federal 1910.30 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Training Requirements". Oregon OSHA has also proposed alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

437-002-0022 Additional Oregon General Requirements. This Oregon initiated rule has been in place since 1994. Oregon OSHA has maintained the rule's language and intent, only removing from this rule that which was essentially duplicative with the new federal 1910.22 language as published by federal OSHA in the Federal Register on November 18, 2016. Oregon OSHA added a scope and application to this rule and recrafted the rule's language to follow the same "The employer must ensure..." format used in the new federal rule.

437-002-0023 Covers for Holes. This Oregon initiated rule has been in place since 2013. Oregon OSHA has proposed repealing the rule in its entirety as the language and intent is duplicative with the new federal 1910.29 Fall Protection Systems and Falling Object Protection - Criteria and Practices language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0026 Portable Ladders. This Oregon initiated rule has been in place since 1994. Oregon OSHA removed much of the existing language as it is now duplicative of the new federal 1910.23 Ladders language as published by federal OSHA in the Federal Register on November 18, 2016. That which was not duplicative has been maintained. Oregon OSHA added a scope and application to this rule and recrafted the rule's language to follow the same "The

employer must ensure..." format used in the new federal rule. Oregon OSHA added three new definitions for terms that are used in the proposed revision of 437-002-0026. Furthermore, Oregon OSHA updated the ANSI A14 references in the ladder selection section of the rule from the 1990's editions to the most current editions available, which are from 2007. Finally, the new federal rule, 1910.23(c)(2), which was not adopted by Oregon OSHA in the new federal 1910.23 Ladders, has been added to this rule and expanded to include all self-supporting ladders, not just stepladders as defined in 1910.21(b).

437-002-0027 Fixed Ladders. This Oregon initiated rule has been in place since 1999. Oregon OSHA has proposed repealing the rule in its entirety as its language and intent is mostly duplicative with the new federal 1910.23 Ladder language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0028 Guardrails and Toeboards. This Oregon initiated rule has been in place since 1990. Oregon OSHA has proposed repealing the rule in its entirety as its language and intent is duplicative with the new federal 1910.27 Scaffolds and Rope Descent Systems language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0030 Floors. This Oregon initiated rule has been in place in its current form since 1994. Oregon OSHA has proposed repealing the rule in its entirety as its language and intent is duplicative with the new federal 1910.22 General Requirements language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0031 Provisions for Window Cleaners. This Oregon initiated rule has been in place in its current form since 1990. Oregon OSHA has proposed repealing the rule in its entirety as its language and intent is duplicative with the new federal 1910.140 Personal Fall Protection Systems language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2021 Oregon Additional Definitions. Oregon OSHA has proposed promulgating a new Oregon initiated rule where Oregon OSHA defines "low-slope roof". Oregon OSHA has proposed not adopting the federal definition of "low-slope roof" as found in the new 1910.21(b) Definitions as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2027 Rope Descent and Rope Access Systems. As discussed above in 1910.27, Oregon OSHA has proposed to not directly adopt the federal rule 1910.27(b) Rope Descent Systems as published in the Federal Register on November 18, 2016. Instead, Oregon OSHA views this rule making as a unique and timely opportunity to include rope access systems and methods, which are similar, yet significantly different from rope descent systems into this overall Walking-Working Surface rule making process. Rope access methods, which were not addressed by the new federal rules, are well established in today's general industry environment in Oregon. Oregon OSHA has proposed to use all of the rope descent system rules as found in the federal 1910.27(b) Rope Descent Systems as published by federal OSHA in the Federal Register on November 18, 2016 as the foundation for what must be met to engage in rope access work. It also adds to the minimum rope descent systems requirements by requiring the use of life-safety rated ropes made from industrial synthetic fibers, auto locking descent devices, and pre-job safety briefings. For employers that choose to use rope access methods, they must meet all of the rope descent systems regulations as well as the additional rope access specific requirements. The additional rope access system requirements include undergoing a documented assessment to determine if other access methods are feasible, developing a written rope access program and conducting rope access specific training and evaluation in addition to the fall protection training required by new federal 1910.30 Training.

Division 2, Subdivision F (Powered Platforms)

1910.66 Powered Platforms for Building Maintenance. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA is proposing to amend this rule to bring the walking-

## NOTICES OF PROPOSED RULEMAKING

working surface portions and fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.67 Vehicle-mounted Elevating and Rotating Work Platforms. This rule has been in place in its current form in Oregon since 1997. Oregon OSHA is proposing to amend this rule to bring the fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.68 Manlifts. This rule has been in place in its current form in Oregon since 2008. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0072 Manually Propelled Elevating Aerial Platforms. Oregon OSHA is proposing to repeal this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA proposes to direct general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This proposed action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-0074 Scissor Lifts - Self-Propelled Elevating Work Platforms. Oregon OSHA is proposing to repeal this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA proposes to direct general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This proposed action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-0076 Boom Supported Elevating Work Platforms. Oregon OSHA is proposing to repeal this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA proposes to direct general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This proposed action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-2022 Additional Oregon Rules for Powered Platforms. Oregon OSHA is proposing a new Oregon initiated rule that directs general industry employers who use powered platforms other than those covered by 1910.66, 1910.67 and 1910.68 to the three construction industry powered platform counterparts within Division 3/L. This proposed rule is needed because of the proposal discussed above to repealed 437-002-0072, 437-002-0074, and 437-002-0076 within Division 2/F. This proposed action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

Division 2, Subdivision I (Personal Protective Equipment)

1910.139 Reserved. This is a new rule number which Oregon OSHA proposes to adopt in accordance with the new federal 1910.139 language as published by federal OSHA in the Federal Register on November 18, 2016. There is no rule language associated with this rule number as it is reserved for future consideration.

1910.140 Personal Fall Protection Systems. This is a new rule which Oregon OSHA proposes to adopt fully in accordance with the new federal 1910.140 language as published by federal OSHA in the Federal Register on November 18, 2016. This rule establishes minimum requirements for personal fall protection systems such as personal fall arrest, travel restraint and positioning systems for general industry work covered by Division 2. Currently, Oregon OSHA guides employers to the fall protection system criteria in the construction industry code, Division 3/M for this information through

437-002-0134(5) Fall Protection as well as other general industry regulations.

Appendix C to Subpart I of Part 1910 - Personal Fall Protection Systems Non-mandatory Guidelines. This is a new non-mandatory appendix which Oregon OSHA proposes to adopt fully in accordance with the new federal Subpart I of part 1910 language as published by federal OSHA in the Federal Register on November 18, 2016.

Appendix D to Subpart I of Part 1910 - Test Methods and Procedures for Personal Fall Protection Systems Non-mandatory Guidelines. This is a new non-mandatory appendix which Oregon OSHA proposes to adopt fully in accordance with the new federal Subpart I of part 1910 language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0134(5) Fall Protection. In the preamble discussion to the final rule as published in the Federal Register on November 18, 2016, federal OSHA established that all general industry walking-working surfaces are covered by the new federal rule 1910.28 Duty to have Fall Protection and Falling Object Protection. The new rule established fifteen unique situations where an employer has a duty to provide fall protection. It also establishes the trigger height for that fall protection, which is generally 4 feet, with exceptions. None of the fifteen situations where employers must provide fall protection include rolling stock or motor vehicles. The preamble discussion specifically states that motor and rolling stock vehicles were not included in the overall "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)" final rule and that rolling stock and motor vehicles may be considered in future federal rule making. For these reasons, Oregon OSHA is proposing to amend the current 437-002-0134(5) Fall Protection within Division 2/I to require fall protection when employees are greater than 10 feet on motor and rolling stock vehicles. This rule goes beyond federal OSHA's regulations and maintains the same Oregon initiated rule for these vehicles as has been in place since 2011. Furthermore, the rule's mandate that fall protection systems must be provided, installed, and used in accordance with the criteria in 1926.502(d), and 437-003-0502 in Division 3/M, Construction/Fall Protection has been revised to guide employers to the applicable new general industry requirements in proposed 2/I, 1910.140.

Division 2, Subdivision L (Fire Protection)

437-002-0182 Oregon Rules for Fire Fighters. This rule has been in place in its current form in Oregon since 2015. Oregon OSHA is proposing to amend this rule to bring the walking-working surfaces in hose drying towers and drill towers into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision N (Material Handling and Storage)

1910.178 Powered Industrial Trucks. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.179 Overhead and Gantry Cranes. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision R (Special Industries)

1910.262 Textiles. This rule has been in place in its current form in Oregon since 1999. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.265 Sawmills. This rule has been in place in its current form in Oregon since 2012. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

# NOTICES OF PROPOSED RULEMAKING

437-002-0310 Tree and Shrub Services. This rule has been in place in its current form in Oregon since 2001. Oregon OSHA is proposing to amend the climbing work procedure portion of the existing rule to bring the walking-working surface portions and fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0312 Pulp, Paper and Paperboard Mills. This rule has been in place in its current form in Oregon since 2013. Oregon OSHA is proposing to amend this rule to bring the walking-working surface portions and fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision RR (Electrical Power Generation, Transmission and Distribution)

437-002-2306 Personal Protective Equipment. This rule has been in place in its current form in Oregon since 2016. Oregon OSHA is proposing to amend this rule to bring the fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2307 Portable Ladders and Platforms. This rule has been in place in its current form in Oregon since 2016. Oregon OSHA is proposing to amend this rule to bring the portable ladder portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

**Rules Coordinator:** Sue C. Joye

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

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

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## Department of Corrections Chapter 291

**Rule Caption:** Access to Law Libraries in Department of Corrections Facilities

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

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

**Proposed Adoptions:** 291-139-0100, 291-139-0110, 291-139-0120, 291-139-0130, 291-139-0140, 291-139-0150, 291-139-0160, 291-139-0170, 291-139-0180, 291-139-0190

**Proposed Repeals:** 291-139-0005, 291-139-0010, 291-139-0015, 291-139-0020, 291-139-0025, 291-139-0028, 291-139-0030, 291-139-0035, 291-139-0040, 291-139-0045

**Last Date for Comment:** 4-20-17, 4:30 p.m.

**Summary:** These modifications are necessary to bring inmate access to law library service, supplies, and equipment current with established processes and practices of the department. These rules have not been revised since 1999, and many of the processes for access to law libraries services, supplies, and equipment are accomplished through electronic formats.

**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:** Use of Chemical Agents in Use of Force Incidents in Correctional Facilities

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

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

**Proposed Amendments:** 291-013-0104

**Last Date for Comment:** 4-20-17, 4:30 p.m.

**Summary:** This amendment is necessary to clarify the department's method of allowing inmates to decontaminate after having received a direct application of a chemical agent. The inmate will be offered a shower as soon as time and circumstances allow.

**Rules Coordinator:** Janet R. Worley

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

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**Rule Caption:** Transgender and Intersex (Inmate)

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

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

**Proposed Adoptions:** 291-210-0040, 291-210-0050

**Proposed Amendments:** 291-210-0010, 291-210-0020, 291-210-0030

**Last Date for Comment:** 4-20-17, 4:30 p.m.

**Summary:** Currently, the department's rules establish department policies and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake. However, the rules do not clearly set out department policies and procedures in certain areas of prison administration for these inmates during intake processing, or after facility assignment.

These rule amendments are necessary in order to more clearly and completely set out the department's policies and procedures in this area of prison administration, and to provide clearer information and direction for Department of Corrections inmates and staff regarding the same. These rule amendments set out and clarify DOC policy and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake and after facility assignment, specifically including those regarding searches; facility and housing assignments; access to department-issued clothing, shower and hygiene; and appropriate and professional questioning by staff. These amendments also reflect certain definitional changes.

**Rules Coordinator:** Janet R. Worley

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

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

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## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Salmon Seasons for Commercial and Sport Fisheries In the Pacific Ocean

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, OR 97601

**Hearing Officer:** Oregon Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.138, 496.146, 506.119 and 506.750 et Seq.

**Other Auth.:** Magnuson-Stevens Sustainable Fisheries Act.

**Stats. Implemented:** ORS 496.162, 506.129 and 506.750 et Seq.

**Proposed Adoptions:** Rules in 635-003, 635-013

**Proposed Amendments:** Rules in 635-003, 635-013

**Proposed Repeals:** Rules in 635-003, 635-013

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** Amend rules related to commercial and sport salmon fishing in the Pacific Ocean within Oregon State jurisdiction. House-keeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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**Rule Caption:** Amend Rules for Sport and Commercial Halibut Fisheries

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, OR 97601

**Hearing Officer:** Oregon Fish and Wildlife Commission



# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 496.138, 496.146, 496.162, 497.121, 506.036, 506.109, 506.119, 506.129.

**Stats. Implemented:** ORS 496.004, 496.009, 496.162, 506.109, 506.129, 508.306.

**Proposed Adoptions:** Rules in 635-004, 635-039

**Proposed Amendments:** Rules in 635-004, 635-039

**Proposed Repeals:** Rules in 635-004, 635-039

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** Amendments to Oregon's regulations for sport and commercial halibut fisheries will bring the State concurrent with federally adopted regulations. Modifications establish 2017 seasons and/or quotas for halibut fisheries and establish a requirement for descending devices in the recreational halibut fishery. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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**Rule Caption:** Amendments Regarding Harvest of Game Birds, Season Dates, Open Areas, and Bag Limits

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, OR 97601

**Hearing Officer:** ODFW Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162, 498.002

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162, 498.002

**Proposed Amendments:** Rules in 635-008, 635-045, 635-051, 635-052, 635-053, 635-054, 635-060

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** Amend rules regarding the harvest of game birds including 2017-2018 season dates, open areas, regulations, and bag limits.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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**Rule Caption:** Amend rule to authorize Transfer of Tags to Terminally Ill Individuals

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, OR 97601

**Hearing Officer:** ODFW Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162

**Stats. Implemented:** ORS 496.012, 496.138, 496.146 & 496.162

**Proposed Amendments:** 635-060-0046

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** The adoption of these rules would provide a mechanism for qualifying terminally ill individuals to obtain controlled or limited hunt tags transferred from an immediate family member. To qualify for these tags individuals must have been diagnosed with a terminal illness by a licensed physician.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

\*\*\*\*\*

**Rule Caption:** Amend Rules for Issuing Leftover Limited Landowner Preference Tags

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, OR 97601

**Hearing Officer:** ODFW Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146 & 496.162

**Stats. Implemented:** ORS 496.012, 496.138, 496.146 & 496.162

**Proposed Adoptions:** 635-075-0023

**Proposed Amendments:** Rules in 635-075

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** The current process for issuing leftover Limited Landowner Preference (LOP) elk tags limits each landowner to one tag. These rules will make the process consistent for issuing leftover tags for Limited LOP deer and elk hunts. This change is necessary to make leftover

Limited LOP elk tags available to landowners who have not received all of the tags their property qualifies for based on acreage as set forth in 635-075-0005 (8).

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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**Rule Caption:** Oregon State List of Threatened and Endangered Species Amended

Date:	Time:	Location:
4-21-17	8 a.m.	Running Y Ranch 5500 Running Y Rd. Klamath Falls, Or 97601

**Hearing Officer:** Oregon Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

**Stats. Implemented:** ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

**Proposed Amendments:** 635-100-0125

**Last Date for Comment:** 4-21-17, Close of Hearing

**Summary:** Rule amendments remove Borax Lake Chub (*Gila boraxobius*) and Foskett Spring Speckled Dace (*Rhinichthys osculus* ssp.) from the Oregon State List of Threatened and Endangered Species.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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**Rule Caption:** Amendment to Administrative Rules for Recreational and Commercial Fisheries in the Columbia River.

Date:	Time:	Location:
3-17-17	8 a.m.	Benton County Fairgrounds Guerber Hall 110 SW 53rd St. Corvallis, OR 97333

**Hearing Officer:** Oregon Fish and Wildlife Commission

**Stat. Auth.:** ORS 183.325, 496.138, 496.146, 497.121, 506.036, 506.109, 506.119, 506.129, 513.020

**Stats. Implemented:** ORS 496.004, 496.009, 496.162, 506.109, 506.129, 507.030, 508.025, 508.040, 508.550, 508.980.

**Proposed Adoptions:** Rules in 635-014, 635-017, 635-023, 635-042, 635-500

**Proposed Amendments:** Rules in 635-014, 635-017, 635-023, 635-042, 635-500

**Proposed Repeals:** Rules in 635-014, 635-017, 635-023, 635-042, 635-500

**Last Date for Comment:** 3-17-17, Close of Hearing

**Summary:** The amendments will modify recreational and commercial fisheries in the Columbia River and tributaries. ORS 508.980 sets forth the policy of the State that governs rules related to Columbia River fish management and reform. The Commission adopted rules on January 20, 2017, and directed the ODFW Director to negotiate with Washington through the Columbia River Compact process in order to reach concurrence, and to check back with the Commission regarding those discussions. These rulemaking amendments will address modifications, if any, to the existing rules to promote orderly fisheries with Washington. Housekeeping and technical correc-

# NOTICES OF PROPOSED RULEMAKING

tions to the regulations may occur to ensure rule consistency. The Agency requests public comment on whether other options should be considered for achieving the rule's goals while reducing any negative economic effect on business.

**Rules Coordinator:** Michelle Tate

**Address:** Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

**Telephone:** (503) 947-6044

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

**Rule Caption:** Eligibility and activities of daily living criteria for long-term care services

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-17	9 a.m.	Human Services Bldg., Rm. 160 500 Summer St. NE Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 410.070

**Stats. Implemented:** ORS 410.060, 410.070, 414.065

**Proposed Amendments:** 411-015-0005, 411-015-0006

**Last Date for Comment:** 3-21-17, 5 p.m.

**Summary:** The Department of Human Services (Department) is proposing to amend OAR 411-015-0005 and 411-015-0006 to more clearly define the threshold of need for a nursing facility level of care. The Department is also amending the rules to more clearly define frequency of need thresholds and the definition of tasks associated with the activities of daily living (ADL) portion of the rule. Minor grammar, formatting, punctuation, and housekeeping issues are also being addressed.

**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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**Rule Caption:** ODDS: Agency Background Checks to Provide Developmental Disabilities Services in Community-Based Settings

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-17	3 p.m.	Human Services Bldg. 500 Summer St. NE, Room. 160 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 409.050

**Stats. Implemented:** ORS 409.050

**Proposed Amendments:** 411-323-0050

**Proposed Repeals:** 411-323-0050(T)

**Last Date for Comment:** 3-21-17, 5 p.m.

**Summary:** The Department of Human Services, Office of Developmental Disabilities Services (ODDS) is proposing to amend OAR 411-323-0050 to make permanent the temporary changes that became effective on October 24, 2016 and December 16, 2016, in order to comply with the following:

- ORS 181A.190.
- OAR chapter 125, division 007.
- OAR 407-007-0200 to 407-007-0370.

In addition, ODDS is also proposing additional edits to ensure consistent terminology, update statutory and rule references, correct formatting and punctuation, and improve ease of reading.

**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

**Department of Human Services,  
Child Welfare Programs  
Chapter 413**

**Rule Caption:** Amending rule relating to reports of child abuse or neglect

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-20-17	9 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 257 Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 418.005, 419B.020

**Stats. Implemented:** ORS 418.005, 419B.020

**Proposed Amendments:** 413-015-0210

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** The Department of Human Services, Office of Child Welfare Programs, is amending OAR 413-015-0210 relating to determining the Department's response to reports of child abuse. The rule is amended to state that a CPS (Child Protective Services) assessment is required on a report of child abuse or neglect if the report would be the fourth or greater consecutive report received regarding the same family and there is at least one child in the home under the age of four. Any exception to this requirement must be approved by the CPS program manager or their designee. This rule was amended by temporary rule on October 5, 2016.

Rule text showing edits for the rules described above is available at <http://www.dhs.state.or.us/policy/childwelfare/drafts/drafts.htm>.

**Rules Coordinator:** Amie Fender

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 945-8986

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

**Rule Caption:** Amending rules relating to programs for refugees

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-20-17	10 a.m.	500 Summer St. NE, E-48 Salem, OR

**Hearing Officer:** Robert Trachtenberg

**Stat. Auth.:** ORS 409.050, 411.060, 411.404, 411.706, 411.816, 412.014, 412.049

**Stats. Implemented:** ORS 409.010, 411.060, 411.404, 411.706, 411.816, 412.014, 412.049

**Proposed Adoptions:** 461-135-0915

**Proposed Amendments:** 461-101-0010, 461-110-0210, 461-110-0630, 461-110-0750, 461-115-0190, 461-115-0230, 461-115-0610, 461-120-0125, 461-120-0510, 461-130-0310, 461-130-0327, 461-135-0085, 461-135-0560, 461-135-0900, 461-135-0930, 461-140-0040, 461-140-0210, 461-145-0005, 461-145-0035, 461-145-0088, 461-145-0300, 461-145-0365, 461-145-0430, 461-145-0505, 461-145-0930, 461-155-0225, 461-160-0015, 461-160-0100, 461-160-0160, 461-165-0030, 461-175-0220, 461-190-0231, 461-193-0031, 461-195-0601

**Last Date for Comment:** 3-20-17, 5 p.m.

**Summary:** OAR 461-101-0010 is being amended to add the Refugee (REF) Employment Program to the list of programs that are described and to which OAR 461 rules apply when no program acronym appears in a rule.

OAR 461-110-0210 is being amended to add A&D treatment and DV shelter as a reasons for absence from the household group for the Refugee (REF) and Refugee Medical (REFM) programs. This rule is also being amended to indicate that in these programs the initial absence due to emergent needs is limited to 30 days, and to change the reasonably anticipated to return extension from 90 to 30 days.

OAR 461-110-0630 is being amended to broaden the need group description in the REF and REFM programs. The need group consists of the individuals whose basic and special needs are used to determine eligibility.

## NOTICES OF PROPOSED RULEMAKING

OAR 461-110-0750 is being amended to specify the benefit group membership for the REF and REFM programs, which will generally align with the TANF program.

OAR 461-115-0190 is being amended to reduce the time that DHS has to provide an eligibility decision for the REF and REFM programs.

OAR 461-115-0230 is being amended to remove the interview requirement for the REFM program, aligning with other medical programs.

OAR 461-115-0610 is being amended to add a requirement for the REF and REFM programs that an individual's immigration status must be verified so that federal law is being followed.

OAR 461-120-0125 is being amended to move Iraqi and Afghan SIV holders back into qualified noncitizen status, remove references to Lautenberg parolees, and reorganize the rule. These changes align with federal law and make the rule easier to follow.

OAR 461-120-0510 is being amended to eliminate the ineligible TANF filing group's potential eligibility for the REF and REFM programs.

OAR 461-130-0310 is being amended to add an exemption from an employment program for REF individuals who are taking care of household members who have disabilities. This rule is also being amended to describe who is mandatory to participate in an employment program for REF.

OAR 461-130-0327 is being amended to add health and safety violations and customary work hours as good cause for failure to comply with program requirements in the REF program. These changes follow federal requirements.

OAR 461-135-0085 is about assessment and treatment requirements is being amended to so the rule no longer applies in the REF program, consistent with the limited benefit period.

OAR 461-135-0560 is being amended to require that REF and REFM individuals are not fleeing felons, aligning these programs with the TANF program.

OAR 461-135-0900 is being amended to add a new requirement for the REF and REFM programs individuals must provide the name of the resettlement program that resettled them if they were resettled in Oregon, consistent with federal law. This rule is also being amended as part of reorganizing which rules set out REF only and REFM only requirements.

OAR 461-135-0915 is being adopted to add job quit requirements for the REF program as well as REF only requirements previously in OAR 461-135-0900.

OAR 461-135-0930 is being amended to include requirements about the REFM program previously in OAR 461-135-0900. The amended rule will indicate that an individual is not required to apply or receive REF in order to receive REFM, and that an individual who is receiving REF and loses Medicaid eligibility is not required to meet the financial requirements of REFM, aligning with federal policy.

OAR 461-140-0040 is being amended to remove the reference to medical expenses as a reason income is not available in the REFM program because this is addressed in other rules.

OAR 461-140-0210 is being amended to limit the look back time for an asset transfer in the REF program and limiting the assets to those in the U.S. only. This rule is also being amended to align REFM with TANF, and remove the disqualification for REFM if the individual was an inpatient at a nursing facility or medical institution.

OAR 461-145-0005 is being amended to correct the name of the federal legislation.

OAR 461-145-0035 is being amended to indicate that public assistance programs count Black Lung Benefits as unearned income.

OAR 461-145-0088 is being amended to remove its requirement to treat certain expenditures as available income in the REF and REFM programs, aligning these programs with the TANF program.

OAR 461-145-0300 is being amended to add an income exclusion in the REF and REFM programs for some needs-based payments, aligning these programs with the TANF program.

OAR 461-145-0365 is being amended to add the REF and REFM programs to the child care allowance for NCSTA and AmeriCorps, aligning with the TANF program.

OAR 461-145-0430 is being amended to add REF and REFM on how the equity value of real property is treated to determine eligibility, aligning with the TANF program requirements.

OAR 461-145-0505 is being amended to treat spousal support for determining eligibility in the REFM program similarly to the TANF program.

OAR 461-145-0930 is being amended to change how self-employment costs are treated for REFM program, aligning this program with the REF and TANF programs.

OAR 461-155-0225 is being amended to change the income standard to the adjusted income standard for the REFM program, aligning this program more closely with the REF and TANF programs.

OAR 461-160-0015 is being amended to provide a new resource limit for the REFM program, aligning this program more closely with the REF and TANF programs.

OAR 461-160-0100 is being amended to provide a definition of adjusted income that is specific to the REFM program and change which income is compared to the income standard, aligning this program more closely with the REF and TANF programs.

OAR 461-160-0160 is being amended to allow an earned income deduction in the REFM program, aligning this program more closely with the REF and TANF programs.

OAR 461-165-0030 is being amended to clarify the time frame that an individual is considered to have received benefits in the Matching Grant program to ensure that an individual is not able to potentially receive benefits in the Matching Grant Program and another DHS cash assistance program during the same month.

OAR 461-175-0220 is being amended to add the REF Employment Program to the notice requirements for disqualification, aligning this program with the JOBS program.

OAR 461-190-0231 is being amended to add the REF Employment Program to the re-engagement process, aligning this program with the JOBS program.

OAR 461-193-0031 is being amended to clarify that an individual must participate in the Refugee Case Services Project under the stated conditions to strengthen the requirement to participate in the Refugee Case Services Project. This rule is also being amended to remove newborn verification requirements.

OAR 461-195-0601 is being amended to include REF and REFM as programs that have the potential for an Intentional Program Violation, aligning these programs with the TANF program.

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

The Department requests public comment on whether other options should be considered for achieving the substantive goals of the rules while reducing the negative economic impact of the rules on business. Rule text showing edits for the rules described above is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_proposed.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm).

**Rules Coordinator:** Robert Trachtenberg

**Address:** Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301

**Telephone:** (503) 947-5290

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**Department of Justice**  
**Chapter 137**

**Rule Caption:** Establishment of Past Support Orders

**Stat. Auth.:** ORS 180.345

**Stats. Implemented:** ORS 416.422

**Proposed Amendments:** 137-055-3220

# NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** OAR 137-055-3220 is being amended to limit the amount of past support that may be entered in an action initiated by the Child Support Program.

Please submit written comments to Lori Woltring, Policy Analyst, Division of Child Support, 1162 Court St NE Salem, Oregon 97301. Questions may be directed to that address or emailed to lori.woltring@doj.state.or.us

**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:** Self-Support Reserve annual update

**Stat. Auth.:** ORS 25.275, 25.280, 180.345

**Stats. Implemented:** ORS 25.275, 25.280

**Proposed Amendments:** 137-050-0745

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** OAR 137-050-0745 is being amended to update the self-support reserve in the child support guidelines using the federal poverty level guidelines for 2017.

Please submit written comments to Lori Woltring, Policy Analyst, Division of Child Support, 1162 Court St NE Salem, Oregon 97301. Questions may be directed to that address or emailed to lori.woltring@doj.state.or.us

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 378-5987

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## Department of Public Safety Standards and Training Chapter 259

**Rule Caption:** Specifies person hired as an investigator not eligible for expert witness exemption from PI licensure.

**Stat. Auth.:** ORS 703.480

**Stats. Implemented:** ORS 703.407, 703.411, 703.430, 703.450, 703.480

**Proposed Amendments:** 259-061-0018

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** The proposed changes to OAR 259-061-0018, Private Investigator Responsibilities, provide DPSST's interpretation of the expert witness exemption from private investigator licensure found in ORS 703.407. The proposed rule language states that the expert witness exemption to private investigator licensing requirements does not apply when an individual is hired as an investigator to obtain or furnish information and later testifies as to the factual information obtained during the investigation.

DPSST's application of the administrative rule would be centered on the intent of employment when an individual is hired. If an individual is hired to obtain or furnish information, then they meet the definition of a private investigator. If an individual is hired to be a witness and provide an opinion or interpretation of collected data, then the individual does not meet the definition of a private investigator because they are not obtaining or furnishing the information. Discovery of new information based on an individual's review of information in order to make a witness statement would not require the individual to be licensed as a private investigator because the individual was not hired to obtain or furnish the information. An individual hired to be a witness and conducting investigation to obtain or furnish information in order to be a witness would be required to be licensed as a private investigator because they are conducting investigation to obtain and furnish information.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

**Rule Caption:** Changes the requirements and processes for out-of-state private investigators to obtain temporary licensure in Oregon.

**Stat. Auth.:** ORS 703.480

**Stats. Implemented:** ORS 703.425, 703.430, 703.435, 703.450, 703.460, 703.465 & 703.480

**Proposed Amendments:** 259-061-0010, 259-061-0110

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** Current rule language for OAR 259-061-0110, Temporary License, allows DPSST to issue a temporary license to an out-of-state private investigator based on reciprocity when the licensing standards of the other state meet or exceed Oregon's requirements for licensure as a private investigator.

Private Investigator Subcommittee members expressed concern that out-of-state investigators cannot meet the statutory requirement for reciprocity due to the fact that their state's requirements must be substantially similar to Oregon's requirements and most states do not have continuing education requirements that would be considered substantially similar.

The proposed changes to OAR 259-061-0110 make eligibility for temporary licensure as an Oregon private investigator based on an individual's current out-of-state license with a background check completed pursuant to the issuing state's requirements for licensure. Under the proposed changes, a temporary investigator's license allows an out-of-state investigator to perform investigatory services for cases that originate from the individual's licensing state for a total of 30 days per calendar year. Under the proposed changes, a temporary investigator's license does not allow an out-of-state investigator to initiate new cases, open an investigatory business or provide investigatory services for more than 30 days per calendar year. Under the proposed changes, investigators providing services in Oregon with a temporary investigator's license must maintain a record of the dates they are providing investigatory services in Oregon; carry a copy of their temporary license; obey all rules of conduct and ethics that apply to Oregon private investigators; and obey state laws as they pertain to the duties of investigations for Oregon private investigators.

The proposed changes to OAR 259-061-0010 remove the fee requirement for a temporary license.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

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**Rule Caption:** Amends and adopts responsibilities and compliance regarding use of prohibited business name per HB 4142.

**Stat. Auth.:** ORS 181A.870 & OR Laws 2016 Chapter 50

**Stats. Implemented:** ORS 181A.870 & OR Laws 2016 Chapter 50

**Proposed Adoptions:** 259-060-0200

**Proposed Amendments:** 259-060-0015, 259-060-0130, 259-060-0450, 259-060-0600

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** House Bill 4142 (2016) states that it is unlawful for an entity that employs private security providers to use a name that implies that the entity is, or is affiliated with, an existing law enforcement unit or public safety agency as defined in ORS 181A.355, the organized militia as described in ORS 396.105, the Armed Forces of the United States, a federal law enforcement agency or a federal intelligence agency.

This proposed rule change amends language in OAR 259-060-0015, 259-060-0130, 259-060-0450 and 259-060-0600 to comply with the provisions of HB 4142 and to clarify executive manager responsibilities. The proposed rule language for OAR 259-060-0200 adopts Employer Responsibilities to comply with the provisions of HB 4142.

The proposed rule language adds specific requirements for the executive manager to submit Form PS-24 (Executive Manager Information Form). The Form PS-24 will be used to identify the name and the business owner who the executive manager is employed by or

## NOTICES OF PROPOSED RULEMAKING

contracted with, provide company contact information, and to report the beginning of or termination or completion of employment or contract. Information contained in the Form PS-24 will allow DPSST to monitor employer compliance with HB 4142. Failure of the executive manager to provide the Form PS-24 will make the executive manager's license subject to denial, suspension or revocation as referenced in OAR 259-060-0300.

A proposed rule was filed and opened for public comment in September 2016. Public comment was received. Review of the public comment lead to amending the proposed rule language to better mirror the language within HB4142. The changes were made for clarity, but have not altered the intent of the proposed rule language.

In response to the public comment, DPSST Staff determined that the interpretation of the proposed rules drafted pursuant to HB 4142 would be applied to the business name of the employer. OAR 259-060-0010 defines "Employer" as:

(a) An individual who employs persons to provide private security services;

(b) An owner or owners of a business or entity that provides private security services; or

(c) An owner or owners of a business or entity who employs persons to provide private security services.

This application means that when considering the name of the business, DPSST will be looking at the employer's business name and not the name of the office/department/branch tasked with the responsibility of organizing the private security services. For example, "Sample Community College" and "Example Medical Center" are considered the business names.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

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**Rule Caption:** Amends definition of Alarm Monitoring Facility to exclude a temporary/emergency backup facility from licensure requirements.

**Stat. Auth.:** ORS 181A.840 & 181A.870

**Stats. Implemented:** ORS 181A.840 & 181A.870

**Proposed Amendments:** 259-060-0010

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** The Alarm Monitor Subcommittee identified circumstances when Alarm Monitor Facilities would need to reroute alarm monitoring services to another destination, which would include other states, for emergency coverage or backup.

Based on current administrative rule language the alternate facility providing the backup services to an alarm monitor facility that loses the ability to perform alarm monitoring services during an unexpected outage or an emergency situation would be required to utilize alarm monitors that hold Oregon licensure.

The Alarm Monitor Subcommittee identified that due to the nature of rerouting services for emergency coverage or backup, backup facilities may automatically be out of compliance with certification requirements based on unforeseen circumstances. Because these circumstances would generally be for unexpected and brief periods of service, the Alarm Monitor Subcommittee requested that backup facilities be exempt from certification requirements for alarm monitors.

The proposed rule change to OAR 259-060-0010, Definitions, amends the definition of an Alarm Monitoring Facility to exclude facilities that are providing temporary back up alarm monitoring services. The exclusion of the temporary backup facilities from the definition of an Alarm Monitoring Facility means that the temporary backup facility is not required to utilize alarm monitors that have been certified in Oregon.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

**Rule Caption:** Amends rule language to reflect changes in the submission of training records to DPSST.

**Stat. Auth.:** ORS 181A.410

**Stats. Implemented:** ORS 181A.410

**Proposed Amendments:** 259-008-0090

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** OAR 259-008-0090, Training Records, identifies what the DPSST training record for a public safety professional is used for, how to report training to DPSST for the addition of information to a DPSST training record, and what training will be accepted for addition to a DPSST training record.

The current administrative rule language identifies specific forms and specific reporting periods for each form.

In recognition that DPSST has updated the internal processes for data entry of reported training to DPSST public safety professional training records, which includes the addition of electronic versions of the training rosters, this proposed rule change eliminates the references to specific forms and some now outdated processes.

The proposed rule changes simplify the reporting process to state that training must be submitted on a course attendance roster through a Department approved submission process. This proposed language allows DPSST to accept the standard F6 course attendance roster or the newer eRoster by mail, fax, email attachment or digital upload, as well as, make changes to processes and forms without requiring additional rule changes in the future.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

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**Rule Caption:** Updates FTM and JTA version dates, clarifies PCOD/CCOD remediation and attendance for mandated courses, housekeeping.

**Stat. Auth.:** ORS 181A.410, 181A.590, 183.341

**Stats. Implemented:** ORS 181A.410, 181A.590, 183.341

**Proposed Amendments:** 259-008-0010, 259-008-0011, 259-008-0085

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** DPSST administrative rules for the minimum standards for employment and minimum standards for mandated courses document and reference the current versions of the Job Task Analysis (JTA) and the Field Training Manual (FTM) for each public safety officer discipline. Over the course of the past year, the Policy Committees and the Board have reviewed and approved the 2015 Parole and Probation JTA, 2015 Telecommunications JTA, 2016 Corrections JTA and the 2016 Emergency Medical Dispatcher Field Training Manual. These proposed rule changes for OARs 259-008-0010, 259-008-0011 and 259-008-0085 provide the updates to reflect each of the current versions of the JTA and FTM that were approved.

The proposed rule change for OAR 259-008-0085 amends the rule language to clarify the original intention of the Board that a law enforcement officer be provided one additional attempt to pass the COD course before being required to complete a full basic course due to failure of the COD course. The proposed language also incorporates a recommendation from DPSST Staff and the Center for Policing Excellence to allow that the remediation and retesting of an initial failure of a Police COD course be remediated by repeating the Police COD course, of the employing agency's choice, either by the self-study option or the two week academy at DPSST. Corrections COD courses are currently only available through the self-study option. These rule changes do not address Parole and Probation COD.

The proposed rule change for OAR 259-008-0085 includes an update to the rule language regarding attendance for mandated courses. This recommended change reflects current practices.

The following general changes have been included in the proposed rule language for OAR 259-008-0085:

## NOTICES OF PROPOSED RULEMAKING

- The addition of language to the Basic Police Course, the Basic Corrections Local Course, the Basic Parole and Probation Course and the DOC Basic Corrections Course regarding successful completion of course projects and assignments as part of successful completion of the course;

- The incorporation of updates to the number of tests administered during the Career Officer Development courses from multiple exams to one exam;

- The deletion of language regarding the option for waiver of the PCOD and CCOD FTM requirement (this option already exists in OAR 259-008-0025 and waivers are not a component of OAR 259-008-0085); and

- Recommended housekeeping changes for punctuation, consistency in capitalization, reference clarity.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

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**Rule Caption:** Adds maintenance training for Corrections, Parole and Probation Officers, Regulatory Specialists; amends Police maintenance requirements.

**Stat. Auth.:** ORS 181A.410

**Stats. Implemented:** ORS 181A.410

**Proposed Amendments:** 259-008-0065

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** The proposed changes to OAR 259-008-0065, add certification maintenance training standards for certified corrections officers, parole and probation officers, and OLCC regulatory specialists. The changes also include clarification to the intent of the requirements already required for certified police officers and the certification maintenance training standards.

The changes adding certification maintenance training standards for certified corrections officers, parole and probation officers and OLCC regulatory specialists are being implemented with a transition period in which the maintenance training is a recommendation. The recommended transition period extends to December 31, 2019. Completion of maintenance training for certified corrections officers, parole and probation officers and OLCC regulatory specialists will be tracked by DPSST after the OAR becomes effective and DPSST will report training deficiencies to each agency employing certified corrections officers, parole and probation officers and OLCC regulatory specialists during the transition period for education and implementation purposes. Certifications for corrections officers, parole and probation officers and OLCC regulatory specialists will not be suspended for maintenance training deficiencies during the transition period which extends to December 31, 2019.

Completion of certification maintenance training standards for certified corrections officers, parole and probation officers and OLCC regulatory specialists will be required beginning January 1, 2020. After January 1, 2020, certified corrections officers, parole and probation officers and OLCC regulatory specialists are subject to suspension of their certifications for a failure to complete maintenance training requirements.

The term law enforcement officer includes police officers, corrections officers, parole and probation officers and OLCC regulatory specialists.

These rule changes are replacing the references to police maintenance training with references to law enforcement maintenance training.

The maintenance training standard for law enforcement officers includes:

- Continued maintenance of FA/CPR certification;
- The completion of 84-hours of training every three years;
- Of the required 84 hours, eight hours annually must be related to Firearms/Use of Force;

- A minimum of one hour annually of ethics training (for all disciplines: recommended training through December 31, 2019 / required training after January 1, 2020);

- If the officer holds supervisory certification, 24 of the 84 hours must be related to Leadership training; and

- The remainder of the 84 hours must be related to general law enforcement training.

Certified police officers should note that the proposed rule language has also been amended to reflect the original intent of the police maintenance standard regarding First Aid and CPR certifications and annual Firearms/Use of Force related training.

These changes clarify that the intent that First Aid and CPR certifications are to be maintained, with "maintained" being interpreted as continuous and without lapse. Failure to maintain First Aid and CPR certifications may result in suspension of a law enforcement officer's certifications.

These changes clarify that the intent that a certified law enforcement officer is required to complete 8 hours of Firearms/Use of Force training annually means that failure to complete the training annually may result in suspension of a law enforcement officer's certifications.

When a law enforcement officer has not met a maintenance training requirement, a deficiency notice will be sent to the officer and their agency first. If the deficiency is not resolved then the Department will send a Notice of Intent to Suspend certifications to the officer and their agency.

The rule also includes the opportunity to request a time extension to complete the training requirements and guidelines for extending a maintenance training cycle based upon a law enforcement officer's leave from their certifiable position.

The rule provides guidelines for recertification following a suspension for failure to meet certification maintenance training requirements.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

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**Rule Caption:** Requires public safety professionals to report arrests, criminal citations to appear, to DPSST.

**Stat. Auth.:** ORS 181A.410, 181A.590, 183.341, 206.015

**Stats. Implemented:** ORS 181A.410, 181A.590, 183.341, 206.015  
**Proposed Amendments:** 259-008-0010, 259-008-0011, 259-008-0075, 259-008-0080

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** This proposed rule change is the result of a recommendation developed by the Criminal Justice Denial/Revocation Workgroup. This proposed rule change replaces the requirements for a public safety professional to report a conviction to their employer, who would then notify DPSST, with requirements that the public safety professional report arrests to DPSST directly. This requirement would not replace any reporting requirements that are a part of an employer and employee agreement or policy.

This proposed rule change requires a public safety professional who is arrested, or receives a criminal citation to appear or its equivalent, for any offense punishable as a crime, to notify DPSST within five business days. Notification must be in writing and include the date of the arrest or citation, the location of the arrest or citation, the reason for the arrest or citation and the arresting or citing agency.

This requirement would allow DPSST to monitor criminal cases and ensure that appropriate action is taken at the conclusion of the case.

Failure to report an arrest, or criminal citation to appear, may be considered aggravation during a denial, suspension or revocation proceeding.

**Rules Coordinator:** Jennifer Howald

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317  
**Telephone:** (503) 378-2432

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**Rule Caption:** Updates denial revocation standards and processes for criminal justice certifications; adds suspension and verbal mitigation.

**Stat. Auth.:** ORS 181A.410, 181A.590, 181A.670, 183.341

**Stats. Implemented:** ORS 181A.410, 181A.590, 181A.670, 183.341

**Proposed Amendments:** 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0070, 259-008-0080

**Last Date for Comment:** 3-21-17, Close of Business

**Summary:** The proposed rule changes to OAR 259-008-0070 incorporate the changes to current standards and processes that have been made based upon the recommendations of the Criminal Justice Denial Revocation Workgroup; DPSST staff recommendations; reviews by the Department of Justice; reviews by the Telecommunications, Corrections and Police Policy Committees and the Board on Public Safety Standards and Training.

By way of an overview, the changes to OAR 259-008-0070 include:

- Removal of the definitions section from the rule language;
- Removal of the Mandatory and Discretionary lists of crimes;
- Changes to the definition of discharge for cause as mandatory grounds for denial or revocation;
- Changes to the definition of discretionary grounds for denial or revocation;
- Changes to the definitions of the elements of misconduct - Dishonesty, Disregard for the Rights of Others, Misuse of Authority, and Gross Misconduct;
- Addition of Emergency Suspension of certifications in extreme circumstances;
- Addition of Suspension of certifications as an alternative to revoking certifications;
- Changes to the ineligibility periods that are determined for each denial, suspension, or revocation action;
- Addition of the opportunity for the affected individual to make verbal statements to the Policy Committees;
- Changes to the reconsideration of eligibility for certification after denial, suspension or revocation;
- Updated process language regarding stipulated order revoking certification; and
- Addition of language regarding the process for surrendering certifications.

OARs 259-008-0005, 259-008-0010, 259-008-0011 and 259-008-0080 have been included in this proposed rule change based on the references that connect these rules to OAR 259-008-0070 and the denial, suspension and revocation standards. The changes included update the citations in each of the rules pertaining to sections referenced in the draft of OAR 259-008-0070.

The proposed change included in OAR 259-008-0005 deletes the definition for "Suspension". The existing definition ties suspension to certification maintenance standards and the proposed changes to OAR 259-008-0070, adding suspension for discretionary disqualifying conduct, make the definition inaccurate as it applies to the rule set.

A complete and detailed memo describing the changes to these OARs and their corresponding recommendations is available on the agency website at [www.oregon.gov/dpsst](http://www.oregon.gov/dpsst) or by contacting the agency rule coordinator.

**Rules Coordinator:** Jennifer Howald

**Address:** Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317

**Telephone:** (503) 378-2432

## Department of State Lands Chapter 141

**Rule Caption:** Establish Rules Governing the Oregon Ocean Science Trust Competitive Grant Program.

**Date:**  
3-16-17

**Time:**  
5 p.m.

**Location:**  
Newport City Hall  
169 SW Coast Hwy.  
Newport, OR

**Hearing Officer:** Louise Solliday and Richard Fitzgerald

**Stat. Auth.:** ORS 196.565(6)

**Stats. Implemented:** ORS 196.565-196.569 - Oregon Ocean Science Trust

**Proposed Adoptions:** 141-141-0100, 141-141-0110, 141-141-0120, 141-141-0130, 141-141-0140, 141-141-0150, 141-141-0160

**Last Date for Comment:** 4-14-17, 5 p.m.

**Summary:** The 2013 Legislature established the Oregon Ocean Science Trust and Fund (ORS 196.565-569). The duties of the Trust are to:

1. Promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources.
2. Promote innovative, collaborative, community-oriented, multi-institutional approaches to research and monitoring related to Oregon's ocean and coastal resources.
3. Enhance the state's capacity for peer-reviewed scientific ocean and coastal research.
4. Subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources.

The Oregon Ocean Science Trust has engaged in rulemaking to establish the rules that will govern the competitive grant program.

The Department also specifically requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business pursuant to ORS 183.335(2)(b)(G).

For additional information on this rulemaking process please visit the following link on the Departments website: <http://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx>

**Rules Coordinator:** Sabrina L. Foward

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

**Telephone:** (503) 986-5236

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

**Rule Caption:** Makes technical changes to DMV vehicle dealer and vehicle dismantler rules

**Stat. Auth.:** ORS 183.430 184.616, 184.619, 802.010, 802.012, 802.370, 803.600, 803.625, 821.060, 821.080, 822.005, 822.020, 822.025, 822.027, 822.035, 822.040, 822.042, 822.045 & 822.050

**Stats. Implemented:** ORS 822.005, 822.080 & 822.100-822.150

**Proposed Amendments:** 735-150-0010, 735-150-0015, 735-150-0020, 735-150-0027, 735-0150-0030, 735-150-0110, 735-150-0120, 735-150-0130, 735-150-0160, 735-152-0000, 735-152-0005, 735-152-0031

**Last Date for Comment:** 3-21-17, 4 p.m.

**Summary:** OAR 735-150-0130 describes the circumstances DMV may consider when imposing a civil penalty against a dealer found in violation of applicable laws and DMV rules. Those circumstances, as specified in section (2) of the rule, include:

1. The severity of the violation or its impact on the public;
2. The number of similar or related violations;
3. Whether a violation was willful or intentional;
4. The prior history of all civil penalties and sanctions imposed by DMV against the dealer or principals of the dealership;
5. The number of violations compared to the volume of transactions at the dealership; or

# NOTICES OF PROPOSED RULEMAKING

6. Other circumstances determined by DMV to be applicable to the particular violation.

Section (3) of the rule specifies the actions DMV may take after issuing a notice of proposed civil penalty during settlement discussions. For example, before issuing a final order DMV may choose to retain, reassess, reduce or waive the civil penalty amount specified in the notice of proposed civil penalty.

During a recent review of the rule, it was found that language in subsection (3)(a) does not reflect the requirements of ORS 822.020 and 822.040, which list the specific requirements for issuance and renewal of a vehicle dealer certificate. The proposed amendment of OAR 735-150-0130 removes the language in subsection (3)(a) and clarifies that in addition to the options specified in section (3), DMV may impose a sanction as provided in OAR 735-150-0120.

The proposed amendment of OAR 735-150-0110 adds a new violation—failure to pay a civil penalty assessed by DMV—to the schedule of vehicle dealer offenses subject to sanctions and penalties. The proposed amendment OAR 735-150-0120 adds a new sanction for a violation of amended OAR 735-150-0110 (failure to pay civil penalty assessed by DMV).

The amendment of OAR 735-150-0015(1) and (2), and 735-152-0005(1)(a)(B) updates the type of identification DMV will accept in connection with an application for the issuance or renewal of an Oregon vehicle dealer or vehicle dismantler certificate. The change allows for the acceptance of government issued photo-identification, such as a passport or U.S. military ID, and makes clear that the identification must be valid at the time of presentation. OAR 735-150-0010 and 735-152-0000 are amended to add and update definitions.

**Rules Coordinator:** Lauri Kunze

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

**Telephone:** (503) 986-3171

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**Rule Caption:** Age Requirement to Take Knowledge Test

**Stat. Auth.:** ORS 184.616, 184.619, 802.010, 802.179, 802.220, 802.540 & 807.070

**Stats. Implemented:** ORS 807.060, 807.070, 807.280, 807.530 & 809.310

**Proposed Amendments:** 735-062-0040

**Last Date for Comment:** 3-21-17, 4 p.m.

**Summary:** OAR 735-062-0040 establishes provisions regarding the Class C non-commercial knowledge test. DMV proposes to add a provision regarding the age when a person is first eligible to take a knowledge test. Class C non-commercial knowledge test scores are good for two years. However, it would make little sense for a person to take a knowledge test at 13 years of age in anticipation of getting an instruction permit at 15 years of age. Therefore, DMV is amending OAR 735-062-0040 to include that to be eligible to take a knowledge test, a person must meet the minimum age requirement for the driving privileges for which the applicant is applying.

**Rules Coordinator:** Lauri Kunze

**Address:** Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

**Telephone:** (503) 986-3171

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## Employment Department Chapter 471

**Rule Caption:** Amend/repeal criminal records checks rules to comply with amended statutes and HB 3168 (2013).

**Stat. Auth.:** ORS 657.610, 181A.195, 181A.200

**Other Auth.:** House Bill 3168 (2013)

**Stats. Implemented:** ORS 181A.195

**Proposed Amendments:** 471-007-0200, 471-007-0210, 471-007-0285, 471-007-0300, 471-007-0310

**Proposed Repeals:** 471-007-0220, 471-007-0230, 471-007-0240, 471-007-0250, 471-007-0260, 471-007-0270, 471-007-0280, 471-007-0290

**Last Date for Comment:** 3-31-17, 5 p.m.

**Summary:** Repeals and amends the criminal records check and fitness determination process that is addressed in OAR 125-007-0200 for purposes of utilizing the uniform administrative rules established by Department of Administrative Services in accordance with House Bill 3168 passed in the 2013 Legislative Session.

Written comments may be submitted via e-mail to OED\_Rules00 PM on March 31, 2017. All comments received will be given equal consideration before the Department proceeds with the permanent rule-making.

**Rules Coordinator:** Cristina Koreski

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

**Telephone:** (503) 947-1471

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## Higher Education Coordinating Commission Chapter 715

**Rule Caption:** Student Complaints against public universities, community colleges, private non-profit institutions, and private career schools.

**Date:**

3-15-17

**Time:**

2 p.m.

**Location:**

Public Service Bldg., 3rd Flr.  
HECC Executive Conf. Rm.  
255 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** Kelly Dickinson

**Stat. Auth.:** ORS 348.603, 348.606, 350.075, 350.240, 659.850, 659.860

**Other Auth.:** Federal regulation 34 CFR §660.9

**Stats. Implemented:** ORS 183.341, 345.120, 345.240, 348.596, 350.075(4), 659.850, 689.852

**Proposed Adoptions:** 715-011-0005, 715-011-0010, 715-011-0015, 715-011-0020, 715-011-0025, 715-011-0030, 715-011-0035, 715-011-0040, 715-011-0045, 715-011-0050, 715-011-0055, 715-011-0060, 715-011-0065, 715-011-0070, 715-011-0075, 715-011-0080, 715-011-0085, 715-011-0090

**Proposed Amendments:** 715-045-0023

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** ORS 350.075 (4)(a) requires the Higher Education Coordinating Commission (HECC) to receive and “resolve student complaints against any school operating in this state” and 350.075(4)(g) states that HECC may “adopt rules” to implement that statute. These rules detail the HECC’s role in receiving, processing, and acting on student complaints against post-secondary institutions in Oregon.

**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 Community Colleges and Workforce Development Chapter 589

**Rule Caption:** Changes to when Growth Management Component of Community College Support Fund Distribution Methodology is applied.

**Date:**

3-15-17

**Time:**

3 p.m.

**Location:**

Public Service Bldg., 3rd Flr.  
HECC Executive Conf. Rm.  
255 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** Kelly Dickinson

**Stat. Auth.:** ORS 326.051, 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

**Stats. Implemented:** ORS 341.626

**Proposed Amendments:** 589-002-0120

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** The distribution methodology for the Community College Support Fund includes a Biennial Growth Management



# NOTICES OF PROPOSED RULEMAKING

Component, defined as “(16)...the percent change, from one biennium to the next, of the total number of FTE for all community college districts that could be included in the funding formula without reducing resources available per FTE. The biennial growth management component is determined by the amount of total public resources available for the current biennium compared to the prior biennium and the estimated increased cost of FTE” (ORS 589-002-0110, Definitions).

**Rules Coordinator:** Kelly Dickinson

**Address:** Higher Education Coordinating Commission, Office of Community Colleges and Workforce Development, 775 Court St. NE, Salem, OR 97301

**Telephone:** (503) 947-2379

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**Rule Caption:** Student Complaints against public universities, community colleges, private non-profit institutions, and private career schools.

Date:	Time:	Location:
3-15-17	2 p.m.	Public Service Bldg., 3rd Flr. HECC Executive Conf. Rm. 255 Capitol St. NE Salem, OR 97301

**Hearing Officer:** Kelly Dickinson

**Stat. Auth.:** ORS 348.603, 348.606, 350.075, 350.240, 659.850, 659.860

**Other Auth.:** Federal regulation 34 CFR §660.9

**Stats. Implemented:** ORS 183.341, 345.120, 345.240, 348.596, 350.075(4), 659.850, 689.852

**Proposed Repeals:** 589-010-0100

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** ORS 350.075 (4)(a) requires the Higher Education Coordinating Commission (HECC) to receive and “resolve student complaints against any school operating in this state” and 350.075(4)(g) states that HECC may “adopt rules” to implement that statute. These rules detail the HECC’s role in receiving, processing, and acting on student complaints against post-secondary institutions in Oregon.

**Rules Coordinator:** Kelly Dickinson

**Address:** Higher Education Coordinating Commission, Office of Community Colleges and Workforce Development, 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:** Student Complaints against public universities, community colleges, private non-profit institutions, and private career schools.

Date:	Time:	Location:
3-15-17	2 p.m.	Public Service Bldg., 3rd Flr. HECC Executive Conf. Rm. 255 Capitol St. NE Salem, OR 97301

**Hearing Officer:** Kelly Dickinson

**Stat. Auth.:** ORS 348.603, 348.606, 350.075, 350.240, 659.850, 659.860

**Other Auth.:** Federal regulation 34 CFR §660.9

**Stats. Implemented:** ORS 183.341, 345.120, 345.240, 348.596, 350.075(4), 659.850, 689.852

**Proposed Amendments:** 583-030-0020

**Last Date for Comment:** 3-22-17, 5 p.m.

**Summary:** ORS 350.075 (4)(a) requires the Higher Education Coordinating Commission (HECC) to receive and “resolve student complaints against any school operating in this state” and 350.075(4)(g) states that HECC may “adopt rules” to implement that statute. These rules detail the HECC’s role in receiving, processing, and acting on student complaints against post-secondary institutions in Oregon.

**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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## Landscape Contractors Board Chapter 808

**Rule Caption:** Adds a Practical Skills Registration Fee

Date:	Time:	Location:
3-23-17	9 a.m.	LCB 2111 Front St NE #2-101, Salem, OR 97301

**Hearing Officer:** Elizabeth Boxall

**Stat. Auth.:** ORS 670.310 & 671.670

**Stats. Implemented:** ORS 671.561 & 671.570

**Proposed Amendments:** 808-003-0710

**Last Date for Comment:** 3-23-17, Close of Hearing

**Summary:** Adds a Practical Skills Registration Fee

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

**Telephone:** (503) 967-6291, ext. 223

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**Rule Caption:** Amend civil penalty amounts and re-arrange listing of those penalties.

Date:	Time:	Location:
3-23-17	9 a.m.	LCB 2111 Front St. NE, #2-101 Salem, OR 97301

**Hearing Officer:** Elizabeth Boxall

**Stat. Auth.:** ORS 183.310–183.500, 670.310 & 671.670

**Stats. Implemented:** ORS 671.997

**Proposed Amendments:** 808-005-0020

**Last Date for Comment:** 3-23-17, Close of Hearing

**Summary:** Amend civil penalty amounts and re-arrange listing of those penalties.

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

**Telephone:** (503) 967-6291, ext. 223

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**Rule Caption:** Adopt 2017–2019 LCB operating budget

Date:	Time:	Location:
3-23-17	9 a.m.	LCB 2111 Front St. NE, #2-101 Salem, OR 97301

**Hearing Officer:** Elizabeth Boxall

**Stat. Auth.:** ORS 182.462

**Stats. Implemented:** ORS 182.462 & 671

**Proposed Amendments:** 808-001-0008

**Last Date for Comment:** 3-23-17, Close of Hearing

**Summary:** Adopt 2017–2019 LCB operating budget.

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301

**Telephone:** (503) 967-6291, ext. 223

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## Oregon Department of Education Chapter 581

**Rule Caption:** Essential Skills for English Language Learners

Date:	Time:	Location:
3-21-17	9 a.m.	Oregon Dept. of Education 255 Capitol St NE Salem OR

**Hearing Officer:** Emily Narov

**Stat. Auth.:** ORS 329.451, 338.025, 339.115 & 339.505

**Stats. Implemented:** 329.045, 329.075, 329.485 & 338.115

**Proposed Amendments:** 581-022-0617

**Last Date for Comment:** 3-23-17, 9 a.m.

# NOTICES OF PROPOSED RULEMAKING

**Summary:** During the 2016-2017 school year, Oregon's English Language Proficiency Assessment was replaced with the ELPA21. This new assessment produces results in a different form than the previously administered English language proficiency assessment, therefore at this time no students can be eligible for this support under current OAR criteria. In order to ensure that students who are pursuing graduation in the 2016-2017 and 2017-2018 school years are not negatively impacted during this test transition, ODE is submitting a revision to OAR 581-022-0617. The revision removes the English proficiency assessment score requirement for students pursuing graduation in the 2016-2017 and 2017-2018 school years, thus allowing a student to demonstrate proficiency in reading and writing Essential Skills in the student's language of origin if the student meets all the other criteria:

- (a) Is on track to meet all other graduation requirements;
- (b) Is unable to demonstrate proficiency in the Essential Skills in English; and
- (c) Has been enrolled in a U.S. school for five years or less.

**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 Department of Education,  
Early Learning Division  
Chapter 414**

**Rule Caption:** Rules required to meet federal Child Care and Development Block Grant Act of 2014 requirements.

**Stat. Auth.:** ORS 329A.250-329A.450 & 326A.425

**Stats. Implemented:** ORS 329A.250-329A.450 & 329A.505

**Proposed Amendments:** 414-300-0040, 414-300-0120, 414-300-0170, 414-300-0180, 414-300-0220, 414-300-0295, 414-300-0350, 414-350-0050, 414-350-0060, 414-350-0100, 414-350-0115, 414-350-0160, 414-350-0170, 414-350-0180, 414-350-0220, 414-350-0250, 414-205-0040, 414-205-0055, 414-205-0100, 414-205-0110, 414-205-0120, 414-180-0015, 414-180-0020, 414-180-0025

**Last Date for Comment:** 3-21-17, 5 p.m.

**Summary:** Rule changes to Certified Child Care Centers, Certified Family Child Care Homes, Registered Family Child Care Homes and Regulated Subsidy providers required to meet requirements of the Federal Child Care and Development Block Grant Act of 2014.

Subject areas to be addressed are procedures for dealing with children with allergies, procedures for preventing child maltreatment, prevention of shaken baby syndrome and abusive head trauma, handling and storage of hazardous materials, disposal of bio-contaminants, procedures for protecting children from vehicular hazards, procedures in the event of an emergency, required Office of Child Care approved health and safety training, orientation requirements for staff and critical training for staff before they can have unsupervised access to children.

**Rules Coordinator:** Lisa Pinheiro

**Address:** Oregon Department of Education, Early Learning Division, 775 Summer St. NE, Suite 300, Salem, OR 97301

**Telephone:** (503) 910-8135

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**Oregon Health Authority,  
Health Licensing Office, Board of Licensed Dietitians  
Chapter 834**

**Rule Caption:** Renewal language for licensed dietitians must be aligned with the rest of the rules.

**Stat. Auth.:** 2015 Oregon Revised Statutes 691.465 and 691.475

**Stats. Implemented:** 2015 Oregon Revised Statutes 691.465 and 691.475

**Proposed Amendments:** 834-030-0010

**Last Date for Comment:** 3-28-17, 9 a.m.

**Summary:** A very recent (January 2017) continuing education language clarification missed this language in another section. Rules must be consistent for licensees.

**Rules Coordinator:** Samantha Patnode

**Address:** Health Licensing Office, Board of Licensed Dietitians, 700 Summer St. NE, Suite 320, Salem, OR 97301-1287

**Telephone:** (503) 373-1917

.....  
**Oregon Health Authority,  
Health Systems Division: Medical Assistance Programs  
Chapter 410**

**Rule Caption:** Amending Prior Authorization Approval Criteria Guide

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-17	10:30 a.m.	500 Summer St. NE, Rm. 137B Salem, OR 97301

**Hearing Officer:** Sandy Cafourek

**Stat. Auth.:** ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312, 414.316

**Stats. Implemented:** ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353, 414.354

**Proposed Amendments:** 410-121-0040

**Proposed Repeals:** 410-121-0040(T)

**Last Date for Comment:** 3-17-17, 5 p.m.

**Summary:** The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows: The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at <http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx> based on the P&T (Pharmacy and Therapeutic) Committee recommendations.

**Rules Coordinator:** Sandy Cafourek

**Address:** Oregon Health Authority, Health Systems Division: Medical Assistance Programs, 500 Summer St. NE, 3rd Floor, Salem, OR 97301

**Telephone:** (503) 945-6430

.....  
**Rule Caption:** Aligning ABA Rules with Licensing, HERC, and Mental Health Parity Regulations

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-15-17	10:30 a.m.	500 Summer St. NE, Rm. 137B Salem, OR 97301

**Hearing Officer:** Sandy Cafourek

**Stat. Auth.:** ORS 413.042 & 430.640

**Stats. Implemented:** ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715

**Proposed Amendments:** 410-172-0650, 410-172-0760, 410-172-0770

**Proposed Repeals:** 410-172-0650(T), 410-172-0760(T), 410-172-0770(T)

**Last Date for Comment:** 3-17-17, 5 p.m.

**Summary:** These rules are needed to inform the prior authorization process for Applied Behavior Analysis services by ensuring that high quality diagnoses that are aligned with national practice standards are performed by trained and experienced providers that are accessible in all areas of the State and that prior authorization decisions are arrived at through the consideration of their medical appropriateness as well as the HERC guidelines.

**Rules Coordinator:** Sandy Cafourek

**Address:** Oregon Health Authority, Health Systems Division: Medical Assistance Programs, 500 Summer St. NE, 3rd Floor, Salem, OR 97301

**Telephone:** (503) 945-6430

.....  
**Rule Caption:** Expanding Services in State Plan for Babies First!, CaCoon TCM Approved by CMS Effective January 1, 2017

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 413.042 & 414.065

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** OAR 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0390, and 410-138-0420

**Proposed Repeals:** OAR 410-138-0000(T), 410-138-0005(T), 410-138-0007(T), 410-138-0009(T), 410-138-0020(T), 410-138-0040(T), 410-138-0060(T), 410-138-0080(T), 410-138-0390(T), and 410-138-0420(T)

**Last Date for Comment:** 3-17-17, 5 p.m.

**Summary:** The Division needs to amend these rules to incorporate changes to the State Plan for Targeted Case Management Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership services, recently approved by Centers for Medicare and Medicaid Services (CMS) effective 01/01/2017. The Division is adding definitions specific to the expanded services, qualifications of case managers, expanded target group, and identified risk criteria for clients eligible in the target group. All changes are pending subject to CMS approval of proposed language and/or changes to language for expanding services for Babies First!, CaCoon Targeted Case Management Services.

**Rules Coordinator:** Sandy Cafourek

**Address:** Oregon Health Authority, Health Systems Division: Medical Assistance Programs, 500 Summer St. NE, 3rd Floor, Salem, OR 97301

**Telephone:** (503) 945-6430

\*\*\*\*\*

## Oregon Housing and Community Services Department Chapter 813

**Rule Caption:** Adds the acquisition of shelter facilities as allowable program services for the Homeless Assistance program.

Date:	Time:	Location:
3-23-17	1 p.m.	725 Summer St. NE, Rm. 124A Salem OR 97301

**Hearing Officer:** Sandy McDonnell

**Stat. Auth.:** ORS 456.555

**Stats. Implemented:** ORS 458.505–458.515

**Proposed Amendments:** 813-240-0005

**Proposed Repeals:** 813-240-0005(T)

**Last Date for Comment:** 3-30-17, 5 p.m.

**Summary:** The amended rule expands the definition of program services to include acquisition of shelter facilities for the Homeless Assistance Program.

**Rules Coordinator:** Sandy McDonnell

**Address:** Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301-1266

**Telephone:** (503) 986-2012

\*\*\*\*\*

**Rule Caption:** Adds acquisition, conversion and rehabilitation of shelter facilities and transitional housing units as allowable services.

Date:	Time:	Location:
3-23-17	1 p.m.	725 Summer St. NE, Rm. 124A Salem OR 97301

**Hearing Officer:** Sandy McDonnell

**Stat. Auth.:** ORS 456.555

**Stats. Implemented:** ORS 458.505, 458.620 & 458.650

**Proposed Amendments:** 813-046-0011

**Proposed Repeals:** 813-046-0011(T)

**Last Date for Comment:** 3-30-17, 5 p.m.

**Summary:** The amended rules for the Emergency Housing Assistance Program (EHA) expands the definition for allowable program services to include the acquisition, conversion and rehabilitation of emergency shelter facilities and transitional housing units.

**Rules Coordinator:** Sandy McDonnell

**Address:** Oregon Housing and Community Services Department, 725 Summer St. NE, Suite B, Salem, OR 97301-1266

**Telephone:** (503) 986-2012

## Oregon Liquor Control Commission Chapter 845

**Rule Caption:** The amendments enable a licensee to post a public notice for a liquor license establishment.

Date:	Time:	Location:
3-22-17	10 a.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Bryant Haley

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

**Stats. Implemented:** ORS 471.313

**Proposed Amendments:** 845-005-0306

**Last Date for Comment:** 4-5-17, 5 p.m.

**Summary:** As the Commission moves towards online licensing, staff is working to improve licensing processes and communications with the public. The amendments update and streamline the language and subsequent processes. The changes will enable the licensee to post a public notice for a prospective liquor license establishment. The current rule requires Commission staff to go to the prospective location and post the notice with the licensee.

**Rules Coordinator:** Bryant Haley

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

**Telephone:** (503) 872-5136

\*\*\*\*\*

**Rule Caption:** This package implements Senate Bill 1511 which enables recreational licensees to also produce medical marijuana.

Date:	Time:	Location:
3-20-17	2 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Bryant Haley

**Stat. Auth.:** ORS 475B & 2016 Oregon Laws Chapter 83

**Stats. Implemented:** ORS 475B & 2016 Oregon Laws Chapter 83

**Proposed Adoptions:** 845-025-2500, 845-025-2510, 845-025-2520, 845-025-2530, 845-025-2540, 845-025-2550, 845-025-2560

**Proposed Amendments:** 845-025-1060

**Last Date for Comment:** 4-3-17, 5 p.m.

**Summary:** The Oregon Legislature adopted several bills during the 2016 legislative session that make significant alterations to ORS 475B. Specifically, Senate Bill 1511 directs Oregon Liquor Control Commission to register qualified marijuana producers, marijuana processors, marijuana wholesalers and marijuana retailers for purposes of producing, processing and selling medically designated marijuana items.

Previously, the Commission implemented a rule package to cover processors, wholesalers and retailers; however, it did not include marijuana producers. The statutes governing production of a medically designated marijuana canopy are sufficiently complex that staff felt the permanent rule making process was more appropriate to fully develop the rule concept. This concept has been entitled the “bump-up” canopy.

Staff has met on two occasions with industry, community partners and other interested parties to develop this rule package.

**Rules Coordinator:** Bryant Haley

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

**Telephone:** (503) 872-5136

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## Oregon State Marine Board Chapter 250

**Rule Caption:** “Slow-No Wake” on the Skipanon Waterway and on other waters in Clatsop County

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

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

**Proposed Amendments:** 250-020-0041

**Last Date for Comment:** 3-31-17, 5 p.m.

**Summary:** The proposed rule will eliminate the 5 MPH speed designation from the area North of the Hampton Mill to the confluence of the Columbia River. In addition, the 5 MPH speed limits on other

# NOTICES OF PROPOSED RULEMAKING

waterways in the County are being changed to "Slow-No Wake" for consistency with other local area rules. Housekeeping and technical corrections to the regulation may occur to ensure rule consistency.

**Rules Coordinator:** June LeTarte

**Address:** Oregon State Marine Board, P.O. Box 14145, Salem, OR 97309-5065

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

.....  
**Oregon Watershed Enhancement Board**  
**Chapter 695**

**Rule Caption:** Revisions to OWEB Grant Program and Restoration Grants rules to implement an effective grant-making process.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-30-17	10 a.m.	Department of State Lands Mill Creek Rm. 775 Summer St. NE, Salem, OR

**Hearing Officer:** Eric Hartstein

**Stat. Auth.:** ORS 541.906

**Stats. Implemented:** ORS 541.890–541.969

**Proposed Amendments:** 695-005-0010, 695-005-0030, 695-005-0040, 695-005-0050, 695-005-0060, 695-010-0020, 695-010-0060

**Last Date for Comment:** 3-30-17, 5 p.m.

**Summary:** OWEB is proposing rule amendments relating to the administration of the OWEB grant program and restoration grant program. The purpose is to provide updates related to the acceptance and administration of grants in the OWEB grant program (Division 5) administrative rules, and to clarify and streamline the evaluation criteria for restoration grants found at 695-010-0060.

Copies of the proposed amendments will be available March 1, 2017 on OWEB's website: [http://www.oregon.gov/OWEB/pages/admin\\_rules\\_statutes.aspx](http://www.oregon.gov/OWEB/pages/admin_rules_statutes.aspx)

**Rules Coordinator:** Eric Hartstein

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301

**Telephone:** (503) 986-0029

.....  
**Public Utility Commission**  
**Chapter 860**

**Rule Caption:** In the Matter of Rulemaking regarding Severe Weather Moratorium on Service Disconnection.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
4-5-17	1:30 p.m.	Public Utility Commission, Hearing Rm. 201 High Street SE Salem, OR 97301

**Hearing Officer:** ALJ Power

**Stat. Auth.:** ORS 756.060

**Stats. Implemented:** ORS 756.040

**Proposed Adoptions:** 860-021-0407

**Last Date for Comment:** 4-14-17, 5 p.m.

**Summary:** The proposed rule will establish a temperature-based moratorium on regulated gas and electric utility service disconnections for nonpayment of bills.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 601 on comments and file them by e-mail to the Commission's Filing Center at PUC. [FilingCenter@state.or.us](mailto:FilingCenter@state.or.us).

Interested persons may review all filings online at <http://apps.puc.state.or.us/edockets/docket.asp?DocketID=20262>. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at [http://arcweb.sos.state.or.us/pages/rules/oars\\_800/oar\\_860/860\\_001.html](http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html).

Participants wishing to monitor the hearing by telephone must contact Diane Davis at [diane.davis@state.or.us](mailto:diane.davis@state.or.us) or (503) 378-4372 by close of business April 4, 2017, to request a dial-in number. The

Commission strongly encourages those planning to present oral comment at the hearing to attend in person.

**Rules Coordinator:** Diane Davis

**Address:** Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088

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

.....  
**Public Utility Commission,**  
**Board of Maritime Pilots**  
**Chapter 856**

**Rule Caption:** Amends time window for requiring physical examinations as part of license renewals.

**Stat. Auth.:** ORS 776

**Stats. Implemented:** ORS 776.115(4)&(7)

**Proposed Amendments:** 856-010-0015

**Last Date for Comment:** 4-5-17, Close of Business

**Summary:** Extends the time frame for obtaining federal physicals for license renewals from three months to eleven months prior to state license expiration.

**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

.....  
**Secretary of State,**  
**Elections Division**  
**Chapter 165**

**Rule Caption:** Adopts Revisions to the Vote by Mail Manual

**Stat. Auth.:** ORS 246.150, 254.465, 254.470

**Stats. Implemented:** ORS 254.465, 254.470

**Proposed Amendments:** 165-007-0030

**Last Date for Comment:** 3-31-17, 5 p.m.

**Summary:** This rule amendment adopts the most recent revisions of the Vote by Mail Manual as the processes, procedures and requirements for conducting an election by mail. This August 2015 revision incorporated updated procedures for voters lacking a residential address and ballot return envelope language. Other non-substantive technical changes and clarifications were also incorporated with this revision.

**Rules Coordinator:** Brenda Bayes

**Address:** Secretary of State, Elections Division, 255 Capitol St. NE, Suite 501, Salem, OR 97310

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

.....  
**Teacher Standards and Practices Commission**  
**Chapter 584**

**Rule Caption:** Amends rules related to educator licensure, professional practices and state approval of educator preparation programs.

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
3-22-17	5 p.m.	TSPC Salem Office 250 Division St. NE Salem, OR 97301

**Hearing Officer:** Tamara Dykeman

**Stat. Auth.:** ORS 342

**Stats. Implemented:** ORS 342.120–342.430, 342.455–342.495 & 342.553

**Proposed Adoptions:** 584-420, 584-420-0305

**Proposed Amendments:** 584-050, 584-050-0020, 584-200, 584-200-0010, 584-200-0050, 584-210, 584-210-0030, 584-210-0040, 584-210-0090, 584-220, 584-220-0185

**Proposed Repeals:** 584-017, 584-017-1030, 584-420, 584-420-0300, 584-420-0375, 584-420-0390

**Last Date for Comment:** 3-24-17, 5 p.m.

**Summary:** 584-420-0305 is being adopted to create one program standard for all single-subject endorsement areas that do not require a full program (e.g. English, Social Studies, Science.)

# NOTICES OF PROPOSED RULEMAKING

584-050-0020 is being amended to change the 60 day notice for resignations from 60 days “prior to” to “upon or at the time of resignation.” The purpose of this change is to clarify the timing of reporting requirements.

584-200-0010 is being amended to create a definition of prekindergarten. Prekindergarten is defined as: “Birth through age 5.”

584-200-0050 is being amended to change the fee for background checks from “\$57” to “Less than \$75” as determined by the Oregon State Police.

584-210-0030 is being amended to clarify that recency requirements do not apply to applicants moving directly from a reciprocal to a preliminary teaching license.

584-210-0040 is being amended to allow TOSA (Teachers on Special Assignments) experience to count toward the experience requirement for the Professional Teaching Experience Requirement.

584-210-0090 is being amended to allow the International Visiting Teacher License (IVTL) to extend to a fourth and fifth year, as permitted by US Department of State. The current IVTL is limited to three years.

584-220-0185 is being amended to define the scope of the endorsement to begin at birth.

584-017-1030 is being repealed as it has been replaced by 584-017-0110.

584-420-0300; 584-420-0375; 584-420-0390 are being repealed because they are being replaced by 584-420-0300

**Rules Coordinator:** Tamara Dykeman

**Address:** Teacher Standards and Practices Commission, 250 Division St. NE, Salem, OR 97301

**Telephone:** (503) 378-3586

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## Water Resources Department Chapter 690

**Rule Caption:** Walla Walla Subbasin Serious Water Management Problem Area, Classification and Updates

Date:	Time:	Location:
3-22-17	5 p.m.	Milton-Freewater Community Bldg. 109 NE 5th St. Milton-Freewater, OR 97862

**Hearing Officer:** Commissioner Eric Quaempts

**Stat. Auth.:** ORS 536, 537 & 540

**Other Auth.:** OAR 690-085

**Stats. Implemented:** ORS 536.220, 536.300, 536.310, 536.340, 537.535, 537.545 & 540.435

**Proposed Amendments:** 690-507-0010 through 690-507-0640, 690-507-0647 through 690-507-0690, 690-507-0790

**Last Date for Comment:** 3-31-17, 5 p.m.

**Summary:** The Water Resources Commission is charged with developing basin program rules with consideration to the multiple aspects of the beneficial use and control of such water resources to best protect and promote the public welfare of Oregon’s citizens generally, including the environmental health of Oregon’s watersheds and basins. Available groundwater data show groundwater level declines occurring across the Walla Walla Subbasin of the Umatilla Basin, indicating groundwater use in excess of recharge. Senior groundwater users have reported that they are not able to pump their usual and accustomed rate or volume of water.

The Department is proposing to classify groundwater in the Walla Walla Subbasin for new exempt uses only, as defined in ORS 537.545. This classification is intended to limit new use of the groundwater resource and prevent chronic declining water level trends from getting worse.

The Department is also proposing to establish a Serious Water Management Problem Area (SWMPA) per ORS 540.435. Owners of permitted basalt aquifer wells within the SWMPA will be required to install a totalizing flow meter on each well, measure and record water use on a monthly basis, and report monthly water use to the Department annually. Measurement and reporting of use will eventually allow the Department to determine how much, if any, reduction in current pumping may need to occur to stabilize observed groundwater level declines.

In addition, proposed changes include spell out acronyms, correct spelling, and grammar.

**Rules Coordinator:** Diana Enright

**Address:** Water Resources Department, 725 Summer St. NE, Salem, OR 97301

**Telephone:** (503) 986-0874

# ADMINISTRATIVE RULES

## Board of Licensed Social Workers Chapter 877

**Rule Caption:** Amendments would revise requirements for Plan of Supervision and approved supervisors.

**Adm. Order No.:** BLSW 1-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 9-1-2016

**Rules Amended:** 877-020-0010, 877-020-0012

**Subject:** Adopted amendments to OAR 877-020-0010 would limit supervision by an individual other than a Licensed Clinical Social Worker to no more than 50 hours.

Adopted amendments to OAR 877-020-0012 would permit the Board of Licensed Social Workers to authorize an individual who is licensed as a clinical social worker in a state other than Oregon to supervise a clinical social worker association (CSWA); the proposed amendments would also permit the board to authorize a clinical psychologist or psychiatrist licensed in Oregon to supervise an Oregon CSWA; the proposed amendments would also establish requirements for individuals other than Oregon licensed clinical social workers who are authorized to supervise Oregon CSWA.

**Rules Coordinator:** Randy Harnisch—(503) 373-1163

### 877-020-0010

#### Plan of Practice and Supervision

(1) After a person submits an application described in OAR 877-020-0009, the board will inform the person whether the application, including the plan of practice and supervision, is approved.

(2) After an application has been approved, an associate may request a change to a plan of practice and supervision by submitting a request to the board that provides a justification for the change and ensures that the plan, as modified, will meet the requirements of this division of rules.

(3) For the associate to satisfactorily complete a plan of practice and supervision, the following requirements must be met while the associate is working under an approved plan of practice and supervision:

(a) The contact with clients described in OAR 877-020-0009(4)(b) must be direct contact during which the associate practices clinical social work, which is defined in ORS 675.510(2).

(b) The associate must meet with a supervisor identified in the plan, as required in OAR 877-020-0009(4)(d):

(A) For a total of 100 hours over a period of not less than 24 consecutive months nor more than 60 consecutive months, of which a minimum of 50 hours must be individual supervision. The board may, at their discretion, approve a written request to extend a plan of supervision beyond the 60 month period. The associate must meet at least twice each month with a plan supervisor for a minimum of one hour. If there is a second supervisor for group supervision, the requirement in this paragraph (A) is met by a single one-hour meeting with each supervisor.

(B) After the associate has completed the plan requirements contained in paragraph (A) of this sub-section, the associate must continue to meet at least once each month with a plan supervisor for a minimum of one hour.

(c) At least 50 supervision hours, group or individual, must be with a supervisor as defined in OAR 877-020-0012(1) or (2)(a).

(d) No more than 50 supervision hours, group or individual, may be with a supervisor as defined in OAR 877-020-0012(2)(b).

(e) Supervision required in this rule must be accomplished:

(A) In person, in a professional setting; or

(B) By electronic video-conferencing media, provided that the first and final supervisory sessions and at least one supervisory session each quarter be conducted in person pursuant to subsection (A) above.

(f) The associate must submit to the board, on a form provided by the board, each evaluation by the supervisor (or supervisors in the event two or more are authorized) required by OAR 877-020-0012(2)(e)(A) of the progress by the associate toward completion of the plan.

(g) The associate must pass the national examination required by OAR 877-020-0008.

(h) The associate must work with each supervisor identified in an approved plan for not less than six months unless

(A) A change in supervision is required by a reason outside the control of the associate and the board approves the change; or

(B) The associate has completed the requirements of the plan.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 2-2005, f. & cert. ef. 12-22-05; 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 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15; BLSW 1-2017, f. & cert. ef. 1-23-17

### 877-020-0012

#### Requirements of Supervision

(1) An associate or applicant's plan supervisor must be an Oregon licensed clinical social worker, approved by the board at the time the applicant submits the plan of practice and supervision for approval, except as provided in subsection (2) of this rule.

(2) Upon request of an associate or applicant, the board may authorize a supervisor who is one of the following:

(a) A person who meets the following requirements for licensure but has not been licensed by the board or a licensed clinical social worker issued in another state, whose license is in good standing, and who has met requirements that are substantially equivalent to:

(A) The educational requirement in OAR 877-020-0009(2);

(B) The fitness requirement in OAR 877-020-0009(3); and

(C) The field experience requirement described in OAR 877-020-0009(4); or

(b) A clinical psychologist licensed in Oregon or a psychiatrist licensed in Oregon.

(3) A plan supervisor approved under Section 1 of this rule:

(a) Must have completed two years of licensed practice;

(b) Must have completed and reported to the board at least six hours of continuing education hours described in OAR 877-025-0006(1) or (2) in techniques of supervision within five years prior to commencing the supervision of an associate; and

(c) Must have passed the examination on Oregon rules and statutes described in OAR 877-020-0008 (4) and (5) within five years prior to commencing the supervision of an associate.

(4) A plan supervisor approved under section 2 of this rule must pass the examination on Oregon rules and statutes described in OAR 877-020-0008 (4) and (5), and must have completed at least six hours of continuing education hours described in OAR 877-025-0006 (1) or (2) within five years prior to commencing the supervision of an associate.

(5) A plan supervisor approved under section 1 or 2 of this rule must pass the examination on Oregon rules and statutes described in OAR 877-020-0008(4) and (5) within five years prior to commencing the supervision of an associate.

(6) Requirements of the supervision.

(a) The associate may have one supervisor for individual supervision and a different supervisor for group supervision.

(b) The relationship between the supervisor and the associate must be of a professional nature, and the ethical standards for social workers, including standards contained in this division of rules, are applicable to each of them.

(c) The supervisor must have the authority to direct the caseload and treatment plans of the associate.

(d) In order that the goals of the supervision are reached:

(A) The supervisor and associate are expected to discuss cases with each other based on case notes, charts, records, and audio or visual tapes of clients, if available.

(B) The associate must present to the supervisor assessments, diagnoses, and treatment plans of clients seen by the associate.

(C) The treatment plans presented by the associate must be appropriate, and the supervisor must focus on the therapeutic skill of the associate in promoting change in the client.

(D) The supervisor must have the authority to determine the appropriateness of the associate's client population to the associate's level of expertise.

(e) A licensed clinical social worker or other person authorized by the board who agrees to supervise an associate must:

(A) Submit to the board at intervals not to exceed six months an evaluation of the associate's progress toward completion of the plan, on a form provided by the board.

(B) Report to the board in writing immediately in the event the associate is not complying with the plan of practice and supervision.

(C) Report to the board in writing immediately in the event the relationship between the supervisor and the associate ends earlier than the date provided for in the Plan.

(D) Make other reports as required by the board.

# ADMINISTRATIVE RULES

(f) Clinical social workers who participate in supervision that is conducted by electronic video-conferencing media must:

(A) Ensure that clients whose records may be discussed as a part of the supervision provide written consent to having confidential records and information transmitted electronically;

(B) Conduct the video-conference in a setting and in a manner that protects the privacy of both parties; and

(C) Utilize secure transmittal methods, (encryption, for example) to maintain confidentiality of the information.

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

Hist.: BCSW 1-1987, f. & ef. 12-29-87; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1997, f. & cert. ef. 3-25-97; BCSW 1-2001, f. & cert. ef. 5-4-01; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 2-2014, f. 12-29-14, cert. ef. 1-1-15; BLSW 1-2017, f. & cert. ef. 1-23-17

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**Rule Caption:** Amends requirement for name, address, employer of record; adds requirement for email of record.

**Adm. Order No.:** BLSW 2-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 9-1-2016

**Rules Amended:** 877-001-0009

**Subject:** The adopted amendments to OAR 877-001-0009 would revise the requirements that regulated social workers provide and maintain a current legal name, postal address, and employer of record. The amendment would create a requirement that regulated social workers provide and maintain a current email of record. The amendment would create a presumption of receipt if the agency sends any communication to a regulated social worker's postal address or email address of record.

**Rules Coordinator:** Randy Harnisch—(503) 373-1163

## 877-001-0009

### Name, Address and Employer of Record

(1) As used in OAR Chapter 877 Division 001:

(a) "Licensee" means a regulated social worker or applicant for licensure, certification or registration as a regulated social worker;

(b) "Name of record" means a licensee's legal name;

(c) "Postal address of record" means the place the licensee chooses to receive postal mail and may be either the licensee's residence, place of employment, or a post office box;

(d) "Email of record" means an email address where the licensee receives and sends electronic mail;

(e) "Employer of record" means a licensee's employer name and employer's postal address; and

(f) "In writing" means a writing submitted to the board, either in hard-copy by postal mail, or electronically to the board's posted email address.

(2) A licensee must provide the board with a Name of Record.

(a) If a licensee's Name of Record changes, the licensee must notify the board in writing within 30 days of the effective date of the name change and must include:

(A) Copies of official legal documents showing the name change, which must include either a birth certificate, marriage certificate or a court order or court decree.

(b) A licensee must use their Name of Record for the regulated practice of social work.

(3) A licensee must provide the board with a Postal Address of Record.

(a) If a licensee's Postal Address of Record changes, the licensee must notify the board of the change within 30 days of the effective date of the change.

(4) A licensee must provide the board with an Email Address of Record.

(a) If a licensee's Email Address of Record changes, the licensee must notify the board of the change within 30 days of the effective date of the change.

(5) A licensee must provide the board with an Employer of Record, if the licensee is employed.

(a) If a licensee's Employer of Record changes or the licensee's employment status changes (the licensee becomes employed or becomes unemployed), the licensee must notify the board of the change within 30 days of the change.

(6) The board will communicate with licensees either by postal mail or by email, at the board's discretion, unless a specific method of communication is required by applicable state or federal rule or law.

(7) Communication sent to a licensee will be considered to be received by the licensee the date it is sent if it is sent to the licensee's Postal Address of Record or Email Address of Record.

Stat. Auth.: ORS 675.510 - 675.600 & OAR 137-001-0005 - 137-001-0100

Stats. Implemented: ORS 675.510 - 675.600

Hist.: BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 2-2017, f. & cert. ef. 1-23-17

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**Rule Caption:** Amended rules to allow board to accept degrees issued by programs in accreditation candidacy.

**Adm. Order No.:** BLSW 3-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 9-1-2016

**Rules Amended:** 877-020-0009, 877-015-0108

**Subject:** The amendments will allow the Board of Licensed Social Workers to accept master level degrees from a college or university that is in candidacy for accreditation by an accrediting organization recognized by the Board. The Board's existing authority to accept baccalaureate degrees from programs in accreditation candidacy will continue unchanged. The board currently recognizes colleges and universities that are accredited by the Council on Social Work Education (CSWE) or Canadian Association of Schools of Social Work (CASSW).

The proposed amendments would also delete sections that were initially included to address transition to new license requirements and are no longer relevant or applicable.

**Rules Coordinator:** Randy Harnisch—(503) 373-1163

## 877-020-0009

### Requirements for Certificate of Clinical Social Work Associate

To be eligible for a certificate of clinical social work associate, a person must:

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

(2) Hold a master's degree in social work from a college or university accredited by or considered in candidacy status 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.

(3) Meet the fitness requirements of OAR 877-020-0008(2).

(4) Submit to the board for approval and, following approval, satisfactorily work toward completing an approved plan of practice and supervision that:

(a) Shows that the person will meet the requirements in OAR 877-020-0010(3) while working in an agency that:

(A) Provides the associate with sufficient support to progress toward licensure;

(B) Screens patients who are served by the agency and by the associate; and

(C) Either:

(i) Is licensed by the Oregon Department of Human Services; or

(ii) If not required to be licensed by the Oregon Department of Human Services, is in compliance with the requirements to conduct business in Oregon.

(b) Requires a minimum of 3,500 practice hours of which at least 2,000 hours must involve direct contact with a client of the agency.

(c) Provides for all clinical social work practice by the associate to be supervised and that supervision of the associate meets the requirements of OAR 877-020-0012.

(d) Provides that the associate meet with the plan supervisor for a minimum of one hour not fewer than two times a month. This requirement of the supervision is not met through a training or administrative activity. The associate may meet alone with the supervisor (individual supervision) or may meet with the supervisor and as many as four other mental health professionals (group supervision).

Stat. Auth.: ORS 675.510 - 675.600 & 675.990

Stats. Implemented: ORS 675.537

# ADMINISTRATIVE RULES

Hist.: BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1991, f. & cert. ef. 5-30-91; BCSW 1-1992, f. & cert. ef. 6-30-92; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1999, f. & cert. ef. 4-9-99; BCSW 2-2005, f. & cert. ef. 12-22-05; BCSW 1-2008, f. 6-27-08, cert. ef. 7-1-08; BLSW 1-2010, f. & cert. ef. 1-15-10; BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2016(Temp), f. & cert. ef. 3-14-16 thru 9-9-16; Administrative correction, 9-23-16; BLSW 3-2017, f. & cert. ef. 1-23-17

## 877-015-0108

### Eligibility Requirements

To be eligible for initial certificate of registration or license, a person must meet the requirements in sections (1) through (6) of this rule:

(1) The person must submit a complete and accurate application on a form provided by the board.

(2)(a) The person must hold the degree described in sub-section (b) of this section from a college or university accredited by or considered in candidacy status 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.

(b)(A) The degree required for initial registration is a baccalaureate degree in social work.

(B) The degree required for initial licensure is a master's degree in social work.

(3) The person must be fit to practice social work in Oregon. The board uses the following standard and procedure to make a fitness determination:

(a) To be fit to practice social work in Oregon, the person must have demonstrated and must currently have:

(A) Good moral character. For purposes of this rule, lack of "good moral character" may be established by reference to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice social work; and

(B) A personal history of conduct that is consistent with the standards contained in division 30 of this chapter of rules.

(b) In the event the person's history includes conduct that may call into question the person's fitness, the board will consider, if made available by the person, the amount of time elapsed since the conduct and the person's relevant conduct since the questioned conduct, including remedial or compensatory actions taken by the person, if appropriate.

(4) The person must be fit to practice social work in Oregon. In making this fitness determination, the board will consider whether the person is subject of an investigation or disciplinary action by a licensing board and the reasons for the action.

(5) The person must pass the following examination administered by the Association of Social Work Boards:

(a) For registration as a baccalaureate social worker, the bachelor's level examination.

(b) For licensure as a master's social worker, the master's level examination.

(6) The person must achieve a score of 90 percent on the examination on the Oregon statutes and rules prepared by the board on:

(a) The contents of ORS 675.510 to 675.600 and OAR chapter 877, which are the Oregon statutes and administrative rules governing regulated social work.

(b) Oregon Revised Statutes relating to mental health practice that may be relevant to regulated social work.

Stat. Auth: ORS 675.510 - 675.600, 675.532 - 675.533, SB 177 (2009) & HB 2345 (2009)  
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990 - 675.994 & 675.150

Hist.: 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 1-2016(Temp), f. & cert. ef. 3-14-16 thru 9-9-16; Administrative correction, 9-23-16; BLSW 3-2017, f. & cert. ef. 1-23-17

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## Board of Optometry Chapter 852

**Rule Caption:** Updates agency rules for business ownership, criminal records and recent grads

**Adm. Order No.:** OPT 1-2017

**Filed with Sec. of State:** 2-14-2017

**Certified to be Effective:** 2-14-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 852-020-0045, 852-050-0001, 852-050-0025, 852-060-0025, 852-070-0010

**Subject:** 1) Clarifies the legal requirements for owning an optometry practice and the Board's authority to take action for an illegally structured/operated business.

2) Clarifies what work recent optometry graduates can do without a license.

3) Grants 1 hour of CE credit for taking and passing the Oregon law exam.

4) Updates the Board's background check rules to reflect new statewide rules adopted by the Oregon Department of Administrative Services (DAS). The rule changes are necessary due to House Bill 3168 (2013) and House Bill 2250 (2015). The bills gave DAS the authority to adopt statewide administrative rules for criminal records checks and require other agencies to repeal or amend their existing rules that may conflict with the statewide rules.

**Rules Coordinator:** Shelley Sneed—(503) 399-0662, ext. 3

## 852-020-0045

### Requirements for Business Entity Organization

The following provisions apply to Oregon optometry practices, as defined in ORS 683.010, organizing or operating as a business entity and are in addition to the provisions for a professional corporation, limited liability company and partnership outlined in ORS Chapters 58, 63, 67, and 70.

(1) Definitions. As used in these administrative rules, unless the context requires otherwise:

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice optometry:

(a) The majority ownership interest must be held by optometric physicians licensed in this state to practice optometry:

(A) A majority of the principals must be optometric physicians who are licensed in this state to practice optometry;

(B) All officers except the secretary and treasurer, if any, must be optometric physicians who are licensed in this state to practice optometry. Any two or more offices may be held by the same person;

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing optometry solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code;

(c) The Oregon Board of Optometry has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of business ownership is provided to the Board, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the optometric physicians and business entity; and



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(d) Upon a finding that a holder or owner of an optometric practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of optometry, the Oregon Board of Optometry may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 683.140.

Stat. Auth.: ORS 58, 63, 683  
Stats. Implemented: ORS 58.367, 63.074, 683.270(11)  
Hist.: OPT 1-2010, f. & cert. ef. 9-20-10; OPT 3-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2017, f. & cert. ef. 2-14-17

## 852-050-0001

### License Required

(1) Unless otherwise exempted by Oregon law, all persons practicing optometry in the state of Oregon must possess a valid, unrevoked, active status Oregon license.

(a) Optometry school graduates who have not been granted an Oregon optometry license are prohibited from the practice of optometry. When working in optometry prior to licensure, graduates may perform the work of unlicensed technicians under the supervision of a licensed optometrist, but cannot be referred to in any terms that imply being a doctor.

(2) Doctors of optometry who are not practicing in Oregon may hold an inactive status license.

(3) Those granted an inactive status license by the Board are exempt from ORS 683.100 and OAR 852-050-0016, which require the licensee to report each Oregon practice location to the Board:

(a) Inactive licensees are required to maintain a current mailing address and phone number of record with the Board. Upon written request, the Board will hold the phone number of record of an inactive licensee confidential if it is a personal number not associated with a business entity; and

(b) Inactive licensees failing to notify the Board in writing of any changes to their address or phone number of record before the change are subject to the fee listed in OAR 852-010-0080.

Stat. Auth.: ORS 683  
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270  
Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2017, f. & cert. ef. 2-14-17

## 852-050-0025

### State Criminal Records Check and Fitness Determination

(1) The purpose of this rule is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or to hold a license that has been issued by the Board.

(2) The Board may require legible fingerprints for the purpose of a criminal records check and fitness determination of all applicants and licensees including:

- (a) Applicants for a license;
- (b) Licensees applying to reactivate a license;
- (c) Licensees applying to reinstate a license,
- (d) Licenses applying to renew a license
- (e) Licensees renewing a license; and
- (f) Licensees under investigation.

(3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170 to 181A.215, 670.280 and OAR 125-007-0200 to 127-007-0310.

(a) The Board will request the Oregon Department of State Police to conduct state and nationwide criminal records checks. Any original fingerprint cards will subsequently be destroyed.

(b) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative to the Board.

(c) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military or set aside criminal records.

(d) The Board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.

(4) If the applicant or licensee has potentially disqualifying criminal offender information, the Board will consider the following factors in making the fitness determination:

- (a) The nature of the crime;
- (b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license;

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

- (A) The passage of time since the commission of the crime;
  - (B) The age of the applicant or licensee at the time of the crime;
  - (C) The likelihood of a repetition of offenses or of the commission of another crime;
  - (D) The subsequent commission of another relevant crime; and
  - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction.
- (F) Any recommendation of an employer;
- (e) Any false statements or omissions made by the applicant or licensee; and
- (f) Any other pertinent information obtained as part of an investigation.

(5) The Board will make a fitness determination consistent with the outcomes provided in OAR 125-007-0260.

(a) A fitness determination approval does not guarantee the granting or renewal of a license.

(b) A restricted or conditional approval may necessitate probation, conditions, limitation, or other restrictions on licensure.

(c) A denial prohibits the applicant from being granted a license or prohibits the licensee from holding a license.

(d) An incomplete fitness determination results if the applicant or licensee refuses to consent to the criminal history check, refuses to be fingerprinted or respond to written correspondence, or discontinues the criminal records process for any reason. Incomplete fitness determinations may not be appealed.

(6) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(7) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(8) An applicant or licensee may appeal a final fitness determination pursuant to OAR 125-007-0300. Challenges to the accuracy or completeness of criminal history information must be made in accordance with OAR 125-007-0300(7).

(9) The applicant or licensee must pay a criminal records check fee for the cost of acquiring and furnishing the criminal offender information per OAR 852-010-0080(5)(g).

Stat. Auth.: ORS 683, 182, 181, 676  
Stat. Implemented: ORS 683.140, 683.270, 182.466, 181.534 & 676.303  
Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16; OPT 2-2016, f. & cert. ef. 4-8-16; OPT 1-2017, f. & cert. ef. 2-14-17

## 852-060-0025

### Disciplinary Action

(1) When disciplining an optometric physician or any other person, the Oregon Board of Optometry may do any of the following:

- (a) Deny an initial license;
- (b) Suspend, refuse to renew or revoke a license;
- (c) Impose probation on any licensee;
- (d) Limit the practice of any licensee; and
- (e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty, the assessment of a civil penalty not to exceed \$10,000 for each violation, or both.

(2) The Board may discipline any optometric physician or person, where appropriate, for the following causes:

- (a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometric physician. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is held, is conclusive evidence of such conviction;
- (b) Practicing optometry without a license;
- (c) Securing a license by practicing fraud or deceit upon the Board;
- (d) Unprofessional conduct;

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- (e) Gross ignorance or inefficiency in the practice of optometry;
- (f) Failing to comply with the requirements of continuing education;
- (g) Obtaining any fee by fraud or misrepresentation;
- (h) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;
- (i) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;
- (j) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;
- (k) Permitting another person to use the optometrist's license;
- (l) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;
- (m) Advertising professional methods or professional superiority;
- (n) Violating the federal Controlled Substances Act;
- (o) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;
- (p) Failing to report to the Board within 10 calendar days any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;
- (q) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action;
- (r) Any violation of the provisions of ORS 683.010 to 683.335; or
- (s) Practicing optometry in a location not reported to the Board.
- (t) Failing to report the suspected prohibited or unprofessional conduct of another health care licensee to the appropriate board within 10 working days as required in ORS 676.150 and 683.340.
- (u) Operating a business that violates the requirements of OAR 852-020-0045.

(3) The Board must report all disciplinary action taken by the Board to the National Practitioner Data Bank.

Stat. Auth.: ORS 683, 182  
Stats. Implemented: ORS 683.140, 683.180, 683.270, 683.990 & 182.466  
Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2017, f. & cert. ef. 2-14-17

## 852-070-0010

### Requirement of Continuing Optometric Education

The Oregon Board of Optometry is committed to ensuring the continuing education of its licensees for the protection, safety and wellbeing of the public. Continuing education is required to maintain and advance the professional skills and abilities of licensees and to educate optometric physicians in the application and use of new techniques, scientific and clinical advances and the achievements of research to ensure expansive and comprehensive care to the public.

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward approved excess CE hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease (TMOD). The licensee must be the first or second author of the article or paper and the paper must have been published in the CE reporting period.

(3) Optometric physicians must complete one hour of approved credit for an optometric ethics or Oregon law course every other license year, regardless of credits carried forward under (1) of this section. Licensees may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry. One hour of law/ethics credit is granted for passing the Oregon law exam.

(4) One hour of Board approved cultural competency continuing education may be used toward satisfying the required number of non-TMOD hours each license year.

(5) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(6) The required hours of continuing education used to meet the CE requirement each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted for credit in the same license renewal period, credit will be given for only one.

(7) Credit will be given for no more than 2 hours for each publication of a qualifying article or paper.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 683.140, 683.270, 683.210 & 182.466  
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1978, f. & ef. 1-25-78; OE 1-1984, f. & ef. 1-13-84; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16; OPT 1-2017, f. & cert. ef. 2-14-17

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**Rule Caption:** Adoption of the Board's 2017-19 operating budget.

**Adm. Order No.:** OPT 2-2017

**Filed with Sec. of State:** 2-14-2017

**Certified to be Effective:** 7-1-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 852-005-0005

**Subject:** The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2017-19 Biennium Budget of \$656,980 in revenues and \$773,044 in expenses covering the period from July 1, 2017 through June 30, 2019. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget for the effective operation of the Board. The Board will not exceed the approved 2017-2019 Biennium budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2).

**Rules Coordinator:** Shelley Sneed—(503) 399-0662, ext. 3

## 852-005-0005

### Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2017-19 Biennium Budget of \$656,980 in revenues and \$773,004 in expenses covering the period from July 1, 2017 through June 30, 2019. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget for the effective operation of the Board. The Board will not exceed the approved 2017-19 Biennium budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182  
Stats. Implemented: ORS 182.462(1) & (2)  
Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 1-2015, f. 6-25-15, cert. ef. 7-1-15; OPT 3-2016, f. & cert. ef. 9-27-16; OPT 2-2017, f. 2-14-17, cert. ef. 7-1-17

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**Rule Caption:** Fee schedule update for public records fees

**Adm. Order No.:** OPT 3-2017

**Filed with Sec. of State:** 2-14-2017

**Certified to be Effective:** 2-14-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 852-010-0080

**Subject:** Updates Board rules for public records fees and adding fees for returned check fees.

**Rules Coordinator:** Shelley Sneed—(503) 399-0662, ext. 3

## 852-010-0080

### Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees and specified civil penalties charged by the Board:

(1) Active license:

# ADMINISTRATIVE RULES

(a) Annual renewal — \$323, of which \$298 is for the active optometry license and \$25 is the Prescription Drug Monitoring Fund fee collected by the licensing body on behalf of the Oregon Health Authority.

(b) Additional copy of Portable Multiple Practice Location license — \$25 each.

(c) Failure to meet renewal date: Late renewal fee — \$50 first failure, \$100 second failure, \$200 any subsequent failure in a seven-year period.

(d) Lapse in CPR certification during licensing period — \$50, \$100 second failure, \$200 any subsequent failure in a seven-year period.

(e) Failure to notify the Board of practice locations or address or phone number of record — \$50 first failure, \$100 second failure, \$200 any subsequent failure(s) in a seven-year period.

(2) The agency assesses civil penalties for violations of ORS 683.010 to 683.310 and 676.110 to 676.220 and OAR chapter 852, some of which may be settled per the terms of a settlement agreement, consent order or stipulated order. Penalties not listed here will be assessed by the Board on a per case basis.

(a) Failure to respond to a Continuing Education audit within 21 days — \$250.

(b) Failure to complete or document meeting Continuing Education requirements by the due date — \$500 plus license suspension if overdue 60 days or more.

(3) Inactive License:

(a) Annual renewal — \$98.

(b) Late renewal fee — \$15.

(c) Failure to notify the Board of address or phone number of record — \$50 first failure, \$100 second failure, \$200 subsequent failure(s) in any seven-year period.

(4) Application for Licensure:

(a) Application for Examination and Licensure — \$200.

(b) Application for Endorsement Examination and Licensure — \$300.

(c) Application for TPA Certification — \$75.

(d) Law and Administrative Rule Examination administered by the Board — \$75.

(5) Other fees:

(a) Written official license verification — \$20.

(b) List of licensees (electronic or printed) — \$25 each Active/Inactive.

(c) Reactivation of license — \$100.

(d) Reinstatement of license — \$100.

(e) Law and Administrative Rules booklet — \$25 (available online at no charge).

(f) Decorative Wall Certificate of Registration (optional, personalized and signed by Board) — \$30.

(g) Applicant or licensee must pay to the Board the cost of conducting the state and federal background check. The cost is \$45 and due with the application fee or when requested by the Board.

(h) Return check fees or other costs associated with a returned payment to the agency will be reimbursed by the licensee, as well as a \$25 agency processing fee.

(6) Public Records Fees

(a) Photocopies of records \$.25 per page

(b) Email/electronic document fee \$5.00

(c) Staff time for records research and production after the first 15 minutes of agency staff time: Clerical time \$20.00 per hour, Executive \$50.00 per hour and AAG time is based on actual cost billed.

(d) Actual postage and other mailing costs.

(e) Actual cost of CD, disk, thumb drive or other storage device provided by agency.

(7) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, or other person or entity has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683, 182 & 431

Stats. Implemented: ORS 683.270, 182.466 & 431.972

Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15; OPT 3-2014, f. 12-29-14, cert. ef. 1-1-15; OPT 2-2015, f. & cert. ef. 11-12-15; OPT 1-2016, f. 2-23-16, cert. ef. 4-1-16; OPT 2-2016, f. & cert. ef. 4-8-16; OPT 3-2017, f. & cert. ef. 2-14-17

## Commission for the Blind Chapter 585

**Rule Caption:** Business Ventures Funding Policy

**Adm. Order No.:** CFTB 1-2017

**Filed with Sec. of State:** 2-7-2017

**Certified to be Effective:** 2-7-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 585-010-0310

**Subject:** Division 10: Business Ventures Funding Policy: New title and updates language to reflect current practices other than the Business Enterprise Program.

**Rules Coordinator:** Dacia Johnson—(971) 673-1588

### 585-010-0310

#### Business Policy

(1) What This Rule Does. This rule establishes the conditions under which financial support for funding business ventures will be provided by the Commission for the Blind. Clients who are entering into the Business Enterprise Program do not meet the federal definition of self-employment under the Rehabilitation Act and are not subject to the requirements of this rule.

(2) Statutory Authority. This rule is authorized by ORS 183.341 and 346.150.

(3) Definitions. The following definitions apply to this rule:

(a) "Agency" means the Commission for the Blind;

(b) "IPE" means Individualized Plan for Employment;

(c) "PASS" means Plan to Achieve Self-Support;

(d) "SBA" means the U. S. Small Business Administration;

(e) "SSA" means the U. S. Social Security Administration;

(f) "Counselor" means the client's assigned Vocational Rehabilitation Counselor who is a staff member of the Agency.

(4) Effective Date. This rule is effective upon publication for clients requesting assistance in becoming involved in a business venture.

(5) Basic Criteria:

(a) Intent to establish or run a business is to help an individual become financially independent. Agency involvement will be available to establish or run a business that can reasonably be expected to provide income to the client commensurate with the individual's strengths, abilities, capabilities and interests. The agency will not fund "hobby" businesses. A "hobby" business is defined as one that is casual or recreational in nature with no intention of earning income at or above a living wage, also referred to as a "not for profit" business. The agency will not fund businesses designated as tax-exempt by the Internal Revenue Services (IRS), also referred to as a "non-profit" business;

(b) If a client is involved with a business partnership or corporation, s/he must present written evidence of being the controlling partner or controlling shareholder of the corporation. Provision must be made in the Partnership Agreement for the client to settle all debts should the business not succeed. The agency will assume no financial liability for debts;

(c) Speculative or high-risk business ventures will not be considered. These include those which present a risk beyond the control of the business owner or those which are so subject to economic whims as to have an unpredictable future;

(d) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain comparable benefits, when available. Evidence must include one or more of the following: application and rejection from a lending institution, PASS Plan benefits sheet, request for investments, or list of personal assets to be used for the business. If financial support from another source(s) is identified to fund the business in part or in whole, a request to obtain financial support from that source(s) should be made before requesting agency assistance. If the request was denied because of an insufficient business plan, the client must revise the plan and resubmit it to the funding source. When no comparable benefits and services are available, the agency may fund reasonable and necessary start-up costs for a business as part of a client's Individualized Plan for Employment. In order for a plan to be viable, other funding sources may be necessary to cover costs identified in the business plan that would not be covered by the agency;

(e) Where partial support is obtained elsewhere, the client must submit copies of the relevant documentation to identify the extent of that financial assistance;

(f) Where denial of financial support outside this agency is based on the availability of personal or family resources, the client will be expected to utilize those resources before requesting agency funding support;

# ADMINISTRATIVE RULES

(g) The client may seek assistance in developing a business plan from outside sources such as the Small Business Administration or the Small Business Development Centers at community colleges.

(6) Comprehensive Assessment:

(a) Financial support will be provided to a client to become involved in a business only after the client has satisfied a comprehensive assessment. As a part of this, the agency is prepared to provide or arrange for an assessment by agency staff or competent business persons outside the agency to assess the business skills, background, and potential of the client seeking financial assistance. Portions of the assessment may be conducted by business persons such as a representative of the Oregon Small Business Development Center;

(b) The comprehensive assessment will cover the following:

(A) Evaluation of previous work experience, especially in the same or a similar industry to the proposed business or in other self-employment;

(B) Understanding of other career options and availability of jobs in the present and future job market;

(C) Communications skills necessary in the proposed business (written and verbal skills, along with capability to maintain and interpret financial records for the business);

(D) Factors such as willingness to make personal financial investment in the business, ability to make appropriate decisions, dependability, follow-through, organizational ability, adequate travel skills as demonstrated by interaction with agency personnel and former business colleagues;

(E) Alternative skills of blindness adequate to function in the business; knowledge of technology, adaptive technology and software applications currently being used in the management of similar businesses;

(F) Demonstration of money/resource management skills consistent with running a viable small business.

(G) Background or training in financial management skills required for managing a self-owned business.

(7) Comprehensive Business Plan:

(a) The client must prepare a well-researched and written comprehensive business plan such as that required by a bank or the Small Business Administration.

(b) The plan must include an itemized list of equipment or business-related expenses, which the client requests the agency to provide. The client must make a formal presentation of the plan to the agency. If the plan is accepted, the decisions made will lead to the development or amendment of the IPE. Any agency support must be a part of an agreed upon IPE.

(c) If the total request for financial assistance and technical assistance for business startup is less than \$3,500, the counselor may not require a formal business plan. However, in providing assistance less than \$3,500, there still should be sufficient evidence that the business is viable. Financial assistance for business startup purposes must be clearly documented.

(d) Requests for an existing business, which exclusively involve adaptive equipment, may require documentation of the viability of the business rather than a formal business plan. Documentation must include one or more of the following: customer invoices, sales receipts, recent tax returns, or business financial statements.

(A) Self-Employment options for an Existing Business: Vocational Rehabilitation (VR) services for qualified individuals seeking assistance with an existing business may be provided under the following circumstances:

(i) The existing business is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice.

(ii) The individual's barriers to work, caused by disabilities, affect his/her ability to continue operating this business.

(iii) Without VR intervention, the individual will not be able to continue operating this business.

(B) VR services cannot provide services solely to expand or update an existing business, including situations to make a business profitable if there are no disability related barriers. In the event an individual is requesting a service such as this, the VRC can provide the client a reference of additional community resources.

(C) VR services and the IPE will be designed to address disability specific barriers noted. The business plan must address those barriers that make the business unsuitable. In the event the barriers cannot be removed, the business will not be supported and alternate goals should be explored. In the event the self-employment goal is viable, VR services may be provided in order to make the business suitable.

(8) Training. Where assessment results indicate that a client lacks some of the skills necessary for successful business management, the agency may make available and require training in those specific skill

areas, especially the alternative skills dealing with blindness and financial management skills.

(9) Availability of Funds:

(a) Financial support for any service provided under an IPE is contingent upon the availability of funds to the agency;

(b) Financial assistance should not place a burden on agency resources to the extent that the agency would be unable to provide services to other clients.

(10) Financial Support:

(a) Client will provide timely, at a minimum quarterly, financial statements and other documentation as requested by the Commission showing progress toward becoming self-sufficient. Examples of documentation include, but are not limited to: business bank statements, profit/loss statements against business plan projections, progress against planned startup activities, marketing plan execution.

(b) Agency support is designed to assist in the initial startup of a business; it is not to be considered an on-going resource, and in no case will losses be reimbursed by the agency;

(c) The client and Counselor will jointly determine the limits of agency financial involvement and time limits. Development of a comprehensive business plan is expected to adequately capitalize the business and limit the need for ongoing financial support by the agency.

(11) Equipment:

(a) Any equipment for the business must be purchased in accordance with agency policy; i.e., preauthorized, with appropriate bids, where necessary, obtained by the client;

(b) Under the criteria in ORS 346.210, ownership of equipment may be transferred to the client. The Counselor will determine appropriateness of this action. Regardless of ownership, the client is responsible for adequately maintaining the equipment;

(c) Any equipment whose title is not passed to the client will be returned to the agency when it is no longer required for the purpose for which it was procured.

Stat. Auth.: ORS 183 & 346

Stats. Implemented: ORS 346.150

Hist: 2BC 1-1985, f. & ef. 1-31-85; CFTB 3-1999, f. & cert. ef. 7-8-99; CFTB 1-2004, f. & cert. ef. 10-8-04; CFTB 1-2005, f. & cert. ef. 2-11-05; CFTB 1-2009, f. & cert. ef. 4-13-09; CFTB 1-2012, f. & cert. ef. 8-9-12; CFTB 1-2017, f. & cert. ef. 2-7-17

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**Department of Agriculture**  
**Chapter 603**

**Rule Caption:** Amend rules for the Oregon Farm Mediation Program.

**Adm. Order No.:** DOA 1-2017

**Filed with Sec. of State:** 1-17-2017

**Certified to be Effective:** 1-17-17

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 603-075-0010

**Rules Amended:** 603-075-0005, 603-075-0025, 603-075-0050, 603-075-0100, 603-075-0110, 603-075-0120, 603-075-0130, 603-075-0140

**Rules Repealed:** 603-075-0015

**Subject:** The 2015 legislative assembly passed HB 2444 which made changes to ODA's Farm Mediation Program. The rule describes the process for selection of mediation services, fees to be charged for mediation services, methods of advertising the availability of mediation services, and the processing of requests for agricultural mediation or mediation of disputes directly related to activities of the department of mediations pursuant to ORS 36.252 to 36.268.

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

**603-075-0005**

**Purpose**

These rules describe the process for selection of mediation services, fees to be charged for mediation services, methods of advertising the availability of mediation services, and the processing of requests for agricultural mediation or mediation of disputes directly related to activities of the department for mediations held pursuant to ORS 36.252 to 36.268.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

**603-075-0010**

**Definitions**

As used in these regulations, unless the context requires otherwise:

# ADMINISTRATIVE RULES

(1) "Agricultural producer" means a person engaged in the production of livestock, poultry, field crops, fruit, dairy, fur-bearing animals, Christmas trees, vermiculture products, food fish or other animal and vegetable matter or any other person, as determined by the department, who is engaged in agricultural production.

(2) "Coordinator" means the Director of Agriculture or a designee of the Director of Agriculture.

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

(4) "Mediation" as defined by ORS 36.110(5).

(5) "Mediation service" means a person selected by the coordinator to provide mediation under ORS 36.250 to 36.280.

(6) "Mediation program" as defined by ORS 36.110(8).

(7) "Mediator" as defined by ORS 36.110(9).

(8) "Party" means an individual, entity or group taking part in mediation as a disputant.

(9) "Person" means the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or any other legal entity.

(10) "Representative" means a person or persons that represents an individual, entity or organized group, including but not limited to an attorney.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.252 - 36.268

Hist.: DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0025

### Mediator Training Guidelines

If necessary, the training of impartial mediators shall include the following topic areas:

(1) Procedures to follow in conducting a mediation session;

(2) Skills important to successful mediation;

(3) Current agricultural, legal and financial issues;

(4) Other, as determined by the coordinator.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0050

### Process for Selection of Mediation Service

(1) The coordinator shall select such mediation service(s) for the agricultural mediation program based upon the following criteria:

(a) The number of formally mediated cases and hours of formal mediation completed;

(b) The number of continuing education credits obtained during the last two calendar years;

(c) Demonstrated knowledge of agriculture and agricultural issues;

(d) Demonstrated knowledge of agricultural and financial matters;

(e) Demonstrated ability to conduct actual mediation(s) with analysis of the results;

(f) Demonstrated ability to provide mediation services in the geographical area, which the mediation service proposes to provide its services; and

(g) Other, as determined by the coordinator.

(2) The coordinator may revoke or withdraw the selection of a mediation service if it is later determined that the above criteria have not been or are not being adequately met.

(3) The agriculture mediation service(s) shall be selected by the Request for Proposals (RFP) method.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0100

### Fees for Agricultural Mediation Services

(1) At the option of the department, fees may be established at an amount reasonably necessary to cover the cost of mediation services. Such fees shall be calculated by determining the costs, including administrative overhead, for providing mediation service.

(2) The fees to be charged per party shall be reviewed annually by the coordinator to determine the appropriateness of such fees and whether the fees should be increased or decreased based upon the overall financial status of the program.

(3) All or a portion of the mediation fees may be waived upon showing of financial need made by the applicant.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0110

### Method of Advertising Mediation Services

(1) The coordinator shall prepare and publish informational material describing the mediation program, including but not limited to description of the mediation service, costs to participants, manner of application and other information as the coordinator shall deem necessary to ensure adequate knowledge of mediation services.

(2) Information material shall be posted on the department's website and distributed to agricultural organizations and any other entity who make a request for such materials.

(3) The coordinator may use other appropriate means of advertising of the mediation program, including but not limited to, print and electronic media, posters and other means of public information.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0120

### Application for Mediation

(1) An agricultural producer or a person involved in a dispute directly related to the activities of the department may request services from the department by submitting a request to the department on a form provided by the department.

(2) The department shall, within ten days of the receipt of a request for mediation, give written notice of receipt of the request to the parties, or representatives of the parties, to the dispute.

(3) The coordinator will review mediation requests. If a dispute is eligible for the agricultural mediation, the coordinator shall notify the parties, or representatives of the parties, that the request is accepted by the department and forward the written requests for mediation to the mediator chosen by the coordinator.

(4) If the dispute is not eligible for the agricultural mediation program, the coordinator shall notify the parties or the representatives of the parties, that the request for mediation is denied.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0130

### Confidentiality of Mediation and Materials used in Mediation

(1) All mediations conducted are subject to the confidentiality requirements set forth in ORS 36.262. In addition, except as provided in subsection (3), all memoranda, work products and other materials contained in the case files of a mediator, an agricultural mediation service provider, or the department that are created for, or used in, a mediation are confidential and not subject to disclosure consistent with ORS 192.501(16).

(2) Breach of confidentiality by a mediator or mediation service shall be cause for revocation of a mediator's approval or cancellation of a mediation services' contract.

(3) A mediation agreement reached between the parties is not confidential unless the parties otherwise agree in writing.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

## 603-075-0140

### Reporting Procedures

(1) The coordinator shall prepare for the Director of Agriculture an annual evaluation report, which includes:

(a) The number of requests received for agriculture mediation;

(b) The number of requests that were eligible for agricultural mediation;

(c) Dispute type;

(d) Whether or not a settlement was reached;

(e) The cost of each case; and

(f) Recommendations, if any, for improving the delivery of mediation to agricultural resources.

(2) The coordinator shall prepare the evaluation report to reflect the agricultural mediation activities for the calendar year.

Stat. Auth.: ORS 561

Stats. Implemented: ORS 36.210

Hist.: AD 14-1990, f. & cert. ef. 7-3-90; DOA 1-2017, f. & cert. ef. 1-17-17

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**Rule Caption:** Temporary rule for increasing annual registration fees for growers and handlers of industrial hemp.

**Adm. Order No.:** DOA 2-2017(Temp)

**Filed with Sec. of State:** 1-18-2017

**Certified to be Effective:** 1-18-17 thru 7-16-17

# ADMINISTRATIVE RULES

## Notice Publication Date:

**Rules Amended:** 603-048-0700

**Subject:** The industrial hemp program (program) is financially insolvent. Current registration fees do not generate funds sufficient to cover the cost to pay for administration of the program. The only mechanism available for financing the program under the current statute (ORS 571.300 to 571.315, as modified by Oregon Laws 2016, Chapter 71) is annual registration fees. The proposed fee change increases annual registration fees for industrial hemp as follows:

Industrial hemp grower registration increases from \$500 to \$1300;

Industrial hemp handler registration increases from \$500 to \$1300;

Agricultural hemp seed producer registration increases from \$25 to \$120.

A delay in adopting these rules to increase fees would cause the program to go further in debt, impair the program's ability to register and regulate registrants, and ultimately seriously prejudice this new industry. It is therefore necessary to immediately adopt temporary rules.

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

## 603-048-0700

### Registration Fees

The following designated annual registration fees shall be applicable to each described activity under authority of ORS 571.305:

- (1) Industrial hemp grower registration \$1300.00;
- (2) Industrial hemp handler registration \$1300.00; and
- (3) Agricultural hemp seed producer registration \$120.00.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996

Stats. Implemented: ORS 571.300 - 571.315

Hist.: DOA 3-2015, f. & cert. ef. 1-29-15; DOA 11-2016(Temp), f. & cert. ef. 5-3-16 thru 10-29-16; DOA 19-2016, f. & cert. ef. 10-28-16; DOA 2-2017(Temp), f. & cert. ef. 1-18-17 thru 7-16-17

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**Rule Caption:** Temporary rule prohibiting sales of live crab and prohibiting crab not processed consistent with rules.

**Adm. Order No.:** DOA 3-2017(Temp)

**Filed with Sec. of State:** 2-2-2017

**Certified to be Effective:** 2-2-17 thru 7-31-17

### Notice Publication Date:

**Rules Adopted:** 603-025-0400

**Subject:** Contamination of Dungeness crab *Metacarcinus magister* with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. The Oregon Department of Agriculture is coordinating with the Oregon Department of Fish and Wildlife to close the Dungeness crab fishery in affected areas and to require that Dungeness crab caught before the closure is sold, offered for sale or donated to the public only after it is processed. These rules prohibit the sale of live crab caught in the affected areas and prohibit the sale of any crab that is not processed consistent with these rules.

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

## 603-025-0400

### Requirements for Dungeness Crab

Contamination of Dungeness crab with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. For these reasons, Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 is considered adulterated food unless the crab is processed consistent with these rules.

(1) Application. These rules apply to commercial fishing and commercial landings regulated by the Oregon Department of Fish and Wildlife pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed food processors regulated by the Oregon Department of Agriculture pursuant to ORS Chapter 616, and to any person, wholesaler or food processor that purchases or receives Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017.

(3) Definitions. For the purposes of these rules, unless the context requires otherwise;

(a) Dungeness Crab or Crab means *Metacarcinus magister*.

(b) HACCP Plan means a hazard analysis critical control point plan as described in 21 CFR §123.6 (2016).

(b) Processor means any person engaged in commercial, custom, or institutional processing of fish or fishery products, in Oregon, in another state, or in a foreign country. A processor includes any person engaged in the production of any foods that are to be used in market or consumer tests.

(c) Processing means handling, storing, preparing, heading, eviscerating, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading or holding.

(d) Wholesaler means any person who buys crab that is subject to these rules for resale to retailers, other merchants, or industrial, institution, and commercial users for resale or business use.

(2) Prohibitions. It is prohibited to sell or offer for sale or donate Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 unless:

(a) The crab is sold to a food processing establishment licensed by the Oregon Department of Agriculture or to a licensed food processor that eviscerates and processes crab consistent with subsection (3);

(b) The crab is sold to a wholesaler that in turn sells all crab subject to these rules to a food processor that is licensed by the Oregon Department of Agriculture or to a licensed processor.

(c) In no case, may live crab be sold or donated to retailers or directly to the public.

(d) In no case may crab be sold or donated to retailers or directly to the public unless it is processed as described in subsection (3).

(3) Food processors or wholesalers are prohibited from selling or offering for sale to retailers or to the public crab as described in subsection (2) unless:

(a) The licensed processor conducts its activities consistent with an approved seafood HACCP plan; and

(b) The crab is eviscerated and processed such that it contains less than 20ppm domoic acid.

(4) Whenever it is found that any crab as described in subsection (2) is sold, offered for sale, or donated to any person in a manner that is inconsistent with these rules, the Oregon Department of Agriculture may proceed with any lawful remedy including:

(a) Seeking the district attorney to institute proceedings in the proper courts to be prosecuted in the manner required by law;

(b) Enjoining violations of law in a summary proceeding;

(c) Embargo, seizure or detention consistent with the provisions of ORS 561.605 - 630.

Stat. Auth.: ORS 616.215, 616.225, 616.235, 561.190

Stats. Implemented: ORS 616.215 & 161.235

Hist.: DOA 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

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**Rule Caption:** Prohibits sale to public of Dungeness crab caught in area described in ODFW rule.

**Adm. Order No.:** DOA 4-2017(Temp)

**Filed with Sec. of State:** 2-8-2017

**Certified to be Effective:** 2-8-17 thru 8-6-17

### Notice Publication Date:

**Rules Amended:** 603-025-0400

**Subject:** Contamination of Dungeness crab *Metacarcinus magister* with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. The Oregon Department of Agriculture is coordinating with the Oregon Department of Fish and

# ADMINISTRATIVE RULES

Wildlife to ensure that Dungeness crab caught within the area described in rule by ODFW, is offered for sale or donated to the public only after it is processed. These rules prohibit the sale of live crab caught in the affected areas and prohibit the sale of any crab that is not processed consistent with these rules.

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

## 603-025-0400

### Requirements for Dungeness Crab

Contamination of Dungeness crab with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. For these reasons, Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 is considered adulterated food unless the crab is processed consistent with these rules.

(1) Application. These rules apply to commercial fishing and commercial landings regulated by the Oregon Department of Fish and Wildlife pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed food processors regulated by the Oregon Department of Agriculture pursuant to ORS Chapter 616, and to any person, wholesaler or food processor that purchases or receives Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017.

(3) Definitions. For the purposes of these rules, unless the context requires otherwise;

(a) Dungeness Crab or Crab means *Metacarcinus magister*.

(b) HACCP Plan means a hazard analysis critical control point plan as described in 21 CFR §123.6 (2016).

(c) Processor means any person engaged in commercial, custom, or institutional processing of fish or fishery products, in Oregon, in another state, or in a foreign country. A processor includes any person engaged in the production of any foods that are to be used in market or consumer tests.

(d) Processing means handling, storing, preparing, heading, eviscerating, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading or holding.

(e) Wholesaler means any person who buys crab that is subject to these rules for resale to retailers, other merchants, or industrial, institution, and commercial users for resale or business use.

(2) Prohibitions. It is prohibited to sell or offer for sale or donate Dungeness crab taken from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 unless:

(a) The crab is sold to a food processing establishment licensed by the Oregon Department of Agriculture or to a licensed food processor that eviscerates and processes crab consistent with subsection (3);

(b) The crab is sold to a wholesaler that in turn sells all crab subject to these rules to a food processor that is licensed by the Oregon Department of Agriculture or to a licensed processor.

(c) In no case, may live crab be sold or donated to retailers or directly to the public.

(d) In no case may crab be sold or donated to retailers or directly to the public unless it is processed as described in subsection (3).

(3) Food processors or wholesalers are prohibited from selling or offering for sale to retailers or to the public crab as described in subsection (2) unless:

(a) The licensed processor conducts its activities consistent with an approved seafood HACCP plan; and

(b) The crab is eviscerated and processed such that it contains less than 20ppm domoic acid.

(4) Whenever it is found that any crab as described in subsection (2) is sold, offered for sale, or donated to any person in a manner that is inconsistent with these rules, the Oregon Department of Agriculture may proceed with any lawful remedy including:

(a) Seeking the district attorney to institute proceedings in the proper courts to be prosecuted in the manner required by law;

(b) Enjoining violations of law in a summary proceeding;

(c) Embargo, seizure or detention consistent with the provisions of ORS 561.605 – 630.

Stat. Auth.: ORS 616.215, 616.225, 616.235, 561.190

Stats. Implemented: ORS 616.215 & 161.235

Hist.: DOA 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DOA 4-2017(Temp), f. & cert. ef. 2-8-17 thru 8-6-17

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**Rule Caption:** Ends restrictions on crab sales from Coos Bay to Heceta Head effective February 10, 2017

**Adm. Order No.:** DOA 5-2017(Temp)

**Filed with Sec. of State:** 2-10-2017

**Certified to be Effective:** 2-10-17 thru 8-6-17

**Notice Publication Date:**

**Rules Amended:** 603-025-0400

**Rules Suspended:** 603-025-0400(T)

**Subject:** Contamination of Dungeness crab *Metacarcinus magister* with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. The Oregon Department of Agriculture is coordinating with the Oregon Department of Fish and Wildlife to ensure that Dungeness crab caught within the area described in rule by ODFW during the time period for which domoic acid levels above the 30 ppm threshold were documented is offered for sale or donated to the public only after it is processed. These rules prohibit the sale of live crab caught in the affected areas during the time period for which domoic acid levels above the 30 ppm threshold were documented and prohibit the sale of any crab that is not processed consistent with these rules.

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

## 603-025-0400

### Requirements for Dungeness Crab

Contamination of Dungeness crab with natural toxins such as domoic acid can cause serious illness in consumers. Amnesiac shellfish poisoning from domoic acid may be associated with consumption of Dungeness crab, and is characterized by gastrointestinal symptoms, and in severe cases, neurological symptoms, memory loss, respiratory difficulty, and coma. Recent testing indicates the potential for Dungeness crab harvested between Coos Bay North Jetty northward to Heceta Head to contain over 30 ppm domoic acid in the viscera. For these reasons, Dungeness crab landed from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 is considered adulterated food unless the crab is processed consistent with these rules.

(1) Application. These rules apply to commercial fishing and commercial landings regulated by the Oregon Department of Fish and Wildlife pursuant to Oregon Revised Statutes (ORS) Chapter 509, to licensed food processors regulated by the Oregon Department of Agriculture pursuant to ORS Chapter 616, and to any person, wholesaler or food processor that purchases or receives Dungeness crab landed from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017.

(3) Definitions. For the purposes of these rules, unless the context requires otherwise;

(a) Dungeness Crab or Crab means *Metacarcinus magister*.

(b) HACCP Plan means a hazard analysis critical control point plan as described in 21 CFR §123.6 (2016).

(c) Processor means any person engaged in commercial, custom, or institutional processing of fish or fishery products, in Oregon, in another state, or in a foreign country. A processor includes any person engaged in the production of any foods that are to be used in market or consumer tests.

(d) Processing means handling, storing, preparing, heading, eviscerating, freezing, changing into different market forms, manufacturing, preserving, packing, labeling, dockside unloading or holding.

(e) Wholesaler means any person who buys crab that is subject to these rules for resale to retailers, other merchants, or industrial, institution, and commercial users for resale or business use.

(2) Prohibitions. It is prohibited to sell or offer for sale or donate Dungeness crab landed from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) after 12:01 a.m. January 25, 2017 and before 12:01 a.m. February 10, 2017 unless:

# ADMINISTRATIVE RULES

(a) The crab is sold to a food processing establishment licensed by the Oregon Department of Agriculture or to a licensed food processor that eviscerates and processes crab consistent with subsection (3);

(b) The crab is sold to a wholesaler that in turn sells all crab subject to these rules to a food processor that is licensed by the Oregon Department of Agriculture or to a licensed processor.

(c) In no case, may live crab be sold or donated to retailers or directly to the public.

(d) In no case, may crab be sold or donated to retailers or directly to the public unless it is processed as described in subsection (3).

(3) Food processors or wholesalers are prohibited from selling or offering for sale to retailers or to the public crab as described in subsection (2) unless:

(a) The licensed processor conducts its activities consistent with an approved seafood HACCP plan; and

(b) The crab is eviscerated and processed such that it contains less than 20ppm domoic acid.

(4) Whenever it is found that any crab as described in subsection (2) is sold, offered for sale, or donated to any person in a manner that is inconsistent with these rules, the Oregon Department of Agriculture may proceed with any lawful remedy including:

(a) Seeking the district attorney to institute proceedings in the proper courts to be prosecuted in the manner required by law;

(b) Enjoining violations of law in a summary proceeding;

(c) Embargo, seizure or detention consistent with the provisions of ORS 561.605 – 630.

Stat. Auth.: ORS 616.215, 616.225, 616.235, 561.190

Stats. Implemented: ORS 616.215 & 161.235

Hist.: DOA 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DOA 4-2017(Temp), f. & cert. ef. 2-8-17 thru 8-6-17; DOA 5-2017(Temp), f. & cert. ef. 2-10-17 thru 8-6-17

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

**Rule Caption:** Adopts minimum safety standards for recreational vehicles and clarifies types of recreational vehicles regulated

**Adm. Order No.:** BCD 1-2017(Temp)

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 1-19-17 thru 7-17-17

**Notice Publication Date:**

**Rules Amended:** 918-500-0450, 918-525-0000, 918-525-0005, 918-525-0015, 918-525-0020, 918-525-0035, 918-525-0040, 918-525-0042, 918-525-0065, 918-525-0090, 918-525-0100, 918-525-0210, 918-525-0220, 918-525-0260, 918-525-0270, 918-525-0310, 918-525-0320, 918-525-0330, 918-525-0350, 918-525-0410, 918-525-0420, 918-525-0430, 918-525-0440, 918-525-0450, 918-525-0510, 918-525-0520, 918-098-1305, 918-098-1325, 918-525-0060, 918-525-0070, 918-525-0080

**Rules Suspended:** 918-525-0045, 918-525-0055, 918-525-0325, 918-525-0370, 918-525-0460, 918-530-0005, 918-530-0010, 918-530-0020, 918-530-0040, 918-530-0050, 918-530-0060, 918-530-0070, 918-530-0080, 918-530-0090, 918-530-0100, 918-530-0110, 918-530-0120, 918-530-0310, 918-530-0320, 918-530-0340

**Subject:** These temporary rules make a variety of changes to the division's Recreational Vehicle Program. These changes include, but are not limited to, adopting current editions of the minimum safety standards for the construction of recreational vehicles, clarifying the types of recreational vehicles regulated by the division, changing plan review requirements for manufacturers, and clarifying the requirements for the manufacture and sale of recreational vehicles in Oregon.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

### 918-098-1305

#### Manufactured Structure Installation Inspector Certification

(1) Scope of Activities and Authority.

(a) A manufactured structure installation inspector conducts onsite field inspections of manufactured dwelling installations including site preparation, setbacks, drainage, stand, foundation support, earthquake bracing systems, tie-downs, under-floor enclosures, access, egress, plumbing utility connections (within 30 lineal feet of the manufactured dwelling), mechanical connections and electrical feeder assembly connections (as defined by Article 550 of the National Electrical Code), electrical fixture

connections, and plumbing, mechanical, and electrical crossover connections for manufactured structures under ORS 446.230 and 446.240;

(b) This certification does not include inspections or plan reviews of manufactured dwelling alterations or manufactured structure accessory structures and accessory buildings. See OAR 918-098-1325 and 918-098-1330 for certification requirements.

(c) This certification can be used only in a jurisdiction that:

(A) Meets all of the requirements of this rule and OAR 918-500-0055;

(B) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(C) Issues permits according to ORS 446.253; and

(D) Enforces the current edition of the Oregon Manufactured Dwelling Installation Specialty Code, the provisions of OAR chapter 918, division 500, and all referenced standards contained therein.

(2) A Manufactured Structure Installation Inspector must also possess an Oregon Inspector Certification issued under OAR 918-098-1025 prior to performing inspections.

(3) Revocation. The division is authorized to revoke this certification under ORS 446.255. Persons certified under this rule who fail to meet the minimum continuing education requirements are subject to revocation. If the minimum continuing education is met within 60 days from the date it was originally due, the division may discontinue any pending revocation action based on a failure to meet minimum continuing education requirements.

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

Stat. Auth.: ORS 446.250, 446.255 & 455.720

Stats. Implemented: ORS 446.250, 446.255 & 455.720

Hist.: BCA 25-1990, f. & cert. ef. 10-17-90; BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; Renumbered from 918-099-0135; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0310; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0310; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11; BCD 24-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 6-2016, f. & cert. ef. 4-1-16; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

### 918-098-1325

#### Requirements for Alteration Inspection and Plan Review of Manufactured Dwellings

(1) Scope of Work. Manufactured dwelling alteration inspections and plan reviews include on-site field inspections of alterations including structural, fire and life safety, electrical, plumbing, and mechanical alterations made to manufactured dwellings after the initial sale of the home to the first consumer after all the terms of the sales contract have been met. Most alteration inspections made prior to this time are the responsibility of the division and must be performed by a certified manufactured structure construction inspector.

(2) Certifications. Inspectors of manufactured dwelling alterations are required to be certified by ORS 446.250. The division requires that persons performing inspections or plan reviews on manufactured dwelling alterations have:

(a) An Oregon Inspector Certification and the appropriate Oregon Code Certification under OAR 918-098-1015 for the Oregon Residential Specialty Code for the specific discipline being used; or

(b) An Oregon Inspector Certification and the appropriate ICC Residential Certification as described in OAR 918-098-1010.

(3) The requirement in section (2) is not applicable to alteration inspections performed on manufactured homes still under the jurisdiction of the U.S. Department of Housing and Urban Development (HUD).

(4) Authority. Inspectors and plans examiners of manufactured dwelling alterations may only inspect or review plans in a jurisdiction that has been delegated the manufactured dwelling alteration program and that:

(a) Complies with ORS 446.250 and 446.253(2) relating to the delegation of full responsibility for permit issuance and inspections;

(b) Issues permits and enforces the current edition of ORS chapter 446 and OAR chapter 918, division 500;

(c) Meets the requirements of OAR 918-500-0055 for delegation; and

(d) Enforces the current edition of the **Oregon Manufactured Dwelling Installation Specialty Code** and all referenced standards contained therein.

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

Stat. Auth.: ORS 446.250 & 455.720

Stats. Implemented: ORS 446.250 & 455.720

Hist.: BCD 13-1997, f. 9-18-97, cert. ef. 10-1-97; BCD 16-2005(Temp), f. & cert. ef. 7-7-05 thru 12-31-05, Renumbered from 918-098-0350; BCD 24-2005, f. 9-30-05, cert. ef. 10-1-05, Renumbered from 918-098-0350; BCD 19-2006, f. 12-29-06, cert. ef. 1-1-07; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 6-2010, f. 5-14-10, cert. ef. 7-1-10; BCD 7-2011, f. & cert. ef. 3-11-11; BCD 24-2011, f. 7-26-11, cert. ef. 10-1-11; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17



# ADMINISTRATIVE RULES

## 918-500-0450

### Insignia and Label Requirements

All manufactured dwellings constructed on or after June 15, 1976, must bear an insignia of compliance.

Stat. Auth.: ORS 446.176 & 446.230

Stats. Implemented: ORS 446.170

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0000

### Reasonable Notice to Interested Parties

Before the adoption, amendment, or repeal of any rule relating to the construction or inspection of recreation vehicles adopted under ORS 446.003 to 446.280 and 446.990, the Building Codes Division shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.335 at least 21 days before the effective date; and

(2) By mailing a copy of the notice to persons on the interested parties mailing list established under ORS 183.335 and OAR 918-001-0210.

Stat. Auth.: ORS 446

Stats. Implemented: ORS 183.335

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0005

### Definitions

The following definitions are in addition to those included in ORS 446.003:

(1) "Accessible" means having access thereto, but which may require removal of an access panel or opening a door.

(2) "Adjustment of Equipment" means the adjustment of the rate, flow, speed, temperature, etc. as necessary for the continued operation of the equipment but does not include the repair, replacement, conversion, alteration, or addition to any equipment.

(3) "Design Option" means an option to a model or model group submitted with the original model or with a model supplement.

(4) "Field Technical Service" means the clarification of technical data, including but not limited to division interpretations of, or investigations into to the application of laws, rules, standards, and regulations administered and enforced by the Building Codes Division.

(5) "Labeled" means equipment or materials, used in the manufacture or installation of a recreational vehicle, to which has been attached a label, symbol, or other identifying mark of a nationally recognized testing laboratory, inspection agency, or other organization, which evaluates products to nationally recognized standards and periodically inspects production of equipment and materials to show compliance with those standards for usage in a specified manner.

(6) "Listing Agency" means an agency that:

(a) Is regularly engaged in conducting its own tests, or listing, labeling, or contracting its testing procedures to a nationally recognized testing agency;

(b) Maintains a periodic inspection program on production of currently listed products; and

(c) Publishes, at a minimum, an annual report which is used to determine whether products have been tested to such national standards and found safe for use in a specified manner.

(7) "Minor Repair" means a simple repair such as replacing broken glass, fittings, devices, or fixtures, using approved component parts, but does not include the repair or replacement of major portions of the structural, plumbing, electrical, or mechanical systems or conversions, alterations, or additions.

(8) "Model" means an individual recreational vehicle designated by the manufacturer to be manufactured to a specific floor plan, which includes specific structural components, plumbing, electrical, and mechanical equipment, and installed and located in accordance with the plans submitted to the division.

(9) "Model Group" means two or more models with identical floor plans and plumbing, electrical and mechanical systems but identified by different names, numbers, or letters.

(10) "Noncompliance" means a failure of a recreational vehicle, equipment, or installation to comply with these rules or the codes and standards described in OAR 918-525-0040.

(11) "Notice of Violation" means written notification by the division stating the recreational vehicle or equipment may not be used, rented, leased, or sold or offered for sale, rent, or lease due to violations of ORS chapter 446 or these rules.

(12) "Option Ready" means a provision made during the manufacture of a recreational vehicle to facilitate the future installation of an appliance or other equipment (e.g., air conditioner, generator, dishwasher).

(13) "Plan Supplement" means the revision, modification, or updating of an existing division-approved plan.

(14) "Readily Accessible" means having direct access without the necessity of removing a panel, door, or similar obstruction.

(15) "Recreational Vehicle" means a vehicle as defined in ORS 446.003 and is a vehicular-type unit that contains 12-volt interior and exterior lighting, eating and sleeping facilities, is designed as temporary living quarters for recreational, seasonal or emergency use, and has its own motive power or is mounted on or towed by another vehicle and meets all of the following:

(a) Is regulated and registered by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment;

(b) Does not require a special highway use permit for operation on the highways;

(c) Is designed to be easily transported and set up on a daily basis by an individual;

(d) Is represented in NFPA 1192 Figure A.3.3.50;

(e) Has exterior wall and roof coverings of aluminum, fiberglass, fiberglass composite or rubber membrane; and

(f) Does not have a pitched roof or bay windows.

(16) "Regulated Repair" means an alteration, repair, or conversion regulated by the codes and standards described in OAR 918-525-0040 but excludes those unregulated repairs described in ORS 446.003(2)(b) and OAR 918-525-0350(2).

(17) "Repair" means the reconstruction or renewal of any part of an existing recreational vehicle or piece of equipment for the purpose of its maintenance.

(18) "Repair Operation" means any person in the business of making alterations, repairs, or conversions to recreational vehicles or recreational vehicle equipment regulated by the division under ORS Chapter 446 and these rules.

(19) "Replacement in Kind" means replacing equipment or accessories with approved like equipment or accessories such as switches, thermostats, fittings, elements, or motors, but does not include the replacement of major portions of the structural, plumbing, electrical, or mechanical systems.

(20) "Technician" means a quality assurance technician approved by the division to perform inspections according to a repair operation's quality assurance manual.

(21) "Testing Laboratory" or "Testing Agency" means an organization:

(a) In the business of testing equipment and systems;

(b) Qualified and equipped to perform or to observe experimental testing to approved standards;

(c) Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry;

(d) Publishing reports, including specific information about the equipment and systems tested and found safe for use in a specified manner; and

(e) Whose methods and standards have been approved by the division.

(22) "Travel Mode" means the overall size of the recreational vehicle as it travels on a highway including all horizontal projections except for expandable rooms, retractable awnings, exterior plumbing, mechanical, or electrical fixtures, or equipment or other minor exterior attachments.

(23) "Visual Inspection" means an inspection by the division of the visible portions of completed construction of a recreational vehicle for the purpose of identifying code violations or approving and issuing an insignia of compliance.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 11-1997, f. 7-23-97, cert. ef. 1-1-98; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 12-2011(Temp), f. 4-29-11, cert. ef. 5-2-11 thru 10-29-11; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0015

### Objective

The provisions of OAR chapter 918, division 525 apply to the design, manufacture alteration, and repair of recreational vehicles rented, leased, sold, or offered for rent, lease, or sale in Oregon.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.155

# ADMINISTRATIVE RULES

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0020

### Equipment and Equipment Installations

(1) All equipment and equipment installations in the thermal, fire and life safety, plumbing, mechanical, and electrical systems of recreational vehicles or intended for use in recreational vehicles are subject to the provisions of these rules.

(2) The division may accept for approval equipment and equipment installations listed and labeled by a testing agency using standards approved by the division.

(3) If the division determines that listed or labeled equipment and equipment installations are not adequate for the protection of health, safety, and the general welfare, then the division may revoke the approval for installation in recreational vehicles manufactured, sold, rented, leased, or offered for sale, rent, or lease in Oregon.

Stat. Auth.: ORS 446.155

Stats. Implemented: ORS 446.155

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0035

### Allowable Floor Areas

(1) Recreational vehicles are limited to a maximum gross floor area of 400 square feet in the setup mode, including all tip-outs, slide-outs, expandable rooms, and other horizontal projections. The 400 square foot limitation does not apply to:

- (a) Motorized recreational vehicles;
- (b) Fifth wheel trailers up to 430 square feet in the setup mode;
- (c) Any space less than five feet in height which does not increase the size of the recreational vehicle or extend horizontally beyond the recreational vehicle floor line;
- (d) Bay windows, walk-a-bays, and other window projections with a floor or platform at least 12 inches above the vehicle floor;
- (e) Space occupied by drawbars, couplings, hitches, or lights; or
- (f) Retractable awnings.

(2) The gross floor area of a recreational vehicle shall not be increased through the use of a manufactured dwelling, another recreational vehicle, or through any other means.

(3) The gross floor area of a combination vehicle shall not exceed the maximum allowable gross floor area if there is no permanent separation between the recreational vehicle and the other use (i.e., horse trailer/recreational vehicle). When a combination vehicle has a permanent wall separating the two uses, only the recreational vehicle portion of the combination vehicle is limited to the maximum gross floor area.

Stat. Auth.: ORS 446.003 & 446.160

Stats. Implemented: ORS 446.003 & 446.160

Hist.: BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 12-2011(Temp), f. 4-29-11, cert. ef. 5-2-11 thru 10-29-11; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0040

### Adopted Minimum Safety Standards

(1) The minimum safety standards for recreational vehicles are adopted pursuant to OAR chapter 918, division 8.

(2) Effective January 19, 2017, the following standards are adopted by reference as the standards for the manufacture, alteration, or repair of recreational vehicles

(a) The 2015 Edition of NFPA 1192, Standard on Recreational Vehicles, as published by the National Fire Protection Association.

(b) The 2014 Edition of NFPA 70, National Electrical Code, specifically but not limited to, Article 551 pertaining to Recreational Vehicles, as published by the National Fire Protection Association.

(c) The 2014 Edition of ANSI/RVIA Standard for Low Voltage Systems in Conversion and Recreational Vehicles, as published by the Recreational Vehicle Industry Association.

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

Stat. Auth.: ORS 183.325 - 183.410 & 446.003 - 446.285

Stats. Implemented: ORS 446.185

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 22-1990(Temp), f. & cert. ef. 9-4-90; BCA 27-1990, f. 11-28-90, cert. ef. 11-30-90; BCA 16-1993, f. 8-12-93, cert. ef. 9-1-93; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 16-1996, f. 8-6-96, cert. ef. 9-1-96; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 11-1997, f. 7-23-97, cert. ef. 1-1-98; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0042

### Amendments to the Adopted Minimum Safety Standards

The minimum safety standards for recreational vehicles are adopted in OAR 918-525-0040 and are amended pursuant to OAR Chapter 918, Division 8. Amendments adopted to the minimum safety standards for recreational vehicles are placed in this rule, showing the section reference and code language.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2010, f. 3-1-10, cert. ef. 4-1-10; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; BCD 3-2012(Temp), f. 4-6-12, cert. ef. 4-9-12 thru 9-30-12; BCD 6-2012, f. 6-27-12, cert. ef. 7-1-12; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0045

### Recreational Park Trailer Disclosures

(1) Dealers and distributors shall present each potential buyer of a new recreational park trailer that is over 8-1/2 feet wide with a disclosure statement to read and sign prior to the completion of the sales contract of any new recreational park trailer. Prior to presenting disclosures to potential buyers and prior to any sale, dealers and distributors shall complete the disclosure in writing indicating the date, dealer's or distributor's name, address, and Department of Consumer and Business Services license number. Dealers and distributors shall give one signed copy of the disclosure to the buyer and retain one signed copy in the dealer's or distributor's files for not less than five years from the date of sale. Copies of signed disclosures shall be made available to the division upon request.

(2) Dealers or distributors may reprint the division's disclosure form or include the division's disclosure statement within their own sales contract. If a dealer or distributor prints its own disclosure, the content shall be identical to the division's disclosure statement and shall have not less than a 10 point type size.

NOTE: Disclosure form is available from the division and can be found on the division Web site.

Stat. Auth.: ORS 446.260

Stats. Implemented: ORS 446.260

Hist.: BCD 4-1998, f. 2-10-98, cert. ef. 7-1-98; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0055

### Recreational Park Trailer License Requirements

Persons engaged in the business of installing recreational park trailers, accessory structures, and accessory buildings are not required to have a division issued manufactured dwelling installer's license but are required to be licensed by the Construction Contractors Board. Persons in the business of making on-site electrical or plumbing installations shall be licensed by the division according to ORS 479.620, 693.030, or 447.060.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0060

### Manufacturer's Quality Assurance Manual

(1) Each manufacturer of recreational vehicles seeking certification under these rules shall submit to the division a manual outlining the quality assurance procedures to be followed at its particular manufacturing facility or facilities. If the quality assurance manual is applicable to more than one manufacturing facility, the manual shall adequately define procedures specific to each facility. The quality assurance manual shall be submitted electronically or in paper format. Paper submittals must be submitted in duplicate. All submittals must contain the following:

- (a) The name and address of the facility in which this quality assurance manual will be used;
- (b) An organizational chart showing the accountability, by position, of the manufacturer's quality assurance personnel;
- (c) A description of production tests, test procedures, and test equipment required to determine compliance with this division of rules;
- (d) A station-by-station description of each manufacturing facility's manufacturing process;
- (e) A plant layout showing each stage of the production line;
- (f) A list of quality assurance inspections required by the manufacturing facility at each station;
- (g) Identification, by title, publisher, edition, date, and publication number, those codes and standards to be enforced by the manufacturer's quality assurance program; and

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(h) A description of procedures for the receipt, storage, and handling of materials and components used in the manufacture of recreational vehicles.

(2) Each manufacturer shall supplement its quality assurance manual following each code change, change in production process or change to any item described in subsections (1)(a) through (i) of this rule and submit the supplement to the division along with the fees in OAR 918-525-0510 according to section (1) of this rule.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0065

### Compliance Monitoring of Manufacturers

(1) To maintain consistent compliance with these rules the division:

(a) May inspect recreational vehicles at each facility selling, offering for sale, or displaying for sale, the manufacturers products whether for wholesale, retail, or consignment.

(b) May inspect recreational vehicles at all manufacturing facilities to evaluate the manufacturer's compliance with the rules adopted by the division.

(2) If the division determines that recreational vehicles produced by the manufacturer consistently fail to conform with the requirements of these rules, the manufacturer's quality assurance program, or the pre-established acceptable quality level, the division may:

(a) Post a Notice of Violation on each recreational vehicle which fails to conform in accordance with OAR 918-525-0330;

(b) Remove the Insignia of Compliance from each recreational vehicle which fails to conform in accordance with OAR 918-525-0450(2);

(c) Increase inspections as necessary to assure adequate compliance in accordance with OAR 918-525-0080, 918-525-0310, and 918-525-0320; or

(d) Rescind the manufacturer's certification in accordance with OAR 918-525-0080(4)..

(3) Fees for increased inspections are set forth in OAR 918-525-0510 and 918-525-0520.

(4) Dealer lot monitoring inspections are paid through the insignia label fee set forth in OAR 918-525-0510.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 14-1996(Temp), f. & cert. ef. 7-1-96; BCD 24-1996, f. & cert. ef. 11-8-96; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0070

### Manufacturer Registration

(1) Each manufacturer seeking certification under these rules must register with the division. A manufacturer registration application must be submitted on a division approved form together with the registration fee.

(2) Registrations expire August 1 of each year. Registrations may be renewed by submitting an application for renewal to the division, together with the renewal fee.

(3) Manufacturers not registered or whose registration has expired will not be issued Oregon insignia of approval or receive Oregon plan review and approval or division inspections.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0080

### Manufacturing Facility Certification

(1) Each recreational vehicle manufacturer that produces or intends to produce recreational vehicles that are required to bear an Oregon insignia of compliance must be certified by the division. Manufacturing facilities may be certified by the division if the following criteria are met:

(a) The manufacturer has registered with the division;

(b) The manufacturer has submitted and the division has approved the manufacturer's quality assurance manual;

(c) The manufacturer has division approved plans;

(d) The division has inspected a manufacturer's product and an inspection report has been issued verifying that the manufacturer's product meets the minimum safety standards adopted in OAR 918-525-0040; and

(e) Random units inspected by the division on dealer lots conform to the provisions of OAR 918-525-0065.

(2) The division may inspect a manufacturing facility and verify that facilities ability to follow the procedures outlined in its approved quality assurance manual.

(3) Certification inspections shall be performed at the division's convenience and at the inspection fee rates provided in OAR 918-525-0510.

(4) The division may rescind a manufacturing facility's certification if the division determines that any of the criteria identified in section (1) of this rule are not satisfied. The division shall notify a manufacturer in writing of its intent to decertify a manufacturing facility. The notice shall identify the circumstances and reasons for decertification. If the manufacturer fails to bring the facility into conformance with the requirements of these rules within the time specified by the division, the division may decertify the facility.

(5) As an alternative to decertifying the manufacturing facility, the division may increase the frequency of inplant inspections and dealer lot-monitoring. Violations identified on an inplant inspection report or a dealer lot monitoring report shall be corrected prior to the departure of the issuing inspector or a Notice of Violation shall be posted on the recreational vehicle. At the discretion of the issuing inspector, violations may be corrected after the departure of the issuing inspector if a summary of the corrective actions taken is submitted to the division within the time frame specified in OAR 918-525-0330.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0090

### Change of ownership

(1) If there is a change in the ownership of a recreational vehicle manufacturer or repair operation, the new owner shall register with the division within ten days of the date of change according to OAR 918-525-0070.

(2) If the new owner intends to operate according to the current approved quality assurance manual, the new owner shall indicate their intent in the written notice of change of ownership.

(3) If the new owner does not intend to operate under the current approved quality assurance manual, the new owner shall submit to the division a new quality assurance manual within 30 days of the change in ownership when required by OAR 918-525-0060 or 918-525-0150.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0100

### Change of Name or Address

When a manufacturer or repair operation changes its name, address, or location, the manufacturer or repair operation shall notify the division in writing within ten days of the date of change. The notice shall be accompanied by a registration form according to OAR 918-525-0070.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0210

### General — Plans and Specifications

(1) Manufacturers must apply to the division for plan approval for each model of recreational vehicle requiring an Oregon insignia of compliance.

(2) Plan approvals must be submitted to the minimum safety standards adopted in OAR 918-525-0040. Manufacturers may submit plans based upon newly published recreational vehicle codes and standards prior to the division adopting new recreational vehicle minimum safety standards provided the plans meet or exceed Oregon's adopted minimum safety standards.

(3) Plans may be submitted electronically according to current division policy. Paper plans must be submitted in duplicate.

(4) Each plan submittal must include:

(a) A completed division-approved plan application form;

(b) Completed plans as required by OAR 918-525-0220; and

(c) The fees as provided in OAR 918-525-0510.

(5) A manufacturer may choose either a one-year, two-year, or three-year approval period at time of submittal. If the manufacturer chooses a multiple-year approval, fees are multiplied accordingly.

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

Stat. Auth.: ORS 446

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0220

### Recreational Vehicle and Recreational Park Trailer Plan Requirements

(1) Plan shall indicate the nature and extent of the work proposed and all options. Plans shall meet the following requirements.

(2) General: Plans shall be on substantial paper a minimum of 8-1/2 x 11 inches but not exceeding 17 x 22 inches, or submitted electronically according to current division policy, and shall show at least the following:

(a) Fire and Life Safety:

(A) Floor plan and all design options drawn to scale showing all window sizes, exit locations, the gross floor area, and egress requirements;

(B) Design and proposed use of each room, space, and area, including lofts;

(C) Location of required smoke detector, carbon monoxide detector, and liquefied petroleum gas (LPG) detector;

(D) Fire extinguisher location;

(E) Locations of drain, water, gas, and electrical supply connections; and

(F) Exterior elevations indicating all vehicle fuel filler locations, all appliance combustion air inlets, engine exhaust locations, and LPG discharges.

(b) Mechanical:

(A) Location of all appliances and fixtures;

(B) Description of all materials, appliances, fittings, pipe, tubing, vents, and ducts;

(C) Schematics of all piping system designs;

(D) Maximum developed length of fuel piping required;

(E) Maximum Btuh input rating of all fuel-burning appliances;

(F) Source of combustion air for each appliance;

(G) Size of openings for combustion air, except an integral part of an approved appliance;

(H) Types of fuels used;

(I) Diameter, length, and type of pipe and tubing;

(J) Capacity and location of liquid fuel tanks and LPG cylinders;

(K) Size, location, and construction of fuel storage compartments;

(L) Location of fuel piping indicating protection for concealed tubing;

(M) Clearances between range burners and combustible materials and methods of protection where required;

(N) Size, length, type, and location of vents and vent connectors;

(O) Details showing the design and construction of air supply and return systems including type, width, and gauge of warm air ducts and size of openings for return circulating air duct insulation specified when required; and

(P) Size and location of circulating air supply inlet.

(c) Electrical:

(A) Floor plan indicating location of all electrical receptacles, appliances, and equipment;

(B) Type and rating of all appliances, fixtures, wire, cable fittings, panels, and equipment;

(C) Specifications of power supply assembly;

(D) Number of circuits;

(E) Number and location of outlets on each circuit;

(F) Number of fixtures;

(G) Number of fixed appliances;

(H) Conductor sizes;

(I) Voltage;

(J) Method of grounding all exposed noncurrent carrying metal parts of the vehicle;

(K) Method of grounding appliances;

(L) Location of distribution panel and minimum working space; and

(M) Method of neutral conductor isolation.

(d) Plumbing:

(A) Description of all materials, fixtures, fittings, pipe tubing, shower stalls, and walls, including applicable listings;

(B) Diameter and type of pipe and tubing;

(C) Size and type of fittings;

(D) Diagram of potable water supply system, waste, vent, and drain system; and

(E) Diagram of holding tank flushing systems.

(e) Exterior shell:

(A) Identify material to be used on exterior sidewalls; and

(B) Identify material to be used on the roof.

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

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 11-1997, f. 7-23-97, cert. ef. 1-1-98; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0260

### Plan Approval Expiration and Renewal

(1) Approved recreational vehicle plans are valid from the date of approval by the division for either one-year, two-years, or three-years based upon the manufacturer's choice at time of submittal.

(2) Approved plans must be renewed by submitting a division-approved renewal form accompanied by the fees as shown in OAR 918-525-0510. Renewal forms may be submitted electronically or in paper format.

(3) A manufacturer has the option of renewing an approved plan for either one-year, two-years, or three-years. If the manufacturer chooses to renew the plan for more than one-year, the fee must be multiplied by the number of years that manufacturers choose to renew the plan for. Plans are not required to be submitted with plan approval renewal applications.

(4) Except for a change in model name or designation, no change or modification may be made in plans when plan renewal is filed.

(5) Expired plans may be resubmitted per OAR 918-525-0210 and 918-525-0220.

Stat. Auth.: ORS 446

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0270

### Model Name Change and Model Supplement

A manufacturer may revise or modify an existing approved plan by submitting to the division, a plan approval supplement application, revised or modified plans per OAR 918-525-0210, along with the fees set by OAR 918-525-0510, prior to the expiration date of the existing plan.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0310

### Required Inspections

(1) Any person selling, renting, leasing, or offering for sale, rent, or lease any recreational vehicle within the State of Oregon must request a division inspection if any of the following conditions exist:

(a) A newly manufactured recreational vehicle manufactured by an Oregon certified manufacturer which does not bear an Oregon insignia of compliance;

(b) The recreational vehicle has left an Oregon certified manufacturer's facility, or a distributor's or dealer's facility with a "Notice of Violation" or "Red Tag"; or

(c) An in-plant inspection or dealer lot report indicates violations have not been corrected through the normal inspection process.

(2) The division is not obligated to provide recreational vehicle inspections when the recreational vehicles are:

(a) Previously lawfully registered and titled by any state department of motor vehicles within the United States;

(b) Manufactured in Oregon, but designated by the manufacturer as an out-of-state delivery, and delivered by the manufacturer or its agent to a purchaser in another state;

(c) Manufactured out-of-state, and not destined for an Oregon purchaser, but may be passing through Oregon to its out-of-state destination; or

(d) Inspected by certified manufacturers at the manufacturing facilities

(e) Inspected by certified quality assurance technicians at the times and places of the alterations or repairs.

(3) Division inspection and insignia fees are as provided in OAR 918-525-0510.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160, 2005 OL, Ch. 89

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 28-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

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## 918-525-0320

### Inspection and Approval

(1) A request for inspection shall:

(a) Be made on forms supplied by the division, and received by the division at least five working days prior to the desired date of inspection; and

(b) Indicate the location, make, model, and serial number of the vehicle.

(2) Fees shall be as established in OAR 918-525-0510 and 918-525-0520 and are payable upon completion of each inspection.

(3) All work involving alteration or repair shall be accessible for inspection.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0325

### Inspection of Prototype Models

A manufacturer of recreational vehicles may build a prototype model prior to plan approval under the following conditions:

(1) Prior to beginning construction, the manufacturer shall notify the division and request an inspection. The inspection may be made during or upon completion of the vehicle.

(2) The number of prototype models to be built prior to plan approval shall be approved in advance by the division.

(3) Prototype models may only be constructed at manufacturing facilities that have been registered and certified under OAR 918-525-0070 and 918-525-0080.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0330

### Notice of Violation

(1) When an inspection reveals that a recreational vehicle, the equipment, or installation violates any provision of the statutes or administrative rules, the division shall serve upon the renter, lessor, seller, distributor, owner, repair operation, manufacturer, or agent thereof a copy of the inspection report giving details of the violations. The division may also post a Notice of Violation on the recreational vehicle, equipment, or installations.

(2) Violations shall be corrected within 20 days from the date of such notice or at a later date if approved by the division.

(3) If the violations are not corrected in the allotted time, the division may withdraw any previously issued insignia of compliance.

(4) The recipient of a Notice of violation shall inform the division in writing within 20 days of the date of the notice of the action taken to correct the violations. A recreational vehicle, equipment, or installation subject to a Notice of Violation shall not be moved without division approval.

(5) When a Notice of Violation has been posted on the recreational vehicle, equipment, or installation such notice shall not be removed until authorized by the division. A Notice of Violation may only be removed by division representatives or a person specifically authorized by the division. A recreational vehicle or equipment posted with a Notice of Violation shall not be displayed or offered for sale, rent, or lease.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0350

### Alteration, Conversion and Repair

(1) The following shall not constitute an alteration, conversion, or repair:

(a) Minor repairs with approved component parts as defined in OAR 918-525-0005;

(b) Conversion of listed fuel-burning appliances in accordance with the terms of their listing;

(c) Adjustment and maintenance of equipment as defined in OAR 918-525-0005;

(d) Replacement of equipment or accessories in kind as defined in 918-525-0005; or

(e) Installation of option ready appliances, equipment, or accessories where pre-plumbing or wiring was provided by the manufacturer.

(2) Alterations performed on a recreational vehicle by the manufacturer, repair operation, or dealer shall conform to the division's adopted standards in effect at the time of the alteration.

(3) Insignias on recreational vehicles damaged beyond repair must be returned to or appropriated by the division.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0370

### Permit Requirements

(1) No person shall install a recreational park trailer over 8-1/2 feet wide in the travel mode without first obtaining an installation permit from the building official.

(2) No person shall construct or install an accessory building or accessory structure without first obtaining all required permits and approvals from the building official. The building official may require compliance with planning, zoning, health, sanitation, flood plain, sewage disposal, fire mitigation, and accessibility regulations prior to issuing permits or approvals.

(3) The permit application for the construction, alteration, or repair shall be accompanied by:

(a) Construction plans and specifications that meet all or part of the requirements of OAR 918-525-0220, if required by the division; and

(b) Permit or inspection fees as set by OAR 918-525-0510.

(4) Permit applications and permit fees for the construction of accessory buildings, accessory structures, or any other site-built construction shall be according to those regulations adopted by the building official.

(5) Every permit issued under these rules shall expire by limitation and become null and void if the work authorized by the permit is not started within 180 days from the date the permit is issued, or if the work authorized by the permit is suspended or abandoned for a period of 180 days at any time after the work is started. A new permit shall be obtained before any work is resumed.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.160

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0410

### Procedure for Attaching Insignia of Compliance

(1) An Oregon insignia of compliance must be securely attached to a specific recreational vehicle when a recreational vehicle is manufactured. The division, or a certified manufacturer, must attach the Oregon insignia of compliance to the outside surface of the exterior wall near the main entrance door, and placed 12 to 36 inches above the finished floor line

(2) When a recreational vehicle is altered or repaired, the division, or an approved quality assurance technician, must attach the Oregon insignia of compliance in an accessible location on or near the alteration or repair.

(3) Oregon insignias of compliance may only be attached to recreational vehicles by a division inspector, an approved quality assurance technician at the time and place of alteration or repair, or a certified manufacturer at the manufacturing facility, or elsewhere if requested by the manufacturer in writing and approved by the division.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 28-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0420

### Enforcement Actions for Non-Compliance

(1) Oregon insignias of compliance are non-transferable.

(2) Oregon insignias of compliance remain the property of the division, and may be withdrawn from a manufacturer, distributor, dealer, or any individual or business for any violation of ORS Chapters 455 or 446, and any rules adopted thereunder.

(3) Oregon insignias of compliance and repair operation insignias are not interchangeable.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 28-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

# ADMINISTRATIVE RULES

## 918-525-0430

### Application for Insignia of Compliance

(1) Following certification, recreational vehicle manufacturers, and repair operations shall apply for insignias for each recreational vehicle produced or intended to be produced for sale, rent, or lease in Oregon, except as provided in OAR 918-525-0420. An Insignia Label Request shall be submitted to the division together with appropriate insignia fees set by OAR 918-525-0510.

(2) Each certified recreational vehicle manufacturing facility shall submit to the division, by the tenth day of each month, a Monthly Insignia Report for the preceding month showing:

- (a) The name of the manufacturer;
- (b) The location of the manufacturer's facility;
- (c) The plant identification number;
- (d) Insignia numbers;
- (e) Serial numbers;
- (f) Plan approval numbers;
- (g) Makes and models;
- (h) Dates of manufacture; and
- (i) Destinations.

(3) Insignias may be requested in bulk as long as the number of insignias is not more than the manufacturer or repair operation would reasonably expect to use in one month.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0440

### Denial of Insignia of Compliance

(1) Bulk insignia requests may be denied or bulk insignias withdrawn if:

(a) The applicable plan approvals have not been acquired per OAR 918-525-0210;

(b) A recreational vehicle manufacturer or repair operation is not registered with the division as required in OAR 918-525-0070 or 918-525-0130;

(c) A recreational vehicle manufacturing facility is not certified according to OAR 918-525-0080 or 918-525-0140;

(d) A Monthly Insignia Report is delinquent per OAR 918-525-0430(2); or

(e) Through in-plant or dealer lot monitoring, the division determines a recreational vehicle manufacturer is not manufacturing recreational vehicles according to the approved quality assurance manual or any other provisions of these rules; or

(f) Through a monitoring inspection, the division determines a recreational vehicle repair operation is not performing alterations or repairs according to the approved quality assurance manual or any other provision of these rules.

(2) Individual insignia requests may be denied if:

(a) The recreational vehicle does not conform to the requirements of ORS chapter 446, adopted codes and standards, or these rules; or

(b) The recreational vehicle manufacturer is not registered and certified with the division as required in OAR 918-525-0070; or

(c) The recreational vehicle repair operation is not registered and certified with the division as required in OAR 918-525-0130.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0450

### Insignia of Compliance Removal

(1) When a certified recreational vehicle manufacturer or repair operation discontinues operations, it shall notify the division in writing within ten days of the facility closure and return all unused insignias.

(2) The division may remove an insignia from a recreational vehicle if the vehicle, or equipment violates any provision of OAR chapter 918, division 525 or ORS chapter 446. The division shall notify the vehicle owner in writing of the violations. The division shall reissue an insignia when the violations are corrected and the vehicle passes an inspection under OAR 918-525-0330.

(3) An insignia of compliance shall be removed and returned to the division by the building official when a recreational vehicle is converted to another occupancy or use. This does not waive the owner's responsibility

to conform to other state or local requirements for the new occupancy or use.

(4) An insignia of compliance shall be removed and returned to the division when a recreational vehicle is attached to a permanent foundation. This does not waive the owner's responsibility to bring the recreational vehicle into conformance with the applicable Oregon Specialty Codes.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08 BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0460

### Lost or Damaged Insignia of Compliance

(1) When an insignia of compliance is lost or damaged, the owner shall notify the division immediately in writing specifying the name of the manufacturer, the vehicle's serial number, and if possible, the insignia number and approximate date of manufacture.

(2) All damaged insignia shall be promptly returned to the division. Damaged or lost insignias may be replaced by the division. A replacement insignia shall be requested on an Insignia Request Application Form accompanied by the appropriate fees as set in OAR 918-525-0510.

(3) A replacement insignia may be requested only after a visual inspection indicates the recreational vehicle meets the requirements of these rules.

Stat. Auth.: ORS 446.160

Stats. Implemented: ORS 446.160

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 25-1996, f. 11-8-96, cert. ef. 1-1-97; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0510

### Fees

The following fees apply to the division only and do not apply to municipalities.

(1) Inspection Fee:

(a) \$45 for an inspection requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(2) Field Technical Service Fee:

(a) \$45 for service requiring one hour or less;

(b) \$22.50 for every 30 minutes or fraction exceeding one hour, including travel time and mileage; and

(c) Mileage shall be paid at the rate established by the Oregon Department of Administrative Services.

(3) Out-of-State Inspection or Field Technical Service Fee: In addition to the hourly charges of subsections (a) and (b) of this section, the division shall be reimbursed for actual cost based on published air fare or equivalent, plus necessary surface transportation and cost for food and lodging consistent with the allowances established by the Oregon Department of Administrative Services for authorized state employee travel.

(4) Reinspection Fee: Same fee schedule as noted in sections (1), (2), and (3) of this rule.

(5) Quality Assurance Manual Fee: \$30 for initial review of manuals and \$20 for review of manual supplements. This fee includes the initial issuance of five insignias to certified repair operations.

(6) Plan Renewal Fee: \$15 for administrative costs of renewing plans.

(7) Plan Supplement Fee: Same fee schedule as noted in sections (13) through (18) of this rule.

(8) Change of Name, ownership or Address Fee: \$20 for each change.

(9) Insignia Label Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(10) Replacement Insignia Fee: \$25 per insignia for manufacturers and \$5 for a lot of five insignias for repair operations.

(11) Registration Fee: \$25 per manufacturer or operation.

(12) Annual Registration Renewal Fee: \$20 per manufacturer or operation.

(13) Plan Filing Fee: \$10 for each submittal.

(14) Plan Approval Model Fee: \$15.

(15) Plumbing Supplement Fees:

(a) Drain, waste and Vent: \$20 for each plan submitted;

(b) Potable Water: \$10 for each plan submitted.

(16) Electrical Supplement Fees:

(a) 12 Volt: \$20 for each plan submitted;

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- (b) 120 to 240 Volt: \$20 for each plan submitted;
- (c) Generator: \$10 for each plan submitted.
- (17) Mechanical Supplement Fee: \$10 for each plan submitted.
- (18) Model Floor Plan Supplement Fee: \$15 for each plan submitted and \$5 for each model number supplement.
- (19) Design Option, Plan Approval Model, or Number Change Fee: \$20.

(20) Recreational Vehicle Visual Inspection Fee: \$30. This fee includes the insignia label, one initial inspection and one reinspection.

(21) Recreational Vehicle Alteration Permit Fee: \$30. This fee includes one initial inspection and one reinspection.

Stat. Auth.: ORS 446.160 & 446.176  
Stats. Implemented: ORS 446.160 & 446.176  
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 14-1996(Temp), f. & cert. ef. 7-1-96; BCD 24-1996, f. & cert. ef. 11-8-96; BCD 12-1998(Temp), f. 6-2-98, cert. ef. 7-1-98 thru 12-27-98; BCD 23-1998, f. 11-9-98, cert. ef. 11-15-98; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 1-2005, f. & cert. ef. 3-1-05; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-525-0520

### Additional Fees

(1) When the division determines that a person has failed to comply with these rules, obtain required inspections, insignia, or plan review, requiring division staff to work outside normal business hours, the person shall be charged additional fees as described in sections (3) and (4) of this rule.

(2) Persons who sell or ship vehicles or equipment known to be out of compliance or requiring inspections or reinspections prior to sale or shipment requiring division staff to work outside normal business hours, shall be charged additional fees as described in sections (3) and (4) of this rule.

(3) Persons requesting or requiring inspections or field technical service, outside normal business hours of the division, shall be charged fees at 1-1/2 times the amounts required by OAR 918-525-0510, except for travel expenses.

(4) Persons requesting or requiring inspections or field technical service on recognized state holidays shall be charged double the amounts required by OAR 918-525-0510, except for travel expenses.

Stat. Auth.: ORS 446.176, 455.210 & 455.220  
Stats. Implemented: ORS 446.176, 455.210 & 455.220  
Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 31-2005, f. 12-30-05, cert. ef. 1-1-06; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0005

### General Requirements

(1) All recreational park trailers exceeding 8-1/2 feet in width shall be installed to the manufacturer's installation instructions and where applicable, to these rules except for recreational park trailers installed temporarily on display or in storage and not occupied or intended to be occupied. This exception does not include recreational park trailers installed in recreational vehicle parks, mobile home parks, or subdivisions.

(2) Cabanas used in conjunction with a recreational vehicles or recreational park trailers shall be installed according to the manufacturer's installation instructions, the **Oregon Residential Specialty Code** and the provisions of these rules.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 446.185  
Stats. Implemented: ORS 446.185  
Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0010

### Site Preparation

(1) Each site shall be suitable for its intended use and shall comply with applicable federal, state, and local laws.

(2) When, during preparation of the site, unforeseen factors such as rock formation, high ground water levels, springs, or biological generated gasses are encountered, corrective work shall be taken prior to the siting of the recreational park trailer or accessory building and structure.

(3) Grades shall slope downward away from patios, stands, walls, skirting, foundations, and water supply wells.

(4) Site grading and drainage shall:

(a) Provide a diversion of any surface water away from the recreational park trailer, accessory building, and structures and stands except as necessary for controlled irrigation; and

(b) Prevent standing water and soil saturation from becoming detrimental to structures and site use.

(5) Recreational park trailer stands without a subsurface drainage system shall have a crown gradient for surface drainage acceptable to the building official.

(6) Grading, plantings, or drainage systems shall be constructed to prevent erosion of the recreational park trailer stand from high velocity water runoff.

(7) Where natural soils or controlled fill (free of grass and organic material) are used, such soils or fill shall support the loads imposed by the support system of the recreational park trailer and cabana placed thereon.

(8) Up to 6" of non-compacted crushed rock or gravel, no smaller than 3/4" minus, may be placed on a recreational park trailer or cabana stand without affecting the soil bearing capacity of the stand.

(9) Provisions shall be made to reduce moisture and humidity in under-floor spaces by installing a continuous membrane sheeting vapor barrier to cover the ground surface or pavement within the perimeter enclosure of the recreational park trailer or cabana stand. A uniform six mil black polyethylene, linear low density poly (6x) sheet material or other approved equivalent membrane vapor barrier materials shall be installed for this purpose according to the following:

(a) Membrane seams shall be overlapped by at least eight inches;

(b) Edges of the sheeting shall extend to the perimeter of the recreational park trailer;

(c) Stones or bricks shall be placed over seams and around the point of contact of the sheeting with the perimeter enclosure on a spacing of approximately eight feet to maintain a reasonable seal between sheets and the foundation material;

(d) All holes, tears, and penetrations in the membrane shall be adequately patched and sealed with permanent tape;

(e) Under-floor continuous membrane sheeting vapor barrier shall not contact wood that is not treated foundation grade lumber; and

(f) Under-floor continuous membrane sheeting vapor barrier shall not be placed under concrete slabs.

Stat. Auth.: ORS 446.185  
Stats. Implemented: ORS 446.185  
Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0020

### Foundation Systems

(1) This rule prescribes Oregon standards for siting, design and installation of recreational park trailer foundation systems and identifies acceptable foundation systems.

(2) The foundation shall be capable of transferring design vertical loads and other loads unique to local sites due to wind, seismic, and water conditions imposed by or on the structure into the underlying soil bedrock without failure. The building official may approve an installation design and materials not contained in these rules.

(3) Except for axles, wheels, tires, hitches, and transportation lights designed to be detached from the vehicle, no portion of a recreational park trailer transportation platform (chassis) shall be removed before or after the recreational park trailer is installed. Detached transportation equipment shall be left on the site for future use.

(4) Recreational park trailers shall be installed according to the manufacturer's installation instructions. Where manufacturer's installation instructions are not available for relocated recreational park trailers, installations shall meet the minimum requirements in these rules.

(5) Footings shall be a minimum of 256 square inches of pressure-treated wood on all six sides, precast concrete or poured-in-place concrete, including unreinforced slabs or runners. Footings shall be at least equal in area to the piers they support. Footings shall be placed level on a stand free of grass and organic materials.

(6) Piers shall be spaced at a maximum of four feet on center under the main frame (I-beam or channel beam). Pier spacing may be offset up to six inches for obstructions such as outriggers, cross members, axles and utilities. Piers shall not exceed 36 inches in height under the main frame (I-beam or channel beam). Piers shall be:

(a) Constructed of a single stack of open 8" x 8" x 16" concrete blocks with open cells placed vertically upon the footing. Single stacked block piers shall be installed with the 16-inch dimension perpendicular to the main frame (I-beam or channel beam). The pier blocks shall be capped with concrete or wood pier caps equal in area to the top of the pier blocking then shimmed tight to the bottom of the main frame (I-beam or channel beam) with wood blocks and wedges;

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(b) Designed by a registered design professional and approved by the building official; or

(c) Prefabricated piers tested, listed, and labeled by a nationally recognized testing and listing laboratory. Prefabricated piers shall be tested to their dead load plus superimposed live load equal to three times the required live load using the test procedures in the **Manufactured Home Construction and Safety Standards 24 CFR 3280.401**. Prefabricated piers and load bearing devices shall be permanently marked or labeled with the following information:

- (A) The product's intended use;
- (B) The product manufacturer's name and location;
- (C) The product's model or identification number;
- (D) The product's design loads or capacity;
- (E) The product's tested or calculated loads;
- (F) The name, logo, or identification mark of the testing laboratory and listing agency; and
- (G) The product's test report and listing numbers.

(d) Piers may be replaced in part with approved earthquake-bracing system components.

(e) Piers may be replaced in whole with an approved full foundation system.

(7) Earthquake-resistant bracing systems and full foundation systems when used with a recreational park trailer shall be:

(a) Approved for its intended use;

(b) Labeled to identify the component's model or identification number, manufacturer's name and location, testing and listing laboratory name or logo, testing and listing report numbers, certification expiration date, components tested or calculated loads, and minimum design loads or capacity;

(c) Installed according to the manufacturer's installation instructions; and

(d) Provided with installation instructions to be left on the job site for the inspectors use.

(8) A minimum clearance of 18 inches shall be maintained beneath the lowest member of the main frame (I-beam or channel beam).

(9) Under the main frame, (I-beam or channel beam) pier supports shall be placed not more than two feet from the exterior of each end wall. All pier supports shall be installed (centered) directly under and perpendicular to each main frame of the recreational park trailer.

(10) Retaining walls used to resist the lateral displacement of soil and other materials shall be designed to resist the lateral pressure of the retained material in accordance with accepted engineering practices. A retaining wall shall not rely on the recreational park trailer for support. Retaining walls shall be constructed of treated foundation grade wood, concrete, masonry, or other approved materials or combinations of these materials according to the **Oregon Residential Specialty Code**.

(11) All fill and backfill soil surrounding the recreational park trailer shall be compacted to not allow displacement. Soil grading around the recreational park trailer shall allow water to drain away from the recreational park trailer at a slope of 1/2-foot vertical for every 12 feet horizontal.

(12) Regardless of the type foundation system provided, the foundation construction shall assure a level recreational park trailer or cabana floor.

(13) All lumber and concrete described in these rules are identified by their nominal sizes only. Actual sizes may vary from 1/8-inch to 3/4-inch.

(14) All poured in place concrete shall cure seven days prior to installation of the recreational park trailer or cabana and shall have a compressive strength not less than 2,500 pounds per square inch in 28 days.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0040

### Anchoring Systems

(1) To resist overturning and lateral movement from high winds, all recreational park trailers installed in the following counties shall be anchored: Clatsop, Tillamook, Lincoln, Coos, Curry, Multnomah, Hood River, Sherman, Gilliam, Morrow, and Umatilla; Lane and Douglas if located within 20 miles of the coast; and Wasco County if located within 30 miles of the Columbia River.

(2) To resist movement and reduce damage, all recreational park trailers installed in designated flood plain areas shall be anchored when required by a municipality.

(3) Anchoring systems shall be designed and tested according to the **Manufactured Home Construction and Safety Standards 24 CFR 3280.306**. Anchoring systems shall be:

(a) Designed by a registered design professional and approved by the building official; or

(b) Manufactured, tested, listed, and labeled as capable of meeting all the requirements of this rule. Each manufactured anchoring system shall be installed according to the manufacturer's installation instructions. Each manufactured anchoring system shall be permanently marked or labeled with the following information:

- (A) The product's intended use;
- (B) The product manufacturer's name and location;
- (C) The product's model or identification number;
- (D) The product's design loads or capacity;
- (E) The product's soil classification and soil depth when applicable;
- (F) The product's tested or calculated loads;
- (G) The name, logo, or identification mark of the testing laboratory and listing agency; and
- (H) The product's test report and listing numbers.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0050

### Skirting

(1) Skirting on recreational park trailers and cabanas shall be installed where specifically required by local ordinance.

(2) Skirting shall be of material suitable for exterior exposure. Untreated wood shall not be nearer than 5-1/2 inches to any earth, unless separated by three inches of metal or foundation grade lumber. Field cut ends, notches, and drilled holes of pressure-treated foundation grade lumber shall be retreated in the field according to AWPA U1-04.

(3) Skirting shall be installed according to the material manufacturer's installation instructions and these rules.

(4) Skirting shall be adequately secured to assure stability, minimize vibration, susceptibility to wind damage, and to compensate for possible frost heave.

(5) All holes or gaps between the skirting and the ground or other locations shall be substantially sealed to limit the entrance of wind and water.

(6) Access openings through skirting shall be not less than 18" x 24" and located as close as practical to the utilities so fuel, electric, water, and sewer connections located under the recreational park trailer are accessible for inspection, service, and repair. Such access panels or doors shall not require tools or operation of more than four devices to remove or open. There shall be a minimum 30-inch access space directly in front of each access panel or door.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0060

### Ventilation of Skirting

(1) Provisions shall be made to minimize condensation in underfloor areas through ventilation openings.

(2) If combustion air for heat-producing appliance(s) is taken from within the under-floor areas, ventilation shall be adequate to assure proper operation of appliances.

(3) A minimum of four ventilation openings shall be provided from the under-floor space to the exterior. A ventilation opening shall be placed at, or as near to, each corner as practicable and as high as practicable, except in flood hazard areas where the ventilation opening shall be near the bottom of the skirting. The total net free area for ventilation shall be 200 square inches or one square foot for every 300 square feet of under-floor area whichever is less. Openings shall provide cross ventilation on at least two sides. The openings shall be covered with 1/4-inch corrosion resistant wire mesh or with louvered openings with not less than 1/8-inch screen to retard entry of dry vegetation, waste materials, or rodents. The net free area of a vent shall not be diminished in size by vent hardware.



# ADMINISTRATIVE RULES

(4) Intake air for indoor ventilation purposes shall not be drawn from under floor spaces of the recreational park trailer or cabana. (This does not include combustion air.)

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0070

### Electrical Connections

(1) Recreational park trailers shall be connected to power sources according to **Article 552 of the NFPA 70, National Electrical Code**

(2) Accessory equipment, structures, and buildings shall not be powered by the recreational park trailer electrical system.

(3) At the time of installation, all recreational park trailers shall be tested to the following criteria:

(a) All 110 volt electrical receptacle outlets shall be subjected to a polarity test to determine all connections have been made properly; and

(b) All electrical lights, equipment, ground fault circuit interrupters, and appliances shall be subjected to an operational test to demonstrate all equipment is connected and in working order.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; BCD 26-2011, f. 9-30-11, cert. ef. 10-1-11; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0080

### Plumbing Connections

Recreational park trailers and cabanas shall be connected to water sources and waste disposal terminals according to the **Oregon Plumbing Specialty Code** and to the following standards:

(1) A full way shutoff valve shall be provided on the water supply serving each recreational park trailer site.

(2) The water inlet shall be connected to the site water supply outlet by an approved flexible connector not less than 3/4-inch nominal diameter or by other approved means identified in the Oregon Plumbing Specialty Code.

(3) Where static water pressure exceeds 80 pounds per square inch, a pressure regulator shall be installed.

(4) The water distribution system of the recreational park trailer and cabana and the supply connection shall be subjected to a test to assure there is no evidence of leakage under normal operating pressure. If water under normal operating pressure is not available, the recreational park trailer and cabana water distribution system shall show no evidence of leakage, by sustaining 80 pounds per square inch of air pressure for 15 minutes.

(5) Each recreational park trailer and cabana shall be connected to the sewer inlet by means of a three-inch diameter drain connector consisting of approved pipe, not less than schedule 40, appropriate directional fittings and listed and approved shielded flexible connectors at each end of the pipe.

(6) The recreational park trailer and cabana drainage piping system shall be connected to the lot or site drain inlet and tested by allowing water to flow into all fixtures and receptors, including the clothes washer stand-pipe, for a period of three minutes. If water under pressure is not available, the drainage piping system shall be tested by dumping at least three gallons of water into each fixture and receptor. Each P-trap shall be visible during this test to assure there is no evidence of leaks.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0090

### Mechanical

(1) Mechanical equipment installed outside of and not supported by the recreational park trailer or cabana shall be mounted two inches above grade on a level concrete slab not less than three inches thick, a three-inch thick precast reinforced concrete slab or be mounted according to the applicable equipment manufacturer's installation instructions.

(2) Mechanical equipment shall not be installed:

(a) In a manner which obstructs any exit door;

(b) In a window opening which is part of an emergency egress system; and

(c) Where it might obstruct sidewalks or any means of egress from the recreational park trailer or cabana.

(3) Exhaust duct systems of clothes dryers, applicable cook tops, and other appliances shall not terminate beneath the recreational park trailer or cabana. Exhaust ducts shall be routed through the skirting to the exterior. Exhaust duct installations shall have no dips or traps and shall be installed according to the applicable appliance manufacturer's installation instructions.

(4) Moisture or heat producing appliances, such as dryers and applicable cook tops, shall be vented to the outside atmosphere to insure moisture-laden air is carried out beyond the perimeter of the recreational park trailer.

(5) Exhaust ducts shall be installed according to the appliance manufacturer's installation instructions and the following requirements:

(a) The duct shall be a minimum of four inches in diameter unless otherwise specified by the appliance manufacturer;

(b) The duct material shall be metal or listed flexible metal if approved by the appliance manufacturer;

(c) There shall be no dips in the duct run;

(d) There shall be no screws, mechanical fasteners, screens, or any other obstructions extending into any interior portion of the duct;

(e) The total length of the duct shall not exceed 15 feet unless otherwise specified by the appliance manufacturer;

(f) There shall not be more than two 90-degree elbow fittings or four 45-degree elbow fittings installed in the duct run; and

(g) The duct termination shall be equipped with a back-draft damper.

(6) When installed, adequate distance shall be maintained under the recreational park trailer and cabana for an external air conditioning or heat pump duct. The external air conditioning or heat pump duct shall be supported off the ground, providing a one-inch minimum ground clearance and be supported and connected according to the appliance manufacturer's installation instructions. Ducts shall not be crushed, dented, compressed, have sharp bends, or stress at the connections. All tears, holes, and penetrations in ducts shall be repaired and sealed.

(7) Inlets or outlets of an exhaust vent, combustion air vent, return air vent, or any other vent opening capable of conveying air or gasses into or out of the recreational park trailer or cabana, or to or from any appliance used in conjunction with the recreational park trailer, shall not be located in an area where an accessory building is to be sited.

(8) Inlets or outlets of an exhaust vent, combustion air vent, return air vent, condensation drain, or any other vent opening capable of conveying air or gasses into or out of the recreational park trailer or cabana, or to or from any appliance used in conjunction with the recreational park trailer or cabana, shall not be located under the recreational park trailer when located over a basement.

(9) Condensation drains from air conditioning, heat pumps, evaporative coolers, dehumidifiers, refrigeration equipment, or any other appliance shall not terminate under a recreational park trailer or cabana.

(10) Mechanical installations not a part of the recreational park trailer shall be in conformance with the **Oregon Residential Specialty Code**.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0100

### Fuel Supply

(1) All fuel gas piping systems serving recreational park trailers and cabanas shall be designed and constructed according to applicable provisions of the **Oregon Residential Specialty Code**.

(2) Where fuel gas is provided, each recreational park trailer site shall have a listed gas shut off valve installed upstream from the recreational park trailer site gas outlet. Such valve shall not be located under any recreational park trailer or cabana. The outlet shall be equipped with a cap or plug to prevent discharge of gas whenever the recreational park trailer site outlet is not connected to a recreational park trailer or cabana.

(3) Each gas supply shall be connected to the recreational park trailer with an approved six-foot flexible gas connector.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

# ADMINISTRATIVE RULES

## 918-530-0110

### Access

(1) Required egress doors on recreational park trailers shall be accessible by steps or ramps or have door thresholds within eight inches of grade.

(2) All ramps, decks, hand rails, guard rails, stairs, steps, porches, and landings constructed adjacent to a recreational park trailer to be used by the occupants of the recreational park trailer shall be constructed in conformance with the **Oregon Residential Specialty Code**.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0120

### Rodent Proofing

All cuts, holes, or tears in the bottom board or floor insulation, including but not limited to areas around plumbing, mechanical, and heating equipment penetrations shall be adequately repaired and sealed to prevent the entrance of rodents and limit heat loss.

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0310

### Accessory Buildings and Structures

(1) Accessory buildings and accessory structures shall be designed, constructed, and installed according to the **Oregon Residential Specialty Code** and these rules.

(2) Accessory buildings and accessory structures shall not obstruct required egress windows, exit doors, appliance access, exhaust vents or ducts, chimney or flue pipes, combustion air inlets, drains, sewer vents, or the utility access of a recreational vehicle or a recreational park trailer.

(3) Accessory buildings and accessory structures shall be free standing, self-supporting structures. No loads shall be imposed on a recreational vehicle or recreational park trailer from the installation of an accessory building or accessory structure unless approved by the building official.

(4) The total area of all accessory buildings and accessory structures on the same lot, in a recreation park, shall not exceed 400 square feet in area except as provided below:

(a) Where the accessory building is a cabana, the size restrictions in OAR 918-530-0320 shall apply;

(b) Where an accessory building or accessory structure has a six-foot clearance to all recreational vehicles, accessory buildings, and accessory structures, the size limitations of this section shall not apply;

(c) Where an accessory building or accessory structure has a three-foot clearance and is provided with a minimum of one-hour fire-resistive construction on the wall facing any recreational vehicle, accessory building or accessory structure, the size limitations of this section shall not apply;

(d) Where the accessory structure is a deck, patio, or ramada, the size limitations of this section shall not apply;

(e) Factory-built porches, decks, eaves, roof overhangs, and other construction that is built by the manufacturer and connected to and supported by the recreational vehicle shall not be counted within the size limitations of this section; and

(f) Where more than one accessory building or accessory structure occupies the same space (i.e., landing, ramp or stairs under an awning or carport), the area shall only be counted once within the size limitations of this section.

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

Stat. Auth.: ORS 446.155, 446.185 & 446.240

Stats. Implemented: ORS 446.185 & 446.240

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 24-1994, f. 10-26-94, cert. ef. 11-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99, Renumbered from 918-535-0010; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0320

### Cabanas

(1) A cabana may be installed or constructed as an accessory building to a recreational vehicle according to the following restrictions:

(a) Cabanas shall not be designed or constructed to include sleeping or cooking facilities;

(b) Cabanas shall be restricted in size to a total of 240 square feet of gross floor area per recreational vehicle; and

(c) Cabanas shall not contain gas, liquid or solid fuel-burning fireplaces, fireplace stoves, room heaters or pellet-fired appliances.

(2) Cabanas shall be designed and constructed as freestanding, self-supporting structures. Cabanas may be attached to a recreational vehicle or recreational park trailer only with appropriate flashing or sealing materials to provide a weather seal.

(3) Each cabana shall have an exit door opening directly to the outside without passing through the recreational vehicle.

(4) Cabanas shall have smoke alarms installed according to Section 313 of the **Oregon Residential Specialty Code**. The smoke alarm in the cabana is not required to be interconnected with the smoke alarm(s) in the recreational vehicle.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99, Renumbered from 918-535-0020; BCD 10-2000(Temp), f. 6-21-00, cert. ef. 6-23-00 thru 12-19-00; BCD 29-2000, f. & cert. ef. 12-19-00; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

## 918-530-0340

### Ramadas

(1) A ramada may be constructed or installed as an accessory to a recreational vehicle or recreational park trailer.

(2) A ramada or any portion thereof shall have a clearance of not less than 36 inches in a vertical direction above the highest portion of a recreational vehicle or recreational park trailer roof and not less than 18 inches in a horizontal direction from each side of a recreational vehicle.

(3) Cross braces, architectural appurtenances, and structural ties shall not obstruct the installation or removal of any recreational vehicle or recreational park trailer.

(4) Recreational park trailers with roof extensions or sited under a ramada that also have solid fuel burning appliances installed shall have the chimney, flue, or vent for the solid fuel burning appliance installed through the roof extension or ramada according to the appliance manufacturer's installation instructions. Chimney, flue, or vent pipe extensions shall be of the same type, brand, and specifications as the original pipes used in the recreational park trailer. Shipped-loose chimney, flue, or vent sections and equipment for solid fuel burning appliance shall be installed according to the appliance manufacturer's installation instructions. If manufacturer's installation instructions are not available, installations shall comply with the mechanical chapters of the **Oregon Residential Specialty Code**.

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

Stat. Auth.: ORS 446.185

Stats. Implemented: ORS 446.185

Hist.: BCA 30-1993, f. 12-1-93, cert. ef. 1-1-94; BCD 9-1999, f. 7-14-99, cert. ef. 9-1-99, Renumbered from 918-535-0040; BCD 25-2008, f. 10-31-08, cert. ef. 11-1-08; Suspended by BCD 1-2017(Temp), f. & cert. ef. 1-19-17 thru 7-17-17

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**Rule Caption:** Implementation of a New Manufactured Home Ownership Document Software System

**Adm. Order No.:** BCD 2-2017(Temp)

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-1-17 thru 7-30-17

**Notice Publication Date:**

**Rules Adopted:** 918-550-0020, 918-550-0030, 918-550-0040

**Rules Amended:** 918-550-0000, 918-550-0010, 918-550-0100, 918-550-0120, 918-550-0140, 918-550-0200, 918-550-0600

**Rules Suspended:** 918-550-0160, 918-550-0180

**Subject:** These rules align the division's manufactured home ownership document rules with the division's new electronic Manufactured Home Ownership Document Software system.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

## 918-550-0000

### Purpose and Scope

(1) OAR 918-550-0000 through 918-550-0600 establish requirements and procedures to obtain an ownership document for a manufactured structure or to obtain an ownership document for a manufactured structure that has been previously exempted pursuant to ORS 820.510 or 446.626 after May 1, 2005.

(2) These rules also describe the requirements for issuing a manufactured structure trip permit for the movement of a manufactured structure from one site to another.

(3) Nothing in these rules shall change any rights and liabilities of the various parties governed by the Uniform Commercial Code, ORS Chapter 79, and any applicable Oregon tax laws.

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(4) These rules are intended to repeal all Department of Motor Vehicle rules, located in OAR chapter 735, to the extent that they apply to the titling and registration of manufactured structures and manufactured structure trip permits.

Stat. Auth.: ORS 446.571, 446.631 & 446.646  
Stats. Implemented: ORS 446.566, 446.571, 446.576, 446.621, 446.631 & 446.636  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0010

### Definitions

For the purposes of this division of rules, the following definitions apply, unless the context requires otherwise:

(1) "Division" means the appropriate division within the Department of Consumer and Business Services, Building Codes Division, or the county who is acting on behalf of the department.

(2) "Land leaseholder" means the holder of a recorded leasehold estate of 20 years or more, if the lease specifically permits the owner of the manufactured structure to obtain an exemption under ORS 820.510(b).

(3) "Legal description of the manufactured structure" means the model year, make, width, length and vehicle identification number (VIN).

(4) "Owner" when referring to the owner of a manufactured structure does not include a security interest holder or lessee, unless the owner of the manufactured structure is a land leaseholder.

(5) "Ownership document" means a document reflecting the status of a manufactured structure as reported to the division, with respect to ownership, relevant security interests, and other information required by ORS 446.566.

(6) "Release" means the written or electronic relinquishment, concession, or giving up of right, claim or interest in a manufactured structure.

(7) "Security interest holder" means a person who holds an interest in property that secures payment or performance of an obligation pursuant to a security agreement.

Stat. Auth.: ORS 446.646  
Stats. Implemented: ORS 446.646  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 12-2008, f. 6-30-08, cert. ef. 7-1-08; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0020

### Agents of the Department

(1) No county may carry out functions under ORS 446.566 to 446.646 related to manufactured structure ownership documents and trip permits unless it has entered into and maintained participation in an agent agreement with and approved by the division.

(2) Refusal by a county to enter into or maintain participation in an agent agreement with and approved by the division is a refusal to accept all applications submitted to that county under ORS 446.571(1)(b)(C).

(3) Refusal by a county that has entered into and maintained participation in an agent agreement with and approved by the division to perform a duty under ORS 446.566 to 446.646, related to manufactured structure ownership documents and trip permits, is refusal to accept all applications submitted to that county under ORS 446.571(1)(b)(C).

Stat. Auth.: ORS 446.646  
Stats. Implemented: ORS 446.646, 446.574  
Hist.: BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0030

### Division Approved Forms

(1) The following forms are approved by the division for use with the Manufactured Home Ownership Document Software system:

(a) Abandonment Affidavit for Manufactured Homes, form 2951;

(b) Affidavit to Establish Ownership of a Manufactured Structure, form 2947;

(c) Affidavit of Transfer of Interest by Inheritance without Probate, form 2946;

(d) Affidavit of Transfer of Interest by Probate or Small Estate, form 5177;

(e) Application to Remove Manufactured Home from County Deed Records, form 5175;

(f) Application for Recording Manufactured Home as Real Property, form 5176;

(g) County Manufactured Home Notification for New Homes, form 5159;

(h) County Manufactured Home Notification and Tax Certification Form for Used Homes, form 5158;

(i) Manufactured Home Affidavit of Repossession, form 3926;

(j) Manufactured Home Bill of Sale/Change of Ownership, form 2952;

(k) Manufactured Structure Security Interest Change, form 2948;

(L) Request for Confidential Address Protection, form 3490.

(2) No state or county office providing services under ORS 446.561 through 446.646 may require the use of any form not listed in this rule for the purposes of issuing an ownership document.

Stat. Auth.: ORS 446.646  
Stats. Implemented: ORS 446.646  
Hist.: BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0040

### Transaction Requirements

(1) To be processed and completed, a transaction must have all required forms and attachments completed, and all fees paid in full.

(2) To provide for uniform administration and customer interaction with the Manufactured Home Ownership Document Software system, the division has developed the 2017 Manufactured Home Ownership Document Transaction Guide.

(3) Transactions covered in the 2017 Manufactured Home Ownership Document Transaction Guide shall be processed and completed if all the forms and attachments listed in the guide have been completed in full and all applicable fees have been paid in full.

Stat. Auth.: ORS 446.646  
Stats. Implemented: ORS 446.646  
Hist.: BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0100

### Ownership Document Requirements

(1) Except as provided in ORS 446.626, all owned manufactured structures in the State of Oregon must be registered or titled with DMV, or be issued an ownership document by the division after May 1, 2005.

(2) All applications for ownership documents must be made on valid division approved forms and must be accompanied by a division approved county notification form.

(3) The county notification form submitted pursuant to (2) must be signed by an authorized representative of the appropriate county.

(4) The county notification form submitted pursuant to (2) is only valid until the expiration date indicated on the form.

Stat. Auth.: ORS 446.571, 446.621 & 446.646  
Stats. Implemented: ORS 446.571 & 446.621  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0120

### Sale of a Used Manufactured Structure

If a purchaser submits a division approved notice of sale under ORS 446.641(8), the purchaser must include one of the following as acceptable proof of sale:

(1) A bill of sale from the current owner of record on the division's ownership document; or

(2) A Department of Transportation certificate of title to the structure that has a release of ownership signed by the owner.

Stat. Auth.: ORS 446.641 & 446.646  
Stats. Implemented: ORS 446.641  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0140

### Notice of Transfer of Interest in Manufactured Structure

(1) A person who releases, terminates, assigns or otherwise transfers an interest in a manufactured structure, shall within 30 days of the transfer, submit a completed and notarized copy of the division approved form to record the release, termination, assignment or other transfer of the interest in the manufactured structure.

(2) The division approved form submitted pursuant to (1) must be accompanied by a county notification form.

(3) The county notification form submitted pursuant to (2) must be signed by an authorized representative of the appropriate county.

(4) The county notification form submitted pursuant to (2) is only valid until the expiration date indicated on the form.

(5) Signing the division approved form serves as an acknowledgment of the release of the interest by the transferor.

Stat. Auth.: ORS 446.616 & 446.646  
Stats. Implemented: ORS 446.616  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0160

### Recording of Manufactured Structure in County Deed Records

The owner of a manufactured structure, or a licensed manufactured structure dealer selling the structure, may file a division approved applica-

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tion to record the structure in county deed records, if the owner of the structure is also the owner or leaseholder of the land on which the structure is sited. To have the structure recorded in county records, the owner or dealer must submit a complete division approved form to the county assessor in the county where the structure will be located that includes but is not limited to:

(1) The name and address of each owner of the manufactured structure and each record owner of the land upon which the manufactured structure is located. If the names are not identical to the applicant, the applicant shall submit a statement explaining any discrepancy and that the applicant is in fact the same person as the structure owner; and

(2) The name and address of each lessor, mortgagee, trust deed beneficiary, or lien holder of record who holds an interest in the land and the name and address of each security interest holder or lien holder of record who holds an interest in the manufactured structure, including documentation that the security interest holder or lien holder has been notified of the intent to record the manufactured structure in the county deeds.

Stat. Auth.: ORS 446.626 & 446.646  
Stats. Implemented: ORS 446.611 & 446.626  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Suspended by BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0180

### Demonstration of Ownership for Lost or Misplaced Ownership Documents

(1) If a manufactured structure to be moved or sold is not recorded in the county deed records, an ownership document has not been issued for the structure, or the owner has misplaced the certificate of title, the owner shall submit a division approved affidavit with supporting documents which may include sales contracts and security interest agreements and releases, to the division which contain:

(a) A statement that the person making the affidavit is either the sole owner of the structure, or that the person who owns the structure with other persons, including the names of all the owners of the structure;

(b) A statement naming all of the persons who have had a security interest or lien in the manufactured structure identified in the affidavit; and

(c) A statement verifying that the information in the affidavit is true and accurate.

(2) If more than one person owns the manufactured structure, each owner must verify and sign the division approved affidavit.

(3) If the information on the division approved affidavit and any attached documents is reliable, consistent and supports the claim of ownership, the division may, in its discretion, issue an ownership document.

Stat. Auth.: ORS 446.616, 446.621, 446.631 & 446.646  
Stats. Implemented: ORS 446.616, 446.621 & 446.631  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; Suspended by BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0200

### Abandoned Manufactured Structures

(1) If a landlord complies with the notice requirements of ORS 90.425 or 90.675 such that a manufactured structure is presumed abandoned, the landlord may apply for an ownership document by submitting a completed division approved application form and a division approved abandonment affidavit.

(2) If the holder of a possessory lien on a manufactured structure forecloses the lien, the holder may apply for an ownership document by submitting a completed division approved application form and division approved certification of the possessory lien foreclosure.

Stat. Auth.: ORS 446.581 & 446.646  
Stats. Implemented: ORS 446.571 & 446.581  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

## 918-550-0600

### Trip Permit Requirements

(1) A trip permit is required to move a manufactured structure from one location to another unless exempted under ORS 446.631 & 446.646. A person desiring a trip permit to move a manufactured structure shall submit a completed division approved form and a division approved county notification form to the division.

(2) The division approved county notification form submitted pursuant to (1) must be signed by an authorized representative of the appropriate county.

(3) The division approved county notification form submitted pursuant to (1) is only valid until the expiration date indicated on the form.

(4) The expiration date for a trip permit is either the same date as indicated on the county notification form or 30 days after issuance of the trip permit, whichever is sooner.

(5) In the case of a multiple-unit-manufactured structure, a trip permit is required for each unit. The manufactured structure trip permit fee, as provided in ORS 446.631 & 446.646 is required for each permit issued.

(6) An issued trip permit is valid for a single move from one situs to another as indicated on the permit, and only until the expiration date as determined by subsection (4).

(7) A trip permit is valid for the owner of the structure and transporter listed on the permit.

(8) A permit may not be transferred to any person or a different manufactured structure.

(9) A trip permit issued by the division is not required to move a new manufactured structure to a destination outside of Oregon. However, a trip permit is required if a manufactured structure is being moved out of state, if the structure currently has an ownership document, or is exempt under ORS 446.626.

Stat. Auth.: ORS 446.631  
Stats. Implemented: ORS 446.631, 446.636 & 446.646  
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05; BCD 2-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 7-30-17

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**Rule Caption:** Creates a provisional journeyman electrician license category

**Adm. Order No.:** BCD 3-2017(Temp)

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17 thru 7-30-17

**Notice Publication Date:**

**Rules Adopted:** 918-282-0465, 918-282-0470, 918-282-0475

**Subject:** These temporary rules create a provisional journeyman electrician license category that recognizes the qualifications of the State of Alaska's, State of Alabama's, Province of Alberta's, Province of British Columbia's, State of Colorado's, State of Connecticut's, State of Idaho's, State of Kentucky's, State of New Mexico's, State of Oklahoma's, State of South Dakota's, State of Texas', or the State of Washington's journey level electricians who have a certificate of completion from a state registered apprenticeship program and valid state issued license. Applicants must also complete an approved Oregon Rule and Law course as part of the application process.

**Rules Coordinator:** Holly A. Tucker—(503) 378-5331

## 918-282-0465

### Purpose and Scope

(1) It is the purpose of these rules to allow qualified applicants to obtain a provisional general journeyman electrician license. The Electrical and Elevator Board has determined that individuals who meet the qualifications established in these rules have experience substantially equivalent to the state's general journeyman apprentice program.

(2) A provisional general journeyman electrician:

(a) Is authorized to make any electrical installation that an Oregon general journeyman electrician is authorized to make; and

(b) May only work under the supervision, direction and control of an Oregon licensed general supervising electrician unless doing the type of work that may be supervised, directed or controlled by a person holding a specified limited supervising electrician license.

Stat. Auth.: ORS 455.117, 479.730  
Stat. Implemented: ORS 455.117, 479.730  
Hist.: BCD 3-2017(Temp), f. & cert. ef. 2-1-17 thru 7-30-17

## 918-282-0470

### Application Process and Qualifications

The division may issue a provisional general journeyman electrician license to an applicant who meets the requirements of this rule.

(1) Applicants for a provisional general journeyman electrician license must:

(a) Apply on a form provided by the division; and

(b) Submit proof of completing a 4-hour Oregon rule and law course meeting the standards established in OAR 918-035-0055 prior to application.

(2) For the purposes of this rule, an approved apprenticeship program is a program that is substantially similar to the licensing requirements for hours and classroom training in Oregon. Examples include:

# ADMINISTRATIVE RULES

(a) The inside wireman apprenticeship delivered by the International Brotherhood of Electrical Workers and the National Electrical Contractors Association Electrical Training Alliance; or

(b) The journeyman electrical apprenticeship delivered by the Independent Electrical Contractors.

(3) The application must include:

(a) Appropriate application fees; and

(b) Verification of training, work experience and other required documentation.

(4) Verification referenced in subsection (3)(b) includes:

(a) Submitting training examination and experience verification as follows:

(A) Applicants from the State of Alaska must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Alaska Department of Labor and Workforce Development. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Alaska Department of Labor and Workforce Development journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(B) Applicants from the State of Alabama must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Alabama Electrical Contractors Board. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Alabama journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(C) Applicants from the Province of Alberta must provide:

(i) A copy of a valid electrician certification issued by the Province of Alberta. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the interprovincial construction electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(D) Applicants from the Province of British Columbia must provide:

(i) A copy of a valid building electrician certification issued by the Province of British Columbia. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the interprovincial construction electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(E) Applicants from the State of Colorado must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Colorado Department of Regulatory Agencies. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Colorado Department of Regulatory Agencies journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(F) Applicants from the State of Connecticut must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Connecticut Department of Consumer Protection. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Connecticut Department of Consumer Protection journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(G) Applicants from the State of Idaho must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Idaho Division of Building Safety. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Idaho Division of Building Safety journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(H) Applicants from the State of Kentucky must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Kentucky Department of Housing, Buildings and Construction. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Kentucky Department of Housing, Buildings and Construction journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(I) Applicants from the State of New Mexico must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of New Mexico Regulation and Licensing Department. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of New Mexico Regulation and Licensing Department journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(J) Applicants from the State of Oklahoma must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Oklahoma Construction Industries Board. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Oklahoma Construction Industries Board journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(K) Applicants from the State of South Dakota must provide:

(i) A copy of a valid journeyman electrician certification issued by the South Dakota State Electrical Commission. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the South Dakota State Electrical Commission journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(L) Applicants from the State of Texas must provide:

(i) A copy of a valid journeyman electrician certification issued by the State of Texas Department of Licensing and Regulation. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the State of Texas Department of Licensing and Regulation journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(M) Applicants from the State of Washington must provide:

(i) A copy of a valid journeyman electrician certification issued by the Washington State Department of Labor and Industries. This certificate must be current and in good standing with no history of violations;

(ii) Proof of passing the Washington State Department of Labor and Industries journeyman electrician examination; and

(iii) A copy of certificate of completion from an approved apprenticeship program.

(5) Individuals who have taken but failed the Oregon general journeyman electrician license examination more than once are not eligible to apply under these rules. These individuals may still apply for an Oregon general journeyman electrician license under OAR 918-282-0170.

Stat. Auth: ORS 455.117, 479.730

Stat. Implemented: ORS 455.117, 479.730

Hist.: BCD 3-2017(Temp), f. & cert. ef. 2-1-17 thru 7-30-17

## 918-282-0475

### Effective Dates

(1) Applications for a provisional general journeyman electrician license issued under OAR 918-282-0470 must be submitted to the division prior to July 30, 2017. Applications will not be accepted after this date.

(2) All provisional general journeyman electrician licenses issued under OAR 918-282-0470:

(a) Are valid from the date of issuance;

(b) Expire effective February 1, 2020; and

(c) Are not eligible for renewal.

(3) OAR 918-282-0465 to 918-282-0475 are repealed effective July 30, 2017.

Stat. Auth: ORS 455.117, 479.730

Stat. Implemented: ORS 455.117, 479.730

Hist.: BCD 3-2017(Temp), f. & cert. ef. 2-1-17 thru 7-30-17

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## Department of Consumer and Business Services, Finance and Securities Regulation Chapter 441

**Rule Caption:** Allows mortgage professionals to submit required surety bond information through the national licensing database.

**Adm. Order No.:** FSR 1-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 4-1-17

# ADMINISTRATIVE RULES

**Notice Publication Date:** 10-1-2016

**Rules Amended:** 441-730-0026, 441-860-0020, 441-860-0025, 441-860-0050, 441-885-0010

**Subject:** The Department of Consumer and Business Services has been working toward full utilization of the Nationwide Mortgage Licensing System and Registry's (NMLS) features. The NMLS released the first phase allowing for the electronic submission of surety bonds in January 2016. The feature will be fully available, and licensees will be able to electronically submit surety bonds to the Director of the Department through NMLS, by the end of 2016. Requiring electronic submission of the surety bond will make it easier for consumers to access the bond information and will streamline the mortgage licensing process. Currently, the surety bond is the only piece of paper that is still required for the mortgage licensing process. The proposed rules also remove the grace period after a bond is cancelled that was meant to provide time for new bonds to be sent through the U.S. mail. This protects consumers by reducing the period during which a mortgage loan originator may originate loans without the protection of a bond. Because NMLS can be used to quickly notify, and continually remind, licensees of their bond status licensees will receive more effective notice regarding their bonds.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-730-0026

### Corporate Surety Bond for Consumer Finance Licensees Employing a Mortgage Loan Originator

(1) This rule applies to a consumer finance company licensed under ORS 725.010 to 725.270 and OAR chapter 441, division 730 that employs one or more mortgage loan originators. The corporate surety bond must be in a form and on terms approved by the director.

(2) A corporate surety bond under this rule must be renewed or replaced each calendar year, concurrently with the license renewal of any mortgage loan originators employed by the consumer finance company. The corporate surety bond shall be submitted through the Nationwide Mortgage Licensing System and Registry by December 1 of each calendar year but may be made effective as of December 31 of each calendar year. In no case shall any applicant, mortgage banker or mortgage broker subject to this rule reduce the amount of a corporate surety bond before October 1 of each calendar year.

(3) A consumer finance company must maintain a corporate surety bond during the period the company employs a mortgage loan originator. The corporate surety bond must remain in effect for at least five years after the person ceases to employ one or more mortgage loan originators. A person must file a claim against the corporate surety bond before the bond expires as described in this section.

(4) At least five years after a consumer finance company ceases to originate residential mortgage loans, the person or the writer of the corporate surety bond may apply to the director for release of the corporate surety bond. Unless the director determines that claims are pending against the person for violation of ORS 86A.095 through 86A.198, the director will release the corporate surety bond.

(5) The sum of the corporate surety bond for a consumer finance company that employs one or more mortgage loan originators must be calculated based on the last required annual report submitted under OAR 441-730-0320. The sum of each consumer finance company's corporate surety bond must be determined as follows:

(a) For a consumer finance company that has not previously conducted business involving the origination of residential mortgage loans, the corporate surety bond must be in the amount of \$50,000.

(b) For a consumer finance company making or negotiating less than \$10,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$50,000.

(c) For a consumer finance company making or negotiating \$10,000,000 or more but less than \$25,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$75,000.

(d) For a consumer finance company making or negotiating \$25,000,000 or more but less than \$50,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$100,000.

(e) For a consumer finance company making or negotiating \$50,000,000 or more but less than \$100,000,000 in residential mortgage

loans in the previous calendar year, the corporate surety bond must be in the amount of \$150,000.

(f) For a consumer finance company making or negotiating more than \$100,000,000 in residential mortgage loans in the previous calendar year, the corporate surety bond must be in the amount of \$200,000.

(6) Notwithstanding section (5) of this rule, a person that obtains and maintains one or more consumer finance licenses in this state may provide a corporate surety bond in an amount to cover the entire surety amounts required for one or more of the person's consumer finance companies in an amount meeting the minimum bond amounts of sections (5)(a) through (f) of this rule.

Stat. Auth.: ORS 86A.242

Stats. Implemented: ORS 86A.227

Hist.: FCS 3-2010, f. 3-18-10, cert. ef. 3-22-10; FCS 4-2012, f. & cert. ef. 8-1-12; FSR 1-2017, f. 1-31-17, cert. ef. 4-1-17

## 441-860-0020

### Application Requirements

Each person applying for a mortgage banker or mortgage broker license shall submit to the director all the following required application materials and information:

(1) A completed Form MU1 submitted through the Nationwide Mortgage Licensing System and Registry and approved by the director.

(2) A completed Form MU2 submitted through the Nationwide Mortgage Licensing System and Registry and approved by the director for any individual that acts as a control person for the mortgage banker or mortgage broker.

(3)(a) A corporate surety bond submitted through the Nationwide Mortgage Licensing System and Registry that meets specified terms calculated using the appropriate loan volume amounts under OAR 441-860-0085 if the applicant acts as the applicant's sole mortgage loan originator or employs a mortgage loan originator; or

(b) A corporate surety bond submitted through the Nationwide Mortgage Licensing System and Registry that meets specified terms calculated using the appropriate loan volume amounts under OAR 441-860-0090; or

(c) An irrevocable letter of credit filed with the director that meets specified terms calculated using the appropriate loan volume amounts under OAR 441-860-0090 if the applicant is a mortgage banker and the applicant is either not a mortgage loan originator or the applicant is not required to employ a mortgage loan originator.

(4) Financial statements prepared in accordance with generally accepted accounting principles, including a balance sheet and a statement of income or operations, dated not more than six months prior to submission of the application through the Nationwide Mortgage Licensing System and Registry.

(a) The financial statements may be prepared by the mortgage banker or mortgage broker, except that if the director finds it in the public interest, the director may require that a mortgage banker or mortgage broker submit financial statements prepared by an independent accountant.

(b) If the financial statements are more than six months old, interim period financial statements prepared by the mortgage banker or mortgage broker for the period ending the last full month prior to the date of application shall also be submitted.

(5) A written authorization to examine the applicant's Clients' Trust Account under ORS 86A.157 or, in the case of a neutral escrow depository, a copy of the escrow agreement under OAR 441-875-0040.

(6) A copy of the written notice to financial institution of establishment of Clients' Trust Accounts under ORS 86A.160. In the event the applicant does not receive client funds except at the time of closing, an affidavit and undertaking in the form and on terms approved by the director.

(7) The name of the registered agent of the mortgage banker or mortgage broker appointed under ORS 60.111 to accept process, notices or demands served upon the mortgage banker or mortgage broker listed on the application submitted through the Nationwide Mortgage Licensing System and Registry.

(8) Biographical information required by OAR 441-860-0021 submitted through the Nationwide Mortgage Licensing System and Registry.

(9) The information required under OAR 441-860-0030 for each branch office submitted through the Nationwide Mortgage Licensing System and Registry.

(10) Payment of fees for application or renewal, as applicable, under OAR 441-860-0101, paid through the Nationwide Mortgage Licensing System and Registry.

Stat. Auth.: ORS 86A.106, 86A.109, 86A.212

Stats. Implemented: ORS 86A.103, 86A.106, 86A.212

# ADMINISTRATIVE RULES

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1994, f. 11-4-94, cert. ef. 11-15-94; FCS 1-1996, f. 11-20-96, cert. ef. 12-1-96; Administrative correction 8-4-97; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-03 cert. ef. 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 3-2005, f. & cert. ef. 9-6-05; FCS 1-2007, f. & cert. ef. 1-17-07; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12; FCS 5-2014, f. 9-18-14, cert. ef. 1-1-15; FSR 1-2017, f. 1-31-17, cert. ef. 4-1-17

## 441-860-0025

### Rules for Use of Assumed Business Names

(1) In addition to any requirements for registering an assumed business name with the Secretary of State, a mortgage banker or mortgage broker who intends to use an assumed business name to identify the person's mortgage banker or mortgage broker business shall also comply with the following before doing business under the assumed business name:

(a) If the assumed business name contains words or phrases described in ORS 56.023, the mortgage banker or mortgage broker must obtain specific written approval from the director under ORS 705.635 and OAR 441-005-0010.

(b) The assumed business name must be placed upon any client trust account maintained by the mortgage banker or mortgage broker.

(2) Regardless of the lack of any ownership interest in the assumed business name, the mortgage banker or mortgage broker is responsible for all actions of those acting under the assumed business name which relate to mortgage banking loans or mortgage loans.

Stat. Auth.: ORS 86A.106, 86A.136

Stats. Implemented: ORS 86A.106

Hist.: FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12; FSR 1-2017, f. 1-31-17, cert. ef. 4-1-17

## 441-860-0050

### Renewal of Mortgage Banker and Mortgage Broker License

(1) A mortgage banker or a mortgage broker license shall expire on December 31 of each calendar year. At least 30 days prior to the expiration of a mortgage banker or mortgage broker license, the mortgage banker or the mortgage broker shall submit a renewal request for the license to the director through the Nationwide Mortgage Licensing System and Registry and shall:

(a) Complete a renewal request with an attestation that the records are true and accurate; and

(b) Pay any applicable renewal fees prescribed under OAR 441-860-0101.

(2) A mortgage banker or mortgage broker shall each calendar year:

(a) Submit, or confirm, through the Nationwide Mortgage Licensing System and Registry a corporate surety bond meeting specified terms and calculated using the appropriate loan volume amounts under OAR 441-860-0085; or

(b) File or have on file with the director an irrevocable letter of credit which meets specified terms calculated using the appropriate loan volume amounts under OAR 441-860-0090

(3) The director may refuse to renew a license if a reason exists under ORS 86A.095 through 86A.198 or 86A.200 through 86A.239.

(4) If a mortgage banker or mortgage broker submits an application for renewal which is incomplete in any respect, the director shall notify the mortgage banker or broker of the deficiencies on the application. The mortgage banker or mortgage broker shall have 30 days from the date of the notice or the end of the renewal period, whichever occurs first, to complete the application for renewal. If the mortgage banker or mortgage broker fails to complete the application for renewal, and the license shall be terminated on the expiration date by reason of failure to renew.

Stat. Auth.: ORS 86A.106, 86A.109, 86A.136

Stats. Implemented: ORS 86A.109, 86A.151

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 11-1995, f. 11-4-94, cert. ef. 11-15-94; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 10-2000, f. & cert. ef. 9-13-00; FCS 10-2001, f. 12-24-01, cert. ef. 1-1-02; FCS 7-2003, f. 12-30-04, 1-1-04; FCS 6-2004, f. 12-14-04, cert. ef. 1-1-05; FCS 12-2009, f. 12-2-09, cert. ef. 1-1-10; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FCS 4-2012, f. & cert. ef. 8-1-12; FCS 5-2014, f. 9-18-14, cert. ef. 1-1-15; FSR 1-2017, f. 1-31-17, cert. ef. 4-1-17

## 441-885-0010

### Cancellation of Mortgage Banker Or Mortgage Broker License for Failure to Maintain Corporate Surety Bond or Irrevocable Letter of Credit

(1) The director may cancel the license of a mortgage banker or mortgage broker for failing to maintain a corporate surety bond or irrevocable letter of credit as required by ORS 86A.106 and OAR 441-860-0090 or ORS 86A.227 and OAR 441-860-0085. The procedure for canceling a mortgage banker or mortgage broker license under this rule is as follows:

(a) Upon notification from the surety of notice of intent to cancel the corporate surety bond, or upon notification from the financial institution of

notice of intent to cancel the irrevocable letter of credit, the director shall notify the mortgage banker or mortgage broker. This notice may be sent by setting a deficiency on the company's license in the Nationwide Mortgage Licensing System and Registry

(b) If an effective corporate surety bond is not submitted through the Nationwide Mortgage Licensing System and Registry or an irrevocable letter of credit filed with the director by 5 p.m. Pacific Time within thirty (30) calendar days after receiving the notice in subsection (a) of this rule the director shall cancel the license of the mortgage banker or mortgage broker. The cancellation of the mortgage banker or mortgage broker license shall be effective as of the corporate surety bond or irrevocable letter of credit cancellation date. For purposes of this rule, an effective corporate surety bond or irrevocable letter of credit is one that commences no later than the cancellation date of the previous corporate surety bond or irrevocable letter of credit.

(2) A mortgage banker or mortgage broker whose license has been cancelled may obtain a mortgage banker or mortgage broker license in Oregon by submitting a new application.

(3) Upon cancellation of a mortgage banker or mortgage broker license all rights under the license are terminated, except that the director shall retain jurisdiction to investigate the professional activities pursuant to ORS 86A.124.

(4)(a) The director may change the mortgage loan originator's license status to inactive if the director finds that the mortgage loan originator is not covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in an insufficient amount under OAR 441-860-0085.

(b) The director may change the mortgage loan originator's license status to approved if the mortgage loan originator provides evidence acceptable to the director that the mortgage loan originator is covered by a corporate surety bond or the corporate surety bond covering the mortgage loan originator is maintained in a sufficient amount under OAR 441-860-0085.

Stat. Auth.: ORS 86A.106, 86A.242

Stats. Implemented: ORS 86A.121, 86A.227

Hist.: FCS 3-1993, f. & cert. ef. 11-15-93; FCS 4-1999, f. & cert. ef. 12-23-99; FCS 14-2009, f. 12-30-09, cert. ef. 1-4-10; FSR 1-2017, f. 1-31-17, cert. ef. 4-1-17

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**Rule Caption:** Amends the "manual exemption" provisions for 701 plans, adjusts fees and makes technical changes.

**Adm. Order No.:** FSR 2-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 441-035-0300

**Rules Amended:** 441-025-0005, 441-025-0020, 441-025-0050, 441-025-0121, 441-035-0005, 441-035-0030, 441-035-0045, 441-049-1001, 441-049-1011, 441-049-1051, 441-175-0002, 441-175-0020, 441-175-0030

**Rules Repealed:** 441-025-0010, 441-035-0040, 441-035-0270

**Subject:** This proposed rulemaking makes technical changes to several rules addressing new statutory sections at the state and federal levels. The rules propose repealing the "exchange exemption" and relying on the federal rules regarding exchanges. The proposed rules remove references to Standard and Poor's Manual which ceased publication in May 2016. In order to provide adequate options for broker-dealers and salespersons utilizing the "manual exemption" provided for in ORS 59.025(5) these rules propose adding the OTCQX and OTCQB Markets to the manual exemption for equity security offerings. The proposed rulemaking also makes changes to the registration requirements for SEC Rule 701 employee benefit stock option plans. The proposed rules would repeal the registration requirement, annual renewal, and salesperson licensing fees and establish a notice filing. The proposed rules also raise filing and renewal fees for investment company portfolios and reduce the fees related to broker-dealer salesperson registration renewals. 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—(503) 947-7484

# ADMINISTRATIVE RULES

## 441-025-0005

### Self-Executing Registration Exemptions

(1)(a)The securities listed in ORS 59.025 are exempt from registration or notice filing requirements. Sales of securities listed in 59.025 may only be effected through licensed persons, unless a person is otherwise exempted by statute or rule. Except as provided in subsection (b) no filing or fee is required to utilize any registration exemption in 59.025.

(b) A renewable energy cooperative corporation must file with the director the information required under OAR 441-025-0125 in order to rely upon the exemption provided in ORS 59.025(12).

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025, 59.195 & 59.275

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-025-0020

### Manual Exemption

Securities maintaining the following ratings by publishers of securities manuals are approved for the purpose of the exemption from registration in subsection (5) of ORS 59.025:

(1) Ratings of BBB or better for debt securities, and ratings of F-3 or better for commercial paper by Fitch Investors Service, Inc.

(2) Ratings of Baa or better for debt securities and ratings of P-3 or better for commercial paper by Moody's Investors Service.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; Renumbered from 815-030-0025; CC 1-1978, f. & ef. 1-4-78; Renumbered from 815-030-0020, FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-025-0050

### Additional Exempt Employee Benefit Plans

Pursuant to ORS 59.025(15), securities issued in connection with an employee benefit plan are exempt from registration if the plan:

(1) Is subject to or voluntarily complies with Title I of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1191c;

(2) Meets the requirements of Section 403(b) of the Internal Revenue Code, 26 U.S.C. § 403(b); or

(3) Does not permit employee contributions.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.025

Hist.: CC 3, f. 10-2-69, ef. 10-25-69; Renumbered from 815-010-0010; CC 2-1978, f. 6-5-78, ef. 6-10-78; Renumbered from 815-030-0025; FCS 3-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 2-25-88; FCS 4-1990, f. & cert. ef. 8-21-90; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-025-0121

### General Requirements for Renewable Energy Cooperative Corporations

(1) In order to rely on the exemption under ORS 59.025(12), a renewable energy cooperative corporation must:

(a) Have a certificate of existence issued by the Oregon Secretary of State pursuant to ORS 62.065 and be in good standing;

(b) Meet all the conditions set out in 441-025-0122;

(c) Provide the disclosures in the manner required by 441-025-0123; and

(d) Make any required filings under 441-025-0125.

(2) Reliance on ORS 59.025(12) does not preclude renewable energy cooperative corporations from relying on other exemptions under 59.025 or 59.035, as appropriate, for the offer or sale of membership shares, capital stock, or other authorized securities.

Stat. Auth.: ORS 59.025 & 2014 OL Ch. 69 §2

Stat. Implemented: ORS 59.025 & 2014 OL Ch. 69 §1

Hist.: FCS 6-2014, f. & cert. ef. 10-6-14; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-035-0005

### Self-Executing Transaction Exemptions

(1) Except for ORS 59.035(11), OAR 441-035-0045, OAR 441-035-0300 for certain compensatory benefit plans, and the Oregon Intrastate Offering Exemption (OIO) at 441-035-0070 et seq., exemptions available pursuant to ORS 59.035 are self-executing and do not require filing or a fee.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035, 59.195 & 59.275

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2015, f. & cert. ef. 1-28-15; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-035-0030

### Manual Exemption

The following are approved for the purposes of the exemption granted under ORS 59.035(10)(c):

(1) The Mergent securities manual;

(2) Fitch Investors Service securities manual; and

(2) The OTCQX and OTCQB markets.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.035(10)

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 22, f. & ef. 11-25-75; Renumbered from 815-030-0035.90; Renumbered from 815-030-0045; FCS 5-1990, f. & cert. ef. 8-21-90; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-035-0045

### Solicitation of Interest for Offering of Securities Pursuant to SEC Regulation A

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt under ORS 59.035(15) if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blank check company," as such term is defined in OAR 441-045-0010(2);

(b) The offerer intends to conduct its offering pursuant to Regulation A under the Securities Act of 1933 and register the securities in Oregon under OAR 441-065-0020;

(c) At least 10 business days prior to the initial solicitation of interest under this rule, the offerer files with the Director:

(A) A completed solicitation of interest application on a form prescribed by the Director along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;

(B) The minimum registration fee as set in OAR 441-065-0001;

(C) A completed Form U-4 (salesperson application available from the Securities Section) for at least one, but no more than five, issuer salespersons (each such salesperson must be a bona fide officer, director or employee of the issuer); and

(D) A salesperson licensing fee as set in OAR 441-175-0002 for each salesperson.

(d) At least five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest;

(f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication;

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(h) No sale is made until at least seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus;

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(A) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

(B) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.



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(C) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

(D) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(F) The prohibitions listed in paragraphs (A) through (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed. Any disqualification caused by this action is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption under ORS 59.035(15) for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1). Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under ORS 59.245 and 59.255 and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to 59.045 as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption under ORS 59.035(15), but shall be a violation of the Oregon Securities Law, be actionable by the Director under 59.245 and 59.255, and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to 59.045 as to a specific security or transaction:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) AN OFFERING STATEMENT PURSUANT TO REGULATION A RELATING TO THESE SECURITIES HAS BEEN FILED WITH THE SECURITIES AND EXCHANGE COMMISSION. INFORMATION CONTAINED IN THIS PRELIMINARY OFFERING CIRCULAR IS SUBJECT TO COMPLETION OR AMENDMENT. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME AN OFFERING CIRCULAR WHICH IS NOT DESIGNATED AS A PRELIMINARY OFFERING CIRCULAR IS DELIVERED AND THE OFFERING STATEMENT FILED WITH THE COMMISSION BECOMES QUALIFIED.

(B) THIS PRELIMINARY OFFERING CIRCULAR SHALL NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY NOR SHALL THERE BE ANY SALES OF THESE SECURITIES IN ANY STATE IN WHICH SUCH OFFER, SOLICITATION OR SALE WOULD BE UNLAWFUL PRIOR TO REGISTRATION OR QUALIFICATION UNDER THE LAWS OF ANY SUCH STATE.

(C) WE MAY ELECT TO SATISFY OUR OBLIGATION TO DELIVER A FINAL OFFERING CIRCULAR BY SENDING YOU A NOTICE WITHIN TWO BUSINESS DAYS AFTER THE COMPLETION OF OUR SALE TO YOU THAT CONTAINS THE URL WHERE THE FINAL OFFERING CIRCULAR OR THE OFFERING STATEMENT IN

WHICH SUCH FINAL OFFERING CIRCULAR WAS FILED MAY BE OBTAINED; and

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

(4) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of ORS 59.055 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ORS 59.025(7), 59.035(5), 59.035(12) or OAR 441-035-0050 until six months after the last communication with a prospective investor made pursuant to this rule.

Stat. Auth.: ORS 59.025(4) & 59.035(11)

Stats. Implemented: ORS 59.025(4), 59.035(11), 59.035(15) & 59.285

Hist.: FCS 10-1994, f. & cert. ef. 10-3-94; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-035-0300

### Certain Compensatory Benefit Plans

(1) Except as provided in subsection (4) of this rule, under ORS 59.035(15), the offer and sale of securities by an issuer pursuant to a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701) is exempt from registration provided that the issuer submits:

(a) Notice to the Director on an approved form is provided no later than 30 days after the initial offer and sale of any a security subject to this exemption; and

(b) Payment of a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(c) Options to purchase securities become subject to the notice and fee requirements of this section when the option grant is made regardless of when the option becomes exercisable.

(2) This rule shall only apply to offers and sales where the federal exemption under 17 CFR 230.701 is available to the issuer for this offering.

(3) The filing is effective as of the date the securities sold in reliance on this exemption are offered and sold provided that the filing and fee requirements under subsection (1) or (4) are satisfied. Upon receipt of a filing, the Director shall provide written acknowledgment of the filing to the person submitting the request for the filing. An inadvertent failure by the Director to acknowledge the filing shall not invalidate the filing.

(4)(a) Failure to file the notice according to subsection (1)(a) of this rule does not affect the availability of this exemption provided that, within 15 business days after discovery of the failure to file or after demand by the director, whichever occurs first, the issuer files the notice and pays the Director a fee equal to the maximum aggregate fee payable had the transaction been qualified under subsection (1)(b) of this rule.

(b) Securities previously registered under OAR 441-065-0270 are not subject to the fee requirements of (1)(b) as a condition of reliance on this exemption.

(5) If an issuer becomes subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) after it has made offers in reliance on this exemption, the issuer may nevertheless rely on this exemption to sell the securities previously offered to the persons to whom those offers were made.

(6) Under ORS 59.015(18)(b)(B), an individual employed by the issuer of a security sold in reliance on this exemption is not required to be licensed in Oregon to offer or sell securities under the plan.

(7)(a) A filer shall amend the notice on a firm approved by the director when there are material changes in the terms and conditions of the original notice or Plan. "Material changes in the terms and conditions of the original notice or plan" means an increase in the aggregate amount of securities to be offered in Oregon, change in the type of securities or change in the identity of the issuer or owner.

(b) Notice of an amendment to increase the aggregate amount of securities to be offered in Oregon shall include the fee calculated in accordance with subsection (1)(b), less amounts previously paid under the prior notice. The amendment fee may not be less than \$100.

(c) The notice is effective when received by the director.

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(8) Offers and sales exempt under this rule are deemed to be a part of a single, discrete offering and are not subject to integration with any other offers or sales, whether registered under ORS 59.065 or otherwise exempt from registration under ORS 59.025 or ORS 59.035.

(9) This rule relates to transactions exempted from the registration requirements of ORS 59.065. These transactions are still subject to the antifraud, civil liability, or other provisions of the Oregon Securities Law.

Stat. Auth.: ORS 59.035, 59.065 & 59.285  
Stats. Implemented: ORS 59.035, 59.065 & 59.285  
Hist.: FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-049-1001

### Fees for Federal Covered Securities Notice Filings

Pursuant to ORS 59.049, for new filings received on or after July 1, 2017 or renewal filings effective on or after July 1, 2017, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial filing fee of \$545 and renewal notice filing fee of \$535 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$500 per portfolio and a renewal fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(E), of the Securities Act of 1933, as amended, a fee of \$200. No renewal notice filing or fee is required.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$250. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049  
Stats. Implemented: ORS 59.049  
Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 3-2006, f. & cert. ef. 5-4-06; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-049-1011

### Scope and Definitions

(1)(a) Scope of rule. The Notice Filing Rules (OAR 441-049-1011 to 441-049-1051) provide Oregon procedures for notice filings and renewals under ORS 59.049.

(b) Application of Notice Filing Rules:

(A) An offering under the Notice Filing Rules does not have to comply with OAR 441 Division 065 Registration of Securities or 441 Division 070 Renewal of Securities Registrations; and

(B) An effective offering under former OAR 441-025-0045 or an effective registered offering that qualifies for the Notice Filing Rules shall become subject to the Notice Filing Rules when the person that previously filed under former 441-025-0045 or securities offering registrant files under the notice filing renewal procedures in 441-049-1021(6).

(2) Definitions. As used in the Notice Filing Rules:

(a) "Investment company notice filing" means a filing by a mutual fund, unit investment trust or other investment company, that covers a security that would be a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933, as amended;

(b) "NASAA" means the North American Securities Administrators Association Inc.;

(c) "NASAA Form NF" means the Uniform Investment Company Notice Filing form adopted by the NASAA;

(d) "Notice Filing Rules" means the rules in OAR 441-049-1011 to 441-049-1051;

(e) "Offering to qualified purchaser," "federally exempt security" or "federally exempt transactions" means offerings of federal covered securities that are subject to section 18(b)(3) or 18(b)(4) of the Securities Act of 1933, as amended, but does not include section 18(b)(4)(E) of that Act;

(f) "Rule 506 offering" means an offering of federal covered securities that is subject to section 18(b)(4)(E) of the Securities Act of 1933, as amended;

(g) "SEC" means the Securities and Exchange Commission; and

(h) "SEC Form D" means "Form D; Notice of Exempt Offering of Securities.

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

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-049-1051

### Rule 506 Offerings

A person offering a covered security under section 18(b)(4)(E) shall:

(1)(a) File a notice on SEC Form D not later than 15 days after the first sale of securities subject to the notice in Oregon;

(b) For the purposes of notice, submit to the director the aggregate amount offered in Oregon;

(A) An offering amount may be "Indefinite" if the amount being offered is undetermined or cannot be calculated at the present time, such as if the offering includes securities to be acquired upon the exercise or exchange of other securities or property and the exercise price or exchange value is not currently known or knowable.

(B) If an amount is definite but difficult to calculate without unreasonable effort or expense, provide a good faith estimate.

(2) Pay a fee as set in OAR 441-049-1001.

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

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-175-0002

### Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$250;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$60 and a renewal license fee of \$50;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50

Stat. Auth.: ORS 59.175  
Stats. Implemented: ORS 59.175  
Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04; FCS 1-2004, f. & cert. ef. 5-19-04; FCS 8-2010, f. 6-22-10, cert. ef. 7-1-10; FCS 1-2012, f. & cert. ef. 7-9-12; FSR 1-2016, f. & cert. ef. 3-7-16; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-175-0020

### Exclusion from Definition of "Broker-Dealer"

ORS 59.015 excludes from the definition of "broker-dealer" the following persons, provided the person is not otherwise licensed as a broker-dealer, investment adviser, or salesperson:

(1) Any person who effects sales of securities that are exempt under subsection (14) of ORS 59.025 and OAR 441-025-0040.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while effecting sales of the securities without special compensation.

(3) Any person, who serves as a dealer manager for an exchange offer of securities which have been registered under OAR 441-065-0035 and who does not perform any active solicitation activities in this state.

(4) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of that person's Principal Real Estate broker, provided that all of the following conditions are met:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities subject to the Oregon Securities Law, ORS Chapter 59, only effects transactions in securities that are registered under 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve resale of those securities described under paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice under OAR 441-175-0050; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(5) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the

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action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(1)  
Stats. Implemented: ORS 59.15(1)  
Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0005; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FSR 1-2016, f. & cert. ef. 3-7-16; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

## 441-175-0030

### Exclusion from Definition of "Investment Adviser"

ORS 59.015 excludes from the definition of "state investment adviser" the following persons, provided the person is not otherwise licensed as a broker-dealer, state investment adviser, mortgage broker, salesperson, or investment adviser representative:

(1) Any person who conducts no public advertising or general solicitation in this state and whose only clients in this state are "accredited investors" as that term is defined in OAR 441-035-0010.

(2) Any person who is a bona fide officer, director or employee of an issuer whose securities are registered under OAR 441-065-0035, while providing advice, analyses, reports or other advisory services regarding the securities without special compensation.

(3) Any person who serves as a dealer manager for an exchange offer of securities which has been registered under OAR 441-065-0035 and who does not perform any active solicitation in this state.

(4) Any person whose advice, analyses or reports relate only to securities exempted by subsection (14) of ORS 59.025 and OAR 441-025-0040.

(5) Any person who is a licensed Principal Real Estate Broker or Real Estate Broker acting on behalf of the Principal Real Estate broker if:

(a) The person is actively licensed with the Oregon Real Estate Commissioner;

(b) The person, with respect to securities activities, only renders advice, analyses, reports or other advisory services relating to securities that are registered under ORS 59.065, and:

(A) Involve interests in a general or limited partnership, joint venture, cooperative, or unincorporated association, but not a corporation, formed for the purpose of investment in specified real property, including condominium securities; or

(B) Involve the resale of those securities described in paragraph (A) of this subsection.

(c) The person complies with the rules of fair practice under OAR 441-175-0050; and

(d) The person does not engage exclusively in the management of rental real estate as defined in ORS 696.010.

(6) Any person who acts as a purchaser representative under OAR 441-065-0060 through 441-065-0230 if the activity is merely an incidental part of the person's usual activities or occupation.

(7) Any person who is licensed as a mortgage banker or mortgage broker under the provisions of ORS 59.840 to 59.965 and whose performance of advisory services relate solely to securities involving real estate paper, whose performance of the advisory services is solely incidental to the person's conduct of business as a mortgage banker or mortgage broker and who receives no special compensation for such services.

(8) The director may, by order, as to any person or type of security or sale, withdraw or condition the exclusions allowed under this rule if the action would be in the public interest and would be in accordance with the purposes of the Oregon Securities Law. No person shall be liable under the Oregon Securities Law by reason of the withdrawal of the exclusions allowed under this rule if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of such withdrawal.

Stat. Auth.: ORS 59.15(6)  
Stats. Implemented: ORS 59.15(6)  
Hist.: CC 13, f. 9-19-73, ef. 10-5-73; Renumbered from 815-030-0015; CC 8-1981, f. 10-27-81, ef. 12-1-81; CC 1-1983, f. & ef. 1-19-83; Renumbered from 815-030-0010; FCS 4-1991, f. & cert. ef. 8-23-91; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 7-2000, f. & cert. ef. 6-2-00; FSR 1-2016, f. & cert. ef. 3-7-16; FSR 2-2017, f. 1-31-17, cert. ef. 2-1-17

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**Rule Caption:** Revises the fee schedule for assessments financial institutions pay to the Director.

**Adm. Order No.:** FSR 3-2017

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 441-500-0020

**Subject:** Under the Oregon Bank Act, the Director of the Department of Consumer and Business Services (DCBS or department) may assess financial institutions a fee under a schedule adopted by rule. In adopting the schedule, the Director takes into consideration three factors: the amount of other moneys available for the director to use in performing the director's duties, the costs the director will incur in performing the director's duties in the year in which the director will collect the fee, and the amount the director needs to establish and maintain a reasonable emergency fund. ORS 706.530. Under long-standing administrative policy, the department interprets the meaning of the term "reasonable emergency fund" as requiring the set-aside of two to four quarters of operating costs.

The department's fee schedule developed under the terms of the statute assesses financial institutions a base fee, and then a variable fee determined by multiplying all assets by a fractional number. The department divides the schedule into tiers in order to equitably assess financial institutions fees based on the institution's size. In 2016, the department adopted a temporary rule that increased assessment rates by five percent and also extended the due date for the fees by 15 days to provide banks and trust companies additional time to pay the revised assessment. The department revised its regulations to make fees more equitable and to ensure that Oregon chartered banks and trust companies pay fees that reasonably reflect the costs of supervision. The changes to fee assessments under the proposed rule incorporate the five percent increase under the temporary rule and raises the assessment by 2.5 percent for a total increase of approximately 7.5 percent. Operating revenue for the banking program is calculated on the average assets of Oregon based institutions, based on quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment. Since 2010, the revenue for the banking program has dropped significantly due to the declining number of Oregon state-chartered banks. As a consequence, and despite best efforts to control expenses, between FY 2009 and FY 2014, expenses have exceeded revenues every year except in FY 2012 when the banking program intentionally left examiner positions vacant and received higher than normal amounts of risk-based assessment premiums due to the large number of banks that required more supervision based on their less-than-satisfactory ratings. The revised fees are not being used to pay for an expansion of the banking program or to cover the cost of any special pay increases to banking program employees; rather, the increase in fees will help to cover the ongoing expenses of the banking program.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-500-0020

### Fees for Banks, Trust Companies, Savings Banks, Extranational Institutions, Savings Associations and Call for Reports

(1) Definitions.

(a) As used in this rule, "assets" means;

(A) The average assets of an Oregon based insured institution; or

(B) The average Oregon assets of an extranational institution.

(b) For the purposes of determining averages in subsections (1)(a):

(A) Average assets for an Oregon based insured institution shall be determined from the quarterly Call Reports of Condition and Income filed with the applicable federal supervisory agency for the calendar year immediately preceding the due date of the fee assessment; and

(B) Average Oregon assets for an extranational institution shall be determined from the quarterly reports of Oregon Assets filed with the Director for the calendar year immediately preceding the due date of the assessment.

(2) Call for Reports. To the extent any report used to determine the fee assessment is not required to be filed or made available to the Director under other Banking Rules, the specific reports shall be provided by the insured institution or extranational institution upon the call of the Director to allow the fee assessments to be determined.

(3) Subject to section (10) of this rule, the annual fee assessment under ORS 706.530 for an insured institution subject to the jurisdiction of the Director, including a savings association, is: If assets are:

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- (a) Less than \$10 million, \$861 plus .00029597 of all assets;
- (b) \$10 million or more but less than \$25 million, \$1,749 plus .00021525 of all assets;
- (c) \$25 million or more but less than \$100 million, \$3,116 plus .00016467 of all assets;
- (d) \$100 million or more but less than \$500 million, \$10,542 plus .00009686 of all assets;
- (e) \$500 million or more but less than \$1 billion \$24,533 plus .00007103 of all assets;
- (f) \$1 billion or more but less than \$2 billion, \$26,686 plus .00006888 of all assets;
- (g) \$2 billion or more but less than \$3 billion, \$28,838 plus .00006780 of all assets;
- (h) \$3 billion or more but less than \$4 billion, \$32,067 plus .00006673 of all assets;
- (i) \$4 billion or more but less than \$10 billion, \$36,372 plus .00006565 of all assets.
- (j) \$10 billion or more, \$800,000.

(4) Subject to section (10) of this rule, the annual fee assessment determined in section (3) of this rule shall include a risk-based assessment calculated on the basis of the CAMELS rating assigned to the insured institution as of December 31 in the calendar year immediately preceding the due date of the risk-based assessment. The rate of the risk-based assessment is as follows: [Table not included. See ED. NOTE.]

(5) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 for each trust company subject to the Director's jurisdiction is \$2,153 plus:

- (a) .00006546 of the first \$150 million in managed assets; and .00003273 of managed assets greater than \$150 million;
- (b) .00001637 of the first \$150 million in custodial assets; and .00008188 of custodial assets greater than \$150 million.

(6) Subject to section (10) of this rule, the annual regulatory fee assessment under ORS 706.530 and 713.090 for each extranational institution is: If Oregon assets are:

- (a) Less than \$10 million, \$909 plus .000333640 of all assets;
- (b) \$10 million or more but less than \$25 million, \$2,739 plus .00015068 of all assets;
- (c) \$25 million or more but less than \$100 million, \$3,815 plus .00010763 of all assets;
- (d) \$100 million or more but less than \$500 million, \$7,259 plus .00007319 of all assets;
- (e) \$500 million or more, but less than \$1 billion, \$11,026 plus .00006565 of all assets;
- (f) \$1 billion or more but less than \$2 billion, \$16,407 plus .00006027 of all assets;
- (g) \$2 billion or more, \$18,560 plus .00005919 of all assets.

(7) The fees assessed by this rule are not subject to prorate or refund.

(8) If no fee is assessed during any year under sections (3) or (5) of this rule because an insured institution did not have Oregon assets during the calendar year immediately preceding the due date of the assessment, the insured institution may be charged for actual cost, if the Director participates in any examination of the institution during the same calendar year. Actual cost shall be determined in the same way as provided in OAR 441-500-0030.

(9) All fees assessed under sections (3) to (6) of this rule are due and payable on April 1 each calendar year.

(10)(a) The Director may by order reduce the fees assessed for any specific year.

(b) When a fee is assessed under sections (3) to (6) of this rule, the assessment shall not be less than:

(A) \$5,000 for an insured institution, including a savings association, under section (3);

(B) \$2,500 for a trust company under section (5) and an extranational institution under section (6).

(11) The charges for special examination and special attention provided in OAR 441-500-0030 are in addition to and not in lieu of the fees assessed by this rule.

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

Stat. Auth.: ORS 705.620

Stats. Implemented: ORS 706.530

Hist.: FID 2-1986, f. & cert. 3-7-86; FID 3-1986, f. & cert. 5-15-86; FID 4-1986, f. & cert. 7-25-86; FCS 2-1988, f. 1-29-88, cert. ef. 2-1-88; Renumbered from 805-002-0100; FCS 1-1989, f. 1-18-89, cert. ef. 2-1-89; FCS 1-1993, f. & cert. 2-23-93; FCS 4-1994, f. & cert. ef. 4-25-94; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-505-0020; FCS 6-2007, f. & cert. ef. 10-22-07; FCS 1-2008, f. & cert. ef. 1-28-08; FCS 2-2009, f. & cert. ef. 2-3-09; FCS 9-2009, f. 9-15-09, cert. ef. 9-25-09; FCS 2-2010, f. & cert. ef. 3-16-10; FSR 2-2016(Temp), f. & cert. ef. 3-16-16 thru 7-29-16; Administrative correction, 8-29-16; FSR 3-2017, f. & cert. ef. 2-1-17

**Rule Caption:** Revises authority to engage in interest rate swap transactions and use of evaluations for OREO

**Adm. Order No.:** FSR 4-2017

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 441-505-3030, 441-505-3090

**Subject:** Please note that this rulemaking involves two parts: OAR 441-505-3090 and 441-505-3030. In 2012, the Department of Consumer and Business Services (DCBS or department) adopted OAR 441-505-3090 permitting Oregon chartered banks to act, as an intermediary, in customer-driven interest rate swap transactions and to pledge bank assets as collateral for such transactions. In 2015, the legislature amended ORS 708A.010 to clarify that Oregon banks could engage, as principal or agent, in activities permissible for national banks. The proposed changes to OAR 441-505-3090 simply update the rule to accommodate the legislative changes to ORS 708A.010 and, under the department's wildcard authority contained in ORS 706.795, expressly provide authority for Oregon chartered banks to pledge collateral to counterparties in connection with swap transactions.

This rulemaking further addresses when Oregon commercial banks may use an evaluation rather than an appraisal to establish the market value of other real estate owned. With respect to OAR 441-505-3030, ORS 708A.175 (3) and (4) require Oregon chartered commercial banks to use appraisals that are current at the time the banks acquire real property to satisfy a lien on a real estate loan. Collectively, property acquired under ORS 708A.175(3) and (4) is known as Other Real Estate Owned (OREO). Unlike Oregon commercial banks, national banks may use an evaluation rather than an appraisal to establish the market value of OREO when its value is less than \$250,000. 12 C.F.R. § 34.43. The proposed changes to OAR 441-505-3030 will enhance and maintain competition between Oregon chartered commercial banks and national banks by allowing Oregon banks to use evaluations determine the fair market value of OREO under similar circumstances. Where the value of the property is over \$250,000, the proposed changes also give banks three months time following the date the property is acquired as OREO to obtain an appraisal.

**Rules Coordinator:** Shelley Greiner—(503) 947-7484

## 441-505-3030

### Appraisal Required

(1) The market value of real estate acquired by an institution pursuant to ORS 708A.175 shall be established by a real property appraisal that is current if the recorded value is equal to or greater than \$250,000. A bank may defer obtaining an appraisal for a maximum period of three months following acquisition of such property if the initial recorded value is based on an appropriate evaluation that is current at the time of the acquisition.

(2) If the recorded value of the real estate acquired pursuant to ORS 708A.175 is less than \$250,000, the market value shall be established by a real property appraisal or evaluation that is current at the time of such acquisition.

(3) An appraisal or evaluation is current if dated no more than one year prior to the acquisition.

(4) The real property appraisal or evaluation must be reviewed by appropriate institution officers to determine whether it is a reliable indicator of the value and condition of the real estate acquired and complies with applicable standards for preparation of such appraisals or evaluations.

(5) If the carrying (book) value of the real estate exceeds the market value less costs to sell, the difference shall be immediately charged off.

(6) ORS 708A.590, as relevant, shall thereafter be followed.

Stat. Auth.: ORS 706.790

Stats. Implemented: ORS 708A.175(3)

Hist.: BB 13, f. & cert. 3-5-76, Renumbered from 805-024-0130; FCS 1-1998, f. & cert. ef. 3-31-98, Renumbered from 441-580-0050; FCS 6-2007, f. & cert. ef. 10-22-07; FSR 4-2017, f. & cert. ef. 2-1-17

## 441-505-3090

### Interest Rate Swap Transactions

(1) An Oregon bank may engage in interest rate swap transactions and pledge bank assets to counterparties to secure the transactions.

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(2) The Oregon bank's aggregate risk exposure, at any time, to each of its counterparties shall not exceed the bank's legal lending limit. The bank's risk exposure under an interest rate swap transaction shall be estimated using any of the methods considered acceptable for national banks by the Office of the Comptroller of the Currency.

Stat. Auth.: ORS 706.790  
Stats. Implemented: ORS 706.795  
Hist.: FCS 5-2012(Temp), f. 8-7-12, cert. ef. 8-8-12 thru 2-4-13; FCS 2-2013, f. & cert. ef. 1-23-13; FSR 4-2017, f. & cert. ef. 2-1-17

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

**Rule Caption:** Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2016.

**Adm. Order No.:** ID 2-2017(Temp)

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 1-31-17 thru 7-1-17

**Notice Publication Date:**

**Rules Amended:** 836-011-0000

**Subject:** This rulemaking prescribes, for reporting year 2016, the required forms for the annual and supplemental financial statements required for insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.

**Rules Coordinator:** Karen Winkel—(503) 947-7694

**836-011-0000**

**Annual Statement Blank and Instructions**

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor and multiple employer welfare arrangement, shall file its financial statement required by ORS 731.574 for the 2016 reporting year on the annual statement blank approved for the 2016 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule for the 2016 reporting year, according to the applicable instructions published for that year by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement for the 2016 reporting year, as required by the applicable instructions published for that year by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) The applicable instructions published by the National Association of Insurance Commissioners referred to in this rule are available for inspection at the Department of Consumer and Business Services. Any person interested in inspecting those instructions should contact the Department at web.inscomp@oregon.gov.

(5) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, 731.574 & 733.210  
Stats. Implemented: ORS 731.574 & 733.210  
Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16-1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03; ID 1-2006, f. & cert. ef. 1-23-06; ID 9-2007, f. & cert. ef. 11-8-07; ID 1-2009, f. & cert. ef. 1-29-09; ID 11-2009, f. & cert. ef. 12-9-09; ID 22-2010, f. 12-30-10, cert. ef. 1-1-11; ID 2-2012, f. & cert. ef. 2-7-12; ID 2-2013, f. & cert. ef. 2-6-13; ID 3-2014, f. & cert. ef. 2-14-14; ID 1-2015, f. & cert. ef. 3-10-15; ID 2-2016, f. & cert. ef. 2-3-16; ID 2-2017(Temp), f. & cert. ef. 1-31-17 thru 7-1-17

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

**Rule Caption:** Adopt changes to the Worker Protection Standard in Agriculture with federal and state changes.

**Adm. Order No.:** OSHA 1-2017

**Filed with Sec. of State:** 2-14-2017

**Certified to be Effective:** 1-1-18

**Notice Publication Date:** 11-1-2016

**Rules Adopted:** 437-004-6001, 437-004-6401, 437-004-6501, 437-004-6502, 437-004-6508, 437-004-6509

**Rules Amended:** 437-002-0170, 437-004-6000

**Subject:** Oregon Occupational Safety and Health Division (Oregon OSHA) administers and enforces the employee safety and health part of the U.S. Environmental Protection Agency (EPA)'s pesticide Worker Protection Standard (WPS) as adopted in Division 4/ Agriculture as adopted at OAR 437-004-6000. The standard aims to protect workers - those who work in pesticide-treated crop areas - and handlers - those who mix, load, and apply pesticides. EPA modified the WPS at the federal level (40 CFR 170) in the November 2, 2015 Federal Register. In response, Oregon OSHA initiated the rule-making process working with an advisory committee - including representatives of labor, employers, grower organizations, and government and nonprofit agencies, and other stakeholders - and reviewed extensive public comments received both orally at three public hearings held around the state, and in written format following formal proposal in late 2016.

Oregon OSHA is adopting most of the modified rules initiated by the EPA as well as several Oregon-initiated rules introduced to reflect the unique circumstances for employers in Oregon. The agency will continue to enforce the existing WPS through the end of 2017.

The rule changes are expected to lead to an overall reduction in incidents of unsafe pesticide exposure and to improve the occupational health of agricultural workers and pesticide handlers.

The adopted OARs:

- 437-004-6001 gives expiration and implementation dates for the existing and revised rules. The rules codified in Division 4/W as 170.1 through 170.260 will remain in effect through 2017, and expire on 12/31/2017. The new rules, codified as 170.301 through 170.607, and the other five new OARs will be implemented beginning on January 1, 2018.

- 437-004-6401 and 437-004-6501 provide specific effective dates for the revised subject matter to be included in training programs for both workers and handlers. In addition, the requirements for crop advisor training programs necessary to exempt workers and handlers from WPS training is cross-referenced to the minimum subject matter in these OARs.

- 437-004-6508 Respiratory Protection and 437-004-6509 Emergency eye-washes and eye flushing supplies maintain Oregon OSHA's more protective requirements related to respiratory protection and emergency eye-washes while fulfilling the EPA's pesticide label requirements.

- 437-004-6502 augments training requirements in Oregon for trainers of WPS handlers who use the Train-the-Trainer qualification described in 170.501(c)(4)(ii) of the WPS. The adopted rule does not apply to trainers of WPS handlers who meet the qualification as certified applicators described in 170.501(c)(4)(iii).

The agency will reconsider some details of the 2016 WPS proposal through a separate public rulemaking process centered on the Application Exclusion Zone (AEZ.) To give more time to fine-tune those provisions and to ease the transition to the modified rule requirements, Oregon OSHA is delaying implementation of the modified standard until Jan. 1, 2018. The expected result will be a revised proposal initiated in 2017, in time for it to take effect with the other modified sections of the WPS on Jan. 1, 2018.

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

**437-002-0170**

**Worker Protection Standard**

Oregon OSHA administers and enforces the pesticide Worker Protection Standard (WPS - 40 CFR 170) as adopted in OAR 437-004-6000. When a pesticide product with Worker Protection Standard language ("Agricultural Use Requirements") on the product label is used on plants grown or maintained for sale or resale, such as those at retail nurseries or greenhouses, the WPS applies. Plants grown or maintained for sale or resale include but are not limited to food, feed and fiber plants; ornamental trees and shrubs; turfgrass sod; flowering plants and seedlings. This is consistent with the Environmental Protection Agency's interpretation and

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application of the WPS. All parts of the WPS apply (without regard to the scope of Division 4) in addition to, and not instead of, any other part of Division 2, General Industry. Should any conflict exist between the WPS and other Division 2 rules, the employer must comply with the rule offering the most protection to workers. A full text of the Worker Protection Standard is found in Division 4, Agriculture, Subdivision W.

**NOTE:** 437-002-0170 Worker Protection Standard does not apply when any pesticide is applied in the following circumstances: (See 437-004-6000, 170.303(b))

(1) As part of government-sponsored public pest control programs over which the owner, agricultural employer and handler employer have no control, such as mosquito abatement and Mediterranean fruit fly eradication programs.

(2) On plants other than agricultural plants, which may include plants in home fruit and vegetable gardens and home greenhouses, and permanent plantings for ornamental purposes, such as plants that are in ornamental gardens, parks, public or private landscaping, lawns or other grounds that are intended only for aesthetic purposes or climatic modification.

(3) For control of vertebrate pests, unless directly related to the production of an agricultural plant.

(4) As attractants or repellents in traps.

(5) On the harvested portions of agricultural plants or on harvested timber.

(6) For research uses of unregistered pesticides.

(7) On pasture and rangeland where the forage will not be harvested for hay.

(8) In a manner not directly related to the production of agricultural plants, including, but not limited to structural pest control and control of vegetation in non-crop areas.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001-654.295

Hist.: OSHA 9-2009 f. & cert. ef. 9-21-09; OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6000

### Adoption by Reference of Federal Standard

In addition to, and not in lieu of, any other safety and health codes contained in OAR chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 40 CFR 170, in the Federal Register:

**NOTE:** Oregon OSHA did not adopt revisions to Sections 170.2; 170.135; 170.235 published in the November 2, 2015 Federal Register.

(1) Subpart A – General Provisions

(a) 40 CFR 170.1 Scope and purpose, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(b) 40 CFR 170.3 Definitions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(c) 40 CFR 170.5 Removed.

(d) 40 CFR 170.7 General duties and prohibited actions, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(e) 40 CFR 170.9 Violations of this part, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.]

(2) Subpart B – Standard For Workers

(a) 40 CFR 170.102 Applicability of this subpart, published 5/3/95, FR vol. 60, no. 85, p. 21952.

(b) 40 CFR 170.103 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.

(c) 40 CFR 170.104 Exemptions, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.

(d) 40 CFR 170.110 Restrictions associated with pesticide applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(e) 40 CFR 170.112 Entry restrictions, published 6/21/06, FR vol. 71, no. 119, pp. 35543-35547; 6/29/07, FR vol. 72, no. 125, p. 35563; 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.

(f) 40 CFR 170.120 Notice of applications, published 6/26/96, FR vol. 61, no. 124, p. 33207.

(g) 40 CFR 170.122 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(h) 40 CFR 170.124 Notice of applications to handler employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(i) 40 CFR 170.130 Pesticide safety training, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.

(j) 40 CFR 170.135 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(k) 40 CFR 170.150 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33212.

(l) 40 CFR 170.160 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(3) Subpart C – Standard For Pesticide Handlers

(a) 40 CFR 170.202 Applicability of this subpart, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(b) 40 CFR 170.203 Exceptions, published 5/3/95, FR vol. 60, no. 85, p. 21952.

(c) 40 CFR 170.204 Exemptions, published 12/12/08, FR vol. 73, no. 240, pp. 75592-75600.

(d) 40 CFR 170.210 Restrictions during applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(e) 40 CFR 170.222 Providing specific information about applications, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(f) 40 CFR 170.224 Notice of applications to agricultural employers, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(g) 40 CFR 170.230 Pesticide safety training, published 5/3/95, FR vol. 60, no. 85, p. 21953

(h) 40 CFR 170.232 Knowledge of labeling and site-specific information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(i) 40 CFR 170.234 Safe operation of equipment, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(j) 40 CFR 170.235 Posted pesticide safety information, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(k) 40 CFR 170.240 Personal protective equipment, published 9/1/04, FR vol. 69, no. 169, p. 53341; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(l) 40 CFR 170.250 Decontamination, published 6/26/96, FR vol. 61, no. 124, p. 33213; OR-OSHA note added with AO 9-2006, filed and effective 9/22/06.

(m) 40 CFR 170.260 Emergency assistance, published 8/21/92, Federal Register, vol. 57, no. 163, pp. 38102-38176.

(4) Subpart D – General Provisions

(a) 40 CFR 170.301 Scope and purpose, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(b) 40 CFR 170.303 Applicability of this part, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(c) 40 CFR 170.305 Definitions, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(d) 40 CFR 170.309 Agricultural employer duties, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(e) 40 CFR 170.311 Display requirements for pesticide safety information and pesticide application and hazard information, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(f) 40 CFR 170.313 Commercial pesticide handler employer duties, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(g) 40 CFR 170.315 Prohibited actions, published 11/2/15, FR vol. 80, no. 211, p. 67495.

**NOTE:** Oregon OSHA did not adopt 170.317 Violations of this part, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(5) Subpart E – Requirements for Protection of Agricultural Workers

(a) 40 CFR 170.401 Training requirements for workers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(b) 40 CFR 170.403 Establishment-specific information for workers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(c) 40 CFR 170.405 Entry restrictions associated with pesticide applications, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(d) 40 CFR 170.407 Worker entry restrictions after pesticide applications, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(e) 40 CFR 170.409 Oral and posted notification of worker entry restrictions, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(f) 40 CFR 170.411 Decontamination supplies for workers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(6) Subpart F – Requirements for Protection of Agricultural Pesticide Handlers

(a) 40 CFR 170.501 Training requirements for handlers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(b) 40 CFR 170.503 Knowledge of labeling, application-specific, and establishment-specific information for handlers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(c) 40 CFR 170.505 Requirements during applications to protect handlers, workers, and other persons, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(d) 40 CFR 170.507 Personal protective equipment, published 11/2/15, FR vol. 80, no. 211, p. 67495.

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(e) 40 CFR 170.509 Decontamination and eye flushing supplies for handlers, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(7) Subpart G – Exemptions, Exceptions and Equivalency

(a) 40 CFR 170.601 Exemptions, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(b) 40 CFR 170.603 Exceptions for entry by workers during restricted-entry intervals, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(c) 40 CFR 170.605 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval, published 11/2/15, FR vol. 80, no. 211, p. 67495.

(d) 40 CFR 170.607 Exceptions to personal protective equipment requirements specified on pesticide product labeling, published 11/2/15, FR vol. 80, no. 211, p. 67495.

**NOTE:** Oregon OSHA did not adopt Sec. 170.609 Equivalency requests.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1998, f. 8-28-98, cert. ef. 10-1-98; OSHA 7-2004, f. & cert. ef. 12-30-04; OSHA 9-2006, f. & cert. ef. 9-22-06; OSHA 9-2009 f. & cert. ef. 9-21-09; OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6001

### Expiration and Implementation Dates

(1) Expiration date. Division 4/W, 170.1 through 170.260 of the Worker Protection Standard shall expire on, and will no longer be effective after December 31, 2017.

(2) Implementation date. Beginning January 1, 2018, the requirements of Division 4/W, 170.301 through 170.607; and 437-004-6001, 437-004-6401, 437-004-6501, 437-004-6502, 437-004-6508, and 437-004-6509, shall apply to the use of pesticide products as defined in Section 170.303 Applicability of the Worker Protection Standard.

**NOTE:** Oregon OSHA is initiating a new rulemaking on OAR 437-004-6405 and OAR 437-004-6406 in early 2017 with the intention of adopting those rules into the modified Division 4/W Worker Protection Standard with an effective date of January 1, 2018.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6401

### Effective dates for worker training programs in Oregon

Beginning on January 1, 2018, training programs for workers must include, at a minimum, all of the following topics:

(1) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(2) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(3) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(4) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(5) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(6) Routes through which pesticides can enter the body.

(7) Signs and symptoms of common types of pesticide poisoning.

(8) Emergency first aid for pesticide injuries or poisonings.

(9) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, to wash or shower with soap and water, shampoo hair, and change into clean clothes.

(10) How and when to obtain emergency medical care.

(11) Instructions to wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet, when working in pesticide treated areas.

(12) Instructions to wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(13) Information about the potential hazards from pesticide residues on clothing.

(14) Wash work clothes before wearing them again and wash them separately from other clothes.

(15) Do not take pesticides or pesticide containers used at work to your home.

(16) Safety data sheets provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(a) Display safety data sheets for all pesticides used on the establishment.

(b) Provide workers and handlers information about the location of the safety data sheets on the establishment.

(c) Provide workers and handlers unimpeded access to safety data sheets during normal work hours.

(17) The rule prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(18) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early-entry activities. Workers must be 18 years old to perform early-entry activities.

(19) Potential hazards to children and pregnant women from pesticide exposure.

(20) Instructions to keep children and nonworking family members away from pesticide treated areas.

(21) Instructions to remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members, after working in pesticide treated areas.

(22) How to report suspected pesticide use violations to the State or Tribal agency responsible for pesticide enforcement.

(23) The rule prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this rule, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, or the EPA or its agents, or to Oregon OSHA regarding conduct that the employee reasonably believes violates these rules, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with these rules.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6501

### Handler training programs in Oregon

(1) Handlers using an exception to the training requirements for crop advisors — as described in 170.501(b)(2) of the Worker Protection Standard — must demonstrate that the program includes all the topics listed in OAR 437-004-6501(2).

(2) Training programs for handlers must include, at a minimum, all of the following topics:

(a) All the topics required by OAR 437-004-6401. Training program for workers.

(b) Information on proper application and use of pesticides.

(c) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(d) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(e) Need for and appropriate use and removal of all personal protective equipment.

(f) How to recognize, prevent, and provide first aid treatment for heat-related illness.

(g) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(h) Environmental concerns, such as drift, runoff, and wildlife hazards.

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(i) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(j) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(k) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(l) Handlers must be at least 18 years old.

(m) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(n) The responsibility of agricultural employers to post treated areas as required by this rule.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6502

### Oregon requirements for Worker Protection Standard trainers of handlers who qualify using train-the-trainer programs

(1) Beginning on January 1, 2018, trainers of handlers who use the train-the-trainer (T-t-T) qualification described in 170.501(c)(4)(ii) must complete a T-t-T program at least once every five years, using training materials approved by EPA for that purpose.

(2) In order to meet this requirement, persons using this qualification are responsible for maintaining a record of their training, to include the following details about their most recent completion of a T-t-T program: the date(s), location, and the EPA reference number of the training materials that were used.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6508

### Respiratory Protection

Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the respirator specified on the label is used and that requirements of the Respiratory Protection Standard that applies to them are met before allowing the handler to perform any activity where the respirator is required to be worn. For employers subject to the Division 4 rules, Division 4/I, OAR 437-004-1041 applies, except for paragraph (4) Selection of respirators. For employers subject to the Division 2 and/or the Division 7 rules, Division 2/I, 1910.134 applies, except for paragraph (d) Selection of respirators.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## 437-004-6509

### Emergency eye-washes and eye flushing supplies

(1) Whenever a handler is mixing or loading a pesticide product whose labeling includes the signal word “Danger” or “Danger/Poison,” due to toxicity to the eye or the possibility of permanent eye damage; or, a handler is mixing or loading any pesticide using a closed system operating under pressure, the employer must provide at each mixing/loading site available to the handler at least one eye-wash system that meets the applicable eyewash requirements. For employers subject to the Division 4 rules, Division 4/K, OAR 437-004-1305(5) applies. For employers subject to the Division 2 and/or Division 7 rules, Division 2/K, OAR 437-002-0161 applies.

(2) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

**NOTE:** The eye-wash rules referenced include the following minimum requirements:

Locate the eye-wash so that exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot require the opening of doors or passage through obstacles unless other employees are always present to help the exposed employee.

Install the equipment according to the manufacturer’s instructions.

Follow the equipment manufacturer’s criteria for water pressure, flow rate and testing to ensure proper operation of the system.

Eye-wash water must flow for at least 15 minutes.

The eyewash must have valves that stay open without the use of the hands.

The water to the equipment must not be subject to unauthorized shut-off.

If eyewash facilities can freeze, take protective measures to prevent freezing.

Equipment must be clean, sanitary and operating correctly.

In self-contained systems, do not use solutions or products past their expiration date.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 – 654.295, 654.750 – 654.780

Hist.: OSHA 1-2017, f. 2-14-17, cert. ef. 1-1-18

## Department of Corrections Chapter 291

**Rule Caption:** Transgender and Intersex (Inmate)

**Adm. Order No.:** DOC 1-2017(Temp)

**Filed with Sec. of State:** 2-15-2017

**Certified to be Effective:** 2-15-17 thru 8-13-17

**Notice Publication Date:**

**Rules Adopted:** 291-210-0040, 291-210-0050

**Rules Amended:** 291-210-0010, 291-210-0020, 291-210-0030

**Subject:** Currently, the department’s rules establish department policies and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake. However, the rules do not clearly set out department policies and procedures in certain areas of prison administration for these inmates during intake processing, or after facility assignment.

These temporary rule amendments are necessary in order to more clearly and completely set out the department’s policies and procedures in this area of prison administration, and to provide clearer information and direction for Department of Corrections inmates and staff regarding the same. These temporary rule amendments set out and clarify DOC policy and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake and after facility assignment, specifically including those regarding searches; facility and housing assignments; access to department-issued clothing, shower and hygiene; and appropriate and professional questioning by staff. These amendments also reflect certain definitional changes.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-210-0010

### Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures for the identification, assessment, review, and management of inmates who present or identify as transgender or intersex.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, order and discipline, the health and safety of inmates and staff, and to further inmate rehabilitation, it is the policy of the Department of Corrections, based on available information, to:

(a) Seek to identify inmates that present with as transgender or intersex upon delivery to the Department of Corrections during intake processing; and

(b) Assess, review, and manage inmates who identify as transgender or intersex on a case-by-case basis, in a respectful manner, considering each inmate’s individual circumstances, including but not limited to the inmate’s physical sexual characteristics, gender identification, physical presentation, behavior and programming needs.

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

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

Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

## 291-210-0020

### Definitions

(1) Behavioral Health Services (BHS): A Department of Corrections Health Services unit with primary responsibility for the assessment and treatment of inmates with mental illness and developmental disabilities.

(2) Gender: The socially constructed roles, behaviors, activities, and attributes that a given society typically or historically assigns to men and women.

(3) Gender Identity: Distinct from sexual orientation and refers to a person’s internal, deeply felt sense of being male, female or something else.



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(4) Intersex: A condition in which a person is born with external genitalia, internal reproductive organs, chromosome patterns, or an endocrine system that does not fit typical definitions of male or female.

(5) PREA Compliance Manager: A management staff person designated by the institution functional unit manager with sufficient time and authority to coordinate the facility's efforts to comply with the federal PREA standards.

(6) Transgender and Intersex Committee: A multi-disciplinary working group of ODOC officials that reviews and determines appropriate housing assignments, recommends safety plans and provides support for inmates who identify as transgender or intersex. The committee will include at least one individual with knowledge of gender issues facing transgender and intersex inmates.

(7) Transgender: A person who identifies with or expresses a gender identity that differs from their assigned sex at birth.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 & 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

## 291-210-0030

### Identification, Assessment, Review, and Management of Inmates who Identify as Transgender or Intersex at Intake

(1) Identification at Intake: Staff shall seek to identify inmates who present or identify as transgender or intersex upon delivery to the Department of Corrections during intake processing, based on available information from the county, the inmate (including the inmate's stated gender identity, if any), and as developed by staff.

(2) Appropriate and Professional Questioning:

(a) Staff shall interview inmates regarding their sex and gender identity only when necessary to develop information for making appropriate intake and housing assignments, classification assignments, programming assignments; to provide health care and health assessments; and as necessary for the inmate's health or safety, or for the safe, secure, and orderly operation of the facility.

(b) Staff shall interview inmates in a private and professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(c) Designated staff shall submit information to the TAIC for review and determination of appropriate housing placement.

(3) Initial Placement in Holding Cell: When staff identify an inmate who presents or identifies as transgender or intersex during intake processing, staff shall place the inmate in a holding cell with no other inmates present to provide for the inmate's safety and to provide the inmate with a measure of privacy pending further review.

(4) Unclothed Searches:

(a) Unclothed searches are performed by appropriate security staff on each inmate upon the inmate's delivery to the facility. Ordinarily, a security staff member of the same gender as the inmate will be assigned to conduct the unclothed search.

(b) When an inmate identifies or presents as transgender or intersex during intake, staff shall ask the inmate to identify whether they prefer that male or female staff conduct the skin search.

(c) If an inmate who has not previously been identified as transgender or intersex during intake processing is later identified by security staff as presenting or identifying as transgender or intersex during the conduct of an unclothed search, staff will immediately cease conducting the search and ask the inmate the gender of security staff they prefer to conduct the unclothed search. Staff will accommodate the inmate's stated preference.

(5) Intake Housing Assignment:

(a) Following initial placement in a holding cell, an inmate who identifies as transgender or intersex during intake processing shall be assigned to a single cell in the Infirmary, on a space available basis, until the appropriate housing for the inmate has been staffed by the Transgender and Intersex Committee.

(b) If there are no infirmary beds available, the functional unit manager or designee will assign the inmate to appropriate alternative housing in the facility, and document the reasons for the alternative housing assignment.

(6) Clothing at Intake Center: Inmates who identify as transgender or intersex at intake will be issued the following clothing to wear during intake processing — two sets of scrubs; two t-shirts; sweatshirt; two bras (if requested or needed); underwear (type issued based on inmate request); pajamas (type issued based on inmate request); and socks and intake shoes.

(7) Recreation at Intake Center: Inmates who identify as transgender or intersex at intake will be afforded the opportunity for out of cell time on the same basis as other inmates assigned to the unit they are being housed

in or as facility operation allows. A minimum out of cell time for all inmates will be three times a week or as staff availability and circumstances allow.

(8) Shower and Hygiene at Intake Center: Inmates who identify as transgender or intersex at intake shall be given the opportunity to shower privately from other inmates.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

## 291-210-0040

### Facility and Housing Assignments

(1) The Transgender and Intersex Committee will collect and review relevant information regarding inmates who identify as transgender or intersex and make appropriate facility and housing assignment decisions on a case-by-case basis.

(2) The Transgender and Intersex Committee will notify staff at the receiving facility of facility and housing assignment decisions regarding the inmate prior to the inmate's transfer.

(3) When an inmate is assigned to a facility by the Transgender and Intersex Committee, designated facility staff will determine and assign the inmate to appropriate housing within the facility unless the inmate's housing assignment has been specifically directed by the Transgender and Intersex Committee.

(4) An inmate who identifies as transgender or intersex may not be transferred to another facility without Transgender and Intersex Committee approval.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist.: DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

## 291-210-0050

### Identification, Assessment, Review, and Management of Inmates who Identify as Transgender or Intersex after Facility Assignment

(1) Identification After Facility Assignment:

(a) If an inmate identifies as transgender or intersex after being assigned to a facility, staff shall notify Behavioral Health Services and the PREA Compliance Manager at the receiving facility. The PREA Compliance Manager will notify the Transgender and Intersex Committee and gather information for the Transgender and Intersex Committee's review.

(b) If an inmate who has not been identified as transgender or intersex during intake processing is later identified by security staff as transgender or intersex during the conduct of an unclothed search, staff will immediately cease conducting the search and ask the inmate the gender of security staff they prefer to conduct the unclothed search. Staff will accommodate the inmate's stated preference.

(2) Appropriate and Professional Questioning:

(a) Behavioral Health Services and the PREA Compliance Manager shall interview the inmate regarding the inmate's assigned sex at birth, gender identity, gender expression, and security concerns.

(b) Behavioral Health Services will submit information to the Transgender and Intersex Committee for its review, upon approval from the inmate. The PREA Compliance Manager will submit information to the Transgender and Intersex Committee for its review.

(c) Staff shall interview the inmate in a private setting and in a professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(3) Unclothed Searches:

(a) After assignment and delivery to a permanent facility unclothed searches of the inmate will ordinarily be conducted by male staff in facilities that are generally designated to house male inmates, and by female staff in facilities that are generally designated to house female inmates.

(b) However, the inmate may request approval from the Transgender and Intersex Committee, via an inmate communication (CD214), to have unclothed searches conducted by security staff of the other gender, subject to staff availability and circumstances.

(c) If the inmate's request is approved by the Transgender and Intersex Committee, security staff shall accommodate the inmate's stated preference when staff availability and circumstances allow.

(4) Department-Issued Clothing:

(a) Female undergarments may be issued to and worn by the inmate when assigned to a designated male facility if assigned to the inmate by the PREA Compliance Manager.

(b) Male undergarments may be issued to and worn by the inmate when assigned to a designated female facility if assigned to the inmate by the PREA Compliance Manager.

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(5) Shower and Hygiene:

(a) The inmate may request approval from the Transgender and Intersex Committee to be afforded the opportunity to shower privately from other inmates, subject to staff availability and circumstances.

(b) If the inmate's request is approved by the Transgender and Intersex Committee, security staff shall accommodate the inmate's stated preference when staff availability and circumstances allow.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075  
Hist: DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

## Department of Energy Chapter 330

**Rule Caption:** Amending EIP Alternative Fuel Vehicle tax credit rules including amendment and program sunset provisions.

**Adm. Order No.:** DOE 1-2017

**Filed with Sec. of State:** 1-25-2017

**Certified to be Effective:** 1-25-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 330-220-0000, 330-220-0010, 330-220-0020, 330-220-0030, 330-220-0040, 330-220-0050, 330-220-0070, 330-220-0080, 330-220-0090, 330-220-0100, 330-220-0150

**Subject:** These permanent rule amendments for the Energy Incentives Program (EIP) alternative fuel vehicle tax credit update program procedures, expand amendment requests and include provisions for the program's sunset.

The alternative fuel vehicle tax credits sunset at the end of tax year 2017. To align with statute and Oregon Laws, the rule amendments require that the department receive an application for final certification prior to the end of the 2017 tax year of the applicant and for applicants choosing to sell the credit, the entity purchasing the credit must pay for it prior to the end of its 2017 tax year. For amendments, the amended rules allow an applicant to submit an amendment request up until issuance of the final certificate rather than by the time the final application is submitted to the department.

Additionally the rules:

- Update cost terms to better explain program practice,
- Add fleet requirements from Opportunity Announcements to rule,
- Add a process for applicants to accept conditions on a preliminary certificate,
- Require at final certification that applicants provide itemized documentation of total project costs, and
- Allow reconsideration of a denial during the technical review phase or request for an amendment.

**Rules Coordinator:** Elizabeth Ross—(503) 378-8534

### 330-220-0000

#### Applicability of Rules in OAR 330, division 220

(1) These rules implement the incentives program for alternative fuel vehicle projects established in ORS 315.336 and 469B.320 to 469B.347. The rules also provide procedures for submission, agency review and selection of alternative fuel vehicle projects for preliminary and final certification of tax credits.

(2) These rules apply to all applications and certifications for tax credits for alternative fuel vehicle projects as governed by ORS 315.336 and 469B.320 to 469B.347.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347  
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347  
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

### 330-220-0010

#### Definitions

For the purposes of this division, the following definitions apply:

(1) "Acquisition" includes:

(a) For an alternative fuel vehicle infrastructure project, installation or construction of a facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment.

(b) For an alternative fuel vehicle fleet project, the replacement of two or more vehicles that are not used primarily for personal, family or house-

hold purposes, with vehicles that are modified or acquired directly from the factory and that:

(A) Use an alternative fuel, including electricity, biofuel, gasohol with at least 20 percent denatured alcohol content, hydrogen, Hythane, methane, methanol, natural gas, propane or any other fuel approved by the Director of the State Department of Energy as an alternative fuel; and

(B) Produce lower exhaust emissions, or are more energy efficient, than equivalent vehicles fueled by gasoline or diesel.

(2) "Alternative Fuel" means a motor vehicle fuel, other than petroleum gasoline or diesel, certified by the U.S. Environmental Protection Agency for roadway use that results in equivalent or lower exhaust emissions or higher energy efficiency when used. Alternative fuels include electricity, biofuels, hydrogen, Hythane, methane, methanol, natural gas, compressed natural gas, liquefied natural gas, liquefied petroleum gas (propane), renewable diesel, butanol and other fuels the director allows. Blends of these alternative fuels with conventional fuels will only be considered an alternative fuel under these rules when the concentration of the alternative fuel is 20 percent of the entire volume of the blended fuel or greater. Hydrated fuels must have water content of 10 percent of the entire volume of the blended fuel or greater to be considered eligible as an alternative fuel under these rules.

(3) "Alternative fuel vehicle project" has the meaning given in ORS 469B.320.

(4) "Applicant" means a person who has applied for or who has received a preliminary certificate for a transportation energy incentives program tax credit.

(5) "Capital lease" means a fixed-term lease where the lessee records the leased vehicle as assets and is eligible to claim depreciation on those vehicles for tax purposes.

(6) "Certified cost" means the cost determined by the department during the review of final application, used as the basis for calculating the tax credit documented on the final certificate.

(7) "Cost" has the meaning given in ORS 469B.320 including:

(a) For an alternative fuel vehicle infrastructure project, the capital expenditures to acquire, erect, design, build, convert, or install a project.

(b) For an alternative fuel vehicle fleet project, the:

(A) Expenditures necessary to convert two or more existing vehicles into alternative fuel vehicles,

(B) Incremental expenditures to acquire two or more replacement alternative fuel vehicles, or

(C) For class 8 tractors, the incremental expenditure to acquire two or more replacement alternative fuel vehicles as determined and stated by the department in an Opportunity Announcement.

(8) "Department" means the Oregon Department of Energy.

(9) "Director" means the director of the department.

(10) "Incremental expenditure" means the difference between the cost of an alternative fuel vehicle and a comparable traditional fuel vehicle, or an amount determined by the department as defined in OAR 330-220-0010(7)(b)(C).

(11) "Natural gas" means a gaseous fuel comprised primarily of methane derived from either hydro-carbon based or renewable sources, which can be used as a transportation fuel.

(12) "Opportunity period" means the timeframe specified in an Opportunity Announcement for the department to accept applications for alternative fuel vehicle projects.

(13) "Qualifying cost" means the amount of the alternative fuel vehicle project's proposed cost that may be eligible for the program.

(14) "Replacement" or "replaced" means either:

(a) The removal of existing fleet vehicles and substitution of new alternative fuel vehicles, or

(b) Conversion of the fuel system of existing fleet vehicles to use alternative fuels.

(15) "Total project cost" means all costs directly associated with an alternative fuel vehicle project, including costs that are not qualifying costs.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347  
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347  
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

### 330-220-0020

#### Opportunity Announcement

(1) The department will announce the availability of tax credits for alternative fuel vehicle projects by issuing an Opportunity Announcement.

(2) The department will continually monitor the allocation of tax credits to ensure that the total amount of potential tax credits does not exceed the tax credit cap specified in ORS 469B.344.

# ADMINISTRATIVE RULES

(3) If the cumulative total of all tax credits awarded under the Opportunity Announcement is less than the total amount of tax credits available, the department may reallocate the balance to a future Opportunity Announcement.

(4) The Opportunity Announcement will include the following information:

- (a) Objectives for the opportunity period;
  - (b) The approximate amount of tax credits available;
  - (c) Application requirements, as defined in OAR 330-220-0050;
  - (d) Dates of the application opportunity period;
  - (e) Instructions and directions to the required application forms and materials;
  - (f) Minimum technical standards;
  - (g) The process the department will use to allocate tax credits;
  - (h) For alternative fuel vehicle fleet projects, a list of eligible on-road vehicle types;
  - (i) For alternative fuel vehicle fleet projects, a maximum percentage of potential tax credit available an applicant may obtain during an opportunity period;
  - (j) For class 8 tractors, the incremental expenditure upon which to base the tax credit;
  - (k) Required percentage of fleet miles driven in state on an annual basis;
  - (L) The date of the sunset of the program; and
  - (m) Other information the department considers necessary.
- (5) The department may increase the amount of tax credits available for an Opportunity Announcement.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0030

### Preliminary Certification Application

(1) Any person may apply for a preliminary certification by submitting a complete preliminary certification application. The application must meet requirements provided by applicable statutes, these rules and the current Opportunity Announcement.

(a) The application must be in the form specified in the Opportunity Announcement and these rules.

(b) An applicant must submit a complete application during the opportunity period. For the purposes of this rule, the department considers an application "submitted" when the department receives the application.

(c) The department will not review applications received outside of an opportunity period and will return the application fee received.

(2) The application must be accompanied by the application fee specified in these rules. The department will not process applications received without fee payment.

(3) The application must include the following information, unless the department specifies otherwise in the Opportunity Announcement.

(a) The name of the applicant.

(A) If the applicant is a partnership, joint venture or association, the application must include the names of each person participating in the partnership, joint venture or association. The department may use this information to ensure compliance with ORS 469B.329.

(B) If the applicant is a corporation or limited liability company, the application must include the name of the corporation or LLC and its parent corporations, members and any close affiliates or subsidiaries. The department may use this information to ensure compliance with ORS 469B.329.

(C) If the applicant is a public or governmental entity, the application must include written authorization from the entity's governing body allowing submission of the application.

(b) The name, address, email address and telephone number of the responsible party for the applicant.

(c) The applicant's federal tax identification number or social security number, which may be shared with the Oregon Department of Revenue to facilitate the administration of state tax law.

(d) A statement verifying that the applicant will be the owner, contract purchaser or lessee of the alternative fuel vehicle project at the time of acquisition of the project.

(e) A description of the personnel and teams that will be working on project development, implementation and operation.

(f) If the applicant has received final certification of tax credits or payment of grants issued by the department within the last 5 years, the application must contain a statement affirming the operational status of the projects awarded such grants or tax credits.

(g) The location of the alternative fuel vehicle project.

(h) A statement explaining the amount by which use of the alternative fuel vehicle project will displace petroleum fuel.

(i) A statement of compliance with applicable state and local regulations and that the applicant will obtain required licenses and permits.

(j) The number and type of new jobs that will be created by the alternative fuel vehicle project and the number of existing jobs that will be sustained throughout construction, installation and operation of the project. Job estimates should be submitted in hours. These hours must directly relate to the alternative fuel vehicle project.

(k) The alternative fuel vehicle project's anticipated total project cost, including the alternative fuel vehicle project's incremental cost, if applicable.

(L) The amount of anticipated or received incentives directly related to the alternative fuel vehicle project.

(m) A project schedule and project management plan.

(n) A description of the applicant's financing plan for the alternative fuel vehicle project including:

(A) Construction or acquisition financing; and

(B) Startup costs.

(o) The dollar amount of tax credit requested by the applicant.

(p) If the applicant has already started acquisition or performance of the alternative fuel vehicle project, a written description of the special circumstances that rendered filing of an application prior to the start of acquisition or performance unreasonable.

(q) For an alternative fuel vehicle infrastructure project, a detailed description of the project including:

(A) Information that demonstrates how the project will be technically feasible and how the project will operate for at least five years as represented in the application. This may require documentation in addition to the application form.

(B) A description of proposed fueling systems, the estimated number of alternative fuel vehicles that will use the proposed station, the type of alternative fuel that will be dispensed and the expected annual amount that will be dispensed.

(C) The expected operational life of the alternative fuel vehicle infrastructure project.

(r) For an alternative fuel vehicle fleet project, a detailed description of the project including:

(A) Information that demonstrates the vehicles being replaced with new alternative fuel vehicles are no longer in the project owner's fleet or the fleet of any related entity.

(B) A description of the vehicles being replaced with new alternative fuel vehicles, including:

(i) Vehicle Identification Number;

(ii) Vehicle make, model, year and description;

(iii) Gross vehicle weight and weight class;

(iv) Fuel type;

(v) Fleet average miles per gallon; and

(vi) Estimated annual mileage.

(C) A description of the new alternative fuel vehicles acquired, including:

(i) Vehicle make, model, year and description;

(ii) Gross vehicle weight and weight class;

(iii) Fuel type;

(iv) Estimated miles per gallon; and

(v) Estimated annual mileage.

(D) A description of the existing fleet vehicles being converted or modified to use alternative fuels, including:

(i) Vehicle identification number;

(ii) Vehicle make, model, year and description;

(iii) Gross vehicle weight and weight class;

(iv) Original fuel type and proposed fuel type after conversion to use of alternative fuel;

(v) Fleet average miles per gallon before and after conversion to use of alternative fuel;

(vi) Annual mileage before and after conversion to use of alternative fuel; and

(vii) Information about the conversion kit and the entity converting the vehicles.

(E) The expected operational life of the alternative fuel vehicle project.

(F) Information that demonstrates the alternative fuel vehicles are registered and operating in Oregon. Where applicable, registration under

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the International Registration Plan must have Oregon as the base jurisdiction.

(s) Other information the department considers necessary.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0040

### Application Fees

The department adopts the following schedule of fees as provided by ORS 469B.335. All fee payments are non-refundable, despite the results of the department's review.

(1) Applicants must submit a fee of \$300 with their preliminary certification application.

(2) Applicants selected for technical review will be required to pay an additional technical review fee prior to that review. The fee amount is equal to the qualifying cost multiplied by 0.9 percent.

(3) Applicants requesting amendments to preliminary certifications must submit a fee of \$300 with their amendment request.

(4) Applicants for final certification must submit with their application a final review fee. This fee amount is equal to the qualifying cost multiplied by 0.55 percent. All applicants seeking final certification for a project are required to apply for final review and pay the final review fee.

(5) Applicants that choose to transfer their tax credit to a pass-through partner, pursuant to OAR 330-230-0110 to 330-230-0140, must pay a pass-through fee. The fee is due after a pass-through partner has been identified and before the department will issue a tax credit certificate.

(a) If the department assists the applicant in obtaining a pass-through partner, or partners, the fee for that assistance is 1.25 percent of the tax credit amount plus \$200 per tax credit certificate issued.

(b) If the department does not assist the applicant in obtaining a pass-through partner, the fee is \$200 per tax credit certificate issued.

(6) Applicants issued a tax credit certificate that choose to have their tax credit certificate re-issued to a transferee must pay a transfer fee of \$200 plus \$100 per tax credit certificate issued.

(7) If an applicant fails to pay fees timely as required by this rule, the department may reject the pending application and discontinue the review.

Stat. Auth.: ORS 469.040, 469B.335 & 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 3-2013, f. & cert. ef. 10-2-13; DOE 2-2015, f. 8-28-15, cert. ef. 9-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0050

### Completeness Review

(1) The department will determine that sufficient potential tax credits are available prior to beginning review of an application. The department may return applications, or offer a lower tax credit amount, if there are not sufficient potential tax credits available to award the amount of tax credit requested.

(2) The department will review all preliminary certification applications to determine whether:

(a) All sections of the application are complete.

(b) The applicant has submitted the required fee.

(c) The project meets the definition of an alternative fuel vehicle project.

(d) The applicant is applying prior to the acquisition of the project.

(A) If the applicant applies after acquisition of the project has started, the department will deny the application unless a written explanation of the special circumstances is received and approved by the director.

(B) Failing to submit a timely application or not being selected for a grant or tax credit under this or prior department programs does not constitute special circumstances.

(e) The alternative fuel vehicle project is located in Oregon.

(3) If the department finds that the application is complete, the application will move into the technical review process and the department will notify the applicant in writing. If an excess of applications is received for an Opportunity Announcement, the department moves complete applications into technical review based on the date the department received the complete application.

(4) The department may deny incomplete applications and notify applicants in writing of the reason for denial of the application.

(5) The department considers the completeness review as a test; the decision to deny an incomplete application is not an action subject to review under ORS Chapter 183.

(6) If an applicant has not started acquisition of the alternative fuel vehicle project, an applicant may apply again for the same project in the

same or a future Opportunity Announcement by submitting a new application and fee. The department will not apply fees submitted with a previous application to future applications.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0070

### Technical Review

(1) Once the department requests the technical review fee and the applicant has paid the technical review fee, the department will conduct a technical review of the alternative fuel vehicle project. If the applicant does not submit the required technical review fee to the department within 21 calendar days from the date of the request for payment of the technical review fee, the department may deny the application.

(2) The department will review the information provided in the preliminary certification application against industry standards to determine whether the project is financially and technically feasible and should operate in accordance with the representations made by the applicant.

(3) To be eligible, the alternative fuel vehicle project must meet the following requirements:

(a) The project must meet the requirements of the statutes, these rules and the Opportunity Announcement.

(b) The applicant must be the owner, contract purchaser or project lessee at the time of the project's acquisition.

(c) The applicant must be a trade, business or rental property owner with a business site in Oregon or be an Oregon non-profit organization, a federally recognized tribe or a public body as defined in ORS 174.109 that partners with an Oregon business or resident. The applicant may not restrict membership, sales or service on the basis of race, color, creed, religion, national origin, sexual preference or gender.

(d) A project located at a residential property must be rental property. A rental property must meet laws related to rental accommodations and contain a dwelling unit or rooming unit with permanent living facilities. Living facilities include facilities for sleeping, eating, cooking and sanitation, for one or more persons, other than the property owner, which is subject to a rental agreement that provides for meaningful compensation to the owner.

(e) For an alternative fuel vehicle infrastructure project, applicants must provide anticipated connection and charging patterns as part of the project description section of the application.

(f) An electric charging station project must supply electricity for on-road vehicles.

(g) An alternative fuel vehicle fleet project must be an eligible on-road vehicle type as described in the Opportunity Announcement. In the Opportunity Announcement the department will list the eligible vehicle types from those defined in ORS chapter 801.

(h) An alternative fuel vehicle fleet project must register the alternative fuel vehicles in Oregon. Where applicable, registration under the International Registration Plan must have Oregon as the base jurisdiction.

(i) An alternative fuel vehicle fleet project for the purchase of new vehicles must replace two or more vehicles and provide information demonstrating the vehicles being replaced are no longer in the project owner's fleet or the fleet of any related entity.

(j) An alternative fuel vehicle fleet must operate in Oregon as specified in the Opportunity Announcement, which will be at least 75 percent of the operation time.

(k) An alternative fuel vehicle fleet project may be acquired with a capital lease. The capital lease terms must be at least five years.

(L) An alternative fuel vehicle fleet project must include at least one eligible alternative fuel.

(m) An alternative fuel vehicle fleet conversion or modification project must include new equipment installed by a qualified technician that is compliant with Environmental Protection Agency or California Air Resources Board standards.

(4) The department will review the alternative fuel vehicle project's cost for eligibility to determine qualifying costs. The application must document total project cost by providing a list of itemized costs.

(a) Qualifying costs for an alternative fuel vehicle infrastructure project include:

(A) The cost of components, including all materials and supplies needed for the erection, construction, installation or acquisition of the proposed project;

(B) The costs to extend or increase the capacity of utility connections are only eligible if located within the property lines of the project location.

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Qualifying costs for utility connections for electric vehicle charging stations are also limited by location to:

(i) \$5,000 for a Level 1, 120 volt AC or similar, electric vehicle charging station.

(ii) \$15,000 for a Level 2, 240 volt AC or similar, electric vehicle charging station.

(iii) \$30,000 for a DC Fast Charger, or similar, electric vehicle charging station.

(C) Fees to design or engineer the project;

(D) The cost of title searches, escrow fees, permit and license fees, excluding fees required by this rule, and shipping;

(E) Cost of work performed by the applicant's employees or independent contractors if the following conditions are met:

(i) Employees or contractors must be certified, accredited, licensed or otherwise qualified to do the work;

(ii) The work must be associated with the erection, construction, installation or acquisition of the alternative fuel vehicle infrastructure project;

(iii) Project management and other similar costs may only account for up to 15 percent of the qualifying costs; and

(iv) Costs for employees' or contractors' work on the alternative fuel vehicle infrastructure project must be detailed and documented as to specific tasks, hours worked and compensation costs.

(F) Costs for legal counsel that are directly related to the development of an alternative fuel vehicle infrastructure project;

(G) Costs of training associated with the alternative fuel vehicle infrastructure project that is approved by the department; and

(H) Other costs the department determines should be included.

(b) Qualifying costs for an alternative fuel vehicle fleet project include:

(A) Incremental expenditure of new alternative fuel vehicles.

(B) Vehicle modification cost directly related to converting the fuel system of the vehicle to use alternative fuel, which are limited to new conversion component costs and labor to install the new components.

(C) Other costs the department determines should be included.

(c) Qualifying alternative fuel vehicle costs do not include:

(A) Interest and warranty charges;

(B) Litigation or other operational-related legal fees and court costs;

(C) Intellectual property search, application and filing payments;

(D) Donated, in-kind or volunteer labor and materials;

(E) Administrative costs to apply for grants, loans, tax credits or other similar funding for an alternative fuel vehicle project including, but not limited to the tax credit review charge, costs associated with the creation and development of the certified public accountant attestation letter and costs associated with securing a pass-through partner for the project;

(F) Routine operational, routine maintenance and repair costs associated with the alternative fuel vehicle project;

(G) Expenses that are deemed not to have a benefit to the alternative fuel vehicle project, including but not limited to, fines, penalties, entertainment, food, alcohol, gifts and lobbying;

(H) Any portion of the cost for an alternative fuel vehicle project that has previously received a tax credit or grant under ORS chapters 469 or 469B; and

(J) Other costs the department determines should be excluded.

(d) The department may do inspections to verify information reported on the preliminary certification application.

(e) An applicant may incur qualifying costs prior to the submission of an application, but may not begin installation or construction.

(5) If an application does not include all information needed to complete the technical review, the department may notify the applicant in writing, requesting additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice, the department may deny the application.

(6) The department will notify the applicant in writing if the department denies the application during the technical review.

(7) If the department denies the application or reduces the tax credit during the technical review, the applicant may request reconsideration in writing within 60 days from the date of denial or reduction.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0080

### Preliminary Certification

(1) The department may issue a preliminary certificate if it determines that the alternative fuel vehicle project is technically feasible and capable of operating in accordance with the representations made by the applicant.

(2) The department may issue a tax credit that is less than the amount requested in the alternative fuel vehicle project application, pursuant to statute and applicable rules.

(3) The sum of any incentives, grants, credits, and the alternative fuel vehicle project incentive may not exceed total project costs.

(4) The preliminary certificate will state the qualifying cost, the potential amount of allowable tax credit and may include any conditions for claiming the credit. The applicant has 60 days from the issue date of the preliminary certificate to return the signed conditions of preliminary certification. Failure to return the signed conditions of preliminary certification within the specified time period may result in revocation of the preliminary certificate.

(5) The applicant must report on the project's status beginning one year from the issuing date of the preliminary certificate, unless the department has already received the project's application for final certification. The applicant must continue to submit project progress reports to the department every six months after the initial report until the department receives the project's application for final certificate. Failure to submit reports may result in revocation of the preliminary certification or denial of the final certification.

(6) A preliminary certification remains valid for a period of three calendar years after the date the department issues the preliminary certification or until the sunset of the program, whichever comes first.

(7) The department may revise a preliminary certificate to comply with statute, rule and the Opportunity Announcement or to correct clerical errors.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347

Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347

Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0090

### Amendments to Preliminary Certifications

(1) Amendments are documentation of changes to the project described in the application for preliminary certification.

(2) An applicant must submit requests for amendments prior to issuance of the final certification.

(3) Failure of an applicant to submit documentation to the department of changes to the project may result in denial of final tax credit certification.

(4) Changes to the project must be documented by the applicant. The applicant must submit an amendment request on the form specified in the Opportunity Announcement along with the required amendment fee, except that:

(a) Equipment substitutions that do not reduce the project's capabilities, do not reduce the project's capacity and are within five percent of the stated fuel displacement may be documented in the project's status report, the final certification application form, an amendment request form or by notifying the department in writing. These changes do not require an amendment fee. The department may require the applicant to demonstrate that the change does not reduce the project's capabilities, does not reduce the project's capacity and is within five percent of the stated fuel displacement.

(b) A change of responsible party information may be documented by notifying the department in writing. These changes do not require an amendment fee.

(5) Undeclared changes found in the application for final certification or through later inspection must be documented by the applicant by submitting an amendment request on the form specified in the Opportunity Announcement with the required amendment fee. Undeclared changes that result in no reduction to the project's capabilities, no reduction to the project's capacity and are within five percent of the stated fuel displacement may be documented by the department through an inspection report or final review and do not require an amendment fee.

(6) When documenting a change, the applicant must demonstrate that the alternative fuel vehicle project, with the proposed change, will continue to meet the requirements of statute, rule and the Opportunity Announcement; be technically feasible; will operate as represented and would remain in operation for at least five years. The applicant has the responsibility to provide an amendment request with complete technical

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documentation supporting the proposed amendment. The department may deny amendments submitted without such justification.

(7) An amendment may result in a reduction in tax credit, but may not increase the tax credit amount certified in the preliminary certificate.

(8) If an amendment request does not include all information needed to complete the review, the department may provide the applicant a written request for additional information. If the applicant does not provide the requested information to the department within 30 calendar days of the date of the department's written request, the department may deny the amendment request to amend the preliminary certification.

(9) Requests for amendments must include payment of the appropriate fee, unless provided otherwise in this rule.

(10) The department will decide whether to approve the request.

(a) If the amendment request is approved prior to submission of the application for final certification, the department will draft an amended preliminary certification, which may contain new or amended conditions and requirements.

(b) If the amendment request is approved after submission of application for final certification, the department will notify the applicant in writing. The amendment may result in a reduction in tax credit and inclusion of conditions in the final certificate.

(c) If the amendment request is denied, the department will notify the applicant in writing. The notice will include the reasons for the denial of the amendment request. The amendment fee will not be applied to future amendments.

(d) No later than 60 days after the department denies an amendment request or reduces the tax credit under this section, the applicant may request reconsideration in writing. The request for reconsideration will not extend other mandated timelines, such as the expiration date of the preliminary certificate.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347  
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347  
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0100

### Final Certification

(1) An alternative fuel vehicle project must be completed and operating prior to applying for a final certification. An applicant must submit a request for an amendment prior to issuance of the final certification.

(2) The department will not review applications for final certification received after the expiration of the preliminary certification or without the final review fee. A preliminary certification remains valid for a period of three calendar years after the date the department issues the original preliminary certification or until the sunset of the program, whichever comes first.

(3) The applicant must submit the application on the current department-issued form and all sections must be completed.

(4) The department will review the application, and may conduct an inspection, to verify:

(a) That the alternative fuel vehicle project is complete and operating.

(b) Compliance with statute, rules and the preliminary certification.

(c) Compliance with state and local regulations, including required licenses and permits.

(d) The lease or rental agreement if the infrastructure is leased or rented.

(e) That applicable fuel taxes and property taxes for the project location are current.

(f) That the alternative fuel vehicle project will be maintained and operated for at least five years by the project owner.

(g) The total project costs for acquisition of the project were paid in full.

(A) A certified public accountant must attest to the total project cost, or if the total project cost is less than \$50,000, the applicant must submit copies of receipts for the project.

(i) The certified public accountant cannot be the project owner, nor permanently employed by the project owner or pass-through partner.

(ii) Receipts for proof of payment may include canceled checks, credit card statements, binding contracts and agreements.

(B) The application must demonstrate that contract and loan agreements directly related to the project are not in default.

(C) The application must include information regarding all incentives, regardless of source, applied for or received in connection with the project.

(D) For a capital lease, applicant must submit a copy of the lease and demonstrate that lease payments directly related to the project are not in default.

(E) Applicants must provide itemized documentation of the installed alternative fuel vehicle project. A detailed invoice or the public accountant's attestation may be sufficient documentation.

(h) Other information the director considers necessary.

(5) If an application for final certification does not include all information needed to complete the final certification review, the department may ask the applicant, in writing, to submit additional information. If the department does not receive the requested information within 30 calendar days of the date of the notice requesting additional information, the department may deny the application for final certification.

(6) Applicants may not receive multiple tax credit certifications from the department for the same transportation project.

(7) The department will notify the applicant, in writing, if the department denies the application during final review. An applicant may submit a written request for reconsideration within 60 days after the department issues a decision on a final certification.

(8) The department will issue a final certification upon verification that the alternative fuel vehicle project is complete and that the project complies with statute, rules, the preliminary certification and any other applicable requirements.

(a) The department may issue a credit up to 35 percent of the certified cost. The department may certify a lesser tax credit amount than approved in the preliminary certificate, but may not certify a greater amount.

(b) The sum of any incentives, grants, credits or other public funds and the tax credit may not exceed total project costs.

(9) The department will send a written notification to applicants of its decision whether to issue a final certification within 60 days from the department receives a complete application for final certification. If more than 60 days pass from the date the department receives a complete application and the applicant has not received a written decision from the department, then the application is rejected and no further action will be taken. Any time required to provide additional information as provided in OAR 330-220-0100(5) is not included in this 60 day period.

(10) For purposes of administering the sunset of the alternative fuel vehicle transportation tax credit program under Oregon Laws 2011, chapter 730, section 54:

(a) The department must receive a complete application for final certification prior to the end of the 2017 tax year of the applicant.

(b) For applicants who choose to use the pass-through or transfer process, the entity purchasing the credit must pay for the tax credit prior to the end of its 2017 tax year.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347  
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347  
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

## 330-220-0150

### Compliance and Pass-through

(1) All participants in this program are subject to OAR 330-230-0000 through 330-230-0150.

(2) The department may periodically inspect alternative fuel vehicle projects and related documents during the five-year term of the tax credit.

(3) If any alternative fuel vehicles that are part of a project receiving the tax credit are no longer in operation by applicant because they were sold, repossessed, destroyed or otherwise no longer in the applicant's fleet, the applicant must notify the department within 30 days of the date that the vehicle was removed from the project owner's fleet. This may cause the department to take action under ORS 469B.341.

Stat. Auth.: ORS 469.040, 469B.326, 469B.332, 469B.347  
Stats. Implemented: ORS 315.336 & 469B.320 - 469B.347  
Hist.: DOE 2-2012(Temp), f. & cert. ef. 2-7-12 thru 8-3-12; DOE 9-2012, f. 7-31-12, cert. ef. 8-1-12; DOE 7-2014, f. 10-10-14, cert. ef. 1-1-15; DOE 1-2017, f. & cert. ef. 1-25-17

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**Rule Caption:** Amending SELP program to allow greater sharing of bond refunding savings with borrowers.

**Adm. Order No.:** DOE 2-2017(Temp)

**Filed with Sec. of State:** 1-25-2017

**Certified to be Effective:** 1-25-17 thru 7-23-17

**Notice Publication Date:**

**Rules Amended:** 330-110-0042

**Subject:** The Oregon Department of Energy's Small Scale Energy Loan Program (SELP) has an opportunity to achieve significant savings by refunding selected outstanding bonds. Under the current rule, savings achieved from a refunding transaction must be divided evenly between the department and the borrower. The rule did not contemplate circumstances under which the borrower would be asked

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to make concessions and take actions that would not be required absent the transaction. The department is asking borrowers to execute tax documents and make certain financial concessions. The temporary rule amendment would allow the department to share the bond refunding savings in excess of one-half with a borrower, if the department determined that circumstances exist under which sharing bond refunding savings in excess of one-half with a borrower was appropriate.

**Rules Coordinator:** Elizabeth Ross—(503) 378-8534

## 330-110-0042

### Bond Refunding

(1) The Department must pursue opportunities to refund bonds to reduce interest sums paid by the Department.

(a) When the Department refunds a bond with tax-exempt bonds, the Department must share, on an equitable basis, the savings from any refunding with the affected borrowers in an amount consistent with a finding by the Director that the sinking fund has, and will continue to have, sufficient funds to make payments required under ORS 470.300(1). Affected borrowers are those whose loans were made with the proceeds of the refunded bonds.

(b) For the purposes of OAR 330-110-0042(1), savings from a refunding are shared on an equitable basis if the Department receives half the savings, and the affected borrowers receive or split half the savings, net of costs, from a bond refunding. If, however, the Department determines that circumstances exist under which it is not equitable for the borrower to receive half of the savings from a refunding, the Department may prescribe a different proportionate split of the savings at its discretion. When the Internal Revenue Code or other law limits the amount of refunding savings the Department may retain or provide to the affected borrowers, the Department may receive less or more than half the savings, and the affected borrowers will receive the remainder. If multiple loans were funded from the proceeds of the refunded bonds, the affected borrowers will share the savings in proportion with their respective shares of the proceeds of the refunded bonds that were used to make their loans, adjusted for the remaining term to maturity of their loans.

(2) Savings from a bond refunding accrue over the remaining term of the refunded bonds. The Department will share these savings with affected borrowers by reducing the amount of their loan payments over the remaining term of the loans. If the accumulated savings over the remaining term of a loan is less than \$15,000 or if the Director finds that it is in the interest of both the Department and the borrowers, the Department may reduce the principal amount of the loan by the net present value of the savings, calculated using a discount rate of the maximum arbitrage yield of the refunding bonds as defined in Section 148 of the Internal Revenue Code.

(3) The Department must not refund tax-exempt bonds with taxable bonds, unless the Department is able to share the savings associated with such a refunding with the borrowers whose loans are linked to such bonds.

(4) At least 120 days before the date on which the Department intends to issue refunding bonds, the Department must notify each borrower whose loan was made from the proceeds of the bonds being refunded and must offer the borrower the opportunity to prepay the borrower's loan. The Department will request that the borrower notify the Department of its intent to prepay their loan within 60 days of the date of the notification or risk losing the opportunity to prepay.

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

Stat. Auth.: ORS 469 & 470.140

Stats. Implemented: ORS 470.270

Hist.: DOE 2-1998, f. & cert. ef. 9-30-98; DOE 7-2004, f. & cert. ef. 12-20-04; DOE 1-2006, f. & cert. ef. 4-3-06; DOE 13-2012, f. & cert. ef. 12-20-12; DOE 2-2017(Temp), f. & cert. ef. 1-25-17 thru 7-23-17

## Department of Environmental Quality Chapter 340

**Rule Caption:** Increase Title V Permit Fees by the Consumer Price Index: Phase 2

**Adm. Order No.:** DEQ 1-2017

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 1-19-17

**Notice Publication Date:** 2-1-2016

**Rules Amended:** 340-220-0030, 340-220-0040, 340-220-0050

**Subject:** The Oregon Environmental Quality Commission adopted rules to increase Title V operating permit fees by the change in the consumer price index (CPI) as state and federal law authorize. The

fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V permitting program.

Phase one: EQC adopted the phase one rules at the commission's meeting in June 2016. The adopted fee increase effective for the 2016 invoice year was 0.45 percent based on the Bureau of Labor Statistics September 2015 consumer price index for the period of Sept. 2014 to Aug. 2015. DEQ applied this CPI increase to permit fees on the invoices DEQ issued in Aug. 2016 for annual emissions during 2015 and the operating period Nov. 15, 2016 to Nov. 14, 2017.

Phase two: EQC adopted the phase two rules at a commission meeting in Jan. 2017. The proposed fee increase effective for the 2017 invoice year is 0.80 percent based on the Bureau of Labor Statistics September 2016 consumer price index for the period Sept. 2015 to Aug. 2016. DEQ will apply this CPI increase to permit fees on the invoices DEQ will issue in Aug. 2017 for annual emissions during 2016 and the operating period Nov. 15, 2017 to Nov. 14, 2018.

**Rules Coordinator:** Meyer Goldstein—(503) 229-6478

## 340-220-0030

### Annual Base Fee

(1) DEQ will assess an annual base fee of \$7,946 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2016 to November 14, 2017, and for each annual period thereafter.

(2) DEQ will assess an annual base fee of \$8,010 for each source subject to the Oregon Title V Operating Permit program for the period of November 15, 2017 to November 14, 2018, and for each annual period thereafter.

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2580; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15; DEQ 7-2016, f. & cert. ef. 6-9-16; DEQ 1-2017, f. & cert. ef. 1-19-17

## 340-220-0040

### Emission Fee

(1) DEQ will assess an emission fee of \$60.08 per ton of each regulated pollutant emitted during calendar year 2015 and for each year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(2) DEQ will assess an emission fee of \$60.56 per ton of each regulated pollutant emitted during calendar year 2016 and for each calendar year thereafter to each source subject to the Oregon Title V Operating Permit Program.

(3) The emission fee will be applied to emissions based on the elections made according to OAR 340-220-0090.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 7-1996, f. & cert. ef. 5-31-96; DEQ 9-1997, f. & cert. ef. 5-9-97; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2590; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 7-2001, f. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; Administrative correction 3-18-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15; DEQ 7-2016, f. & cert. ef. 6-9-16; DEQ 1-2017, f. & cert. ef. 1-19-17

## 340-220-0050

### Specific Activity Fees

(1) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source for the period of June 15, 2016 to January 19, 2017 as follows:

(a) Existing source permit revisions:

(A) Administrative\* — \$484;

(B) Simple — \$1,938;

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- (C) Moderate — \$14,536;
- (D) Complex — \$29,072.
- (b) Ambient air monitoring review — \$3,876.
- (2) DEQ will assess specific activity fees for an Oregon Title V Operating Permit program source as of January 20, 2017 as follows:

(a) Existing source permit revisions:

- (A) Administrative\* — \$488;
- (B) Simple — \$1,953;
- (C) Moderate — \$14,653;
- (D) Complex — \$29,306;
- (b) Ambient air monitoring review — \$3,907.

**NOTE:** \*Includes revisions specified in OAR 340-218-0150(1)(a) through (g). Other revisions specified in OAR 340-218-0150 are subject to simple, moderate or complex revision fees.

(3) DEQ will assess the following specific activity fee for an Oregon Title V Operating Permit program source for annual greenhouse gas reporting, as required by OAR 340-215-0060(1) — 15 percent of the following, not to exceed \$4,500:

(a) The applicable annual base fee (for the period of November 15 of the current year to November 14 of the following year); and

(b) The applicable annual emission fee (for emissions during the previous calendar year).

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468 & 468A

Hist.: DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 12-1998, f. & cert. ef. 6-30-98; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2600; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 6-2001, f. & cert. ef. 7-1-01; DEQ 7-2001, f. & cert. ef. 6-28-01, cert. ef. 7-1-01; DEQ 11-2003, f. & cert. ef. 7-23-03; DEQ 6-2004, f. & cert. ef. 7-29-04; DEQ 6-2005, f. & cert. ef. 7-11-05; DEQ 7-2006, f. & cert. ef. 6-30-06; DEQ 6-2007(Temp), f. & cert. ef. 8-17-07 thru 2-12-08; Administrative correction 2-22-08; DEQ 10-2008, f. & cert. ef. 8-25-08; DEQ 4-2009(Temp), f. & cert. ef. 8-27-09 thru 2-20-10; DEQ 9-2009(Temp), f. & cert. ef. 12-24-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; DEQ 12-2010, f. & cert. ef. 10-27-10; DEQ 16-2010, f. & cert. ef. 12-20-10; DEQ 11-2011, f. & cert. ef. 7-21-11; DEQ 12-2011, f. & cert. ef. 7-21-11; DEQ 5-2012, f. & cert. ef. 7-2-12; DEQ 9-2012, f. & cert. ef. 12-11-12; DEQ 10-2014, f. & cert. ef. 9-4-14; DEQ 2-2015, f. & cert. ef. 1-7-15; DEQ 7-2016, f. & cert. ef. 6-9-16; DEQ 1-2017, f. & cert. ef. 1-19-17

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**Rule Caption:** Updated Oakridge-Westfir PM2.5 Attainment Plan  
**Adm. Order No.:** DEQ 2-2017

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 1-19-17

**Notice Publication Date:** 10-1-2016

**Rules Amended:** 340-200-0040

**Subject:** The Lane Regional Air Protection Agency proposed, and the Oregon Environmental Quality Commission approved, the Updated Oakridge-Westfir PM2.5 Attainment Plan for incorporation into the Oregon Clean Air Act State Implementation Plan (SIP). The plan is also submitted to the U. S. Environmental Protection Agency (EPA) for its approval under the federal Clean Air Act (CAA).

This rulemaking adopts the supplement to the 2012 Attainment Plan which did not meet the CAA deadline of December 2015. In December 2015, Oakridge-LRAPA-DEQ requested a one-year deadline extension to December 2016 consistent with CAA criteria. EPA approved the extension in July 2016. The proposed Updated Oakridge-Westfir PM2.5 Attainment Plan will reduce fine particulate (PM2.5) pollution and protect the health of the residents in the Oakridge area. The plan and associated rules were designed to bring this area into compliance with National Ambient Air Quality Standards for PM2.5 by the extended federal deadline of December 2016.

**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 Jan. 18, 2017.

(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. & ef. 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. & cert. ef. 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. & cert. ef. 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. & 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. & cert. ef. 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. & cert. ef. 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. & cert. ef. 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. & cert. ef. 3-15-11; DEQ 5-2011, f. & cert. ef. 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; DEQ 2-2017, f. & cert. ef. 1-19-17

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**Rule Caption:** SB 263 Materials Management - Opportunity to Recycle

**Adm. Order No.:** DEQ 3-2017

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 1-19-17

**Notice Publication Date:** 11-1-2016

**Rules Adopted:** 340-090-0041, 340-090-0042, 340-090-0068

**Rules Amended:** 340-090-0005, 340-090-0010, 340-090-0015, 340-090-0020, 340-090-0030, 340-090-0040, 340-090-0050, 340-090-0060, 340-090-0070, 340-090-0080, 340-090-0090, 340-090-0100, 340-090-0110, 340-090-0120, 340-090-0130, 340-090-0140, 340-090-0150, 340-090-0180, 340-090-0190, 340-090-0310, 340-090-0320, 340-090-0330, 340-090-0340, 340-090-0350, 340-090-0360, 340-090-0370, 340-090-0380, 340-090-0390, 340-090-0400, 340-090-0410, 340-090-0420, 340-090-0430, 340-090-0510



# ADMINISTRATIVE RULES

## Rules Repealed: 340-090-0045

**Subject:** The Oregon Legislature adopted SB 263 in 2015. The proposed rule amendments and adoptions conform existing recycling and waste prevention and reduction rules to comply with that legislation. The proposed rules would:

- Revise wastesheds' recovery goals and clarify those are now voluntary and not enforceable by DEQ;
- Describe DEQ's methodology for measuring progress towards SB 263's new statewide food waste, plastic, and carpet recovery goals;
- Add SB 263's four new recycling program elements, increasing to thirteen the options available to local governments;
- Amend the expanded education and promotion program element to include a contamination reduction education plan. The plan would require local governments that use this element to also determine contamination levels in collected recyclables and take educational action to reduce contamination.
- Update minimum numbers of recycling program elements required for certain cities. For each city with a minimum number of recycling program elements, the county administered area between the city's limits and urban growth boundary, or within Metro, the area outside the city's limits but within Metro, would also need a recycling program with the city's minimum number of elements.
- Add SB 263's seven new waste prevention education and reuse program elements and require program element minimums ranging from three to five elements;
- Remove DEQ rules' references to the discontinued Two Percent Recovery Rate Credit programs ("Two Percent Credit Programs");
- Revise rules allowing local governments to implement alternative programs to meet their minimum recycling requirements and, where applicable, waste prevention and reuse program requirements. The proposed rules would allow a local government using a DEQ-approved alternative program the adaptability of meeting either the lesser of its recovery goal or recovery levels comparable to similar communities.
- "Clean up" OAR 340-90 to make Division 90 consistent with the SB 263-based proposed rules

**Rules Coordinator:** Meyer Goldstein—(503) 229-6478

## 340-090-0005

### Purpose

These rules establish the minimum requirements for providing the opportunity to recycle. These rules also describe the standards for waste prevention, reuse, recovery, and recycling programs in Oregon. The rules are adopted under the authority of ORS 459.045, 459A.025 and 468.020. These rules relate to the requirements of ORS 459.015, 459.250, 468.862 and Chapter 459A.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.005, 459A.010, 459A.025 & 459A.575

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0005; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0010

### Definitions

The definitions in this rule apply to OAR Chapter 340, Divisions 90 and 91. As used in these Divisions 90 and 91 unless otherwise specified:

- (1) "Affected person" means a person or entity involved in the solid waste collection service process including but not limited to a recycling collection service, disposal site permittee or owner, city, county and metropolitan service district. For the purposes of these rules "affected person" also means a person involved in operation of a place to which persons not residing on or occupying the property may deliver source separated recyclable material.
- (2) "Collection service" means a service that provides for collection of solid waste or recyclable material or both, but does not include that part of a business operated under a certificate issued under ORS 822.110. "Collection service" of recyclable materials does not include a place to which persons not residing on or occupying the property may deliver source separated recyclable material.
- (3) "Collection service customers" includes: residential and commercial customers of a collection service as defined in ORS 459.005, and also, as of July 1, 2022, the multi-family residential and commercial tenants of

landlords or property managers that are customers of a collection service for the benefit of their tenants.

(4) "Collector" means the person who provides collection service.

(5) "Commercial" means stores, offices including but not limited to manufacturing and industry offices, restaurants, warehouses, schools, colleges, universities, hospitals, prisons, and other institutions and non-manufacturing entities. "Commercial" does not include manufacturing activities or business, manufacturing, or processing activities in residential dwellings.

(6) "Composting" means the managed process of controlled biological decomposition of organic or mixed solid waste. It does not include composting for the purposes of soil remediation. Compost is the product resulting from the composting process. "Composting" includes both aerobic composting and anaerobic digestion.

(7) "Consumer of newsprint" means a person who uses newsprint in a commercial or government printing or publishing operation.

(8) "DEQ" means the Department of Environmental Quality.

(9) "Depot" means a place for receiving source separated recyclable material.

(10) "Director" means the Director of the Department of Environmental Quality.

(11) "Disposal site" means land and facilities used for the disposal, handling or transfer of or energy recovery, material recovery, and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site; but the term does not include a facility authorized by a permit issued under ORS 466.005 to 466.385 to store, treat or dispose of both a hazardous waste and solid waste; a facility subject to the permit requirements of ORS 468B.050; a site which is used by the owner or person in control of the premises to dispose of soil, rock, concrete or other similar nondecomposable material, unless the site is used by the public either directly or through a collection service; or a site operated by a wrecker issued a certificate under ORS 822.110.

(12) "Energy intensive materials" means metals, paper, plastic, and food, including products that are primarily made of metals, paper, or plastic, such as some furniture, small and large appliances, and consumer electronics.

(13) "Energy recovery" means recovery in which all or a part of the solid waste materials are processed to use the heat content, or other forms of energy, of or from the material.

(14) "EQC" means the Environmental Quality Commission.

(15) "Food rescue" means the practice of safely retrieving wholesome food still fit for human consumption that would otherwise be left unharvested or go to animal feed or a composting facility, anaerobic digestion facility, energy recovery facility, or other disposal site and redistributing that food through a food assistance program.

(16) "Food waste" means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, and similar materials that results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. "Food waste" includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. "Food waste" does not include dead animals not intended for human consumption or animal excrement.

(17) "Franchise" includes a franchise, certificate, contract or license issued by a local government unit authorizing a person to provide solid waste management services.

(18) "Generator" means a person who last uses a material and makes it available for disposal or recycling.

(19) "Glass container manufacturer" means a person that manufactures new glass containers in Oregon or that manufactures new glass containers outside Oregon sold by the manufacturer to packagers located in Oregon.

(20) "Industrial waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under ORS Chapters 465 and 466. Such waste may include, but is not limited to, waste resulting from the following processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile

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manufacturing; transportation equipment; water treatment; and timber products manufacturing. This term does not include construction/demolition waste; or municipal solid waste from manufacturing or industrial facilities such as office or “lunch room” waste, or packaging material for products delivered to the generator.

(21) “Infrastructure support” means in-kind contributions in support of reuse, repair, leasing or sharing of efforts to reduce waste, such as: local government staff time; franchisee staff time; space at facilities owned, permitted, or franchised by a local government; space for meetings, storage, or display of materials; equipment; access to land; and access to vehicles.

(22) “Land disposal site” means a disposal site in which the method of disposing of solid waste is by landfill, dump, pit, pond, lagoon or land application.

(23) “Local government” means a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, tribal reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste.

(24) “Local government unit” means the territory of a political subdivision that regulates either solid waste collection, disposal, or both, including but not limited to incorporated cities, municipalities, townships, counties, parishes, regional associations of cities and counties, tribal reservations, and metropolitan service districts, but not including sewer districts, fire districts, or other political subdivisions that do not regulate solid waste. If a county regulates solid waste collection within unincorporated areas of the county but not within one or more incorporated cities or municipalities, then the county local government unit must be considered as only those areas where the county directly regulates solid waste collection.

(25) “Material recovery” means any process of obtaining from solid waste, by presegregation or otherwise, materials that still have useful physical or chemical properties and can be reused, recycled or composted for some purpose.

(26) “Metropolitan service district” means a district organized under ORS Chapter 268 and exercising solid waste authority granted to such district under ORS Chapters 268, 459, and 459A.

(27) “Multi-family” means dwellings of five or more units.

(28) “Newsprint” means paper meeting the specifications for Standard Newsprint Paper and Roto Newsprint Paper as set forth in the 2016 HTSA Supplement edition of the Harmonized Tariff Schedule of the United States for such products. (See Figure 1.)

(29) “On-route collection” means pick up of source separated recyclable material from the generator at the place of generation.

(30) “On-site collection” has the same meaning as on-route collection.

(31) “Opportunity to recycle” means those activities described in OAR 340-090-0020, 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, 340-090-0050 and 340-090-0080.

(32) “Permit” means a document issued by DEQ bearing the signature of the director or the director’s authorized representative and that by its conditions may authorize the permittee to construct, install, modify, operate or close a disposal site in accordance with specified limitations.

(33) “Person” means the United States, the state or a public or private corporation, local government unit, public agency, individual, partnership, association, firm, trust, estate or other legal entity.

(34) “Post-consumer waste” means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item. Post-consumer waste does not include manufacturing waste.

(35) “Principal recyclable material” means material that is a recyclable material at some place where the opportunity to recycle is required in a watershed and is identified by the EQC in OAR 340-090-0070.

(36) “Recyclable material” means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

(37) “Recycled-content newsprint” means newsprint that includes post-consumer waste paper.

(38) “Recycling” means any process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(39) “Recycling setout” means any amount of source-separated recyclable material set out at or near a residential dwelling for collection by the recycling collection service provider.

(40) “Residential” means single family dwellings and multi-family dwellings having four or fewer units.

(41) “Reuse” means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(42) “Solid waste” means all useless or discarded putrescible and nonputrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials; discarded or abandoned vehicles or parts thereof; discarded home and industrial appliances; manure, vegetable or animal solid and semisolid materials, dead animals and infectious waste as defined in ORS 459.386. “Solid waste” does not include:

(a) Hazardous wastes as defined in ORS 466.005;

(b) Materials used for fertilizer, soil conditioning, humus restoration, or for other productive purposes or which are salvageable for these purposes and are used on land in agricultural operations and growing or harvesting crops and raising fowls or animals, provided the materials are used at or below agronomic application rates.

(43) “Solid waste management” means: preventing or reducing solid waste; managing the storage, collection, transportation, treatment, utilization, processing and final disposal of solid waste, recycling, reuse and material or energy recovery from solid waste; and facilities necessary or convenient to such activities.

(44) “Source separate” means that the person who last uses recyclable material separates the recyclable material from solid waste.

(45) “Technical assistance” means assistance in support of reuse, repair, leasing or sharing provided to businesses or non-profit staff or programs, such as: program design and implementation; publicizing and promoting opportunities through channels such as directories of reuse and repair operations; research to support technical assistance efforts; and expending funds to hire specialists or contractors who provide information and advice in topics such as business planning, operations, facility design, market research, and marketing.

(46) “Toxic materials” means products or other materials that contain chemicals or groups of chemicals on DEQ’s Toxics Focus List or that DEQ otherwise designates as “toxic.”

(47) “Urbanized area” means, for jurisdictions within the State of Oregon, the territory within the urban growth boundary of each city of 4,000 or more population, or within the urban growth boundary established by a metropolitan service district. For jurisdictions outside the State of Oregon, “urbanized area” means a geographic area with substantially the same character, with respect to minimum population density and commercial and industrial density, as urbanized areas within the State of Oregon.

(48) “Waste prevention” means reducing the amount of solid waste generated or resources used, without increasing toxicity, in the design, manufacture, purchase or use of products or packaging. “Waste prevention” does not include reuse, recycling or composting.

(49) “Waste prevention campaign” means an organized effort intended to change one or more specific behaviors or practices that reduces the amount of solid waste generated or resource used without increasing toxicity in the design, manufacture, purchase, or use of products or packaging. A food rescue program is not a waste prevention campaign for the purpose of complying with sections OAR 340-090-0042(3) or (4).

(50) “Wasteshed” means the areas of the state of Oregon as defined in ORS 459A.010 and OAR 340-090-0050.

(51) “Yard debris” means vegetative and woody material generated from residential property or from commercial landscaping activities. This includes grass clippings, leaves, hedge trimmings and similar vegetative waste but does not include stumps or similar bulky wood materials.

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

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.005 & 459A

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0010; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0015

### Scope and Applicability

(1) OAR chapter 340, division 90 describes the requirements for waste reduction and recycling programs for residential and commercial solid wastes.

(2) The requirements in OAR chapter 340, division 90 apply to local governments generally and where specified to landfill owners/operators, solid waste collection services, and other persons.

(3) OAR chapter 340, division 90 is adopted under the authorities in ORS Chapter 459 and 459A and should be used in conjunction with the laws of the State of Oregon.

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Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.005, 459A.010, 459A.020, 459A.025, 459A.030, 459A.035, 459A.040, 459A.050, 459A.055, 459A.060, 459A.065, 459A.070, 459A.075, 459A.080, 459A.085, 459A.100, 459A.110, 459A.115 & 459A.120  
Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0020

### Opportunity to Recycle

The opportunity to recycle as set forth in ORS 459A.005, 459A.007, 459A.008 and 459A.010, includes at a minimum the requirements described in OAR 340-090-0030, 340-090-0040, 340-090-0041, 340-090-0042, and 340-090-0050. The appropriate city, county, or metropolitan service district, may request approval of an alternative program for meeting the requirements of the opportunity to recycle under OAR 340-090-0080.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.005  
Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0020; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0030

### General Requirements

(1) The city, county, or metropolitan service district responsible for solid waste management must insure that a place for collecting source separated recyclable materials is located at each permitted disposal site or located at an alternative location in the jurisdiction that is more convenient to the population being served.

(2) Each city with a population of 4,000 or more or, where applicable, within the urban growth boundary established by a metropolitan service district, must provide on-route collection service for source-separated recyclable materials at least once a month for all collection service customers within the city limits and the county must provide that service to the collection service customers within the urban growth boundary but outside of the city limits.

(3) The city or county responsible for solid waste management must carry out a public education and promotion program that meets the following minimum requirements:

(a) An initial written or more effective notice or combination of both that is reasonably designed to reach each residential and commercial generator of recyclable materials, and that clearly explains why people should recycle, the recycling opportunities available to the recipient, the materials that can be recycled and the proper preparation of those materials for recycling. The notice must include the following specific information:

(A) Reasons why people should recycle; and

(B) Name, address and telephone number of the person providing on-route collection where applicable; and

(C) Listing of depots for recyclable materials at all disposal sites serving the area and any alternative DEQ-approved more convenient locations, including the materials accepted and hours of operation; or

(D) Instead of paragraphs (B) and (C) of this subsection a telephone number to call for information about depot locations and collection service as appropriate.

(b) Existing residential and commercial collection service customers must be provided information, at least semi-annually, through a written or more effective notice or combination of both, listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why source separation of materials for recycling is necessary;

(c) Written information to be distributed to disposal site users at all disposal sites or, alternatively, more convenient locations with attendants and where it is otherwise practical. The written information must include the following:

(A) Reasons why people should recycle; and

(B) List of materials that can be recycled; and

(C) Instruction for the proper preparation of recyclable materials.

(d) At sites without attendants, a sign indicating availability of recycling at the site or at the more convenient location must be prominently displayed that indicates materials accepted and hours of operation;

(e) Identify and establish a procedure for citizen involvement for the development and implementation of an education and promotion program;

(f) Notification and education materials provided to local media and other groups that maintain regular contact with commercial and residential generators and the public in general, including local newspapers, trade publications, local television and radio stations, community groups, and neighborhood associations;

(g) A person identified as the education and promotion representative for the appropriate jurisdiction to be the official contact to work with the

other affected persons in matters relating to education and promotion for recycling.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.005 & 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0020 & 340-060-0040; DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0040

### Local Government Recycling Program Elements

(1) In addition to the minimum requirements in OAR 340-090-0030 and 340-090-0042, each city with a population of 4,000 or more and any county responsible for the area between the city limits and the urban growth boundary of that city, or the area outside the city limits but within a metropolitan service district, must implement recycling program elements from section (3) of this rule based on the following requirements:

(a) For cities within a metropolitan service district:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least four additional elements set forth under section (3) of this rule;

(B) At least eight recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(b) For cities with a population of at least 4,000 but not more than 10,000 that are located 120 miles or less from the City of Portland:

(A) At least four recycling program elements set forth under section (3) of this rule; or

(B) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(c) For cities with a population of at least 4,000 but not more than 10,000 that are more than 120 miles from the City of Portland:

(A) At least three recycling program elements set forth under section (3) of this rule; or

(B) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(d) For cities with a population of more than 10,000 but not more than 50,000 that are located 150 miles or less from the City of Portland:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least two additional elements set forth under section (3) of this rule;

(B) At least six recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(e) For cities with a population of more than 10,000 that are located more than 150 miles from the City of Portland:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least one additional element set forth under section (3) of this rule;

(B) At least five recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(f) For cities with a population of more than 50,000 that are located 150 miles or less from the City of Portland:

(A) The three recycling program elements set forth under subsections (3)(a), (b) and (c) of this rule and at least three additional recycling program elements set forth under section (3) of this rule;

(B) At least seven recycling program elements set forth under section (3) of this rule; or

(C) An alternative program approved by DEQ that meets the requirements of OAR 340-090-0080.

(g) A local government that is not subject to ORS 459.007(6) or (7) or OAR 340-090-0042 may substitute for one recycling program element set forth under section (3) of this rule:

(A) The waste prevention and reuse program element set forth under OAR 340-090-0042(2); and

(B) At least two additional waste prevention and reuse program elements set forth under OAR 340-090-0042.

(2)(a) For determining a city's distance in miles from the City of Portland under section (1) of this rule, DEQ must use the current mileage table or comparable current mileage statistics from the Oregon Department of Transportation.

(b) The effective date of section (1) of this rule is January 1, 2018. Until that date, in addition to the minimum requirements in OAR 340-090-0030, each city with a population of 4,000 or more and any county respon-

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sible for the area between the city limits and the urban growth boundary of that city must implement additional recycling program requirements selected from section (3) of this rule in accordance with the following criteria:

(A) Each city with a population of at least 4,000 but not more than 10,000 that is not within a metropolitan service district and any county responsible for the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:

(i) Implement subsections (3)(a), (b), and (c) of this rule;

(ii) Select and implement at least three program elements listed in section (3) of this rule; or

(iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.

(B) Each city with a population of more than 10,000 or that is within a metropolitan service district and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city must implement one of the following, except where otherwise indicated:

(i) Implement subsections (3)(a), (b), and (c) of this rule and one additional element in section (3) of this rule;

(ii) Select and implement at least five program elements listed in section (3) of this rule; or

(iii) Implement an alternative program that is approved by DEQ under OAR 340-090-0080.

(3) Program elements:

(a) Deliver to each residential collection service customer at least one durable recycling container. For purposes of this program element, a durable container must be a rigid box or bucket with a volume of at least 12 gallons made of material that holds up under all weather conditions for at least five years and that the resident and the collector can easily handle;

(b) Provide on-route collection at least once each week of source separated recyclable materials, excluding yard debris, to residential collection service customers provided on the same day that solid waste is collected from each customer;

(c) Provide a recycling education and promotion program that is expanded from the minimum requirements described in OAR 340-090-0030(3), and supports the management of solid waste in the following priority order: first preventing the generation of waste, then reusing materials, then recycling materials, then composting materials, then recovering energy, and finally safely disposing of solid waste that cannot be prevented, reused, recycled, composted or used for energy recovery.

(A) Each local government's expanded program must satisfy the applicable requirements of ORS 459A.008 and OAR 340-090-0041 and:

(i) Must inform all solid waste generators of how to prevent waste and how to reuse, recycle and compost material;

(ii) Must inform all solid waste generators of the manner and benefits of preventing waste and how to reuse, recycle, and compost materials;

(iii) Must promote the use of recycling services;

(iv) Must determine the levels of contamination of materials set out for collection and take action to reduce contamination in collected recyclables; and

(v) Must target educational and promotional materials provided to commercial customers to meet the needs of various types of businesses and should include reasons to recycle, including economic benefits, common barriers to recycling and solutions, additional resources for commercial generators of solid waste, and other information designed to assist and encourage recycling efforts. These materials must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025.

(B) The expanded program must be provided in one of the two following ways:

(i) A "Specified Action" program, which must include at a minimum the following elements:

(I) All new residential and commercial collection service customers must each receive a packet of educational materials that contain information listing the materials collected, the schedule for collection, proper method of preparing materials for collection and an explanation of the reasons why customers should source separate materials for recycling;

(II) Existing residential and commercial collection service customers must be provided information identified in OAR 340-090-0040(3)(c)(B)(i)(I) at least four times a calendar year through a written notice or effective alternative to reach various solid waste generators, or combination of both;

(III) At least annually information regarding the benefits of recycling and the type and amount of materials recycled during the past year must be

provided directly to the collection service customer in written form and must include additional information including the procedure for preparing materials for collection;

(IV) Targeting of at least one community or media event per year to promote waste prevention, reuse, recycling and composting, although not every media event needs to promote all of those activities;

(V) Utilizing a variety of materials and media formats to disseminate the information in the expanded program in order to reach the maximum number of collection service customers and residential and commercial generators of solid waste; and

(VI) Development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041.

(ii) Development and implementation of an "Expanded Education and Promotion Plan." The Plan must:

(I) Include actions to effectively reach solid waste generators and all new and existing collection service customers;

(II) Include such actions as necessary to fulfill the intent of this subsection;

(III) Include a timetable for implementation, and the local government must implement that timetable;

(IV) Include development and implementation of a contamination reduction education plan that satisfies the requirements of OAR 340-090-0041; and

(V) Be submitted to DEQ;

(V)-(a) By February 28 of the first year that the Plan is to be in effect; or

(VI)-(b) Within 30 days of the beginning of the local government's fiscal year in which the Plan is first put into effect.

(d) Establish and implement a recycling collection program through local ordinance, contract or any other means enforceable by the appropriate city or county for each multi-family dwelling complex having five or more units. The collection program must meet the following requirements:

(A) Collect at least four principal recyclable materials or the number of materials required to be collected under the residential on-route collection program, whichever is less;

(B) Provide educational and promotional information directed toward the residents of multi-family dwelling units periodically as necessary to be effective in reaching new residents and reminding existing residents of the opportunity to recycle including the types of materials to be recycled and the method for properly preparing those materials.

(e) Establish and implement an effective residential yard debris program to collect and compost residential yard debris. The program must include the following elements:

(A) Promotion of home composting of yard debris through written material or some other effective media form that is directed at the residential generator of yard debris; and either

(B) At least monthly on-route collection of yard debris from residences for production of compost or other marketable products; or

(C) A system of residential yard debris collection depots, for producing compost or other marketable products, located such that there is at least one conveniently located depot, open to the public at least once a week, for every 25,000 population.

(f) Taking into account material generation rates, establish and implement regular, on-site collection of source-separated principal recyclable materials from commercial generators, taking into consideration how the generator could achieve 55 percent recovery from its solid waste stream by the year 2025. This program element does not apply to manufacturing, business or processing activities in residential dwellings or to the generation of industrial solid waste. At a minimum the commercial recycling program:

(A) Must be provided to commercial entities that employ 10 or more persons and occupy 1,000 square feet or more in a single location;

(B) Must include an education and promotion program that:

(i) Uses materials and messages specifically designed for commercial generators of solid waste; and

(ii) Informs all commercial generators of solid waste of the benefits of recycling, the recycling opportunities available to them and how to recycle; and

(iii) If the local government is providing the expanded education and promotion program element, includes any additional requirements needed to meet OAR 340-090-0040(3)(c); and

(iv) Includes information on the benefits of waste prevention to commercial generators.

(C) Must be conducted to effectively promote the commercial recycling program to commercial generators of solid waste;

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(D) Must encourage each commercial generator of solid waste to strive to achieve 55 percent recovery from its solid waste stream by the year 2025;

(E) Should provide other elements including but not limited to:

(i) Provision of waste assessments to businesses;

(ii) Provision of recycling receptacles to businesses at no or low cost;

(iii) Waste prevention and recycling recognition programs. Local governments are encouraged to involve local business organizations in publicly recognizing outstanding waste prevention and recycling efforts by commercial generators of solid waste. The recognition may include awards designed to provide additional incentives to increase waste prevention and recycling efforts.

(g) Establish depots for recycling collection of all principal recyclable materials listed in OAR 340-090-0070, and where feasible, additional materials, except that used oil need not be collected at the depot if another location within the local government unit will accept used oil for recycling. This program must provide at least one (1) recycling depot in addition to the depot(s), if any, required by OAR 340-090-0030(1). For any city with a population of 50,000 or more, the minimum number of additional depots must be equal to the city's population, divided by 25,000, and rounded down to the nearest whole number. The expanded depot program must include promotion or education that maximizes the use of the expanded depot program. The depots must operate as follows:

(A) Have regular and convenient hours for residential generators of solid waste; and

(B) Be open on at least one weekend day each week; and

(C) Be established in location(s) that are convenient for residential generators of solid waste to use.

(h) Establish collection rates for residential solid waste from single family residences and single residential units, in complexes of less than five units that encourage waste prevention, reuse and recycling. The rates must, at a minimum, include the following elements:

(A) At least one rate for a container that is 21 gallons or less in size and costs less than larger containers;

(B) Rates must be based on the average weight, as determined in paragraph (E) of this subsection, of solid waste disposed per container for various sizes of containers;

(C) Rates, as calculated on a per pound disposed basis, may not decrease per pound with the increasing size of the container or the number of containers;

(D) Rates per container service must be established such that each additional container beyond the first container for each residential unit must have a fee charged that is at least the same fee and no less than the first container; and

(E) Rates, calculated on a per pound disposed basis, the city or county develops through their own per pound average weights for various container sizes by sampling and calculating the average weights for a cross section of containers within their residential service area.

(i) An on-going system to collect food waste and, optionally, other compostable waste, from commercial and institutional entities that generate large amounts of such wastes, and compost it at facilities in compliance with DEQ composting facility rules and local government regulations:

(A) Before diverting edible (unwanted) foods to be composted, a local government should consider how to encourage making them available:

(i) Through food rescue;

(ii) Or if charity channels are not available, to farmers for animal feed.

(B) A commercial composting program must include the following elements:

(i) On-going promotion of the commercial compost program through written material or other effective formats directed to targeted commercial generators within the local government unit, such as grocery stores, restaurants, wholesale flower warehouses, hotels, businesses and institutions with food service;

(ii) To avoid problems relating to human health and the environment, periodic collection of food wastes and, optionally, other compostable wastes, is required from commercial generators on an appropriate schedule.

(C) Any composting facility to which collected compostable waste is taken must comply with DEQ composting facility rules;

(D) On-site commercial composting should be considered if the location is appropriate, space is available and the entity complies with DEQ composting facility rules and local government regulations.

(j) A commercial recycling program that requires commercial generators of solid waste that generate large amounts of recyclable materials to source-separate recyclable materials.

(A) For subsection (3)(j) of this rule, "large amount commercial generator" means a commercial generator of solid waste that has a service level of four or more cubic yards of solid waste per week at a single site.

(B) A local government must require participation in its commercial recycling program by all large amount commercial generators except for generators exempted under paragraph (3)(j)(F) of this rule.

(C) The local government's commercial recycling program must include requirements for large amount commercial generators to:

(i) Source-separate recyclable materials for reuse or recycling;

(ii) Self-haul or arrange for collection service of the source separated recyclable materials;

(iii) Provide recycling containers for internal areas where recyclable materials may be collected, stored, or both; and

(iv) Correctly label all interior and exterior containers and post signs where recyclable materials may be collected, stored, or both that identify the materials that the large amount commercial generator must source-separate for reuse or recycling and that provide recycling instructions.

(D) The local government must provide education and promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount commercial generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount commercial generators.

(i) If a large amount commercial generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount commercial generators that it is out of compliance.

(ii) For a noncomplying large amount commercial generator, the local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements, lack of sufficient space to provide additional recycling containers, or non-generation of recyclable materials.

(G) The local government may consider certification requirements for self-haulers of source-separated recyclable materials. Those certification requirements may include, but are not limited to, requiring large amount commercial generators to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(j).

(K) A program for monthly or more frequent on-route collection and composting for food waste and, optionally, other compostable waste from residential collection service customers.

(A) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all residential collection service customers.

(B) In addition to the requirements of subsection (3)(k)(A) of this rule, the local government's education or promotion to all residential collection service customers must include:

(i) Types of food waste collected;

(ii) The schedule for collection;

(iii) Methods of preparing food waste for collection;

(iv) Explanations of why separating food waste for recovery is necessary; and

(v) Explanations of how to reduce contamination of the food waste recovery stream set out for collection.

(L) A recovery program for construction and demolition debris.

(A) As used in subsection (3)(L) of this rule, "construction and demolition debris" means waste resulting from the construction, renovation, repair, or demolition of buildings or other structures that contain recyclable material. "Construction and demolition debris" does not include putrescible wastes, hazardous waste, or asbestos.

(B) The recovery program for construction and demolition debris must:

(i) Require that construction and demolition debris be source-separated at the site of generation or be sent to a material recovery facility for processing and recovery; and

(ii) Include an education or promotion program for developers, contractors, and residential owners that provides strategies:

(I) To reduce waste during preconstruction planning and in building construction, renovation and demolition phases; and

(II) To direct waste to reuse and material recovery facilities.

(C) Generators subject to this program include any person who:

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(i) Generates and self-hauls a minimum of six cubic yards of construction and demolition debris at any time; or

(ii) Generates and arranges for collection service of a minimum of ten cubic yards of construction and demolition debris at any time.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all generators of construction and demolition debris that are subject to the recovery program for that debris.

(m) A food waste collection program requiring nonresidential generators that generate large amounts of food waste to source-separate the food waste for recovery.

(A) For subsection (3)(m) of this rule:

(i) "Nonresidential generator" means a commercial generator or other generator but not a residential or multi-family generator; and

(ii) "Large amount nonresidential generator" means a nonresidential generator that disposes of more than fifty tons of food waste annually.

(B) The local government must require participation in its food waste collection program by all large amount nonresidential generators except for generators exempted under paragraph (3)(m)(F) of this rule.

(C) The local government's food waste collection program must include requirements for large amount nonresidential generators to:

(i) Cover, at a minimum, food waste that is not packaged and for which final disposal by the large amount nonresidential generator is controlled by the nonresidential generator's employees or agents;

(ii) Source-separate food waste for donation or food waste collection;

(iii) Self-haul or arrange for collection service of the food waste;

(iv) Provide containers for internal areas where food waste may be collected, stored, or both; and

(v) Correctly label all interior and exterior containers and post signs and instructions where food waste is collected, stored, or both, that identifies the types of food waste the large amount nonresidential generator must source-separate for donation or food waste collection.

(D) The local government must provide education or promotion that meets at least the minimum requirements described in OAR 340-090-0030(3) for all large amount nonresidential generators.

(E) To ensure compliance with the requirements in this subsection, the local government must establish a method for identification and monitoring of large amount nonresidential generators.

(i) If a large amount nonresidential generator is not in compliance with the requirements of this subsection, then the local government must, at a minimum, notify that large amount nonresidential generator that it is out of compliance.

(ii) For a noncomplying large amount nonresidential generator, a local government may also consider a penalty or fine structure that incorporates warning notices, civil injunctions, financial penalties, or criminal prosecutions.

(F) The local government may allow for limited exemptions from the requirements of this subsection for reasons that the local government deems appropriate, such as zoning requirements or lack of sufficient space to provide additional food waste containers.

(G) The local government may consider certification requirements for self-haulers of food waste. Those certification requirements may include, but are not limited to, requiring large amount nonresidential generators of food waste to maintain written records demonstrating that all self-hauling activities have been completed in compliance with the requirements of this subsection (3)(m).

(4) In addition to the requirements in sections (1) and (2) of this rule, each city with a population of 4,000 or more and any county responsible for the area within a metropolitan service district or the area between the city limits and the urban growth boundary of that city in any of the following wastesheds must provide the opportunity to recycle rigid plastic containers if the conditions set forth in section (5) of this rule are met:

(a) Clackamas, Multnomah and Washington Counties, in aggregate, as a single wasteshed;

(b) Benton wasteshed;

(c) Clatsop wasteshed;

(d) Columbia wasteshed;

(e) Deschutes wasteshed;

(f) Douglas wasteshed;

(g) Hood River wasteshed;

(h) Jackson wasteshed;

(i) Josephine wasteshed;

(j) Lane wasteshed;

(k) Linn wasteshed;

(l) Marion wasteshed;

(m) Polk wasteshed;

(n) Wasco wasteshed; and

(o) Yamhill wasteshed.

(5) The opportunity to recycle rigid plastic containers is required within a wasteshed when a stable market price for rigid plastic containers, that equals or exceeds 75 percent of the necessary and reasonable collection costs for those containers, exists for such wasteshed.

Stat. Auth.: ORS 459.045, 459A.025, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.005, 459A.007, 459A.008, 459A.010 & 459A.665

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0041

### Contamination Reduction Education Plan

(1) As used in this rule, "contamination" means the presence of a material that the local government's recycling program does not accept for recycling through the collection service or depot being used to collect recyclable material under ORS 459A.005.

(2) By January 1, 2018, each local government implementing an expanded education and promotion program under ORS 459A.008 and OAR 340-090-0040(3)(c) must have a program to determine levels of contamination of materials set out for collection and to take action to reduce contamination in collected recyclables.

(3) To implement the program, a local government must have a contamination reduction education plan approved by DEQ that describes how the local government will:

(a) Determine levels of contamination of materials set out for collection; and

(b) Take action to reduce contamination in collected recyclables, including recyclables collected at a depot.

(4) To satisfy section (3) (a) of this rule, the contamination reduction education plan must describe the following:

(a) Method of assessment;

(b) Frequency of assessment; and

(c) Points of assessment in the collection process, including those from either of the following categories:

(A) Customers' and generators' recycling containers; or

(B) Points of transfer or processing, such as transfer stations or material recovery facilities.

(5) To satisfy section (3) (b) of this rule, the contamination reduction education plan must include some activity each year to proactively educate persons in the local government unit. The contamination reduction education plan must also satisfy the following criteria:

(a) The plan must include descriptions of the education, including:

(A) The educational content being provided, including a list of materials that are priority contaminants and information on how to recycle or dispose of those contaminants properly;

(B) The format of that educational content;

(C) The audience to which the education is being presented or distributed; and

(D) The means of and schedule for distribution or implementation.

(b) The education must include activities in at least one of the following categories:

(A) Contact with collection service customers and other generators at the point of generation, such as through color-coded tags on recycling containers, door hangers, or invoices that include information on how to reduce contamination of materials set out for collection; or

(B) Community-wide messaging, such as through a campaign promoting behavior changes by customers or generators in the local government unit, that includes how to reduce contamination.

(6) Each local government must submit to DEQ its contamination reduction education plan during the first year the plan is in effect. The contamination reduction education plan must use either a format that DEQ provides or an alternative written format chosen by the local government. Thereafter, the local government must submit a copy of its plan to DEQ at the same time the local government submits its periodic report under OAR 340-090-0100.

Stat. Auth.: ORS 459.045, ORS 459A.025, & 468.020

Stats. Implemented: ORS 459A.005, 459A.007, 459A.008, 459A.010 & 459A.050

Hist.: DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0042

### Waste Prevention and Reuse Programs

(1) Effective January 1, 2018, and as required by ORS 459A.007, certain local governments must implement the waste prevention education and reuse program element listed in section (2) in this rule and choose two or

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four additional elements from sections (3) through (8) of this rule, depending on the local governments' populations and locations. Each city that is within a metropolitan service district or with a population of greater than 50,000 and each county that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 50,000 or the area outside of city limits but within a metropolitan service district urban growth boundary must implement either: the waste prevention and reuse program element in section (2) and at least four additional elements from sections (3) through (8) of this rule; or an alternative program that is designed to achieve similar benefits as this rule and complies with OAR 340-090-0080(7). Each city with a population of greater than 10,000 but no more than 50,000, that is within a county of greater than 100,000 population, and each county of greater than 100,000 population that is responsible for the area between city limits and the urban growth boundary of a city with a population of greater than 10,000 but no more than 50,000 must implement either: the waste prevention and reuse program element in section (2) and at least two additional elements from sections (3) through (8) of this rule; or an alternative program that is designed to achieve similar benefits as this rule and complies with OAR 340-090-0080(7). Waste prevention education and reuse program elements in this rule that are implemented by a county or metropolitan service district may be used by a city within the county or metropolitan service district to meet the requirements of this rule, provided that the elements are made available throughout the entire city, including the area between the city limits and the urban growth boundary of that city. Waste prevention and reuse program elements implemented by a metropolitan service district may be used by a county that includes or is within the metropolitan service district to meet the requirements of this section, provided that the elements are made available throughout the entire urban growth boundary of the metropolitan service district.

(2) Citywide or countywide education and promotion. A citywide or countywide education and promotion program about the environmental benefits of, and opportunities to reduce the generation of waste through, waste prevention and reuse.

(a) The education and promotion program must include the following components:

(A) Information for existing residential and commercial collection service customers that:

(i) Is designed to reach solid waste generators and is provided at least four times per calendar year through: written notice, an effective alternative, or some combination of both;

(ii) Describes the benefits of generating less waste in terms of the reduction in a material's environmental impact as part of its life cycle, including upstream impacts, such as resource extraction and manufacturing; and

(iii) Addresses how to generate less waste, how to reuse materials, and solutions to common challenges to waste prevention and reuse.

(B) An activity targeting at least one community or one media event each year that promotes waste prevention and reuse, such as a waste prevention booth at a county fair or a community cleanup event that includes a sale or giveaway component to encourage reuse of discarded articles. This activity or event must be in addition to any campaigns used to comply with sections (3) or (4) of this rule. An activity or event may promote waste prevention activities, reuse activities, or some combination of both.

(b) To reach the maximum number of residential and commercial solid waste generators, the education and promotion program must utilize a variety of materials and media formats to disseminate information.

(c) Each local government must submit to DEQ a program plan during the first year the plan is in effect. The plan must use either a format that DEQ provides or an alternative written format chosen by the local government. Thereafter, the local government must submit a summary of activities in the plan to DEQ at the same time the local government submits its periodic report under OAR 340-090-0100. The plan must describe how it will implement the elements in subsections (2)(a) and (3)(b) of this rule, including:

(A) A description of the information to be provided, including messages to be conveyed, program material format and general content, and schedules for distribution;

(B) A description of how the information meets the needs of various types of residential generators, such as multi-family or rural residents, and various types of commercial and institutional generators;

(C) A description of how information will be provided, such as through events, volunteer activities, community meetings and presentations, or door-to-door outreach; and

(D) A description of who will provide the information, such as local government staff, collectors, depot operators, disposal site operators, and non-governmental organizations.

(3) Waste prevention campaign targeting residential generators. A waste prevention campaign targeting residential generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices. As used in this section, "consumer purchasing practices" means the act of purchasing a toxic or energy intensive material, a product containing toxic materials, or a product consisting at least 50 percent by weight of energy intensive materials. A food rescue program is not a waste prevention campaign for the purpose of complying with this section. The campaign must meet the following criteria:

(a) For either a campaign that DEQ provides or an alternative campaign that the local government chooses and DEQ approves, each local government must develop, submit to DEQ, and implement a campaign plan that:

(A) Identifies at least one specific waste generating behavior or practice targeted for change;

(B) Describes the campaign's strategy;

(C) Describes the campaign materials' general content, format, and delivery methods;

(D) Provides an implementation schedule; and

(E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its campaign reached the target audience or achieved its waste prevention objective.

(b) Campaign materials must include multiple components that may be used sequentially or on a rotational basis to meet the required refreshing schedule in subsection (3)(c) of this rule. Such components may include materials using:

(A) Different visual images to convey core messaging;

(B) Variations on core messaging language; or

(C) A variety of media, such as print, websites, social media, or radio.

(c) The duration of a campaign may not exceed five years, and the local government's implementation schedule must include a schedule for refreshing components of the campaign at least once every two years. To "refresh" components of a campaign means to use new or different components to deliver messages in a different way. A local government may also request, and DEQ may approve, a campaign duration or implementation schedule that differs from this subsection's schedule for refreshing components provided that the local government can demonstrate:

(A) That the campaign or one of its components has contributed to the desired behavior change; and

(B) That continuing the campaign or one of its components is likely to result in further desired changes in behavior or practices.

(d) Educational materials used in this campaign must be in addition to educational materials used to satisfy the requirements of section (2) of this rule.

(4) Waste prevention campaign targeting commercial generators. A waste prevention campaign targeting commercial or institutional generators of waste and focused on one or more toxic or energy intensive materials or consumer purchasing practices. As used in this section, "consumer purchasing practices" means the act of purchasing a toxic or energy intensive material, a product containing toxic materials, or a product consisting at least 50 percent by weight of energy intensive materials. A targeted business assistance program would qualify as a campaign if that program includes components that promote changes in waste generating behavior or practices consistent with the requirements of this section and targets businesses with applicable waste generating behaviors or practices. A food rescue program is not a waste prevention campaign for the purpose of complying with this section. The campaign must meet the following criteria:

(a) For either a campaign DEQ provides or an alternative campaign the local government chooses and DEQ approves, each local government must develop, submit to DEQ, and implement a campaign plan that:

(A) Identifies at least one specific waste generating behavior or practice targeted for change;

(B) Describes the campaign's strategy;

(C) Describes the campaign materials' general content, format and delivery methods;

(D) Provides an implementation schedule; and

(E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its campaign reached the target audience or achieved its waste prevention objective.

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(b) Campaign materials must include multiple components that may be used sequentially or on a rotational basis to meet the required refreshing schedule in subsection (5)(c) of this rule. Such components may include materials using:

- (A) Different visual images to convey core messaging;
- (B) Variations on core messaging language; or
- (C) A variety of media, such as print, websites, social media, or radio.

(c) The duration of a campaign may not exceed five years, and the local government's implementation schedule must include a schedule for refreshing components of the campaign at least once every two years. To "refresh" components of a campaign means to use new or different components to deliver messages in a different way. A local government may also request, and DEQ may approve, a campaign duration or implementation schedule that differs from this subsection's schedule for refreshing components provided that the local government can demonstrate:

(A) That the campaign or one of its components has contributed to the desired behavior change; and

(B) That continuing the campaign or one of its components is likely to result in further desired changes in behavior or practices.

(d) Educational materials used in this campaign must be in addition to educational materials used to satisfy the requirements of section (2) of this rule.

(5) Education program in schools. A waste prevention and reuse education program in elementary and secondary schools must satisfy the following criteria:

(a) Each local government must develop, submit to DEQ, and implement a plan to deliver elementary and secondary school education and promotion programs, that:

- (A) Identifies targeted groups or classes of students;
- (B) Describes how the program will engage the targeted students;
- (C) Identifies at least one specific waste generating behavior or practice targeted for change and barriers to that change;
- (D) Provides an implementation schedule; and
- (E) Describes a performance measurement plan that specifies one or more outcomes that the local government will use to demonstrate its education program reached the targeted students or achieved its waste prevention and reuse objectives.

(b) The education program must address students in both elementary and secondary schools and may include activities such as:

- (A) Classroom presentations;
- (B) School assemblies;
- (C) Classroom curricular activities, such as service learning projects;
- (D) After school programs;
- (E) Field trips with a substantial focus on reducing waste generation, such as tours of tool libraries or food rescue facilities; or

(F) Student education implemented as part of in-school waste prevention and reuse programs, such as school cafeteria projects to measure and reduce food waste.

(c) If the program is a general waste prevention and reuse education and outreach program designed primarily to deliver information and increase knowledge about actions that support waste prevention and reuse, then the program must provide education to at least 5 percent of all elementary and secondary students attending public school within the area served by the local government in each calendar year for which this element is used to comply with waste prevention and reuse program requirements, or 10 percent of all students where a program is being implemented over two consecutive years. A local government may use total enrollment numbers reported to the Oregon Department of Education to determine the number of targeted students its program must reach or may propose, with justification, to DEQ an alternative total enrollment number. A local government may, at its discretion, provide education to private school students or to students attending school while in a correctional facility to meet required targets. A city or county may comply with this element through compliance by its county or metropolitan service district provided that:

(A) The education by the county or metropolitan service district is made available to all schools within the area served by the local government using this element to comply with waste prevention and reuse requirements; and

(B) The county or metropolitan service district is providing the education to at least this element's percentage threshold of elementary and secondary students in each calendar year for which this element is used to comply.

(d) A local government may propose a metric, besides the percentage in subsection (5)(c) of this rule, for approval by DEQ that allows for more in-depth programs designed to engage a smaller number of students. The

proposal must explain how targeting a smaller number of students supports longer-term engagement in elementary and secondary education on waste prevention and reuse.

(e) Local governments may not use education programs used to demonstrate compliance with the requirements of OAR 340-090-0042(5) to demonstrate compliance with any other waste prevention and reuse program element in this rule.

(6) Funding or infrastructure support program. A program either for the provision of city, county, or watershed funding or for the provision of city, county, or watershed infrastructure support to promote and sustain reuse, repair, leasing or sharing efforts. The program must meet the following criteria:

(a) A local government must identify the specific forms of funding or infrastructure support the local government will provide to support reuse, repair, leasing or sharing activities and describe how the funding or infrastructure support contributes to sustaining and, where possible, expanding reuse, repair, leasing or sharing efforts within the local government unit.

(b) Support must be provided annually unless a local government provides funding or monetized infrastructure support in an amount larger than that required under subsection (6)(c) of this rule and the amount of that funding or monetized support, when amortized over multiple years, is at least equivalent to the annual support the local government would otherwise provide.

(c) If a city, county, or watershed chooses to use direct funding to comply with the requirements of this section, annual funding must be no less than \$0.17 per local government unit resident for jurisdictions with populations up to 100,000 in population and \$17,000 plus \$0.10 per local government unit resident above 100,000 in population for jurisdictions with populations above 100,000, adjusted annually for inflation from a base year of 2016 using the West Region Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(d) If a city, county, or watershed chooses to provide infrastructure support to comply with the requirements of this section, that support must result in a reuse, repair, lease or sharing opportunity that is provided continuously or on at least 1 day per year for every 50,000 in the local government unit's population or monetized at a value equal to the funding required in subsection (6)(c) of this rule.

(e) Funding may include: grants; payments on behalf of organizations for equipment; funding to cover the costs of outreach efforts, such as website development, development of social media venues and media buys; or funding to allow reuse, repair, or sharing organizations to pay staff or contractors for program development, implementation, or both. However, funding of outreach efforts does not qualify as satisfying this element if that outreach is also used to satisfy the technical assistance requirements of section (7) of this rule.

(f) A city or county may comply with this element through compliance by its county or metropolitan service district provided that the infrastructure supported by the county or metropolitan service district is accessible and convenient to residents and businesses of the city or county.

(7) Technical assistance program. A program for the provision of city or watershed technical assistance to promote and sustain the reuse, repair or leasing of materials or other sharing of efforts to reduce waste. The program must meet the following criteria:

(a) A local government must identify the specific forms of technical assistance the local government will provide to support reuse, repair, leasing or sharing activities and must describe how the technical assistance contributes to sustaining and, where possible, expanding reuse, repair, leasing or sharing efforts within the local government unit.

(b) A local government may satisfy the requirements of this element through a partnership with another governmental agency, a local non-governmental organization or private enterprise provided that this partnership is documented in a written agreement, such as a memorandum of understanding, an intergovernmental agreement, a franchise agreement or other contract vehicle, and:

(A) The agreement specifies the local government's contribution to the partnership. The local government's contribution must be more than nominal support. Examples of sufficient contributions include supporting ordinances or waived fees, including license fees, commitments to support volunteer recruitment, requirements that a partner implements a program on behalf of a local government, promotion that supports implementation of the partner organization's project, facilitating community meetings or workshops to support information exchange or project development, participation of local government staff on organizational boards, and provid-



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ing communications channels through local government websites or other media; and

(B) The agreement specifies annual reporting of outcomes, such as increased borrowing at a tool library, pounds of building materials or household goods salvaged from solid waste disposal, or number and types of materials exchanged through a commercial or residential exchange website or distribution center that can be linked to the partnership and demonstrate year-to-year progress in reuse, repair or otherwise reducing waste.

(c) Technical assistance in the form of promotion, outreach or education used to comply with the requirements of OAR 340-090-0042(7) cannot also be used to demonstrate compliance with any other waste prevention and reuse program element.

(8) Food rescue program support. Support by a local government for a food rescue program. The local government's support must meet the following criteria:

(a) The local government must identify and describe specific support for a food rescue program within the local government unit.

(b) A local government's support must include at least two of the following components:

(A) A review of local health ordinances or other local government regulations that may create regulatory barriers to food rescue, identifying regulatory barriers to food rescue, and implementing solutions needed to facilitate food rescue. Such solutions could include, but are not limited to, recommending revisions to regulations or seeking authorization from a local health agency to take an action necessary to facilitate food rescue. Local ordinance review would be sufficient to constitute support for one component for two years.

(B) Funding, which may include: grants or payments on behalf of organizations for equipment, vehicles or building space; and stipends or other payments for gleaners and other food rescue workers. The annual amount of such funding must be no less than \$0.17 per local government unit resident for jurisdictions with populations up to 100,000 in population and \$17,000 plus \$0.10 per local government unit resident above 100,000 in population for jurisdictions with populations above 100,000, adjusted annually for inflation from a base year of 2016 using the West Region Consumer Price Index for All Urban Consumers for All Items, as published by the Bureau of Labor Statistics of the United States Department of Labor.

(C) Infrastructure support that may include: providing space for rescued food storage; loan of vehicles for food transport; and development and implementation of donor matching programs or farm to food bank programs. Infrastructure support must result in a food rescue opportunity that is provided continuously or on at least one day per year for every 50,000 residents in the local government unit or monetized at a value equal to the funding required in paragraph (8)(b)(B) of this rule.

(D) Technical assistance that may include: convening meetings to assist in developing a food rescue program; a local government website page to inform and promote food rescue opportunities; providing other program education and promotional support; developing success stories for use in promotional materials; and supporting measurement programs to help develop programs and demonstrate the efficacy of food rescue.

(c) A local government may satisfy the technical assistance requirements of this element through a partnership with another governmental agency, a local non-governmental organization or private enterprise provided that this partnership is documented in a written agreement, such as a memorandum of understanding, an intergovernmental agreement, a franchise agreement or other contract vehicle, and:

(A) The agreement specifies the local government's contribution to the partnership. The local government's contribution must be more than nominal support. Examples of sufficient contributions include supporting ordinances or waived fees, including license fees, commitments to support volunteer recruitment, requirements that a partner implements a program on behalf of a local government, promotion that supports implementation of the partner organization's project, facilitating community meetings or workshops to support information exchange or project development, participation of local government staff on organizational boards, and providing communications channels through local government websites or other media; and

(B) The agreement specifies annual reporting of outcomes, such as increased food diverted to food assistance programs, that can be linked to the partnership and demonstrate year-to-year progress in food rescue.

(d) Support must be provided annually unless a local government provides funding or monetized infrastructure support in an amount larger than that required under subsection (8)(b) of this rule and the amount of that funding or monetized support, when amortized over multiple years, is at

least equivalent to the annual support that the local government would otherwise provide.

(e) A city or county may comply with this section (8) through compliance by its county or metropolitan service district provided that the county- or metropolitan service district-supported food rescue program either collects from sources of food in the city or county or redistributes food to residents of the city or county.

Stat.Auth: ORS 459.045, 459A.025 & 468.020.

Stats.Implemented: ORS 459A.007, 459A.010 & 459A.050

Hist.: DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0050

### Wasteshed Designation and Recovery Rates

This rule defines the wastesheds, as designated in ORS 459A.010, and states the recovery goal for each wasteshed to achieve and maintain:

(1) Baker wasteshed is all of the area within Baker County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(2) Benton wasteshed is all of the area within Benton County excluding the City of Albany and has a recovery rate goal for calendar year 2025 and subsequent years of 44 percent.

(3) Clatsop wasteshed is all of the area within Clatsop County and has a recovery rate goal for calendar year 2025 and subsequent years of 53 percent.

(4) Columbia wasteshed is all of the area within Columbia County and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(5) Coos wasteshed is all of the area within Coos County and has a recovery rate goal for calendar year 2025 and subsequent years of 30 percent.

(6) Crook wasteshed is all of the area within Crook County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(7) Curry wasteshed is all of the area within Curry County and has a recovery rate goal for calendar year 2025 and subsequent years of 30 percent.

(8) Deschutes wasteshed is all of the area within Deschutes County and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(9) Douglas wasteshed is all of the area within Douglas County and has a recovery rate goal for calendar year 2025 and subsequent years of 34 percent.

(10) Gilliam wasteshed is all of the area within Gilliam County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(11) Grant wasteshed is all of the area within Grant County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(12) Harney wasteshed is all of the area within Harney County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(13) Hood River wasteshed is all of the area within Hood River County and has a recovery rate goal for calendar year 2025 and subsequent years of 35 percent.

(14) Jackson wasteshed is all of the area within Jackson County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(15) Jefferson wasteshed is all of the area within Jefferson County and has a recovery rate goal for calendar year 2025 and subsequent years of 32 percent.

(16) Josephine wasteshed is all of the area within Josephine County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(17) Klamath wasteshed is all of the area within Klamath County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(18) Lake wasteshed is all of the area within Lake County and has a recovery rate goal for calendar year 2025 and subsequent years of 15 percent.

(19) Lane wasteshed is all of the area within Lane County and has a recovery rate goal for calendar year 2025 and subsequent years of 63 percent.

(20) Lincoln wasteshed is all of the area within Lincoln County and has a recovery rate goal for calendar year 2025 and subsequent years of 37 percent.

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(21) Linn watershed is all of the area within Linn County, including the cities of Albany and Mill City, and excluding the area within the cities of Gates and Idanha, and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(22) Malheur watershed is all of the area within Malheur County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(23) Marion watershed is all of the area within Marion County and all of the area within the cities of Gates, Idanha, and the city of Salem excluding the area within West Salem and Mill city and has a recovery rate goal for calendar year 2025 and subsequent years of 64 percent.

(24) Milton-Freewater watershed is all the area within the urban growth boundary of the city of Milton-Freewater and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(25) Morrow watershed is all of the area within Morrow County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(26) Polk watershed is all the area within Polk County including the area within West Salem and excluding all the city of Willamina and has a recovery rate goal for calendar year 2025 and subsequent years of 48 percent.

(27) Sherman watershed is all of the area within Sherman County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(28) Tillamook watershed is all of the area within Tillamook County and has a recovery rate goal for calendar year 2025 and subsequent years of 37 percent.

(29) Umatilla watershed is all of the area within Umatilla County excluding the area within the urban growth boundary of the city of Milton-Freewater and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(30) Union watershed is all of the area within Union County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(31) Wallowa watershed is all of the area within Wallowa County and has a recovery rate goal for calendar year 2025 and subsequent years of 25 percent.

(32) Wasco watershed is all of the area in Wasco County and has a recovery rate goal for calendar year 2025 and subsequent years of 35 percent.

(33) Wheeler watershed is all of the area within Wheeler County and has a recovery rate goal for calendar year 2025 and subsequent years of 20 percent.

(34) Yamhill watershed is all of the area within Yamhill County and all of the area within the city of Willamina and has a recovery rate goal for calendar year 2025 and subsequent years of 45 percent.

(35) Clackamas, Multnomah and Washington Counties, in aggregate, as a single watershed, have a recovery rate goal for calendar year 2025 and subsequent years of 64 percent.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0025; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0060

### Determination of Wasthed and Overall Statewide Recovery Rates

(1) DEQ may calculate recovery rates for the wastesheds listed in OAR 340-090-0050 by dividing the total weight of material recovered by the sum of the total weight of the material recovered plus the total weight of municipal solid waste disposed that was generated in each respective watershed.

(2) Recovery rates must include the following:

(a) All materials collected for recycling, both source separated or sorted from solid waste, including yard debris;

(b) Beverage containers collected under the requirements of ORS 459A.700 - 459A.740;

(c) Notwithstanding the foregoing, no material shall be counted toward the recovery rate if it is disposed of.

(3) As used in this rule, "viable market" means a person located within a watershed that will pay for the material or accept the material free of charge or a person located outside a watershed that will pay a price for the material that, at minimum, covers the cost of transportation of the material.

(4) Recovery rates may include the composting or burning for energy recovery of the material collected under sections (1) and (2) of this rule when there is not a viable market for recycling that material, provided that the following conditions are met:

(a) If the material is burned for energy recovery and then included in the recovery rate for Clackamas, Multnomah or Washington Counties in aggregate or for Benton, Lane, Linn, Marion, Polk or Yamhill County wastesheds, the same material, when burned as part of mixed solid waste, may be included in the recovery rate for a watershed that burns mixed solid waste for energy recovery. The amount of the material within the mixed solid waste that may be included in the recovery rate for energy recovery shall be determined by a waste composition study performed by the watershed at least every six years.

(b) Mixtures of materials that are composted or burned for energy recovery shall not be included in the recovery rate if more than half of the mixed materials by weight could have been recycled if properly source-separated; and

(c) A place does not exist within a watershed that will pay for the material or accept it for free or a place does not exist outside of the watershed that will pay a price for the material that, at minimum, covers the cost of transportation of the material to market; and

(d) The appropriate county or Metropolitan Service District in the report required under OAR 340-090-0100 provides data on the weight, type of material and method of material recovery for material to be counted in the recovery rate under this section and written explanation of the basis for determining that a viable market did not exist for the watershed, including markets available within and outside of the watershed, transportation distances and costs, and market prices for the material if it were to be recycled as source separated material.

(5) Recovery rates shall not include the following:

(a) Industrial and manufacturing wastes such as boxboard clippings and metal trim that are recycled before becoming part of a product that has entered the wholesale or retail market, or any pre-consumer waste;

(b) Metal demolition debris in which arrangements are made to sell or give the material to processors before demolition such that it does not enter the solid waste stream;

(c) Discarded vehicles or parts of vehicles that do not routinely enter the solid waste stream. Except that, discarded vehicle parts that are received at recycling drop-off facilities operated as part of the general solid waste management system are included in the recovery rate calculation;

(d) Commercial, industrial and demolition scrap metal, vehicles, major equipment and home or industrial appliances that are handled or processed for use in manufacturing new products and that do not routinely enter the solid waste stream through land disposal facilities, transfer stations, recycling depots or on-route collection programs;

(e) Material recovered for composting or energy recovery from mixed solid waste, except as provided in subsection (2)(a) and section (4) of this rule;

(f) Mixed solid waste burned for energy recovery, except as provided by subsection (4)(a) of this rule.

(6) For the purposes of calculating the recovery rate DEQ may not include the following in the total solid waste disposed:

(a) Sewage sludge or septic tank and cesspool pumpings;

(b) Solid waste disposed of at an industrial solid waste disposal site;

(c) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to a municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and watershed of origin for such materials delivered and reports the weight and appropriate watershed in the reports required to be submitted to DEQ under OAR 340-090-0100(3);

(d) Solid waste received at an ash monofill from an energy recovery facility; and

(e) Any solid waste not generated within the state of Oregon.

Stat. Auth.: ORS 459.045, 459A.100 - 459A.120 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 10-1994, f. & cert. ef. 5-4-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 8-2005, f. & cert. ef. 7-14-05; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0068

### Determination of Material-Specific Recovery Rates

(1) DEQ must determine the recovery rate for each material specified in ORS 459A.010(1)(c) based on the amount of that material that is recovered from within Oregon each year, divided by the amount of that material that is generated within Oregon each year.

(a) The amount of material recovered from within Oregon must be determined based on surveying and reporting requirements specified in OAR 340-090-0100.

(b) The amount of material that is generated within Oregon each year means the combined amounts of material recovered and material disposed of, for material disposed or recovered from Oregon sources.

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(c) Unless otherwise specified, determining the amount of material disposed of must be based on results from periodic waste composition studies specified in ORS 459A.035, when combined with data on the total amount of solid waste disposed as specified in ORS 459A.010(3)(d).

(2) For the purpose of determining the recovery rate of food waste under ORS 459A.010(1)(c) and this rule, food waste does not include:

- (a) Crop residue or other agricultural waste;
- (b) Waste from industrial-scale food processing facilities;
- (c) Waste which is composted on the site of generation; and
- (d) Waste that is disposed of directly by the generator to a sewage or septic system.

(3) As used in this section, "plastic" means a material composed of synthetic polymers such as polyethylene, polypropylene, polystyrene, polylactic acid, and other similar polymers, but does not include materials commonly referred to as rubber or materials that are naturally-produced polymers, such as proteins or starches. For the purpose of determining the recovery rate of plastic waste under ORS 459A.010(1)(c) and this rule, plastic waste:

(a) Includes post-consumer plastic items that are entirely made of plastic or that contain small amounts of easily-removed non-plastic items, such as metal handles on five-gallon plastic buckets; and

(b) Does not include plastic in multi-material items, such as electronics, automobiles, appliances, mixed-material toys, or household goods.

(4) As used in this rule, "carpet" means a manufactured article that is used in commercial or residential buildings affixed or placed on the floor or building walking surface as a decorative or functional building interior feature and that is primarily constructed of a top visible surface of synthetic or natural face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials.

(a) Examples of carpet include, but are not limited to:

- (i) Commercial or residential broadloom carpet;
- (ii) Modular carpet tiles; and
- (iii) Indoor/outdoor carpet used as a floor surfacing in exterior applications.

(b) Examples of materials that are not carpet include:

(i) Rugs or similar floor coverings that are either not affixed to the floor or not intended to cover the entire floor surface;

(ii) Pads, cushions, or underlayment used in conjunction with, or separately from, a carpet; and

(iii) Artificial turf.

(5) For the purpose of determining the recovery rate of carpet waste under ORS 459A.010(1)(d) and this rule:

(a) Any carpet that is collected and then discarded may not be considered as being recovered; and

(b) For carpet where, at a minimum, the face fiber is recovered and used, the entire carpet is considered as having been recovered.

(6) DEQ may determine the recovery rate for carpet under ORS 459A.010(1)(d) based on:

(a) The method described in section (1) of this rule; or

(b) A different method of estimating the generation of carpet based on Oregon carpet sales data and an estimate of how much of that carpet is used as replacement carpet rather than in new construction.

(7) If DEQ calculates carpet recovery under section (7)(b), then DEQ must report, in any reports the legislature requires, recovery rates of carpet using both methods in section (7).

Stat.Auth: ORS 459.045, 459A.025 & 468.020

Stat.Implemented: ORS 459A.010, 459A.035 & 459A.050

Hist.: DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0070

### Principal Recyclable Material

(1) The following are identified as the principal recyclable materials in the wastesheds as described in sections (4) through (12) of this rule:

- (a) Newspaper;
- (b) Ferrous scrap metal;
- (c) Non-ferrous scrap metal;
- (d) Used motor oil;
- (e) Corrugated cardboard and kraft paper;
- (f) Aluminum;
- (g) Container glass;
- (h) Hi-grade office paper;
- (i) Tin cans;
- (j) Yard debris.

(2) In addition to the principal recyclable materials listed in section (1) of this rule, other materials may be recyclable material at specific locations where the opportunity to recycle is required.

(3) The statutory definition of "recyclable material" (ORS 459.005(31)) determines whether a material is a recyclable material at a specific location where the opportunity to recycle is required.

(4) In the following wasteshed, Clackamas, Washington and Multnomah counties in aggregate the principal recyclable materials are those listed in subsections (1)(a) through (j) of this rule.

(5) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (i) of this rule:

- (a) Benton wasteshed;
- (b) Clatsop wasteshed;
- (c) Hood River wasteshed;
- (d) Lane wasteshed;
- (e) Lincoln wasteshed;
- (f) Linn wasteshed;
- (g) Marion wasteshed;
- (h) Polk wasteshed;
- (i) Umatilla wasteshed;
- (j) Union wasteshed;
- (k) Wasco wasteshed;
- (l) Yamhill wasteshed.

(6) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (g) of this rule:

- (a) Baker wasteshed;
- (b) Crook wasteshed;
- (c) Jefferson wasteshed;
- (d) Klamath wasteshed;
- (e) Tillamook wasteshed.

(7) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (h) of this rule:

- (a) Coos wasteshed;
- (b) Deschutes wasteshed;
- (c) Douglas wasteshed;
- (d) Jackson wasteshed;
- (e) Josephine wasteshed.

(8) In the following wasteshed, the principal recyclable materials are those listed in subsections (1)(a) through (f) of this rule: Malheur wasteshed.

(9) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (g) and (i) of this rule:

- (a) Columbia wasteshed;
- (b) Milton-Freewater wasteshed.

(10) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (e) of this rule:

- (a) Curry wasteshed;
- (b) Grant wasteshed;
- (c) Harney wasteshed;
- (d) Lake wasteshed.

(11) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(a) through (d) of this rule:

- (a) Morrow wasteshed;
- (b) Sherman wasteshed;
- (c) Wallowa wasteshed.

(12) In the following wastesheds, the principal recyclable materials are those listed in subsections (1)(b) through (d) of this rule:

- (a) Gilliam wasteshed;
- (b) Wheeler wasteshed.

(13)(a) The opportunity to recycle must be provided for each of the principal recyclable materials listed in sections (4) through (12) of this rule and for other materials which meet the statutory definition of recyclable material at specific locations where the opportunity to recycle is required;

(b) The opportunity to recycle is not required for any material that a recycling report, as required in OAR 340-090-0100, and approved by the DEQ demonstrates does not meet the definition of recyclable material for the specific location where the opportunity to recycle is required.

(14) Each city, county or metropolitan service district in a wasteshed where yard debris is a principal recyclable material must individually, or jointly through intergovernmental agreement, implement a program that at a minimum meets the requirements of OAR 340-090-0030 when the option under OAR 340-090-0040(3)(e) is not chosen or request approval of an alternative program for providing the opportunity to recycle under OAR 340-090-0080.

(15) Any affected person may ask the EQC to modify the list of principal recyclable material identified by the EQC or may request a variance under ORS 459A.055.

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(16) DEQ will review the principal recyclable material lists as needed, and will submit any proposed changes to the EQC.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.010 & 459A.025  
Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 1-1986, f. & ef. 2-12-86; DEQ 7-1987, f. & ef. 3-18-87; DEQ 5-1988, f. & cert. ef. 2-2-88; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0030; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0080

### Alternative Methods for Providing the Opportunity to Recycle

This rule describes the necessary procedures and requirements that a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person must follow in order to request approval of an alternative program for meeting the requirements of OAR 340-090-0030, 340-090-0040, and 340-090-0042.

(1) The city, county or metropolitan service district responsible for solid waste management may apply for and request approval by DEQ of an alternative program for providing the opportunity to recycle. Each request must be made in writing to DEQ on a form DEQ provides. The request for an alternative program must be complete, signed by the appropriate authority for the city, county, metropolitan service district or disposal site permittee for an out-of-state request and address all of the requirements in section (3) of this rule and sections (5) and (6) of this rule if applicable.

(2) DEQ will review applications as they are received. DEQ will approve, approve with conditions, or reject each proposed alternative program based on consideration of the criteria described in section (3) of this rule.

(3) Each application for approval of an alternative program for providing the opportunity to recycle must include detailed written information and data on the following:

(a) A description of the alternative program being proposed and how it is different from the standard method that would be required to be implemented under the opportunity to recycle requirements;

(b) The conditions and factors that make the alternative program necessary;

(c) How the alternative program is convenient to the commercial and residential generators of solid waste using or receiving the service;

(d) How the alternative program is as effective in recovering recyclable materials from solid waste as the requirements in OAR 340-090-0020, 340-090-0030, 340-090-0040, and 340-090-0050 for providing the opportunity to recycle.

(e) How the alternative program would achieve at least the lesser of:

(A) The local government unit's washed recovery rate goal specified in OAR 340-090-0050; or

(B) Recovery levels comparable to similar communities. For the purposes of this rule, "similar community" means another local government unit that is similar, for the purpose of DEQ's evaluation of the local government's alternative program, based on:

(i) Population or population density;

(ii) Relevant demographics;

(iii) Distance to a market for material collected for recycling;

(iv) Costs of collection and disposal; and

(v) Other criteria DEQ approves.

(4) Anytime a city, county, metropolitan service district, or disposal site permittee on behalf of an out-of-state person desires to make changes to the approved alternative program, they must submit an amended application for DEQ's approval following the same requirements in sections (3), (5) and (6) of this rule.

(5) In addition to any other standards or conditions, an alternative program for providing the opportunity to recycle yard debris, where yard debris is a principal recyclable material as designated in OAR 340-090-0700, must meet the following minimum standards:

(a) The alternative program is available to substantially all yard debris generators in the local jurisdiction;

(b) The alternative program can be demonstrated to result in the recycling of yard debris from the solid waste stream;

(c) There is a promotion campaign that is designed to inform all potential users about the availability and use of the method;

(d) The city, county or metropolitan service district must individually or jointly, through intergovernmental agreement, choose from the following yard debris recycling program options as an alternative program:

(A) Provide monthly or more often on-route collection of yard debris during the months of April through October with drop-off depots for non-collection service customers available at least monthly;

(B) Provide biweekly or more often yard debris collection depots within one mile of yard debris generators, or such that there is at least one conveniently located depot for every 25,000 population; or

(C) Provide monthly or more often yard debris collection, supplemented by a weekly or more often yard debris depot during the months of April through October, both within one mile of the yard debris generators, or such that there is at least one conveniently located depot for every 25,000 population.

(e) If the alternative program is proposed by a metropolitan service district the alternative program request must include written commitments from the local governments covered by the program to implement the program or a demonstration of the metropolitan service district's authority to implement the program.

(6) In addition to the requirements in section (3) of this rule, when a disposal site permittee is requesting approval of an alternative program for an out-of-state person the following criteria must be met:

(a) For the purposes of satisfying the requirement in subsection (3)(b) of this rule for a local government unit the alternative program must designate a watershed having a common solid waste disposal system or an appropriate area within which to carry out a common recycling program and select and provide justification for an appropriate recovery rate based on similar watershed characteristics in Oregon including population density, and distance to recycling markets;

(b) For persons other than local government units the request for alternative program approval must provide information explaining how the alternative program provides the opportunity for the person to reduce the amount of waste that would be disposed and a description of how the alternative program is implemented.

(7) Instead of a local government implementing a waste prevention and reuse program under OAR 340-090-0042, a local government may apply for DEQ's approval of an alternative waste prevention and reuse program. To apply, a local government must follow these procedures:

(a) Each application for an alternative waste prevention and reuse must be made in writing on a form that DEQ provides. The application must be complete, signed by the local government, and address all of the requirements in section (3) of this rule.

(b) DEQ will review applications as they are received. For each application, using the information in subsection (c) of this rule, DEQ must, for the proposed alternative waste prevention and reuse program:

(A) Approve the proposed program;

(B) Approve the proposed program with conditions; or

(C) Reject the proposed program.

(c) Each application must include the following detailed information:

(A) A description of the proposed alternative waste prevention and reuse program;

(B) Explanations of how the proposed alternative waste prevention and reuse program would be different than and designed to achieve similar benefits as the waste prevention and reuse program that would otherwise be required under rule;

(C) A written plan describing how the proposed alternative waste prevention and reuse program would provide citywide or countywide education and promotion about the environmental benefits of, and opportunities to reduce the generation of waste through, waste prevention and reuse in the local government unit;

(D) An explanation of the conditions and factors that make the proposed alternative waste prevention and reuse program preferable; and

(E) A description of waste generating behaviors targeted for change for residential and commercial generators of solid waste in the local government unit and how that change would be measured.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.005, 459A.010, 459A.025 & 459A.055

Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 27-1988, f. & cert. ef. 9-16-88; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0035 and 340-060-0125; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0090

### Collection of Recyclable Materials

(1) DEQ may not require any city, county, or metropolitan service district, or agent thereof, to collect or receive source separated recyclable material which has not been correctly prepared to reasonable specifications which relate to marketing, transportation, storage, or regulatory agency requirements. The specifications for material preparation must have been publicized by the appropriate city, county or metropolitan service district as part of the education and promotion program requirements in OAR 340-090-0020, 340-090-0030, and 340-090-0040.

(2) In addition to the provisions set forth in ORS 459A.080, no person shall dispose of source-separated recyclable material which has been

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collected or received from the generator by any method other than reuse or recycling except for used oil and wood waste which may be collected and burned for energy recovery.

(3) Commercial and residential recyclable materials that are source-separated for collection on-route or on-site but that are not correctly prepared according to reasonable specifications as set forth by the city, county or metropolitan service district under section (1) of this rule may not be required to be collected and may be left with the generator of the source-separated material or may be collected and prepared for recycling by the collector, but may not be disposed of by the collector. The generator of the material must be provided with written information that explains correct material preparation for the purposes of educating the generator.

(4) Unauthorized materials that are deposited by the generator at a recycling depot are exempt from the prohibition in sections (1), (2), and (3) of this rule and must be managed in the appropriate manner otherwise required by law.

(5) Collected recyclable material later found to be contaminated with hazardous substances are exempt from the prohibition in sections (1), (2), and (3) of this rule and must be managed in an appropriate manner otherwise required by law.

Stat. Auth.: ORS 459A.025, 459.045, 459A.005 - 459A.085 & 468.020

Stats. Implemented: ORS 459A.080

Hist.: DEQ 26-1984, f. & ef. 12-26-84; deq 27-1988, f. & cert. ef. 9-16-88; DEQ 1-1989, f. & cert. ef. 1-27-89; DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0075 and 340-060-0080; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0100

### Reporting Requirements

The information in this rule is reported in order to determine statewide and local washed recovery rates, to determine compliance with the opportunity to recycle requirements and to provide accurate and comprehensive information on the type and amounts of residential and commercial solid waste generated, disposed and recovered in Oregon.

(1) General requirements. The information in subsection (2)(b) and sections (3), (4), and (5) of this rule must be reported on a form provided DEQ and must be reported to DEQ no later than February 28 of each calendar year for the previous calendar year. The information to be reported under section (6) of this rule is optional.

(2) County requirements. Each county, on behalf of its washed and the cities within its washed, must submit the following information to DEQ. The information required below that relates to collection programs within each city jurisdiction must be reported by the city to the county so that the county can provide the required information in a timely manner to DEQ.

(a) The following information must be reported periodically as DEQ requires. This information constitutes the "opportunity to recycle" report. DEQ will notify counties by November 1 of a year if an opportunity to recycle report is required for that year. When required, this report must be submitted on the schedule specified in section (1) of this rule. In any case examples of all materials listed under paragraph (D) below must be kept on file by the county for future reports or inspection by DEQ:

(A) The materials that are accepted for recycling at each disposal site in the washed;

(B) If a recycling depot has been designated in place of a disposal site as a more convenient location for recycling under the opportunity to recycle requirements, the location of that recycling depot and the materials accepted for recycling at that depot;

(C) Description of all education and promotion activities conducted by or on behalf of each applicable city and the county;

(D) For each city of 4,000 or more population in the washed and for each city located within a metropolitan service district in the washed, the following information:

(i) A list of materials accepted for recycling in each on-route residential collection program that is offered to all residential collection service customers;

(ii) A list of materials accepted for recycling in multi-family collection programs;

(iii) A list of materials accepted for recycling in on-site commercial collection programs;

(iv) Listing of each program element under OAR 340-090-0040(3) that has been chosen and implemented by each city within a metropolitan service district or with 4,000 population or more in the washed, including appropriate documentation of implementation of collection service rates, multi-family collection programs and commercial collection programs if applicable; or, as applicable, a description of the approved alternative program being implemented and the status of implementation.

(E) A summary of activities in an expanded education and promotion plan, if a city or county has chosen to provide the expanded education and promotion program element through implementation of a under OAR 340-090-0040(3)(c)(B)(ii). The summary must include education and promotion activities planned for implementation in the coming two years unless DEQ requires otherwise. The summary should also include:

(i) Plan activities actually implemented since the washed last reported to DEQ on activities in the expanded education and promotion plan; and

(ii) Any changes in activities implemented from those in the plan originally submitted to DEQ, or from the previous summary submitted to DEQ under paragraph (2)(a)(E) of this rule, with explanations for the changes.

(F) For each city or county that is implementing the expanded education and promotion program element under OAR 340-090-0040(3)(c), the contamination reduction education plan described in OAR 340-090-0041.

(G) For each city or county that is subject to the requirements of OAR 340-090-0042, the plans required for the city's or county's compliance with that rule.

(H) A city or county that has evaluated the effectiveness of one or more program elements is encouraged to include the evaluation(s) in the washed "opportunity to recycle" report.

(b) The following information must be reported annually, and constitutes the "recovery rate report":

(A) The type and corresponding weight of each material collected for the purpose of recycling during the previous calendar year for the following sources in the washed:

(i) On-route residential collection;

(ii) Multi-family residential collection;

(iii) On-site commercial collection;

(iv) Collection at disposal site recycling depots or designated more convenient locations under the opportunity to recycle requirements;

(v) Collection from approved alternative programs under OAR 340-090-0080 if applicable.

(B) The information required in paragraph (2) (b)(A) of this rule must be reported in the following manner:

(i) The weight of material reported must exclude recovery of wastes as described in OAR 340-090-0060(5);

(ii) The weight of material collected must be determined either by direct measurement or by determining the weight of material sold or otherwise sent off-site or used on-site for recycling during the calendar year, adjusted by the difference in weight of material held in inventory on the first day and last day of the calendar year;

(iii) Unless DEQ and the county have agreed in writing on an alternative reporting method, the weight of material collected must be reported separately for each collection service provider or other recycler, on forms DEQ provides;

(iv) The type and corresponding weight of material reported must be broken down by each of the following collection sources:

(I) On-route residential collection;

(II) On-site commercial collection;

(III) Multi-family residential collection;

(IV) Disposal site recycling depots or depots designated as more convenient locations under the opportunity to recycle requirements; and

(V) Material collected by an alternative program for providing the opportunity to recycle requirements.

(v) In cases where a collection service provider is unable to provide exact weight information for the categories identified in subparagraph (2)(b)(B)(iv) of this rule, reasonable estimates allocating the weight of material collected by collection source and by washed may be made.

(C) Information on participation in on-site residential collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(D) Information on participation in on-site commercial collection programs and multi-family collection programs should be provided if available, either by exact participation data or by a reasonable estimate;

(E) Total weight of all solid waste generated in the washed disposed of outside of the state of Oregon. The following waste is excluded from this reporting requirement:

(i) Sewage sludge or septic tank and cesspool pumpings;

(ii) Industrial solid waste disposed of at an out-of-state industrial solid waste disposal site;

(iii) Industrial waste, ash, inert rock, dirt, plaster, asphalt and similar material if delivered to an out-of-state municipal solid waste disposal site and if the disposal site operator keeps a record of the weight and washed of origin of such materials delivered;

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(iv) Solid waste received at an out-of-state ash monofill from an energy recovery facility.

(F) A copy of any new city or county collection service franchise, or any amendment to franchise, including rates under the franchise, which relates to recycling;

(G) If a county determines that the conditions in OAR 340-090-0060(4) exist and specific materials or mixtures that are composted or burned for energy recovery may be included in the calculation of the recovery rate for the washed, the county must report the following information:

(i) Weight and type of material composted or burned for energy recovery;

(ii) For mixtures of materials, the percent by weight and description of each type of material composted or burned for energy recovery that, if properly source separated, could have been recycled;

(iii) Where markets exist for such materials in the washed and outside the washed;

(iv) Charge or price paid for each material at each location;

(v) Transportation distances to market at each location and the per-mile transportation cost to market by the most economical means of transportation available.

(3) Solid waste disposal facility requirements. Except as provided in section (4) of this rule, and excluding the material listed in OAR 340-090-0060(5), each solid waste disposal site that receives solid waste for disposal, except transfer stations, must report to DEQ the weight of solid waste disposed of by each washed in Oregon. The disposal site must report this waste as either "not counting" in determining the recovery rate in OAR 340-090-0050 [wastes specified in OAR 340-090-0060(5)] or "counting" towards the rate (all other wastes generated in Oregon). This information must be reported by the disposal site permittee on forms DEQ provides and must be a condition of the solid waste permit. If a disposal site is unable to determine the exact weight of waste disposed for each washed in which it was generated, a reasonable estimate allocating the weight of waste to the appropriate washeds may be made.

(4) The metropolitan service district on behalf of Multnomah, Clackamas, and Washington counties and the cities therein, must report the following information:

(a) Information in subsection (2)(b) of this rule for all counties in aggregate for said district;

(b) Weight of solid waste disposed of through facilities owned or operated by the metropolitan service district, or operated under contract to the metropolitan service district, excluding the wastes listed in OAR 340-090-0060(5); and

(c) Weight of solid waste sent to out-of-state facilities.

(5) Privately operated recycling, material recovery, and energy recovery facility requirements. This section applies to buy-back centers, drop-off centers, manufacturers, distributors, pyrolysis facilities, facilities burning recovered material as a fuel, collection service providers who collect or otherwise handle materials other than those required to be reported under subsection (2)(b) of this rule, and other private recycling operations and material recovery facilities who collect, otherwise acquire, use recovered material in manufacturing or as a fuel, or recycle material that is not included in the reporting requirements of subsection (2)(b) and section (6) of this rule. These facilities must accurately report to DEQ the type and corresponding weight of each category of material recycled, processed, recovered as a fuel, or used in a new product containing recycled content in a calendar year as follows:

(a) Weight of each material recovered must be reported, broken down by washed of origin and by source as provided on the data form DEQ supplies;

(b) Weight of materials reported must exclude recycling of wastes described in OAR 340-090-0060(5);

(c) Weight of material collected must be determined either by direct measurement of the material collected, purchased, or generated; or by determining the weight sold or otherwise sent off-site or used on-site for recycling during the year, adjusted by the difference in weight of material in inventory on the first day and last day of the calendar year;

(d) To avoid double counting of materials, entities reporting under this section must identify weight and sources of material they collected from other recyclers, subsequent recyclers and end users that directly receive their material and the weight of material sold or delivered to each directly subsequent recycler or end user. This applies to all materials collected for recycling, including materials delivered to subsequent recyclers or end users or collected and reported to the county under subsection (2)(b) of this rule;

(e) Private recyclers must report the final status of each material sold, delivered or utilized. The report must indicate whether the material was recycled, composted, or burned for energy recovery in order to determine which materials will count toward the recovery rate in OAR 340-090-0050;

(f) Total weight of material recovered by each private recycler must be reported based on actual measurement. In cases where determining the actual weight of material recovered by washed or by collection source is not possible, reasonable estimates allocating the weight of material collected by washed and collection source may be made.

(6) Scrap metal industry requirements. DEQ must survey the scrap metal industry annually. The scrap metal industry may report the following information to DEQ on a form DEQ provides as section (1) of this rule requires:

(a) Weight of post-consumer residential scrap metal, including appliances processed for use in manufacturing new products that do not routinely enter the solid waste stream;

(b) Source or washed where the material was generated.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.010 & 459A.050

Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0110

### Minimum Content Reporting Requirements

The following information must be reported to DEQ by February 28 of each year for the previous calendar year by the applicable person on a form DEQ provides:

(1) Each consumer of newsprint in Oregon must report the following information:

(a) Amount of newsprint used in a calendar year in short tons or metric tons;

(b) Amount of recycled-content newsprint, comprised of post-consumer waste paper, used in a calendar year in short tons or metric tons;

(c) Aggregate recycled content of the newsprint used in a calendar year expressed as a percent of the total newsprint used in a calendar year in short tons;

(d) If a consumer cannot obtain the required amount of recycled content newsprint for the reasons listed in ORS 459A.505, the report must include an appropriate explanation;

(e) For purposes of this section only "post-consumer waste" means a material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer or manufacturing item.

(2) Publishers of directories distributed in Oregon must provide the following information on a form DEQ provides. For purposes of this rule, directories means telephone directories that weigh one pound or more for a local jurisdiction:

(a) Total weight in tons of directories distributed in Oregon;

(b) Percent by weight of recycled content in the total directories distributed in Oregon;

(c) Percent of total weight that consists of post-consumer waste;

(d) If a publisher cannot meet the requirements in ORS 459A.520, the publisher must provide an explanation;

(e) Description of the locations and cooperative programs implemented with local government for the collection and recycling of old directories when new ones are distributed, including the total weight of old directories collected for recycling in each local government jurisdiction.

(3) Each manufacturer of glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, must report the following information:

(a) Total tons of new glass food, drink and beverage containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, in a calendar year;

(b) The total tons of post-consumer recycled glass used in manufacturing the containers made in Oregon, or made outside Oregon and sold to packagers located in Oregon, in a calendar year;

(c) Post-consumer recycled glass generated in Oregon and used in "secondary end uses" must be credited towards the 50 percent minimum percentage requirement. As used in this section, "post-consumer recycled glass" does not include window glass and other glass not related to glass container manufacturing. This "credit" must be determined annually as follows:

(A) DEQ must determine the tonnage of post-consumer recycled glass generated in Oregon and used in "secondary end uses" based on reports received under OAR 340-090-0100;

(B) DEQ must then determine the percentage of post-consumer glass generated in Oregon that was used for secondary end uses that year. DEQ

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must use a composition study of solid waste disposed of in Oregon as the basis for estimating the amount of solid waste which is post-consumer recycled glass;

(C) The 50 percent minimum glass recycled content requirement each glass manufacturer must meet must be reduced by the number of percentage points determined in paragraph (3)(c)(B) of this rule for the subject year.

(d) A glass manufacturer must identify to DEQ all secondary end users of post-consumer recycled glass generated in Oregon of which it is aware. "Secondary end uses" must include:

- (A) Use on road surfaces as "glasphalt;"
- (B) Fiberglass;
- (C) Abrasives;
- (D) Glass foam;
- (E) Glass beads for reflective paint;
- (F) Construction uses, meeting engineering specifications;
- (G) Road-base aggregate, meeting engineering specifications;
- (H) Other uses as approved by DEQ.

(e) Upon request from a glass container manufacturer, DEQ may not enforce the requirement that a minimum percentage of recycled glass be used in the manufacturing of glass containers if DEQ determines that a glass container manufacturer cannot meet the minimum percentage requirements because of a lack of available glass cullet within Oregon watersheds where container glass is a principal recyclable material, and that meets reasonable specifications the manufacturer establishes. However, lack of availability of appropriate cullet to fully comply with the glass recycled content requirement may not exempt a glass container manufacturer from the requirement to achieve as high a minimum recycled content as possible using available appropriate cullet. A request for non-enforcement from a glass container manufacturer must include sufficient detail for DEQ to be able to reasonably make a determination as to the availability of appropriate cullet, and must:

(A) Be made to DEQ in writing by February 28 of a year to apply to use of cullet in the previous calendar year;

(B) Include a copy of the manufacturer's specifications and an explanation of how the manufacturer determined that sufficient glass cullet meeting the specifications was not available. If a manufacturer's specifications are more restrictive than accepted national specifications, the manufacturer must demonstrate to DEQ why such restrictions are necessary;

(C) Include the tonnage of the shortfall of available cullet.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.515, 459A.520 & 459A.550  
Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0120

### Confidential Information

This rule describes and clarifies which information submitted to DEQ under the requirements of OAR 340-090-0100 DEQ must handle as confidential and the procedures for maintaining confidentiality.

(1) DEQ must maintain as confidential information collected under OAR 340-090-0100(5) and (6) as it relates to customer lists or names and specific weights and types of materials collected or processed.

(2) Upon the provider's request, DEQ must maintain as confidential information the information specifically relating to customer lists or specific types and amounts of materials marketed for materials collected enroute that a collection service provider voluntarily submits to DEQ under a survey.

(3) DEQ must designate a Documents Control Officer for purposes of receiving confidential information and for secure storage and management of such information.

(4) DEQ must limit access to information submitted as confidential under OAR 340-090-0100(5) and (6) to employees and representatives of DEQ involved in carrying out the requirements of ORS Chapter 459 and 459A.

(5) DEQ may use and disclose the information submitted under OAR 340-090-0100(5) and (6) in aggregate form.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.010  
Hist.: DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93); DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0130

### Fair Market Value Exemption

(1) To qualify for exemption under ORS 459A.075 a source-separated recyclable material must be:

- (a) Source-separated by the generator; and

(b) Purchased from or exchanged by the generator for fair market value for recycling or reuse.

(2) If, as part of the opportunity to recycle, a city or county requires by franchise that residential collection service of recyclable material be provided and identifies a group of two or more materials as the recyclable material for which the residential collection service must be provided, then:

(a) "Fair market value" of any material within the identified group must include the provisions of collection service for all material in the identified group; and

(b) "Recyclable material" means the group identified by the city or county.

(3) Local government may designate classes of residential dwellings to which specific types or levels of collection service are to be provided.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.075  
Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0050; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0140

### Recyclable Material

This rule describes the factors that DEQ must consider in determining if a material meets the definition of recyclable material. In determining what materials are recyclable materials.

(1) DEQ must calculate the cost of collection and sale of a recyclable material by considering the collector's costs from the time the material is source-separated and leaves the use of the generator until it is first sold or transferred to the person who recycles it. DEQ must consider all costs and savings associated with collection of a recyclable material in the calculation.

(2) DEQ must consider any measurable savings to the collector resulting from making a material available for recycling as opposed to disposal the same as income from sale.

(3) DEQ must calculate the cost of collection and disposal of material as solid waste by using the total costs of collection and disposal. Costs must include fees charged, taxes levies or subsidy to collect and to dispose of solid waste. Costs must also include, but are not limited, to the costs to comply with applicable statutes, rules permit conditions and insurance requirements.

(4) DEQ may use the amount and value of any source-separated material that is collected or received as part of a recycling requirement of a permit or a city or county franchise determining whether remaining material meets the definition of recyclable material.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.010  
Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0055; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0150

### Due Consideration

(1) In determining who must provide the opportunity to recycle, a city or county must first give due consideration to any person lawfully providing recycling or collection service on June 1, 1983, if the person continues to provide the service until the date the determination is made and the person has not discontinued the service for a period of 90 days or more between June 1, 1983, and the date the city or county makes the determination.

(2) "Due consideration" includes at a minimum:

(a) A general notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise;

(b) A timely written notice announcing that the city or county intends to franchise recycling collection service and describing the requirements for the franchise sent to persons entitled by ORS 459A.085(6)(c) to due consideration where such persons are known to the city or county or where such person has filed a timely written request for such notices with the city or county;

(c) An opportunity for public comment on the proposed franchise; and

(d) Consideration of, and response to, a timely application for a recycling collection franchise from a person entitled to due consideration and response.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020  
Stats. Implemented: ORS 459A.085  
Hist.: DEQ 26-1984, f. & ef. 12-26-84; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0085; DEQ 3-2017, f. & cert. ef. 1-19-17

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## 340-090-0180

### Used Oil Recycling Signs

(1) Retail sellers of more than 500 gallons of lubrication or other oil annually in containers for use off premises must post and maintain durable and legible signs.

(2) Retail sellers must print and provide their own signs. The signs must contain the following information:

(a) Information on the energy and environmental benefits gained by recycling used motor oil;

(b) Telephone number where people can call to obtain more information on oil recycling depots and other oil recycling opportunities;

(c) Information on how to recycle used oil;

(d) Information on at least one conveniently located used oil recycling depot, or other oil recycling opportunity, i.e., name, location, and hours of operation;

(3) The signs this rule requires must be no smaller than 11 inches in width and 14 inches in height.

(4) DEQ suggests that the following appear on the sign "Conserve Energy — Recycle Used Motor Oil", in at least inch-high letters.

Stat. Auth.: ORS 459A.025, 459.045 & 468.020

Stats. Implemented: ORS 459A.575

Hist.: DEQ 4-1979, f. & ef. 2-2-79; DEQ 7-1987, f. & ef. 3-18-87; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-061-0062; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0190

### Yard Debris Recycling Charges

(1) The EQC's purpose in adopting this rule governing when a fee may be charged for yard debris recycling services is to:

(a) Ensure that a financial disincentive for recycling is not created for any waste generator;

(b) Increase recovery of yard debris and stimulate participation in yard debris recycling programs;

(c) Acknowledge the rate considerations due to the extreme variability of volumes generated;

(d) Ensure that service provided to multi-family generators residing in dwellings of four or fewer units is equivalent to service provided single family residences.

(2) The purpose as stated in section (1) of this rule is to apply to those recycling programs required under ORS 459A.005, 459A.010 and 459.250.

(3) As used in this rule, "residential generator" means any generator of recyclable material located in single or multi-family dwellings up to and including four units.

(4) As used in this rule, a "unit of yard debris" is the equivalent of a 32-gallon can, a similar sized bag, or the standard unit of yard debris service provided, whichever is greater.

(5) Residential generators of yard debris participating in a regularly scheduled yard debris collection service where yard debris is a principal recyclable material, may be charged a fee for yard debris recycling service. The cost of collection of at least the equivalent of one unit of yard debris per month must be incorporated into the base fee charged for solid waste and recycling collection and disposal. An additional fee may be charged for yard debris service which exceeds the equivalent of collection of one unit of yard debris per month. Where multi-family complexes are treated as a single customer, the local government providing the yard debris service must assure that yard debris service is provided at a level equivalent to service provided single-family dwellings. Local governments must make this determination and any related adjustment in service, no later than their next rate review process. In addition to the base fee charged for solid waste and recycling collection and disposal, which must include the first unit of yard debris, local governments may charge a fee for:

(a) Collection of any volumes of yard debris over and above the first unit which is included in the base fee, where the generator is a solid waste customer;

(b) Collection of any volumes of yard debris where the generator is not a solid waste customer;

(c) Yard debris collected through a depot program or other alternative method including on-call service.

(6) The total additional yard debris recycling fee charged to any generator of yard debris for collection of yard debris must be less than the fee that would have been charged for collection of that same volume of yard debris as mixed solid waste.

(7) Yard debris recycling fees in addition to the base fee charged for solid waste collection and disposal may be charged for the collection of yard debris on-route or at a depot, where yard debris is not a principal recyclable material.

Stat. Auth.: ORS 459A.025, 459.045, 459A.005 - 459A.085 & 468.020

Stats. Implemented: ORS 459.015, 459.250, 459A.005 & 459A.010

Hist.: DEQ 9-1991, f. & cert. ef. 6-20-91; DEQ 31-1992, f. & cert. ef. 12-18-92 (and corrected 1-5-93), Renumbered from 340-060-0130; DEQ 9-1993, f. & cert. ef. 6-16-93; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0310

### Rigid Plastic Containers: Purpose

The following administrative rules, OAR 340-090-0320 - 0430, are intended to establish the minimum requirements for implementing the Oregon Rigid Plastic Container Recycling Law, ORS 459A.650 through 680. The Commission's purposes in adopting these rules are to:

(1) Reduce the amount of rigid plastic containers being disposed of in Oregon;

(2) Increase the reuse or recycling of rigid plastic containers that would otherwise be disposed of;

(3) Increase the use of recycled material in the manufacture of rigid plastic containers.

Stat. Auth.: ORS 459A.025

Stats. Implemented: ORS 459A.650 - 459A.665

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0320

### Definitions

As used in OAR 340-090-0310 through 430 and in OAR 340-012-0042 unless otherwise specified:

(1) "Container manufacturer" means the producer or generator of a rigid plastic container for a packaged product that is sold or offered for sale in Oregon. A "container manufacturer" is the same as a "package manufacturer" as defined in ORS 459A.650(2).

(2) "Container Manufacturer's Certificate of Compliance" means the certificate provided by the container manufacturer to a product manufacturer which describes the records which the container manufacturer has available to document that a rigid plastic container or containers comply with OAR 340-090-0350(1)(a), (1)(b)(A), or (1)(b)(B).

(3) "Container/product ratio" means the ratio of the weight of a rigid plastic container to the units of product in the container.

(4) "DEQ" means the Department of Environmental Quality.

(5) "Drug" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations.

(6) "FDA" means federal Food and Drug Administration.

(7) "FD&C Act" means federal Food, Drug and Cosmetic Act (21 U.S.C. 321).

(8) "Infant formula" has the meaning given by the federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), and is food which purports to be for special dietary use solely as food for infants because it simulates human milk or is suitable as a complete or partial substitute for human milk.

(9) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component, part or accessory, which is:

(a) Recognized in the National Formulary, United States Pharmacopoeia, USP 39-NF 34 (2016) or any existing supplement thereto, and intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or

(B) To affect the structure or any function of the body of man or other animals which does not achieve its primary intended purpose through chemical action within or on the body of man or other animals; and is

(b) Not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(10) "Medical food" has the meaning given by the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) and pertinent regulations and includes the following:

(a) A product formulated to be consumed or administered internally under the supervision of a physician; and

(b) A product intended for specific dietary management of a disease or condition for which distinctive nutritional requirements, based on recognized scientific principles, are established by medical evaluation. For purposes of these rules, medical food is food that is consumed or directly placed in the stomach or intestine through a tube, or other food which is used to manage a disease or medical condition, or food labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet". Food for which popular dietary claims are made, such as "low fat" or "low sodium," is not medical food.

(11) "Post-consumer rigid plastic container" means a rigid plastic container that would otherwise be destined for solid waste disposal, having completed its intended end-use and product lifecycle. Rigid plastic con-



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tainers which held obsolete or unsold products must be considered post-consumer rigid plastic containers when used as a feedstock for new products other than fuel or energy.

(12) “Product-associated container” means a brand-specific rigid plastic container line, which may have one or more sizes, shapes or designs and which is used in conjunction with a particular, generic product line. A “product-associated container” is the same as a “product-associated package” as defined in ORS 459A.650(3).

(13) “Product manufacturer” means the producer or generator of a packaged product that is offered for sale in Oregon in a rigid plastic container:

(a) For purposes of these rules “product manufacturer” includes all subsidiaries and affiliates;

(b) Identification of the product manufacturer, for purposes of these rules, must be determined by the following hierarchy:

(A) When the name of the entity that manufactured the product held by the container is stated on the container label, then that entity must be considered the product manufacturer;

(B) When the container label does not state the entity that manufactured the product held by the container, but the container label does state the distributor of the container, then the distributor must be considered the product manufacturer;

(C) When the container label does not state either the entity that manufactured the product held by the container or the distributor of the container, but the container label states the importer of the container, then the importer must be considered the product manufacturer;

(D) When the container does not have a label or the label does not state the entity that manufactured the product held by the container, or the distributor of the container, or the importer of the container, or the container is filled at the point of sale and no other manufacturer distributor or importer is identified on the label, then the store that sells the product held by the container must be considered the product manufacturer.

(14) “Product manufacturer’s Report of Compliance” means the report a product manufacturer provides to DEQ that documents compliance of a rigid plastic container or containers with requirements of OAR 340-090-0350 or exemption from those requirements as set out in OAR 340-090-0330.

(15) “Recycled content” means that portion of a package’s weight that is composed of recycled material, as determined by a material balance approach that calculates total recycled material input as a percentage of total material input in the manufacture of the package.

(16) “Recycled in Oregon” means generated in Oregon as plastic from post-consumer rigid plastic containers and collected, processed and eventually manufactured into another product, other than fuel or energy, either in Oregon or outside the state.

(17) “Recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use or product life cycle. Recycled material does not include materials and by-products generated from, and commonly reused within, an original manufacturing and fabrication process.

(18) “Recycling rate” means the level, stated as a percentage, at which post-consumer rigid plastic containers are recycled in Oregon. The rigid plastic container recycling rate is determined by dividing the weight of plastic from post-consumer rigid plastic containers recycled in Oregon by the combined weight of plastic from both post-consumer rigid plastic containers recycled and those disposed of in Oregon.

(19) “Reduced container” means a rigid plastic container which has a container/product ratio which is at least ten percent less than the container/product ratio for the same product by the same product manufacturer five years earlier, as provided in OAR 340-090-0330(5).

(20) “Replacement product” means a product which is used to refill a rigid plastic container. Replacement product must be the same as or similar to the original product in the container.

(21) “Reused container” means either a refillable or reusable container which is refilled by the product manufacturer or reused by the consumer and is used at least five times with the same or a similar product.

(22) “Rigid plastic bottle” means a container that has a mouth narrower than its base.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.650 & 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0330

### Rigid Plastic Containers

(1) A rigid plastic container is a plastic bottle, jar, cup, tub, pail, “clamshell” container, or other plastic container which meets the following criteria:

(a) Is designed to hold a product for sale;

(b) Has a volume of not less than eight fluid ounces and not more than five gallons. The volume of the container must be determined using one of the following methods:

(A) For a container which is labeled in liquid measure, the labeled volume; or

(B) The measured liquid volume of the container; and

(C) For containers which have a labeled product liquid volume of five gallons or less and a measured container liquid volume of more than five gallons the labeled product volume must be used.

(c) Is composed predominantly of plastic resin;

(d) Is able to maintain its shape, whether empty or full, under normal usage, independent of any product which it contains or other external support.

Comment: Plastic tubes and blister packs are excluded from the definition of a rigid plastic container.

(2) The following containers are also rigid plastic containers if they meet the criteria set forth in section (1) of this rule:

(a) Plastic boxes, baskets, crates, and flower pots that are sold containing a product;

(b) Plastic trays that have sidewalls designed to contain a product in the tray.

(3) The determination of whether a container meets the definition of rigid plastic container must be based solely upon the characteristics of the plastic container itself at the time of determination and not upon any material used as packaging for a rigid plastic container or for packaging of individual products within a rigid plastic container.

(4) Lids and caps are not considered to be part of a rigid plastic container except when they meet one of the following criteria:

(a) Are designed to be permanently attached to a rigid plastic container; or

(b) Independently meet the criteria set forth in section (1) of this rule.

(5) The following packaging items may not be considered part of a rigid plastic container:

(a) Labels;

(b) Those parts of the whole package or of the rigid plastic container for which the principal purpose is to provide a tamper resistant seal. This does not include portions of a rigid plastic container that have a principal purpose other than providing a tamper resistant seal; and

(c) A bag, film, or flexible inner or outer wrap that is used to cover or contain a product or a rigid plastic container.

Stat. Auth.: ORS 459A.025, 459A.650 - 459A.685, 459.995 & 468.020

Stats. Implemented: ORS 459A.650, 459A.655 & 459A.675

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0340

### Exempt Rigid Plastic Containers

(1) Rigid plastic containers that meet one of the sets of criteria in sections (2) through (7) of this rule are exempt from the requirements of OAR 340-090-0350 through -0370.

(2) The product in the rigid plastic container is one of the following:

(a) A “drug” as defined in OAR 340-090-0320(5);

(b) A “medical device” as defined in OAR 340-090-0320(9);

(c) “Medical food” as defined in OAR 340-090-0320(10); or,

(d) “Infant formula” as defined in OAR 340-090-0320(8).

(3) The rigid plastic container and product are shipped out of Oregon before they are sold to the final consumer.

(4) The packaging is necessary to provide a tamper-resistant seal for public health purposes:

(a) For the purposes of OAR 340-090-0310 through 0430, packaging that provides a tamper-resistant seal is one of the following:

(A) A separate device associated with a rigid plastic container that resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred. Such devices include but are not limited to tape, film, foil, and tamper-resistant caps and lids; or

(B) A portion of a rigid plastic package that is designed to work with a device described in paragraph (A) of this subsection or which independently resists tampering with the product in the container or exposes when an attempt to tamper with a product has occurred.

(b) A complete rigid plastic container may not be considered “necessary to provide a tamper-resistant seal” and may not be exempt under the provisions of this rule.

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(5) The container is a reduced container:

(a) A container is a reduced container when the container/product ratio has been reduced by at least ten percent when compared with the container used for the same product by the same product manufacturer five years earlier:

(A) For a container that has been changed to a reduced container after January 1, 1990 and before January 1, 1995:

(i) Comparison must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption must start on January 1, 1995; and must run until January 1, 2000.

(B) For a container which has been changed to a reduced container on or after January 1, 1995:

(i) Comparison must be made to the container/product ratio of the equivalent container sold five years earlier;

(ii) The exemption must start on the date the reduced container was first used by the product manufacturer and must run for five years.

(b) A reduction in container/product ratio may not be achieved by substituting plastic for a different material for a substantial part of the container;

(A) Different material means a material other than plastic, including but not limited to glass, metal, wood, or paper;

(B) Use of different plastic resins or combinations of plastic resins is not use of a different material.

(c) For the purposes of calculating the container/product ratio, a unit of product is one of the following:

(A) A unit of weight of product;

(B) A unit of volume of product; or

(C) A unit of product use:

(i) To qualify as a "unit of product," a "unit of product use" must be clearly stated on the container or in other product use instructions;

(ii) Some examples of units of product use include the number of "standard applications," "servings," or other generally accepted units of product use.

(d) A reduced container is not exempt from OAR 340-090-0350 through -0370 if DEQ finds that changes made in the original container adversely impact the potential for the container to be recycled or to contain recycled content;

(e) A reduced container is not exempt from OAR 340-090-0350 through -0370 if the container/product ratio for the original container was increased after January 1, 1990;

(f) For purposes of receiving an exemption under this section, a concentrated form of a product must be considered to be the "same product by the same product manufacturer" if it:

(A) Has the same product line name; and

(B) Is intended for the same use.

(6)(a) There has been a substantial investment in achieving the recycling rate. To meet the "substantial investment" exemption, all of the following provisions must be met:

(A) A substantial investment has been made in achieving the recycling rate;

(B) There is a demonstrated viable market for the material from which the container is made;

(C) The 1995 recycling rate for compliance purposes is at least 20%;

(D) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(E) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(b) The exemption provided under the provisions of ORS 459A.660(5)(e) must be a one-time exemption with an effective date of January 1, 1995 to December 31, 1996;

(c) DEQ must, before January 1, 1995, determine if the conditions for the "substantial investment exemption" for rigid plastic containers, in the aggregate, have been met.

(7) The container contains food:

(a) A container must be considered to "contain food" if it contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and for human consumption.

(b) A container may not be considered to "contain food" if it contains a drinkable liquid and is a rigid plastic bottle.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0350

### Compliance Standards

(1) Except as provided in OAR 340-090-0340, by January 1, 1995, any rigid plastic container sold, offered for sale, or used in association with the sale or offer for sale of products in Oregon must comply with one of the following:

(a) Have at least 25 percent recycled content;

(b) Be made of plastic that is being recycled in Oregon at a rate of at least 25 percent by meeting one of the following criteria:

(A) It is a rigid plastic container and rigid plastic containers, in the aggregate, are being recycled in Oregon at a rate of at least 25 percent by January 1, 1995;

(B) It is a specified type of rigid plastic container and that specified type of rigid plastic container, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995; or

(C) It is a product-associated container and that class of containers, in the aggregate, is being recycled in Oregon at a rate of at least 25 percent by January 1, 1995.

(c) Be used at least five times for the same or a substantially similar use.

(2) Individual rigid plastic containers sold in Oregon after January 1, 1995 but manufactured by a container manufacturer or filled by a product manufacturer prior to January 1, 1995 are not required to meet the compliance standards listed above. A product manufacturer must be able to document that the containers were filled prior to January 1, 1995.

(3) For any calendar year for which DEQ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, all product and container manufacturers must be deemed to be in compliance with OAR 340-090-0340, 340-090-0350, 340-090-0400 and 340-090-0410 without any further action on their part.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.655 & 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0360

### Recycled Content Compliance

(1) A rigid plastic container must have at least 25% recycled content by January 1, 1995 to comply with OAR 340-090-0350(1)(a).

(2)(a) A container manufacturer must determine the recycled content of an individual rigid plastic container as being the same as the calculated recycled content for all the same type of rigid plastic containers manufactured during the same time period, within a one-year period, as determined by the container manufacturer, with the same input ratio of recycled material to total plastic;

(b) The recycled content of a rigid plastic container is calculated by dividing the weight of recycled material used in the production of the container by the total weight of plastic material used to produce the container. The result of that calculation is a percentage, which is the recycled content.

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

Stat. Auth.: ORS 459A.025, 459A.650 - 459A.685, 459.995 & 468.020

Stats. Implemented: ORS 459A.655

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0370

### Recycling Rate Compliance

A rigid plastic container may comply with OAR 340-090-0350(1)(b) by meeting one of the following criteria:

(1) The aggregate recycling rate for compliance purposes in Oregon for all rigid plastic containers, as calculated pursuant to OAR 340-090-0380(2), is at least 25%.

(2) It is a specified type of rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%:

(a) A manufacturer using this recycling rate option may designate the type of rigid plastic containers on which the recycling rate will be based. This becomes the specified-type. A specified-type may be designated using any one or combination of the following characteristics:

(A) Type of plastic resin used to manufacture the container, for example HDPE, natural HDPE, colored HDPE, PETE, PVC;

(B) Shape and design of the container, for example all bottles, all tubs, all gallon jugs, all buckets;

(C) Use of the container, for example milk bottles, non-milk dairy containers, household chemical containers, or other generic product lines;

(D) Other specified characteristics of the container.

(b) The characteristics used to identify a specified type of rigid plastic container may not exclude or limit it to an individual product-associated container.

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(3)(a) It is a product-associated rigid plastic container and the recycling rate in Oregon for that type of container, in the aggregate, is at least 25%;

(b) A product manufacturer using this recycling rate option may designate the product-associated rigid plastic container on which the recycling rate will be based. This becomes the product-associated rigid plastic container. A product-associated rigid plastic container may be designated by the following single or combination of characteristics but must be limited to a specific brand and generic product line:

(A) The brand of product in the container (Example: all Brand X products or all Brand Y products);

(B) The brand and type of product in the container (Example: Brand X dish soap or Brand Y cooking oil);

(C) The brand and type of container (Example: all Brand X gallon jugs or all Brand Y jars);

(D) The brand and resin type of the container (Example: all Brand X PETE containers, or all Brand Y HDPE containers);

(E) Other specific characteristics or combination of characteristics which are brand specific.

(4) A manufacturer choosing the options described in sections (2) or (3) of this rule may rely upon disposal or recycling data DEQ generates, where available. Manufacturers using other data to calculate a recycling rate must be able to document that such data was generated by a methodology acceptable to DEQ and are verifiable.

Stat. Auth.: ORS 459A.025, 459A.650 - 459A.685, 459.995 & 468.020

Stats. Implemented: ORS 459A.655, 459A.657 & 459A.665

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0380

### Recycling Rate Calculation

(1) The recycling rate for rigid plastic containers must be calculated as one of the following:

(a) Aggregate or specified resin type recycling rate for compliance purposes;

(b) Calendar year aggregate recycling rate;

(c) Specified-type rate; or

(d) Product-associated rate.

(2) Recycling rate for compliance purposes;

(a) Aggregate recycling rate for compliance purposes;

(A) DEQ may determine a recycling rate for rigid plastic containers, in the aggregate, for compliance purposes by December 31 of any year for which DEQ deems it necessary to determine such a rate. The aggregate recycling rate for compliance purposes must apply to the following calendar year and to any subsequent calendar year until DEQ again calculates an aggregate rigid plastic container recycling rate for compliance purposes;

(B) DEQ must base the aggregate recycling rate for compliance purposes in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, DEQ will use the best available recycling rate information in lieu of a calendar year recycling rate.

(b) Specified resin type recycling rate for compliance purposes:

(A) If the aggregate recycling rate in paragraph (2)(a)(A) of this rule is determined to be less than 25 percent, DEQ must determine a specified resin type recycling rate for compliance purposes for rigid plastic containers made from each of the plastic resin types identified in ORS 459A.680. The specified resin type recycling rate for compliance purposes must apply to the calendar year(s) for which the aggregate recycling rate in paragraph (2)(a)(A) of this rule was determined;

(B) DEQ must base the specified resin type recycling rate for compliance purposes in part on the most recent calendar year recycling rate and in part on other information which reflects or indicates the level of rigid plastic container recycling. When determining the recycling rate for compliance purposes for years prior to the calculation of the calendar year recycling rate, DEQ will use the best available recycling rate information in lieu of a calendar year recycling rate.

(3) Calendar year aggregate recycling rate:

(a) DEQ must calculate the calendar year aggregate recycling rate for rigid plastic containers and must include all rigid plastic containers including those exempted by OAR 340-090-0340(2), (4), (5), (6) or (7) from meeting compliance standards;

(b) DEQ must determine the calendar year recycling rate for rigid plastic containers in the aggregate as a percentage by dividing the aggregate numerator by the aggregate denominator. DEQ must collect or adjust, or

both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year;

(c) The elements of the formula to calculate the calendar year aggregate recycling rate for post-consumer rigid plastic containers in Oregon are:

(A) The aggregate numerator, expressed in tons:

(i) DEQ must calculate the numerator to be calculated as the total weight of post-consumer rigid plastic containers recycled in Oregon;

(ii) In addition to DEQ's census of material recovery rates, DEQ may use as the basis for determining the total weight of post-consumer rigid plastic containers recycled in Oregon an annual recycling census of all parties directly involved in brokering, processing, or recycling post-consumer rigid plastic containers from Oregon. DEQ may provide monthly forms for record keeping purposes only. Census respondents will be asked to calculate and submit:

(I) The total amount of post-consumer rigid plastic received from Oregon sources which is rigid plastic containers as defined in OAR 340-090-0330;

(II) The percentage of (I) that is lost due to removal of contaminated, non-plastic, and non-recyclable material; and

(III) Any other information DEQ may require to accurately determine the recycling tonnages.

(iii) DEQ must design and implement procedures to conduct the census relating to:

(I) Developing and maintaining a comprehensive list of handlers and reclaimers;

(II) Obtaining data from handlers and reclaimers, including the use of monthly and annual record keeping and reporting forms;

(III) Reconciling variances in reported data;

(IV) Maintaining quality control in data collection and analysis; and

(V) Adjusting data to produce estimates of the amount of plastic from post-consumer rigid plastic containers by controlling for contamination, including moisture, organic matter and other non-plastic materials.

(iv) DEQ must publish a report on the findings of the census, methodologies used and information regarding potential errors.

(B) The aggregate denominator, expressed in tons:

(i) DEQ must calculate the denominator as the sum of the total weight of post-consumer rigid plastic containers recycled in Oregon (the numerator) plus the total weight of post-consumer rigid plastic containers disposed of in Oregon. DEQ must calculate the total weight of post-consumer rigid plastic containers disposed of in Oregon by multiplying the estimated percent of municipal solid waste which is post-consumer rigid plastic containers times total tons of municipal solid waste disposed of in Oregon;

(ii) The total tons of municipal solid waste disposed of in Oregon is derived from information collected under the provisions of ORS 459A.010 (4)(g) and 459A.050 (3) and (4);

(iii) DEQ must use a composition study of solid waste disposed of in Oregon as the basis for estimating the percent of disposed solid waste which is post-consumer rigid plastic containers. Adjustments to a previous composition study may be used as a substitute for a new composition study.

(d) DEQ will determine the calendar year aggregate rigid plastic container recycling rate, when DEQ determines it to be necessary, on a calendar year basis. When DEQ determines a calendar year aggregate rate, DEQ will publish it in a report that includes a discussion of potential errors associated with calculation of the total tons of municipal solid waste disposed of in Oregon, information on the recycling and disposal data collection and analysis methodologies and margin of error for the percent composition of rigid plastic containers.

(4) Specified-type recycling rate. DEQ must determine the recycling rate for a specified type of rigid plastic container as a percentage by dividing the specified type numerator by the specified type denominator. DEQ must collect or adjust, or both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year:

(a) The elements of the formula to calculate the specified type recycling rate for rigid plastic containers in Oregon are:

(A) DEQ must calculate the specified type of post-consumer rigid plastic container numerator as the total of the specific type of post-consumer rigid plastic containers recycled in Oregon, expressed in tons;

(B) The specified type of post-consumer rigid plastic container denominator, expressed in tons:

(i) DEQ must calculate the denominator by one of the following methods:

(I) As the sum of the weight of the specified type of post-consumer rigid plastic containers recycled in Oregon plus the total weight of the specified type of rigid plastic containers disposed of in Oregon; or

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(II) The total weight of the specified type of post-consumer rigid plastic containers sold in Oregon.

(ii) If DEQ uses the weight of the specified type of post-consumer rigid plastic containers disposed of to calculate the denominator, DEQ must use a composition study of solid waste disposed of in Oregon as the basis for determining the weight disposed of.

(b) Any person calculating the recycling rate of a specified type of post-consumer rigid plastic container may rely upon disposal or recycling data DEQ generates. Persons using other data to calculate a recycling rate must be able to document that such data were generated by a methodology acceptable to DEQ and are verifiable;

(c) Adjustment to data collected by the recycling census and composition study identified in paragraphs (3)(c)(A)(ii) and (3)(c)(B)(ii) and (iii) of this rule respectively must be made only by use of a methodology DEQ accepts;

(d) DEQ may use data collected on a national basis to determine the post-consumer rigid plastic container recycling rate in Oregon if it can be shown how these data are either typical of or can be adjusted to accurately represent conditions in Oregon.

(5) Product-associated recycling rate. DEQ must calculate the recycling rate for a product-associated rigid plastic container as a percentage by dividing the product-associated numerator by the product-associated denominator. DEQ must collect or adjust, or both, the numbers in both the numerator and denominator of this calculation to represent the same calendar year. The elements of the formula to calculate the product-associated recycling rate for rigid plastic containers in Oregon are:

(a) DEQ must calculate the numerator as the total weight of product-associated post-consumer rigid plastic containers recycled in Oregon, expressed in tons;

(b) The product-associated post-consumer rigid plastic container denominator, expressed in tons. The denominator must be the total weight of the product-associated rigid plastic containers sold in Oregon.

(6) A product manufacturer or container manufacturer must rely on DEQ's calculation of the aggregate recycling rate for compliance purposes for post-consumer rigid plastic containers to comply with OAR 340-090-0350(1)(b)(A). In cases where DEQ calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer or container manufacturer may rely on DEQ's rate calculation when claiming that a container or containers comply with OAR 340-090-0350(1)(b)(B) or (1)(b)(C).

(7) In cases where a manufacturer calculates the recycling rate for specified types of or product-associated post-consumer rigid plastic containers, a product manufacturer may rely upon disposal or recycling data DEQ generates, where available. Manufacturers using other data to calculate a recycling rate must be able to document that such data were generated by a methodology DEQ accepts and are verifiable.

(8) Calculation of a recycling rate must include only those outputs from processing rigid plastic containers which are recycled into new products. When a processing technology results in a combination of outputs, some of which are recycled into new products and others of which are fuel products, or energy recovery, the recycling rate may not include any portion of the output which is a fuel product, is used to produce fuel products, or is otherwise used for energy recovery.

Stat. Auth.: ORS 459A.025

Stats. Implemented: ORS 459A.650 - 459A.657

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 27-1998, f. & cert. ef. 11-13-98; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0390

### Waste Composition

(1) A waste composition study DEQ undertakes must consist of a representative, statistically valid sampling of Oregon's municipal solid waste. DEQ must design a protocol of standards and procedures which relate to:

(a) Developing a representative sampling plan;

(b) Applying the definition of a rigid plastic container in OAR 340-090-0330 when identifying and categorizing rigid plastic containers in the field;

(c) Maintaining quality control, including training and auditing;

(d) Performing sampling, including but not limited to sample selection, sorting, weighing; and

(e) Field data adjustments for contamination including moisture, food and other non-plastic materials.

(2) DEQ must report the findings of the waste composition study, the methodologies used and information regarding potential error.

Stat. Auth.: ORS 459A.025, 459A.650 - 459A.685, 459.995 & 468.020

Stats. Implemented: ORS 459A.035

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0400

### Responsibilities of a Product Manufacturer

(1)(a) A product manufacturer must be able to document that a rigid plastic container or containers comply with either the requirements of OAR 340-090-0350 or with one of the exemptions set out in OAR 340-090-0340;

(b) For any calendar year for which DEQ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, a product manufacturer is not required to keep the records otherwise required by this rule.

(2) A product manufacturer's documentation that a rigid plastic container or containers comply with the provisions of OAR 340-090-0350 must include, at a minimum, the following information:

(a) Recycled content. For each container which complies with OAR 340-090-0350(1)(a):

(A) A description of the container, including its resin type, and product; and

(B) A copy of the container manufacturer's Certificate of Compliance from each manufacturer who supplied that container.

(b) Aggregate recycling rate. The aggregate recycling rate for compliance purposes DEQ establishes must serve as the only acceptable documentation that a product manufacturer's containers comply with OAR 340-090-0350(1)(b)(A);

(c) Other recycling rates. For containers that comply with the specified type container recycling rate requirement, OAR 340-090-0350(1)(b)(B) or the product-associated container recycling rate requirement, OAR 340-090-0050(1)(b)(C):

(A) A description of the container and product;

(B) Identification of the specified-type or product-associated criteria;

(C) Documentation of the recycling rate for the type of container pursuant to OAR 340-090-0380(4) or (5);

(D) Where DEQ or the container manufacturer has calculated a recycling rate for a specified type or product-associated rigid plastic container, the product manufacturer may rely upon that rate to show that the container complies with the recycling rate requirements.

(d) Reuse and refill. For containers which comply with the reuse requirements, OAR 340-090-0350(1)(c):

(A) A description of the container and product; and

(B) Documentation of the number of times the containers are refilled or reused:

(i) The number of times a refillable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The number of returned containers actually refilled;

(II) The number of new containers added to the total number of containers used in the product manufacturer's refillable container program; and

(III) The total number of containers filled as first-use containers.

(ii) The number of times a reusable container is reused is determined by review of the product manufacturer's records which show the following information for a uniform period of time:

(I) The amount of product sold in the original container or the number of original containers sold; and

(II) The amount of replacement product sold or the number of refill units of replacement product sold.

(iii) A container must be considered to be used at least five times if it is part of a refillable system or reusable container system which has an average refill or reuse rate for that container of at least four.

(3) A product manufacturer's records that document that a rigid plastic container or containers are exempt from the requirements of OAR 340-090-0350 through -0370 must include the following information:

(a) Drugs, medical devices, medical food, and infant formula. For containers which are exempt under the provisions of OAR 340-090-0340 (2):

(A) A description that clearly identifies the container;

(B) An identification of which of the four product types will be placed in the container;

(C) For drugs:

(i) An FDA letter of approval;

(ii) Documentation of consistency between the over-the-counter drug claims and FDA requirements, (e.g., appropriate references to the FDA Final Monograph or Tentative Final Monograph under which the drug is marketed); or

(iii) Other definitive evidence that the product meets the FDA definition of a drug.

(D) For medical devices: Documentation that the device is intended to be used for diagnosis, cure, or prevention of disease or other definitive

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evidence that the product meets the FDA definition of a medical device under the FD&C Act (21 U.S.C. 321 (h) and following).

(E) For medical food:

(i) Documentation that the product meets the definition of medical food as defined in the FD&C Act, 1988, and is intended to be used as a medical food;

(ii) Other definitive evidence that the product meets the FDA definition of medical food; or

(iii) Documentation that the product may be labeled "may be used as the sole source of nutrition" or "may be used as the sole item of the diet."

(F) For infant formula:

(i) Documentation that the product meets the definition of infant formula as set forth in the FD&C Act and is being sold for use as infant formula; or

(ii) Other definitive evidence that the product meets the FDA definition of infant formula.

(b) Shipment out of Oregon. No documentation is required for containers that are exempt under the provisions of OAR 340-090-0340(3);

(c) Reduced containers. For containers that are exempt under the provisions of OAR 340-090-0340(5):

(A) Descriptions, including container resin type, which clearly identify:

(i) The original container before reduction; and

(ii) The reduced container.

(B) An identification of the "unit of product" pursuant to OAR 340-090-0340(5)(c) being used to develop the container/product ratio;

(C) A statement of the container/product ratio and description of how it was calculated for:

(i) The original container before reduction; and

(ii) The reduced container.

(d) Substantial Investment. For containers that are exempt under the provisions of OAR 340-090-0340(6):

(A) Identification of the class of containers and the type of recycling rate for which the exemption is being claimed;

(B) Documentation of the following:

(i) A substantial investment has been made in achieving the recycling rate;

(ii) There is a demonstrated viable market for the material from which the container is made;

(iii) The 1995 recycling rate for compliance purposes is at least 20%;

(iv) The recycling rates for the rigid plastic containers for the previous two years show evidence of increasing; and

(v) Reasonable projections indicate that the rigid plastic containers will meet the 25 percent recycling rate by January 1, 1997.

(C) A product manufacturer may rely upon DEQ's determination of compliance with the requirements of this exemption for rigid plastic containers in the aggregate or for rigid plastic containers of specified resin type.

(e) Food containers. For containers that are exempt under the provisions of OAR 340-090-0340(7):

(A) Documentation that the container contains an article used, or intended to be used, for food, ice, confection or condiment, whether simple or compound, or any part or ingredient thereof or in the preparation thereof, and is for human consumption; and

(B) If the container is a rigid plastic bottle, documentation that the container does not contain a drinkable liquid.

(4) Product Manufacturer's Report of Compliance:

(a) Upon DEQ's request, a product manufacturer must make a Report of Compliance available to DEQ;

(b) A product manufacturer's Report of Compliance must be submitted on forms DEQ provides and must contain the following specific information:

(A) The product manufacturer's:

(i) Name;

(ii) Address; and

(iii) Name, title, address and phone number of an official company representative.

(B) A description of the container for which compliance or exemption is claimed; and

(C) A description of the product manufacturer's records documenting compliance or exemption.

(c) A product manufacturer must comply with the following procedure and time schedule when it provides information DEQ requests:

(A) The product manufacturer must provide a Report of Compliance to DEQ within 60 days of the date of receipt of a DEQ request for the report;

(B) If DEQ finds the Report to be incomplete, DEQ may request the missing materials from the official company representative. The product manufacturer must provide missing materials from a Report of Compliance to DEQ within 30 days of the date of receipt of a DEQ request for the missing materials;

(C) After it has reviewed the Report of Compliance, DEQ may request that the product manufacturer provide all or part of the documentation described in a Report of Compliance, other records, additional information kept by the product manufacturer which is the basis for those records or any other information deemed necessary to determine compliance with the law. The product manufacturer must provide the records or other material requested to DEQ within 45 days of the date of receipt of a DEQ request for the records.

(5)(a) A product manufacturer may request an extension of the time period to submit materials DEQ requests. Such a request for extension must be in writing and received by DEQ prior to the due date of the original DEQ request. The request for extension must:

(A) Provide the product manufacturer's name and address;

(B) Provide the name, title, address, and phone number of an official company representative;

(C) State a specific length for the requested extension, not to exceed 60 days; and

(D) Show good reason for the extension.

(b) Based upon the information provided in the request for extension, DEQ may grant the extension, deny the extension or grant an extension for a lesser period of time.

(6) Records that document compliance with the requirements of OAR 340-090-0350 or exemption under the provisions of OAR 340-090-0340 must be maintained and available for audit by DEQ for a period of at least three years after the year for which compliance is documented.

(7) The Report of Compliance for a product manufacturer that can demonstrate that it sells less than 500 rigid plastic containers per day must consist of the quantity, brand name, product number, if any, and source of purchase of rigid plastic containers. These small product manufacturers are not required to keep other records of container compliance.

(8) DEQ shall consider a product manufacturer's failure to provide a Report of Compliance or additional materials DEQ requests within the schedule set out in this rule a violation of these rules.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.65 & 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0410

### Responsibilities of a Container Manufacturer

(1)(a) A container manufacturer must be able to document that a rigid plastic container or containers comply with the requirements of OAR 340-090-0350(1)(a), (1)(b)(A), or (1)(b)(B);

(b) For any calendar year for which DEQ determines that the aggregate recycling rate for compliance purposes is at least 25 percent, a container manufacturer is not required to keep the records otherwise required by this rule.

(2) A container manufacturer's documentation that a rigid plastic container or containers comply with the provisions of OAR 340-090-0350(1)(a), (1)(b)(A) or (1)(b)(B) must include, at a minimum, the following information:

(a) Recycled content. For each container that complies with OAR 340-090-0350(1)(a):

(A) A description of the container including its resin type;

(B) Documentation of the recycled content of the type of container including:

(i) The total weight of plastic used to manufacture that type of rigid plastic container during the time period when the container was made; and

(ii) The weight of recycled material used to manufacture that type of rigid plastic container during the same time period, within a one-year period, as determined by the container manufacturer.

(b) Aggregate recycling rate. The aggregate recycling rate for compliance purposes DEQ establishes serves as the only acceptable documentation that a container manufacturer's containers comply with OAR 340-090-0350(1)(b)(A);

(c) Specified-type recycling rate. For containers that comply with the specified-type recycling rate requirement, OAR 340-090-0350(1)(b)(B):

(A) A description of the container;

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(B) Identification of the specified type;

(C) Documentation of the recycling rate for the type of container pursuant to OAR 340-090-0380(4); and

(D) Where DEQ has calculated a recycling rate for a specified type of container, the container manufacturer may rely upon DEQ's rate to show that the container complies with the rate requirements.

(3) Container manufacturer's Certificate of Compliance:

(a) A container manufacturer must make a Certificate of Compliance available to:

(A) Any product manufacturer who uses containers from that container manufacturer and makes products in those containers available for sale in Oregon; and

(B) DEQ, upon request, only if not otherwise available from the product manufacturer.

(b) A container manufacturer's Certificate of Compliance must contain the following information:

(A) The container manufacturer's:

(i) Name;

(ii) Address; and

(iii) Name, title, address and phone number of an official representative.

(B) A description of the container or containers for which compliance or exemption is claimed; and

(C) A description of the container manufacturer's records documenting compliance.

(c) If, after review of the container manufacturer's Certificate of Compliance, DEQ determines that the information provided in the Certificate is not adequate to document that a container or containers comply with OAR 340-090-0350 through 0370, DEQ may:

(A) Request that the product manufacturer provide all or part of the documentation described in a Certificate of Compliance, other records, or additional information the container manufacturer keeps that is the basis for those records and any other information deemed necessary to determine compliance with the law. Within 15 days of this request, the product manufacturer must notify DEQ whether it will provide the requested information or if DEQ must request it directly from the container manufacturer. If the product manufacturer notifies DEQ it will satisfy the request, the manufacturer must provide the records or other material requested to DEQ within 45 days of the date of the product manufacturer's notification;

(B) If the product manufacturer cannot provide adequate documentation or other information DEQ requests within the time frame in (A) above, then DEQ may request such information directly from the container manufacturer.

(d) A container manufacturer must comply with the following procedure and time schedule when it provides information DEQ requests:

(A) The container manufacturer must provide a Certificate of Compliance to DEQ within 60 days of the date of receipt of a DEQ request for the Certificate;

(B) If DEQ finds the Certificate to be incomplete, DEQ may request the missing materials from the official company representative. The container manufacturer must provide missing materials from a Certificate of Compliance to DEQ within 30 days of the date of receipt of a DEQ request for the Certificate;

(C) After it has reviewed the Certificate of Compliance, DEQ may request that the container manufacturer provide all or part of the documentation described in a Certificate of Compliance, other records, or additional information kept by the container manufacturer that is the basis for those records and any other information deemed necessary to determine compliance with the law. The container manufacturer must provide the records or other material requested to DEQ within 45 days of the date of receipt of a request for the records.

(4)(a) A container manufacturer may request an extension of the time period to submit materials DEQ requests. Such a request for extension must be in writing and be received by DEQ before the due date of DEQ's original request. The request for extension must:

(A) Provide the container manufacturer's name and address;

(B) Provide the name, title, address, and phone number of an official company representative;

(C) State a specific length for the requested extension, not to exceed 60 days; and

(D) Show good reason for the extension.

(b) Based upon the information provided in the request for extension, DEQ may grant the extension, deny the extension, or grant an extension for a lesser period of time.

(5) Records that document compliance with the requirements of OAR 340-090-0350 or exemption under the provisions of OAR 340-090-0340 must be maintained and available for audit by DEQ for a period of at least three years after the year for which compliance is documented.

(6) DEQ will consider a container manufacturer's failure to provide the following a violation of these rules:

(a) A Certificate of Compliance to a product manufacturer; or

(b) A Certificate of Compliance or additional materials to DEQ as requested and within the schedule set out in this rule.

(7) DEQ, at its discretion, may audit the container manufacturer directly to determine compliance with these rules.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.65 & 459A.660

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0420

### Confidential Information Procedure

(1) DEQ may not disclose to the public records provided to DEQ if:

(a) The records contain trade secrets as defined in ORS 192.501(2) or 646.461(2);

(b) The records, or the applicable portions thereof, are clearly identified as trade secrets; and

(c) The person claiming trade secret status for specific information has provided substantiation as to why the material is a trade secret.

(2)(a) DEQ must notify the person who requests confidentiality if a request is received to disclose those records. The notice must:

(A) Be delivered at least 15 days before DEQ discloses any of the records;

(B) Include a copy of any written request or a summary of any oral request for disclosure; and

(C) State how DEQ intends to respond to the request.

(b) If a product or container manufacturer wishes to defend their trade secret claim, the manufacturer must respond with a written justification for the basis of their trade secrets claim. Such justification must be delivered to DEQ within 15 days of DEQ's notice of a request to disclose those records.

(3)(a) DEQ will notify the product manufacturer of any information requested directly from the container manufacturer;

(b) Upon request from the product manufacturer, DEQ will make available to the product manufacturer copies of records received from the container manufacturer concerning that product manufacturer, except as provided in section (2) of this rule, so that the product manufacturer may identify which of the records, if any, contain trade secrets of the product manufacturer;

(c) If the product manufacturer complies with section (1) of this rule with respect to the records of a container manufacturer, DEQ must follow the provisions in section (2) of this rule if it receives any request to disclose those records.

Stat. Auth.: ORS 459A.025, 459A.650 - 459A.685, 459.995 & 468.020

Stats. Implemented: ORS 459A.010

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0430

### Violations

(1) Violations of these rules are punishable as provided in ORS Chapter 459.955(1)(a) and pursuant to OAR 340-012-0042 and -0065.

(2) DEQ may not enforce the provisions of ORS 459A.650 to 459A.660 during the first full calendar year after DEQ determines for the first time that the aggregate recycling rate for compliance purposes is less than 25 percent.

(3) DEQ may not enforce the provisions of ORS 459A.650 to 459A.660 until January 1, 1998. After that time DEQ must take enforcement action for violations of ORS 459A.650 to 459A.660 occurring on or after January 1, 1998.

Stat. Auth.: ORS 459A.025 & 468.020

Stats. Implemented: ORS 459A.660 & Ch. 584 OL 1995

Hist.: DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 3-2017, f. & cert. ef. 1-19-17

## 340-090-0510

### Mercury Thermostat Labeling

The following administrative rule establishes standards for labeling mercury-containing thermostats as ORS 459.045(3)(b) requires relating to the implementation of ORS 646.608(1)(y). The purpose of this rule is to provide sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream or wastewater.

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(1) As used in this rule, “thermostat” and “mercury-containing thermostat” mean a device commonly used to sense and, through electrical communication with heating, cooling, or ventilation equipment, control room temperature.

(2) All mercury-containing thermostats sold in Oregon must meet the following labeling requirements:

(a) The mercury-containing thermostat must have a label that contains the following information:

(A) The wording “Contains Mercury. Manage Properly.”

(B) An icon containing the symbol of a person dropping an object into a trashcan with a circle and slash overprinted on the image, indicating “Do not dispose in trash”.

(b) The label must be affixed to the product so that the label is clearly visible and legible. The font size for print on the label must be no smaller than 10 point.

(c) The label affixed to the product must be printed, mounted, molded, engraved or otherwise affixed, using materials that are sufficiently durable to remain legible for the useful life of the product.

(d) If the product is sold in packaging that obscures the label on the product, then the packaging also must have a label meeting the same standards as the product label. If, prior to the sale, a retailer re-packages the product, then the retailer must label the new packaging in accordance with this rule.

(3) Failure to meet the provisions of this rule may result in enforcement under the provisions of the Unlawful Trade Practices Act, ORS 646.605 to 625.

Stat.Auth.: ORS 459.045

Stat.Implemented: ORS 646.608(1)(y)

Hist.: DEQ 7-2002, f. & cert. ef. 6-11-02; DEQ 3-2017, f. & cert. ef. 1-19-17

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**Rule Caption:** Ballast Water Management Rules

**Adm. Order No.:** DEQ 4-2017

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 3-1-17

**Notice Publication Date:** 5-1-2016

**Rules Amended:** 340-143-0005, 340-143-0010, 340-143-0050

**Subject:** The amended rules establish greater protection for Oregon water resources and aquatic ecosystems in two ways. First, the rules close a management gap associated with residual ballast water and sediments in empty ballast tanks that represents a risk for introducing aquatic invasive species when vessel operators must ballast and subsequently de-ballast from empty ballast tanks while in state waters. The proposed rule requires vessel operators to conduct a mid-ocean saltwater flush of empty ballast tanks that they want to use for ballasting and subsequent de-ballasting while in port.

Second, the rules address concerns that recent federal regulatory changes will replace a strategy that has proven to be highly protective for low-salinity ports, like those in Oregon, with reliance upon first generation shipboard treatment technologies that, under some circumstances, could be less protective of Oregon ports. Under current state rules, vessel operators are no longer required to conduct ballast water exchange practices following implementation of federal discharge standards that generally require use of new shipboard treatment technology. The proposed rule would retain ballast water exchange requirements for a subset of vessel arrivals that represent a high-risk for introducing Aquatic Invasive Species to Oregon, in addition to meeting federal treatment requirements, for high-risk voyages that have sourced ballast from low-salinity environments.

Retaining ballast exchange for high-risk voyages will serve as an important interim strategy to protect Oregon’s low-salinity ports during a significant transition that depends upon the reliability of new technologies that have lacked rigorous testing. As proposed, EQC would repeal the rule after seven years unless DEQ and the EQC determine that technology reliability and efficacy of federal shipboard treatment policies remain inadequate.

**Rules Coordinator:** Meyer Goldstein—(503) 229-6478

**340-143-0005**

**Definitions**

(1) Definitions defined under statute: This division uses the definitions for the following terms provided in ORS 783.625:

(a) “Ballast water”;

(b) “Cargo vessel”;

(c) “Empty ballast tank”;

(d) “Oil”;

(e) “Open sea exchange”;

(f) “Passenger vessel”;

(g) “Sediment”;

(h) “Ship”;

(i) “Tank vessel”;

(j) “Vessel”;

(k) “Voyage”; and

(l) “Waters of the State”.

(2) Definitions defined by administrative rule: This division uses the following terms as defined in this rule:

(a) “Coastal Ocean Exchange” means the exchange of ballast water in an area no less than 50 nautical miles from any shore and where the water depth exceeds 200 meters.

(b) “Common Waters Zone” means the Pacific Coast of North America between 40 and 50 degrees north latitude.

(c) “DEQ” means the Oregon Department of Environmental Quality.

(d) “Exchange” means to replace the water in a ballast tank using either flow-through exchange, empty/refill exchange, or other exchange methods described under U.S. Coast Guard rules, 33 CFR, part 151.2035.

(e) “Exclusive Economic Zone” extends from the baseline of the U.S. territorial sea seaward 200 nautical miles.

(f) “High-risk Ballast Water” means unexchanged or untreated ballast water obtained from a coastal area outside the common waters zone identified in this rule.

(g) “Internal Waters of the State” means those waters of this state that do not have shared jurisdiction with an adjacent state.

(h) “Nonindigenous Species” means any species or other viable biological material entering an ecosystem beyond its natural range. This also includes seeds, eggs, spores and other biological material entering an ecosystem beyond its natural range.

(i) “Pacific Coast Region” means all coastal waters on the Pacific Coast of North America east of 154 degrees W longitude and north of 25 degrees N latitude, exclusive of the Gulf of California.

(j) “Port” means any place to which a vessel is bound to anchor or moor.

(k) “Saltwater flush” means to pump coastal ocean or open sea water, depending upon last ballast source location, into an empty ballast tank in a volume sufficient to ensure that after discharging the ballast water, the remaining residual ballast water and sediment has a salinity greater than or equal to 30 parts per thousand.

(l) “Territorial Sea of the United States” means the waters extending three nautical miles seaward from the coastline in conformance with federal law.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist.: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11; DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

**340-143-0010**

**Ballast Water Management: Discharge Prohibitions**

(1) Vessels may not discharge ballast water containing oil or hazardous material into waters of the state.

(2) Vessels may not discharge ballast water into waters of the state unless:

(a) The vessel discharges ballast water only at the same location where the ballast water originated, provided that the master, operator or person in charge of the vessel can demonstrate compliance with section (3) of this rule or that the ballast water to be discharged was not mixed with ballast water or sediment from an area other than open sea waters. For purposes of this subsection, “same location” means an area within one nautical mile of the berth or within the recognized breakwater of an Oregon port or place, at which the ballast water to be discharged was loaded;

(b) The owner or operator of the vessel conducted proper ballast water exchange management practices before entering waters of the state, as follows:

(A) The vessel conducted an open sea exchange for ballast tanks containing water sourced outside the Exclusive Economic Zone; or

(B) The vessel conducted a coastal ocean exchange for ballast tanks containing water sourced from a port within the Pacific Coast Region of North America;

(c) The vessel obtained the ballast water solely from open sea waters that are no less than 200 nautical miles from any shore and where water depth exceeds 2,000 meters;

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(d) The ballast water originated solely from the common waters zone, as defined by OAR 340-143-0005(4);

(e) The ballast water originated solely from municipal or treated drinking water sources and is not mixed with ballast water obtained from areas other than open sea waters;

(f) The ballast water had been managed using a shipboard treatment system that meets the certification and discharge standards set forth in OAR 340-143-0050; or

(g) The vessel owner or operator has declared a safety exemption as described under OAR 340-143-0040(2).

(3) Vessels may not use empty ballast tanks that contain unpumpable residual ballast water for ballasting and subsequent deballasting within waters of the state unless the residual ballast water has salinity greater than or equal to 30 parts per thousand at the time of entering state waters. Vessel operators that are unable to verify the salinity of the residual ballast water before entering state waters must conduct a saltwater flush of empty ballast tank(s):

(a) At least 200 nautical miles from any shore for tank(s) containing water sourced outside the Exclusive Economic Zone; or

(b) At least 50 nautical miles from shore and in waters at least 200 meters deep for tank(s) containing water sourced within the Pacific Coast Region of North America.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 17-2002, f. 11-1-02, cert. ef. 12-1-02; DEQ 4-2011, f. & cert. ef. 3-17-11; DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

## 340-143-0050

### Ballast Water Management: Shipboard Ballast Water Treatment Systems

(1) Use of shipboard ballast water treatment systems. Ballast water treated using technology approved for shipboard use by the U.S. Coast Guard and in compliance with federal discharge standards established by the U.S. Environmental Protection Agency may be discharged to waters of the state but may also be subject to additional management practice requirements established under section (2) of this rule.

(2) Ballast exchange plus treatment. For vessels managing ballast water with a shipboard treatment system under federal discharge standards, the vessel operator must also conduct ballast water exchange for tanks with ballast water salinity less than or equal to 18 parts per thousand, or under circumstances when vessel operator is unable to verify ballast salinity. This requirement applies to ballast discharge to waters of the Columbia River, Coos Bay, or Yaquina Bay. Under these circumstances, vessel operators must conduct ballast exchange or saltwater flushing practices prior to treatment, as OAR 340-143-0010(2)(b), and 340-143-0010(3) specify, respectively, resulting in salinity greater than or equal to 30 parts per thousand. The ballast water exchange requirement under this section does not apply if:

(a) The vessel is equipped with a ballast water treatment system approved for shipboard use by the U.S. Coast Guard and meets a ballast discharge standard more stringent than the International Maritime Organization D-2 standards established under the 2004 Ballast Water Management Convention, provided that discharged ballast contains:

(A) Less than 1 living organism per 10 cubic meters that is 50 or more micrometers in minimum dimension;

(B) Less than 1 living organism per 10 milliliters that is less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension; and

(C) Concentrations of indicator microbes that are less than:

(i) One colony-forming unit of toxicogenic *Vibrio cholera* (serotypes 01 and 0139) per 100 milliliters or less than one colony-forming unit of that microbe per gram of wet weight of zoological samples;

(ii) 126 colony-forming units of *Escherichia coli* per 100 milliliters; and

(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters.

(b) The ballast water discharge qualifies for an exemption set forth in OAR 340-143-0010(2)(a), 340-143-0010(2)(c), 340-143-0010(2)(d), or 340-143-0010(2)(e), or

(c) DEQ authorizes a vessel's voyage an exemption from the exchange requirements portion of this rule per exemption request procedures established under OAR 143-0040 for circumstances where:

(A) Design specifications indicate that exchange is incompatible with treatment system or vessel piping configurations, or

(B) Conducting exchange prior to treatment represents a threat to the environment, crew, or vessel.

(3) As an alternative to discharging high-risk ballast water identified in 340-143-0040, DEQ may authorize, by order in writing, using ballast water treatment systems identified as promising technology by the U.S. EPA, U.S. Coast Guard or neighboring states.

(4) Section (2) of this rule is no longer in effect after December 19, 2023. Before this date, DEQ, in consultation with a stakeholder advisory group, will review current science on the efficacy of federal ballast water discharge standards and shipboard treatment systems, or the potential need for continuation of this rule to prevent introductions of aquatic invasive species to Oregon waters.

Stat. Auth.: ORS 468.020, 783.620 - 783.640

Stats. Implemented: ORS 783.620 - 783.640

Hist: DEQ 4-2011, f. & cert. ef. 3-17-11; DEQ 4-2017, f. 1-19-17, cert. ef. 3-1-17

## Department of Fish and Wildlife Chapter 635

**Rule Caption:** Sprague River Closed to Angling January 23 Through April 21, 2017.

**Adm. Order No.:** DFW 1-2017(Temp)

**Filed with Sec. of State:** 1-18-2017

**Certified to be Effective:** 1-18-17 thru 4-21-17

**Notice Publication Date:**

**Rules Amended:** 635-021-0090

**Subject:** This amended rule modifies the recreational season on the Sprague River in the Southeast angling zone. The Sprague River will be closed to all angling beginning January 23 through April 21, 2017. Closing the Sprague River during this time frame will protect redband trout from angling pressure and mortality associated with handling and harassment. The season will reopen to angling on April 22, 2017. Adfluvial redband trout are repeat spawners, thus the excessive stress placed on these fish from spawning and harassment by anglers would reduce their chances of survival and have repercussions on future fisheries in Upper Klamath Lake and the Williamson River.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

### 635-021-0090

#### Inclusions and Modifications

(1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2017 Oregon Sport Fishing Regulations**.

(2) The Sprague River will be closed to all angling beginning January 23 through April 21, 2017.

Stat. Auth.: ORS 183.325, 496.138, 496.146

Stats. Implemented: ORS 496.162

Hist: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 60-2012(Temp), f. 6-11-12, cert. ef. 6-13-12 thru 9-1-12; DFW 114-2012(Temp), f. 8-30-12, cert. ef. 9-1-12 thru 2-27-13; DFW 117-2012(Temp), f. 9-5-12, cert. ef. 9-7-12 thru 2-27-13; DFW 122-2012(Temp), f. 9-21-12, cert. ef. 9-21-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 61-2013(Temp), f. 6-24-13, cert. ef. 7-1-13 thru 12-27-13; DFW 93-2013(Temp), f. 8-22-13, cert. ef. 8-24-13 thru 12-31-13; DFW



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137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 57-2014(Temp), f. 6-9-14, cert. ef. 6-11-14 thru 9-1-14; DFW 90-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 12-31-14; DFW 116-2014(Temp), f. 8-6-14, cert. ef. 8-9-14 thru 12-31-14; DFW 149-2014(Temp), f. 10-13-14, cert. ef. 11-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 44-2015(Temp), f. 5-15-15, cert. ef. 5-20-15 thru 9-1-15; DFW 85-2015(Temp), f. 7-13-15, cert. ef. 7-18-15 thru 10-31-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 121-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 37-2016(Temp), f. 4-26-16, cert. ef. 5-1-16 thru 10-27-16; DFW 58-2016(Temp), f. 5-25-16, cert. ef. 6-8-16 thru 9-1-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 1-2017(Temp), f. & cert. ef. 1-18-17 thru 4-21-17

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**Rule Caption:** Establish Average Market Value of Food Fish for Determining Damages Related to Commercial Fishing Violations.

**Adm. Order No.:** DFW 2-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 635-006-0232

**Subject:** The amended rule establishes the average market value of food fish species used to determine damages for commercial fishing violations.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-006-0232

### Damages for Commercial Fishing Violations

(1) For purposes of ORS 506.720 the following shall be the 2016 average market value for each species of food fish for 2017. For species not listed, the average market value shall be the price per pound paid to law enforcement officials for any fish or shellfish confiscated from the person being assessed damages, or the average price per pound paid for that species during the month in which the violation occurred, whichever is greater. Unless otherwise noted, the amount given is the price per pound and is based on round weight.

#### (a) FISH:

- (A) Anchovy, Northern \$0.10.
- (B) Cabezon \$3.40.
- (C) Carp \$0.50.
- (D) Cod, Pacific \$0.58.
- (E) Flounder, arrowtooth \$0.09.
- (F) Flounder, starry \$0.32.
- (G) Greenling \$4.39.
- (H) Grenadier, Pacific \$0.04.
- (I) Hagfish, \$0.85.
- (J) Hake, Pacific (Whiting) \$0.07.
- (K) Halibut, Pacific \$4.95.
- (L) Herring, Pacific \$0.06.
- (M) Lingcod \$1.56.
- (N) Mackerel, jack \$0.05; Pacific \$0.04.
- (O) Opah \$2.98.
- (P) Pacific ocean perch, \$0.47.
- (Q) Pollock, Walleye \$0.05.
- (R) Rockfish:
  - (i) Black, \$2.21.
  - (ii) Blue (including Deacon rockfish), \$1.45.
  - (iii) Canary, \$0.46.
  - (iv) Darkblotched, \$0.47.
  - (v) Black and yellow, \$5.08.
  - (vi) Brown, \$1.75.
  - (vii) China, \$6.12.
  - (viii) Copper, \$3.50.
  - (ix) Gopher, \$4.85.
  - (x) Grass, \$5.50.
  - (xi) Quillback, \$3.47.
  - (xii) Rougheye/blackspotted, \$0.57.
  - (xiii) Shelf, \$0.26.
  - (xiv) Shortbelly, using trawl gear \$0.03, using line and pot gear \$0.98.
  - (xv) Shortraker, \$0.55.
  - (xvi) Slope, using trawl gear, \$0.31, using line and pot gear \$1.31.
  - (xvii) Tiger, \$4.28.
  - (xviii) Vermilion, \$2.51.
  - (xix) Widow, \$0.42.
  - (xx) Yelloweye, using trawl gear \$0.45, using line and pot gear \$0.98.
  - (xxi) Yellowtail, \$0.49.
- (S) Sablefish, \$2.68.
- (T) Salmon eggs, \$2.60.
- (U) Salmon, Chinook, ocean mixed size, \$7.45.

(V) Salmon, coho, ocean dressed weight: mixed size, \$1.55.

(W) Salmon, pink, ocean, dressed weight: ungraded, \$1.60.

(X) Sanddab, Pacific \$0.44.

(Y) Sardine, Pacific \$0.04.

(Z) Scuplin, buffalo \$2.00.

(AA) Shad, American:

(i) Coast, ungraded, midwater trawl, \$0.22.

(ii) Columbia, ungraded, gillnet, setnet, and dipnet, \$0.28.

(BB) Shark, blue \$0.07, Pacific sleeper \$0.03, shortfin mako \$2.35, sixgill \$0.05, soupfin \$0.20, spiny dogfish \$0.03, scalloped hammerhead \$0.12, silky \$0.18, thresher dressed weight \$1.50 and round weight \$0.60, and other species \$0.02.

(CC) Skate, longnose \$0.43.

(DD) Skates and Rays \$0.33.

(EE) Skates, unsp. \$0.17.

(FF) Smelt, Eulachon (Columbia River), \$2.24 and other species \$0.20.

(GG) Sole, butter \$0.05, curlfin (turbot) \$0.25, Dover \$0.43, English \$0.31, flathead \$0.25, petrale \$1.27, rex \$0.34, rock \$0.29 and sand \$0.87.

(HH) Steelhead \$2.72.

(II) Sturgeon, green \$0.98 and white \$3.54.

(JJ) Surfperch \$1.97.

(KK) Swordfish \$4.00.

(LL) Thornyhead (Sebastolobus), longspine \$0.37 and shortspine \$0.61.

(MM) Tuna, albacore \$1.77, bluefin \$5.00, bigeye \$4.00, and yellowfin \$2.00.

(NN) Walleye \$1.50.

(OO) Wolf-eel \$1.69.

(PP) Wrymouth \$0.12.

(QQ) Yellowtail \$0.96.

(b) CRUSTACEANS:

(A) Crab: box \$1.28, Dungeness bay \$4.15 and ocean \$4.28, rock \$0.89 and Tanner \$1.00.

(B) Crayfish \$2.42.

(C) Shrimp: brine \$1.00, coonstripe \$8.00, ghost (sand) \$2.74, mud \$1.37, pink \$0.73 (applied to the gross round weight of the confiscated pink shrimp reported on the fish receiving ticket) and spot \$11.32.

(D) Water flea (Daphnia) \$0.65.

(c) MOLLUSKS:

(A) Abalone, flat \$21.09.

(B) Clams: butter \$0.92, cockle \$1.06, gaper \$0.86, Manila littleneck \$2.00, Nat. littleneck \$0.63, razor \$2.43, and softshell \$1.00.

(C) Mussels, ocean \$0.90.

(D) Octopus \$1.08.

(E) Scallop, rock \$0.70.

(F) Scallop, weathervane dressed weight (shucked) \$5.73 and round weight \$0.55.

(G) Squid, market \$0.24.

(H) Squid, other species \$0.11.

(d) OTHER INVERTEBRATES:

(A) Jellyfish \$10.00.

(B) Sea anemone \$0.83.

(C) Sea cucumber \$1.00.

(D) Sea urchin, red \$0.67 and purple \$0.50.

(E) Sea stars \$1.00.

(2) The Department may initiate civil proceedings to recover damages as authorized by ORS 506.720 where the value of any food fish unlawfully taken exceeds \$300, except for food fish taken by trawl in the groundfish fishery where the trip limit has not been exceeded by more than 15%.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.720

Hist.: FWC 160, f. & ef. 11-25-77; FWC 18-1978, f. & ef. 4-7-78, Renumbered from 635-036-0605; FWC 33-1982, f. & ef. 6-2-82; FWC 9-1988, f. & cert. ef. 3-3-88; DFW 6-2003, f. 1-21-03, cert. ef. 2-1-03; DFW 3-2004, f. 1-14-04, cert. ef. 2-1-04; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2005, f. & cert. ef. 1-7-05; DFW 1-2006, f. & cert. ef. 1-9-06; DFW 1-2007, f. & cert. ef. 1-12-07; DFW 2-2008, f. & cert. ef. 1-15-08; DFW 3-2009, f. & cert. ef. 1-13-09; DFW 5-2010, f. & cert. ef. 1-13-10; DFW 1-2011, f. & cert. ef. 1-10-11; DFW 162-2011(Temp), f. 12-22-11, cert. ef. 1-1-12 thru 2-29-12; DFW 11-2012, f. & cert. ef. 2-7-12; DFW 3-2013, f. & cert. ef. 1-14-13; DFW 1-2014, f. & cert. ef. 1-13-14; DFW 3-2015, f. & cert. ef. 1-13-15; DFW 2-2016, f. & cert. ef. 1-19-16; DFW 2-2017, f. & cert. ef. 1-23-17

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**Rule Caption:** Amend Rules for Protected Wildlife, Holding and Propagating

**Adm. Order No.:** DFW 3-2017

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 1-24-17

# ADMINISTRATIVE RULES

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 635-044-0400, 635-044-0410, 635-044-0420, 635-044-0430, 635-044-0440, 635-044-0450, 635-044-0460, 635-044-0470, 635-044-0475, 635-044-0480, 635-044-0490, 635-044-0500, 635-044-0510, 635-044-0520, 635-044-0530, 635-044-0540, 635-044-0550, 635-044-0560, 635-044-0570, 635-044-0580, 635-044-0590

**Rules Repealed:** 635-044-0000, 635-044-0002, 635-044-0005, 635-044-0010, 635-044-0015, 635-044-0020, 635-044-0025, 635-044-0030, 635-044-0035, 635-044-0040, 635-044-0045, 635-044-0050, 635-044-0051, 635-044-0060, 635-044-0075, 635-044-0080, 635-044-0120, 635-044-0125, 635-044-0130, 635-044-0132, 635-044-0035

**Subject:** The proposed rule amendments are needed to change or update various aspects of agency management of protected wildlife, holding, and propagating.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-044-0400

### Purpose

The purpose of these rules is to identify the species of wildlife that are protected; the species of wildlife that may be held and conditions for holding; and to regulate the propagation of game birds.

Stat. Auth.: ORS 496.004, 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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0410

### Taxonomy

(1) Scientific taxonomic nomenclature reflects the following:

(a) Fish:

(A) Nelson, J. S., E. J. Crossman, H. Espinosa-Perez, L. T. Findley, C. R. Gilbert, R. N. Lea, and J. D. Williams. 2004. Common and scientific names of fishes from the United States, Canada, and Mexico. American Fisheries Society, Special Publication 29, Bethesda, Maryland.

(B) Moyle, P. B. 2002. Inland fishes of California. Revised and expanded. University of California Press. Berkeley, California.

(C) Jelks, H.L., S.J. Walsh, N.M. Burkhead, S. Contreras-Balders, E. Diaz-Pardo, D.A. Hendrickson, J. Lyons, N.E. Mandrak, F. McCormick J. S. Nelson, S. P. Platania, B. A. Porter, C.B. Renaud, J.J. Schmitter-Soto, E. B. Taylor, and M. L. Warren, Jr. 2008. Conservation status of imperiled North American freshwater and diadromous fishes. Fisheries. 33(8): 372-407.

(b) Amphibians and reptiles -- Crother, B. I., editor. 2012. Scientific and standard English names of amphibians and reptiles of North America north of Mexico, with comments regarding confidence in our understanding. 7th Edition. Society for the Study of Amphibians and Reptiles, Herpetological Circular No. 37.

(c) Birds-Marshall, D.B., M.G. Hunter, A.L. Contreras, editors. 2003. Birds of Oregon: A General Reference. Oregon State University Press. Corvallis, Oregon.

(d) Mammals-Wilson, D. E. and D. M. Reeder, editors. 2005. Mammal species of the world; a taxonomic and geographic reference. 3rd Edition. Johns Hopkins University Press.

(2) If the taxonomic status of individual species is changed through subsequent publications, scientific taxonomy shall remain as cited in 635-044-0410(1) and 635-044-0430.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0420

### Definition of Terms

(1) "Animal Entertainment Industry" means for-profit businesses or organizations that hold wildlife for the purpose of providing wild animals on a movie set, film set, television set, still photography set, or any other professional entertainment activity utilizing captive wildlife allowable under the rules and requirements in chapter 635 division 44.

(2) "AZA" means the Association of Zoos and Aquariums. AZA-accredited facilities must incorporate education, conservation and wildlife research as part of their mission and business model.

(3) "AVMA" means the American Veterinary Medical Association.

(4) "Department" means the Oregon Department of Fish and Wildlife.

(5) "Education animal" means wildlife acquired and legally held by a licensed Oregon Exhibitor or Wildlife Rehabilitator as defined in 635-062-0040 and in an approved facility; Education animals are primarily non-releasable migratory birds but may include other wildlife species approved by the Department;

(6) "Educational facility" is a for-profit or non-profit organizations holding non-releasable captive wildlife, often received from Wildlife Rehabilitators, or other captive bred or wild caught sources as approved by the Department, whose primary mission and business model is to provide educational information to the public as part of a living history museum involving native wildlife. Zoos and Aquariums are examples of educational facilities.

(7) "Exhibitor" means any person who legally acquired wildlife for exhibition or educational purposes and who holds that wildlife under the requirements of OAR 635, division 044;

(a) Wildlife held by an Exhibitor includes, but is not limited to, animals used for commercial and non-profit or education purposes, or in carnivals, circuses, and zoos;

(b) Wildlife held for exhibition or educational purposes does not include those held for falconry, game bird propagation, or captive cervid facilities.

(8) "Endangered species" means those species defined in ORS 496.004(6).

(9) "Facility" means any building, structure, cage, or pen in which wildlife may be kept, fed, exercised, or held during any portion of its life stages.

(10) "Grandfathering" means, for the purpose of these rules, that a person who possessed legally held native wildlife prior to January 20, 2017, may continue to hold the animal(s) for the life of said animal(s) within the provisions of these rules.

(11) "Hold" means any form of possession or control of a live animal, gamete, or hybrid thereof. The term does not include the observation or casual temporary holding of wildlife for observation and photographic purposes in their natural habitat where the animal is not removed from its immediate location.

(12) "Hybrid" means any offspring, gamete or egg that is produced from wild parent animals of different strains, races, varieties, species, or genera (for example: *Canis familiaris* (domestic dog) x *Canis lupus* (wolf) are considered F1 generation wolf hybrids. No state permit is required to possess F1 hybrids or the progeny of F1 generation wolf hybrids, however cities and counties may prohibit possession or require a permit.)

(13) "Import/importation" means to bring or cause live wildlife to be transported into Oregon by any means.

(14) "Migratory bird" means any bird, whatever its origin and whether or not raised in captivity, which belongs to a species listed in U.S. 50 CFR §10.13, including any part, nest, or egg of any such bird.

(15) "Native" means indigenous to Oregon, not introduced (ORS 496.171 (2)).

(16) "Nongame wildlife" means all wildlife species except game mammals, fur-bearing mammals, game birds, and game fish (ORS 496.375).

(17) "Pedigree" means the record of descent of an animal identifying its ancestry and genetic lineage.

(18) "Permittee" means the person who holds a valid Wildlife Holding Permit, Wildlife Exhibitor/Animal Entertainment Permit, Wildlife Sanctuary Permit or Game bird Propagation License issued by the Department.

(19) "Propagation" means the breeding, reproduction, production, incubation, or rearing of wildlife for sale, release, or other uses. For purposes of these rules, propagation refers specifically to game bird species.

(20) "Public display" means to place or locate wildlife so that it may be viewed by the public directly or electronically.

(21) "Release" means permitting any legally collected wildlife, domestically raised or imported wildlife currently in possession to exist alive outside an approved holding or propagation facility.

(22) "Sanctuaries" in Oregon are accredited by the Global Federation of Animal Sanctuaries and provide lifetime care for previously captive wildlife. Wildlife held in sanctuaries may come from private owners, research laboratories, the entertainment industry, or zoos. Sanctuaries are distinguished from education and entertainment industries by limiting public display; animals are not exhibited or transported from the sanctuary for non-medical reasons.

(23) "Sensitive species" means those wildlife species, subspecies, or populations that are facing one or more threats to their populations, habitat

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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 and that are included on the Sensitive Species List pursuant to OAR 635-100-0040.

(24) "Species" means a unit of classification of animals which are capable of interbreeding and producing fertile offspring.

(25) "SSP" means Species Survival Plan, which is a cooperatively managed species population within AZA member institutions to ensure the sustainability of a healthy, genetically diverse, and demographically varied population within AZA and its partners.

(26) "Take" means to kill or obtain possession or control of any wildlife (ORS 496.004 (16)).

(27) "Threatened species" means those species defined in ORS 496.004 (17).

(28) "USFWS" means the U.S. Fish and Wildlife Service.

(29) "Wildlife" means those species defined in ORS 496.004 (19).

(30) "Wildlife held as pets" means wildlife species which are native to Oregon and may be legally held including non-game wildlife, grandfathered species, or other wildlife under conditions of Chapter 635 Div. 44 administrative rules and are not held for commercial or non-profit purposes, or supported through fees, contracts or donations or as exhibit, educational, animal entertainment industry or sanctuary animals or in an AZA or ZAA accredited facility. Wildlife held as pets cannot be bred, reproduced, or propagated and may not be offered for sale, trade, barter, or exchange.

(31) "ZAA" means Zoological Association of America.

(32) "Zoo or Aquarium" as defined by the Association of Zoos and Aquariums (2016) means "a permanent institution which owns and maintains wildlife, under the direction of a professional staff, provides its animals with appropriate care and exhibits them in an aesthetic manner to the public on a regular basis. The institution, division, or section shall further be defined as having as their primary mission the exhibition, conservation, and preservation of the earth's fauna in an educational and scientific manner."

Stat. Auth.: ORS 496, 496.390, 498.002, 498.029

Stats. Implemented: ORS 496

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0430

### Protected Wildlife

(1) Except as provided by Oregon statute or rule or letter of authorization, it is unlawful for any person to take, capture, hold, release or have in possession, either dead or alive, whole or in part, any wildlife listed in this section:

(a) Threatened or Endangered animals as provided for in 635-100-0125, Sensitive Species of Oregon as provided by 635-100-0040, species listed by Oregon Biodiversity Information Center (ORBIC) as "rare, threatened or endangered" in Oregon in the ORBIC published book (2016) and federally listed threatened and endangered listed species;

(b) All non-game birds except European starling (*Sturnus vulgaris*), house sparrow (*Passer domesticus*), and Eurasian collared-dove (*Streptopelia decaocto*); unless as authorized by a Migratory Bird Depredation Order, or in compliance with all terms and conditions of a Migratory Bird Depredation Permit issued by the US Fish and Wildlife Service under Title 50 Code of Federal Regulations Part 21, Subpart D. Nothing in this rule is intended to affect the provisions of ORS 610.002 to 610.990, or

(c) Fish:

- (A) Alvord Lake chub (*Siphateles alvordensis*);
- (B) Oregon lakes tui chub (*Siphateles bicolor oregonensis*);
- (C) Sheldon tui chub (*Siphateles bicolor eurysomus*);
- (D) Oregon chub (*Oregonichthys crameri*);
- (E) Goose Lake tui chub (*Siphateles bicolor thalassinus*);
- (F) Northern pit roach (*Hesperoleucis symmetricus mitrulus*);
- (G) Millicoma longnose dace (*Rhinichthys cataractae ssp.*);
- (H) Lahonton redside shiner (*Richardsonius egregius*);
- (I) Goose Lake sucker (*Catostomus occidentalis lacusanserinus*);
- (J) Klamath smallscale sucker, Jenny Creek population (*Catostomus*

*rimiculus*);

- (K) Tahoe sucker (*Catostomus tahoensis*);
- (L) Malheur sculpin (*Cottus bendirei*);
- (M) Margined sculpin (*Cottus marginatus*);
- (N) Pit sculpin (*Cottus pentisus*);
- (O) Pacific lamprey (*Entosphenus tridentatus*);
- (P) Western river lamprey (*Lampetra ayresii*);
- (Q) Western brook lamprey (*Lampetra richardsoni*);
- (R) Miller Lake lamprey (*Entosphenus minimus*);

(S) Klamath River lamprey (*Entosphenus similis*);

(T) Pit-Klamath brook lamprey (*Entosphenus lethophagus*);

(U) Goose Lake lamprey (*Entosphenus spp.*);

(d) Amphibians:

(A) Cope's giant salamander (*Dicamptodon copei*);

(B) Clouded salamander (*Aneides ferreus*);

(C) Black salamander (*Aneides flavipunctatus*);

(D) California slender salamander (*Batrachoseps attenuatus*);

(E) Oregon slender salamander (*Batrachoseps wrightorum*);

(F) Del Norte salamander (*Plethodon elongatus*);

(G) Larch Mountain salamander (*Plethodon larselli*);

(H) Siskiyou Mountains salamander (*Plethodon stormi*);

(I) Blotched tiger salamander (*Ambystoma mavortium melanostictum*);

(J) Dunn's salamander (*Plethodon dunnii*);

(K) Southern torrent salamander (*Rhyacotriton variegatus*);

(L) Columbia torrent salamander (*Rhyacotriton kezeri*);

(M) Cascade torrent salamander (*Rhyacotriton cascadae*);

(N) Crater lake Newt (*Taricha granulosa mazamae*);

(O) Rocky Mountain tailed frog (*Ascaphus montanus*);

(P) Coastal tailed frog (*Ascaphus truei*);

(Q) Northern red-legged frog (*Rana aurora*);

(R) Foothill yellow-legged frog (*Rana boylei*);

(S) Cascades frog (*Rana cascadae*);

(T) Northern leopard frog (*Lithobates pipiens*);

(U) Columbia spotted frog (*Rana luteiventris*);

(V) Oregon spotted frog (*Rana pretiosa*);

(W) Western toad (*Bufo boreas*);

(X) Woodhouse toad (*Anaxyrus woodhousii*);

(Y) Great Basin spadefoot (*Spea intermontana*);

(e) Reptiles:

(A) Western painted turtle (*Chrysemys picta bellii*);

(B) Western pond turtle (*Actinemys marmorata*);

(C) Great Basin collared lizard (*Crotaphytus bicinctores*);

(D) Long-nosed leopard lizard (*Gambelia wislizenii*);

(E) Pygmy short-horned lizard (*Phrynosoma douglassi*);

(F) Desert horned lizard (*Phrynosoma platyrhinos*);

(G) Sharp-tailed snake (*Contia tenuis*);

(H) Common kingsnake (*Lampropeltis getula*);

(I) California mountain kingsnake (*Lampropeltis zonata*);

(J) Western ground snake (*Sonora semiannulata*);

(K) Racer (*Coluber constrictor*);

(L) Rubber boa (*Charina bottae*);

(M) Night snake (*Hypsiglena chlorophaea*);

(N) Striped Whip snake (*Coluber taeniatus*);

(O) Ring-necked snake (*Diadophis punctatus*);

(P) Pacific coast aquatic garter snake (*Thamnophis atratus*);

(Q) Western whiptail (*Aspidoscelis tigris*);

(f) Mammals:

(A) All bats in the Order Chiroptera;

(B) American pika (cony) (*Ochotona princeps*);

(C) Pygmy rabbit (*Brachylagus idahoensis*);

(D) White-tailed jack rabbit (*Lepus townsendii*);

(E) Chipmunk (*Tamias amoenus*, *T. minimus*, *T. senex*, *T. siskiyou* and *T. townsendii*);

(F) Golden-mantled ground squirrel (*Spermophilus lateralis*);

(G) Red squirrel (*Tamiasciurus hudsonicus*);

(H) White-tailed antelope squirrel (*Ammospermophilus leucurus*);

(I) Northern flying squirrel (*Glaucomys sabrinus*);

(J) White-footed vole (*Arborimus albipes*);

(K) Red Tree Vole (*Arborimus longicaudus*);

(L) Ringtail (*Bassariscus astutus*);

(M) Fisher (*Martes pennanti*);

(N) All marine mammals.

(2) Notwithstanding section (1) of this rule, it shall be lawful to purchase, sell, or exchange, or have in possession any pelt of wildlife listed in this rule which was lawfully taken in another state and transported into Oregon. A bill of lading or freight bill from a common carrier or other documentary proof indicating the state of origin of the pelt and the name and address of the person from whom the pelt was received shall be sufficient.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 498.012 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

# ADMINISTRATIVE RULES

## 635-044-0440

### Capture and Holding of Wildlife

Wildlife may not be captured from the wild and/or held except as provided by OAR 635-044-0450(1), or with the following permits or licenses:

(1) Wildlife Holding Permit (OAR 635-044-0460(1) and 635-044-0480(2a));

(2) Wildlife Exhibitor/Animal Entertainment Industry Permit (OAR 635-044-0460(1) and 635-044-0470(2));

(3) Wildlife Sanctuary Permit (OAR 635-044-0460(1) and 635-044-0470(2a));

(4) Game bird Propagation License (OAR 635-044-0540(1));

(5) Falconry License (OAR 635-055-0010);

(6) Wildlife Rehabilitation Permit (OAR 635-062-0010);

(7) Scientific Taking Permit (OAR 635-043-0023 and 635-007-0900);

(8) Game Bird Release Permit for Hunting Dog and Raptor Training and Competitive Hunting Dog Trial Permit as defined in OAR 635 division 046;

(9) Hunting Preserve License (pheasants, quail, and partridge) defined in OAR 635-047-0015;

(10) Captive Cervid Holding and Propagation permits as defined in OAR 635, division 049;

(11) A federal permit or qualifying exception under the Code of Federal Regulations will serve in lieu of a state Wildlife Holding Permit for birds protected by the federal Migratory Bird Treaty;

(12) Fox (*Vulpes vulpes* or *Urocyon cinereoargenteus*) or mink (*Mustela vison*) may be held by a commercial fur farm under authority of the Oregon Department of Agriculture (ORS 596.010(3); 609.125; 596.020(2)).

(13) Fish Transport Permit (OAR 635-007-0600);

(14) Fish Propagation License (OAR 635-007-0650);

(15) Sturgeon Propagation Permit (OAR 635-007-0725)

Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.002,

498.022, 498.029, 498.052, 498.222 & 498.242, 596.010, 596.020, 609.125;

Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318,

498.022.

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0450

### Holding Permit Requirements

(1) No person shall capture or hold three or more animals listed in OAR 635-044-0480 or legally held grandfathered animals (635-044-0470) without a valid Wildlife Holding Permit.

(2) Wildlife Holding Permits are specific to the species held, permit holder and to the holding facility described on the permit.

(3) Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit is required to hold species listed in 635-044-0460 and 635-044-0480.

(4) All Wildlife Holding, Wildlife Exhibitor/Animal Entertainment Industry and Wildlife Sanctuary permittees shall certify to the Department that the species held complies with any applicable city or county ordinances and any applicable federal laws.

(5) No Wildlife Holding Permit is required to hold:

(a) Game birds legally acquired and held under a Game Bird Propagation License; game birds legally acquired from a licensed propagator or with a valid import permit from the Oregon Department of Agriculture;

(b) Captive or farmed cervids held under a Cervid Holding Permit or a Cervid Propagation License (OAR chapter 635 division 49);

(c) Domesticated fur-bearing fox or mink (596.020(2));

(d) Game fish legally acquired and possessed with a valid Fish Transport Permit.

(6) Wildlife held for purposes of Exhibition or Animal Entertainment or in a wildlife sanctuary as defined in 635-044-0420(1), (5), (6), (7) or (22) require a Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary permit.

(a) Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permits must be renewed annually and include updated animal inventory, employee, facility, and business information, and associated fees.

(b) The annual fee for Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permit is \$100 plus the \$2 agent fee.

(c) AZA or ZAA accredited facilities can submit fees for their Wildlife Exhibitor/Animal Entertainment Industry permit at the same interval as their accreditation renewal. A five year AZA accreditation renewal requires payment of the cumulative annual fee for a Wildlife Exhibitor/Animal Entertainment Industry permit of \$500 plus the \$2 agent fee. An annual renewal report is required to document animal inventory, employee, or facility changes.

(7) Revocation or non-renewal of licenses or permits and contested case procedure are defined in 635-044-0570.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0460

### Holding of Live Black Bear (*Ursus americanus*), Cougar (*Puma concolor*), Bobcat (*Lynx rufus*), Wolf (*Canis lupus*), Raccoon (*Procyon lotor*) and Skunk (*Mephitis spp.*)

(1) Black bears, cougars, bobcats, wolves, raccoons and skunks held in captivity require a Wildlife Holding or Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit and associated fees paid for those species held.

(2) Black bears, cougars, bobcats, wolves, raccoons and skunks may only be held at AZA accredited facilities or in Department approved facilities meeting standards defined in the Oregon Enclosure and Caging Standards for Holding Wildlife (Exhibit 1) or as defined in 635-044-0500(5)(b).

(3) Black bears, cougars, bobcats, and wolves, acquired by transfer or new acquisition as part of an existing permit or new holding application after January 20, 2017, shall only be held at AZA accredited facilities or as approved by the Department in Wildlife Exhibitor/Animal Entertainment or Wildlife Sanctuary facilities. No more than one black bear, one cougar, or one bobcat may be held on a Wildlife Exhibitor/Animal Entertainment or Wildlife Sanctuary Permit unless approved by the Department.

(4) Black bears, cougars, bobcats, wolves, raccoons, and skunks must have been acquired from an out-of-state licensed USDA breeder with approved documentation that may include a valid sales receipt, Certificate of Veterinary Inspection with import permit from Oregon Department of Agriculture, valid agency transfer of ownership permit identifying the animal was propagated and born in legal captivity, or as approved by the Department.

(a) Black bears, cougars, bobcats, wolves, raccoons and skunks must be marked permanently and uniquely with either a lip or ear tattoo and/or implanted Radio Frequency Identification Device (microchip). Holders of these defined species of animals shall meet these requirements by January 21, 2018.

(b) Live black bears, cougars, bobcats, wolves, raccoons, and skunks shall not be removed from the wild, with the exception of animals captured and placed by the Department in an AZA accredited facility, or as authorized by a Scientific Taking Permit (OAR 635-043-0023), Wildlife Rehabilitation Rules (OAR 635 Div. 062), as nuisance wildlife captured by permit (OAR 635 Div. 435), or as approved by the Department.

(c) Black bears, cougars, bobcats, wolves, raccoons, and skunks held on a Wildlife Holding Permit or Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permit cannot be bred, reproduced, or propagated in Oregon or offered for sale, trade, barter or exchange, including grandfathered animals with one exception: The Department recognizes that AZA-accredited facilities participate in native species conservation, in part, by the breeding of native species in captivity; therefore, AZA-accredited facilities may breed native species for which there is a current AZA-approved SSP Program which calls for breeding in captivity at the AZA facility with prior approval by the Department. AZA accredited facilities must submit a copy of the relevant AZA SSP Breeding and Transfer Plan Recommendations. If an AZA accredited facility wishes to breed a native species that does not have an AZA-approved SSP Program or is not part of a federal and/or state species recovery plan, the facility may request authorization for breeding from the Department by including information on justification for breeding, number of young desired, and proposed final disposition of resulting progeny.

(d) Black bears, cougars, bobcats, and wolves may only be transferred between valid Wildlife Exhibitor/Animal Entertainment Industry, Sanctuary or AZA or ZAA accredited facilities with prior approval by the Department. Raccoons and skunks may not be offered for sale, trade, barter, or exchange as a household pet in Oregon (ORS 498.029).

(e) Black bears, cougars, bobcats, wolves, and raccoons must be held within AZA accredited facilities or facilities defined in Exhibit 1 and approved by the Department, except when:

(A) Transported to or from licensed Oregon veterinary clinics or other ODFW-approved facilities in temporary holding or transportation caging that is pre-approved by the Department; or

(B) With a Department letter of authorization for requested activities.

(f) Application renewals must include a description of permanent and unique animal identification mark and mark location, and veterinary docu-

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mentation of reproductive sterilization (if required when both sexes are held). No access or contact shall occur between wild animals and captive wildlife including but not limited to black bear, cougar, bobcats, wolves, raccoons and skunks or other wildlife held on a Wildlife Holding or Exhibitor/Animal Entertainment Industry or Sanctuary Permit.

(5) The burden of proof of the hybridity of a bobcat-cross or wolf-cross animal is the responsibility of the animal owner. A wolf is considered "pure-bred" when the animal's genetic and phenotypic makeup does not include any genetic material or characteristics of a domestic dog or other canine. A bobcat is considered "pure-bred" when the animal's genetic and phenotypic makeup does not include any genetic material or characteristics of a domesticated cat or exotic felid species. Documentation in the form of breeding evidence by pedigree and record, records of acquisition and disposition, transactions, and sworn statements, will be required of all bobcats and wolves claimed to be hybrids, and genetic testing may be conducted by the Department. Lack of sufficient proof of hybridity as determined by the Department will genetically classify the animal as a bobcat or wolf requiring a Wildlife Holding Permit or Exhibitor/Animal Entertainment Industry or Sanctuary Permit and regulation under the conditions of these rules (635-044-0460(3), (7)(a), and 635-044-0470(2)).

(6) Raccoons and Skunks:

(a) No more than two raccoons may be held on a Wildlife Holding Permit. Additional animals may be held or added to a permit with Department approval.

(b) Two or more held raccoons or skunks of different sexes requires sterilization of either sex. Animals older than 6 months of age and adult animals presently held or newly acquired must be sterilized within 30 days of rule adoption or animal acquisition. Written documentation of the completed procedure by a licensed veterinarian is required.

(c) Held raccoons must be caged or restrained when transported beyond the permitted facility.

(7) Gray Wolves in Captivity:

(a) Except as provided in 635-044-0470(3), pure-bred wolves acquired after January 20, 2017 must be held in AZA accredited facilities unless specifically approved by the Department.

(b) Current holders of captive wolves must:

(A) Not import, export, purchase, sell or exchange any pure-bred gray wolf except with written authorization from the Department prior to transferring a pure-bred gray wolf to another facility;

(B) Comply with the requirements of OAR 635-044-0470, and;

(C) Possess a valid USDA permit, and;

(D) Provide the Department a copy of their current federal permit/licenses with their Permit application or renewal.

Stat. Auth.: ORS 498.002, 497.228, 496.171 - 182

Stats. Implemented: ORS 498.002, 497.228, 496.171 - 182

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0470

### Grandfathering the Possession of Black Bear, Cougar, Bobcat, Wolf, Raccoon, Skunk, Squirrel, Chipmunk and Other Non-game Wildlife Species Legally Held as Pets

(1) Grandfathered wildlife may be held as pets, or for exhibitor, educational, or animal entertainment industry or sanctuary purposes, or in AZA accredited facilities as defined in these rules.

(2) A person who legally held native wildlife (black bear, cougar, bobcat, wolf, raccoon, skunk, squirrel, chipmunk) or other nongame species in Oregon prior to and on January 20, 2017 may continue to hold those animal(s) for the remainder of the animal(s) life provided:

(a) The holder submits an application for an annual Wildlife Holding, Exhibitor/Animal Entertainment Industry or Sanctuary Permit by January 21, 2018. Included with the application, the person must:

(A) Remit to the Department a fee of \$25 per species held for a Wildlife Holding permit or \$100 for a Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permit (plus a \$2.00 license agent fee) for the permit or permit renewal; and

(B) Demonstrate to the Department that the person's black bear, cougar, bobcat, wolf, raccoon and skunk holding facility complies with any applicable city or county ordinances and any applicable federal laws.

(C) Permit conditions may include, but are not limited to, facility design standards and actions to protect native wildlife and human safety.

(D) Permit renewal must occur before the expiration date printed on the permit issued by the Department.

(b) Grandfathered animals are held in Department approved facilities meeting standards defined in the Oregon Enclosure and Caging Standards for Holding Wildlife (Exhibit 1). The facilities housing legally acquired grandfathered black bears, cougars, bobcats, wolves, raccoons, skunks,

squirrels, chipmunks, and other legally held non-game species, must meet the minimum facility standards defined herein in Exhibit 1 by January 21, 2018.

(c) Grandfathered bears, cougars, bobcats, wolves, raccoons, skunks, squirrels, and chipmunks must have been acquired from a legally propagated out-of-state source or legally acquired with approved documentation that may include a valid sales receipt, Certificate of Veterinary Inspection with import permit from Oregon Department of Agriculture, valid agency transfer of ownership permit identifying the animal was propagated and born in legal captivity, or as approved by the Department. All permit holders of grandfathered animals shall provide to the Department a signed and notarized affidavit stating how the grandfathered animal(s) were legally acquired.

(d) Grandfathered wildlife held as pets may not be bred. Two or more held grandfathered black bears, cougars, bobcats, wolves, raccoons, skunks, squirrels, chipmunks, or other grandfathered wildlife of the same species of different sexes, requires sterilization of either sex for animals older than 6 months of age, within 30 days of rule adoption. Written documentation of the completed procedure by a licensed veterinarian is required. Avoidance of reproduction of nongame wildlife of different sexes can be accomplished by separation of the sexes, disposal of eggs, veterinary sterilization, etc., and is the responsibility of the wildlife holding permittee.

(3) The only person(s) who may hold pure-bred wolves in captivity are those who, as of December 31, 2009, held a gray wolf or wolves in captivity in Oregon under previous Oregon Department of Agriculture, Class I Exotic Canine, Exotic Animal Division 603 Rules or held a valid license or registration from the U.S. Department of Agriculture, under the federal Animal Welfare Act of 1970. These persons must also obtain authority under the requirements of 635-044-0460(7) of this rule.

(a) Beyond the persons described in paragraph (2), the Department will not issue any new permits to hold a pure-bred wolf in captivity except as defined in OAR 635-044-0460(7)(a).

(b) Wolves legally held under the provisions of paragraph (2) may only be transferred to an AZA accredited facility unless specifically approved by the Department.

(4) Grandfathered black bears, cougars, and bobcats may only be transferred from the original Wildlife Holding Permit to an AZA accredited facility or an approved Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary facility, or as approved by the Department. Raccoons and skunks may not be offered for sale, trade, barter, or exchange as a household pet (ORS 498.029).

Stat. Auth.: ORS 498.002, 497.228, 496.171 - 182

Stats. Implemented: ORS 498.002, 497.228, 496.171 - 182

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0475

### Wildlife Held by Exhibitor/Animal Entertainment Industry and Wildlife Sanctuaries

(1) Wildlife held for exhibitor/education or animal entertainment industry purposes or in wildlife sanctuaries are not considered wildlife held as pets. Animals previously held for entertainment purposes that are no longer performing due to age or debilitation may be held as pets (e.g. not on exhibit or performing) by the business or transferred to an exhibitor or sanctuary with prior Department approval.

(2) Wildlife Exhibitor/Animal Entertainment Industry and Sanctuary permittees must be Oregon residents, as defined in OAR 635-010-0015(4)(a), and maintain their approved facility and held wildlife collections in Oregon.

(3) Exhibitor/Animal Entertainment Industry and Sanctuary permittees may only transfer legally held wildlife between other Oregon Wildlife Exhibitor/Animal Entertainment Industry and Sanctuaries permittees or an AZA accredited facility, or add new animals including black bear, cougar, and bobcat to their inventory of legally held wildlife, with prior written approval by the Department.

(4) Exhibitor/Animal Entertainment Industry permittees of held wildlife must provide:

(a) Written documentation to the department with their annual permit application showing that:

(A) Animals held on Exhibitor/Animal Entertainment Industry permit are exhibited to the public for exhibition or education purposes; or,

(B) Permittee of animals used in animal entertainment must document active contract work including dates and job descriptions for that year involving wildlife held on the permit;

(b) A copy of their business license, Non-Profit filing status (if applicable), Tax Identification Number, and/or Employer Identification Number

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and documentation showing approval of their held species of wildlife by local city, town, or county ordinances;

(c) Written documentation of the permit holder and employee qualifications to transport and possess only those species specified on the department approved permit including black bears, bobcat, cougars, and wolves and including: Documentation that applicants or the applicant's employee(s) who will be handling wildlife are at least 18 years of age and possess the equivalent of at least two years, paid or volunteer, hands-on experience caring for and handling species at facilities engaged in a similar or directly related activity to the permit requested. Applicants or the applicant's employee shall have at least one year hands-on professional experience working with black bears, bobcats, cougars, or wolves in the same family or closely related taxonomic family as each species being requested. Experience will be considered only for the periods the applicant or the applicant's employee was directly involved in and responsible for the animals while engaged in the activity requested on the permit and only when acquired within five years of the date of the initial permit application.

(d) AZA accredited facilities are exempt from the requirements listed in this section (4).

(5) Wildlife Exhibitor/Animal Entertainment Industry permittees holding native wildlife for the purposes of education may hold species defined under the rules of Chapter 635 Divisions 044 and 062. Native wildlife that are found injured and/or orphaned in the wild in Oregon and are not suitable for release into the wild, but are suitable for educational purposes, may be held under a Wildlife Exhibitor/Animal Entertainment Industry permit provided the animal in question is placed by the Department and given to a licensed Wildlife Rehabilitator not directly associated with the Exhibitor's business, unless approved by the Department.

(a) Placement or final disposition of wild non-releasable wildlife will be determined at the discretion and pre-approval of the Department. Native species shall only be acquired from the Department or, upon approval by the Department, from a licensed Oregon Wildlife Rehabilitation Facility that is permitted with the Department.

(A) The Department veterinarian shall receive written documentation for each animal requested for Exhibit from a licensed Oregon Wildlife Rehabilitation Facility's veterinarian stating why the animal is unsuitable for wildlife rehabilitation and release, but suitable for education purposes.

(b) Licensed Oregon wildlife rehabilitators who legally hold only non-releasable migratory bird species for educational purposes are not required to acquire a Wildlife Exhibitor/Animal Entertainment Industry permit.

(c) Wildlife may only be transferred from a licensed wildlife rehabilitation facility to a permitted Wildlife Exhibitor/Educational facility through prior approval by the Department.

(6) New application requirements for Wildlife Exhibitor/Animal Entertainment Industry and Sanctuary permit shall include:

(a) An inventory of each animal requested including the common and scientific name, sex, and age of each animal.

(b) A resume which provides the dates and description of an applicant or their full-time employee's experience. The resume is required only when applying for the initial permit, an amendment, or when applying to add new species to the inventory upon renewing a permit.

(c) A copy of current USDA license or registration document required by the USDA (for mammals) and a copy of the most recent USDA facility inspection form completed for the facility shall be on file with the department at all times. A copy of the issued USDA license or registration document shall be provided to the department within 10 business days of receipt of the document.

(d) Three letters of recommendation are required for new applicants, written in the previous five years, on letterhead stationery with an original signature signed in ink from the owner or operator of a facility where the applicant or their employee gained his/her experience and may include a recommendation from other licensed industry associates. The letters shall provide the printed name of the owner or operator and detailed information regarding the quality and extent of the applicant's or their employee's, knowledge and experience related to the permit requested. AZA and ZAA accredited facilities may submit this information with their 5-year accreditation documents, however, animal inventory and employee and facility changes must be submitted annually.

(e) A detailed statement of purpose describing the planned use for each animal. Applicants shall include relevant materials including lists of prospective clients with their contact information or contracts with clients or websites, scripts, brochures or flyers promoting or describing the planned use of the animals. If the animals will be used in an educational program, the applicant shall provide an explanation why live native and/or

restricted species are necessary and copies of the educational material that will be distributed. The department may deny the issuance of a permit if it determines that the statement of purpose for the animal(s) does not sufficiently describe the planned use for each animal or is not supported by the permit application materials. The department may require a permittee seeking to renew a permit to provide documents, including but not limited to client lists with contact information or contracts with clients, demonstrating that the use of a permitted animal was consistent with the statement of purpose.

(f) A copy of all current permits required by the United States Fish and Wildlife Service (USFWS) shall be on file with the Department at all times. A copy of the issued USFWS license or registration document shall be provided to the Department within 10 business days of receipt. Any person who is required to possess a USFWS permit for the restricted species applied for or listed on a Department-approved permit is required to comply with these requirements.

(g) The name, address, and telephone number of the veterinarian that provides veterinary care for wildlife listed on the permit.

(h) Emergency Action Plan. Every Exhibitor, Animal Entertainment Industry and Sanctuary Permittee shall have a written Emergency Action Plan readily available and posted in a conspicuous place in the event of an escape, an attack or an emergency evacuation, and shall submit a copy to the department upon application, renewal of a permit and addition of species. The Emergency Action Plan shall be titled, with a revision date, updated annually and include, but is not limited to the following:

(A) List of the re-capture equipment available, including but not limited to darting equipment, nets, traps, and chemical immobilization drugs;

(B) Description of humane lethal dispatch methods for various animals and a list of qualified personnel who are trained to carry out the methods;

(i) List of medical supplies/first aid kits and where they are located;

(ii) Description of mobile transport cages and equipment on hand;

(iii) List of emergency telephone numbers that includes the local department field office, department regional office, and animal control agencies; and

(iv) Written plan of action for emergencies.

(i) Permittees are responsible for the capture, and for the costs incurred by the Department related to capture or elimination of the threat, of an escaped animal or the use of humane lethal force required to capture an animal that escapes. If an escaped animal becomes a public safety threat, state, federal, or local law enforcement personnel have the authority to use appropriate lethal force required to end the threat.

(j) Any incident involving an animal held under a Wildlife Holding or Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permit that results in serious injury or death to a person shall be reported immediately to the department's District office having jurisdiction over the area in which the serious injury or death has occurred. If the Department determines that serious injury or death has occurred as a result of contact with an animal held under the authority of a Wildlife Holding, or Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permit, the authorizations and conditions of the permit may be reviewed and subject to change by the Department. Additional conditions to the permit may be added at any time to provide for human health and safety.

(k) Permittees shall report by telephone immediately and at first knowledge of the intentional or unintentional escape or release of a wild animal to the Department District biologist and the nearest law enforcement agency of the city or county in which the wild animal was released or escaped.

(7) Wildlife Sanctuaries must follow Global Federation of Animal Sanctuaries standards and requirements in effect on January 20, 2017. Wildlife Sanctuaries shall have:

(a) No captive breeding;

(b) No commercial trade in animals or animal parts;

(c) No public tours allowed that are not guided and conducted in a manner that minimizes the impact on the animals and their environment, does not cause them stress, and gives them the ability to seek visual barriers and shelter;

(d) Animals are not exhibited or taken from the sanctuary or enclosures/habitats for non-medical reasons; and

(e) The public does not have direct contact with wildlife.

(8) Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary Permittees holding black bears, cougars, or wolves exhibited directly to the public or involving guided tours and inclusive of zoos and aquariums, must show annual proof of liability insurance policy with an insurer authorized or approved to write such insurance in Oregon that covers claims or injury

# ADMINISTRATIVE RULES

or damage to persons or property caused by wildlife held on their permit or any resulting claims against the state. The amount of the insurance coverage shall be not less than one million US dollars.

(9) Wildlife used in filmed media entertainment must follow the American Humane Association's (AHA) Guidelines for the Safe Use of Animals in Filmed Media monitored by AHA Certified Animal Safety Representatives and use held wildlife in productions that attain the American Humane Association rating of acceptable or outstanding.

(10) For-profit and non-profit Zoos and Aquariums that are not AZA or ZAA accredited and are holding native wildlife must gain AZA or ZAA accreditation status by January 21, 2022. For purposes of Chapter 635 Division 44 rules, AZA and ZAA are considered equivalent in quality of standards for holding native Oregon wildlife.

Stat. Auth.: ORS 498.002, 496.171 - 182  
Stats. Implemented: ORS 498.002, 496.171 - 182  
Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0480

### Holding of Nongame Wildlife

(1) Native nongame wildlife may not be sold or propagated except as provided in Division 200.

(2) A Wildlife Holding Permit is required to hold three or more animals of a limited number of nongame wildlife species for each facility or household.

(3) Only nongame species from the following list are permitted to be held. These species are determined to be demonstrably widespread, abundant, and secure through the NatureServe state ranking process as currently determined by the Oregon Biodiversity Information Center (ORBIC) as of the date of the revised rule adoption. (<http://inr.oregonstate.edu/orbic/rare-species/ranking-definitions>)

#### (a) Amphibians:

- (A) Northwestern Salamander (*Ambystoma gracile*);
- (B) Long-toed Salamander (*Ambystoma macrodactylum*);
- (C) Pacific (Coastal) Giant Salamander (*Dicamptodon tenebrosus*);
- (D) *Ensatina* (*Ensatina eschscholtzii*);
- (E) Western Red-Backed Salamander (*Plethodon vehiculum*);
- (F) Rough-Skinned Newt (*Taricha granulosa*);
- (G) Pacific Treefrog or Pacific Chorus Frog (*Pseudacris regilla*);

#### (b) Reptiles:

- (A) Northern Alligator Lizard (*Elgaria coerulea*);
- (B) Southern Alligator Lizard (*Elgaria multicarinata*);
- (C) Western Skink (*Plestiodon skiltonianus*);
- (D) Northern Sagebrush Lizard (*Sceloporus graciosus graciosus*);
- (E) Western Fence Lizard (*Sceloporus occidentalis*);
- (F) Common Side-Blotched Lizard (*Uta stansburiana*);
- (G) Western Rattlesnake (*Crotalus oreganus*): excluding Willamette

#### Valley populations;

- (H) Pacific Gopher Snake (*Pituophis catenifer*);
- (I) Western Terrestrial Garter Snake (*Thamnophis elegans*);
- (J) Northwestern Garter Snake (*Thamnophis ordinoides*);
- (K) Common Garter Snake (*Thamnophis sirtalis*);
- (c) Mammals:
- (A) North American Porcupine (*Erethizon dorsatum*);
- (B) Long-Tailed Vole (*Microtus longicaudus*);
- (C) Montane Vole (*Microtus montanus*);
- (D) Creeping vole (*Microtus oregoni*);
- (E) Ermine (*Mustela erminea*);
- (F) Long-Tailed Weasel (*Mustela frenata*);
- (G) Bushy-Tailed Woodrat (*Neotoma cinerea*);
- (H) Dusky-footed woodrat (*Neotoma fuscipes*);
- (I) Deer Mouse (*Peromyscus maniculatus*);
- (J) Great basin pocket mouse (*Perognathus parvus*);
- (K) Coast Mole (*Scapanus orarius*);
- (L) Northern pocket gopher (*Thomomys talpoides*);
- (M) California Ground Squirrel (*Spermophilus beecheyi*);
- (N) Belding's Ground Squirrel (*Spermophilus beldingi*);
- (O) Brush Rabbit (*Sylvilagus bachmani*);
- (P) Douglas's Squirrel (*Tamiasciurus douglasii*).

(4) Additional species may be petitioned for proposed inclusion to the list of species permitted and held under a Wildlife Holding Permit with a written request and justification submitted to the Department.

(5) Wildlife listed in this section that are captured from the wild and held for more than 48 hours in captivity, or held on a Wildlife Holding Permit, must remain in captivity for the life of the animal and may not be returned to the wild without prior approval by the Department. This rule

does not apply to wildlife held under 635-062-0000 (Wildlife Rehabilitation).

(6) Wildlife species whose ORBIC status changes from being demonstrably widespread, abundant, and secure (S5 ORBIC status), to a less secure status (S1-4), will be grandfathered to the individual permit holder at the time of the status change for the life of the animals. No further collections or additions will be permitted to new or existing Wildlife Holding Permits for that species without prior approval by the Department.

Stat. Auth.: ORS 498.002, 496.171 - 182  
Stats. Implemented: ORS 498.002, 496.171 - 182  
Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0490

### Cost, Expiration Date, and Changes to a Wildlife Holding, Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit

(1) Any person desiring to obtain a Wildlife Holding Permit must be an Oregon resident with a legal Oregon address and must submit a complete application and a non-refundable application species fee and license agent fee listed on the permit application. All applications require Department approval and payment of the Wildlife Holding Permit fees of \$25 for each species held.

(2) Any person desiring to obtain a Wildlife Exhibitor/Animal Entertainment Industry or Sanctuary permit must be an Oregon resident and identify whether the applicant is an individual, partnership, corporation, Limited Liability Company or other legal entity. (if a partnership, the application must provide the full names and addresses of the partners; if a corporation, the application must provide the full names and addresses of all officers, directors and stockholder; if a limited liability company, the application must provide the full names and addresses of all members and managers; if the applicant 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 constituent entity within the tiered organization). Applicant must submit a complete application and a non-refundable application fee of \$100 and license agent fee listed on the permit application.

(3) The Wildlife Holding, Wildlife Exhibitor/Animal Entertainment Industry, and Wildlife Sanctuary Permits expires on December 31 of the year issued.

(4) All permit renewals and payment of associated fees must occur before the expiration date of the current permit. Verification of annual permit requirements (if applicable to the permit) must accompany the renewal application.

(5) A new application is required for any change of address by the permittee.

(6) The addition of animals of the species approved on the original permit requires prior approval by the local department biologist.

(7) Except as directed in 635-044-0470(4) and 635-044-0475(1)(A) and (3), wildlife held on a Wildlife Holding Permit may only be transferred to another Wildlife Holding Permittee and requires:

(a) The species transferred is listed on the receiving permittee's Wildlife Holding Permit, and;

(b) A new application and updated Wildlife Holding Permit and payment of associated fees for the addition of animals of the species transferred, and;

(c) Approval by the Department.

(8) Failure to renew a Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit, or Wildlife Holding Permit by December 31 of the year issued may result in a penalty or confiscation of held species, fines, and denial of a future permit.

(9) The Department may revoke or decline to renew a Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit or Wildlife Holding Permit or Game Bird Propagation License if the permittee/licensee is convicted of, or admits to a violation of, any wildlife law or any rule, order or permit issued under the wildlife laws within the previous 5 years of the date of application. Upon revocation or non-renewal of a permit, the Department will confiscate any birds, mammals, amphibians and reptiles held.

(10) Cancellation or non-renewal of application, licenses, or permits and contested case procedure is defined in 635-044-0570.

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 3-2017, f. & cert. ef. 1-24-17

# ADMINISTRATIVE RULES

## 635-044-0500

### Requirements for Care of Wildlife Held in Captivity

(1) All wildlife held in captivity, including, but not limited to, wildlife held under any permit, license, or condition listed in 635-044-0460 and 635-044-0480 or under a Game Bird Propagation license must provide minimum care sufficient to preserve the health and well-being of the held wildlife (except for emergencies or circumstances beyond the reasonable control of the holder), including, but is not limited to, the following requirements:

(a) Appropriate food for each held species of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

(b) Open or adequate access to potable water in sufficient quantity and quality to satisfy the animal's needs.

(c) Shelter sufficient to protect from adverse elements, protect from predators, prevent escape, prevent other wildlife from entry, and prevent injury. Any other requirement particular to the survival of the specific animal shall also be provided.

(d) Veterinary care deemed necessary by a reasonably prudent person to relieve distress from injury, neglect or disease.

(e) Daily access to an area:

(A) With adequate space for exercise necessary for the health of the animal (except when transporting);

(B) With air temperature suitable for the species of animal; and

(C) Shall be kept free from excess food or fecal waste or other contaminants which could affect the health of the animal

(f) Captive wildlife may not be restrained with a chain, rope, hobbles or similar restraint method. Tethering of raptors is permitted.

(2) It is unlawful for any person possessing wildlife in their care and possession to cause or allow such wildlife to be chased, injured, harmed, harassed, or neglected.

(3) Wildlife held on a Wildlife Holding Permit may not be released in Oregon without prior approval by the Department.

(4) Wildlife listed in this section and captured from the wild and held for more than 48 hours in captivity or held on a Wildlife Holding Permit must remain in captivity for the life of the animal and may not be returned to the wild following capture without prior approval by the Department.

(5) Facilities housing wildlife must meet ODFW minimum standards for species defined in the ODFW Enclosure and Caging Standards for Holding Wildlife for Wildlife Held in Captivity (Exhibit 1); and

(a) Enclosed within suitable structures to prevent escape or prevent other wildlife from entry;

(b) Applicants of Wildlife Holding Permits and holders of wildlife in captivity must demonstrate equivalency of facility construction with Department approval of all proposed facility construction design, materials, and specifications equivalent or exceeding the ODFW Enclosure and Caging Standards for Holding Wildlife.

(c) Inspection of facilities by Department personnel may be conducted prior to approval of the permit.

Stat. Auth.: ORS 167.305, 167.310, 167.312, 167.315, 167.320, 167.322, 167.333, 167.334, 167.335, 167.340, 167.343, 167.345, 167.347, 167.349, 167.355, 167.390, 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.006, 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, 167.310

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0510

### Inspection of Facilities

(1) Facilities holding captive wildlife are subject to inspection by any State Police officer or Department representative. Inspection of the facilities may take place without warrant or notice, but, unless prompted by emergency or other exigent circumstances, shall be limited to regular and usual business hours, including weekends. Nothing in these rules is intended to authorize or allow the warrantless search or inspection of a permit holder's residence.

(2) Any inspection(s) of Exhibitor/Animal Entertainment or Sanctuary Permit or Wildlife Holding permit facilities involving approval of new or modified facilities may require a \$150 inspection fee. An inspection fee may be assessed for Wildlife Holding Permit facilities depending on species and number of wildlife held.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0520

### Ownership of Captured Wildlife Held in Captivity

(1) Native wildlife, or the progeny thereof, captured from the wild in Oregon remains the property of the State of Oregon.

(2) Wildlife native to Oregon that are acquired legally from an out-of-state propagator and held in captivity are not considered property of the state of Oregon, but are subject to the same wildlife rules as legally acquired native wildlife collected in Oregon and held in captivity.

(3) Wildlife cannot be sold, exchanged, bartered, transferred or released in Oregon except as defined by rule or statute or as authorized by 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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0530

### Possession of Coyote Prohibited Without Permit

It is *unlawful* to keep coyotes (*Canis latrans*) in captivity except in compliance with the terms and conditions of a permit issued pursuant ORS 497.298 and 497.312.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0540

### License Required to Propagate Game Birds

(1) Any person or business desiring to propagate for sale any game bird, limited to the following bird species in the families listed below, must submit a complete application and a non-refundable application fee of \$52 and license agent fee listed on the permit application:

(a) Columbidae (mourning doves and band-tailed pigeons only);

(b) Anatidae (all species except mute swans and Egyptian geese);

(c) Phasianidae

(A) Subfamily Phasianinae species only;

(B) Subfamily Tetraoninae (grouse and ptarmigan except Genuses *Centrocercus* and *Tympanuchus*);

(C) Subfamily Meleagridinae (wild turkey); and

(D) Subfamily Perdicinae (partridges and common quail (*Coturnix coturnix*);

(d) Odontophoridae (Genuses *Callipepla*, *Colinus*, and *Oreortyx* only); and

(e) Scolopacidae (*Gallinago* delicate only).

(2) Game Bird Propagation Licenses expire on December 31 of the year issued.

(3) Any person desiring to propagate, sell or barter any raptor as defined in OAR 635-055-0002(3) protected by federal law must first adhere to all permit requirements and regulations pertaining to the propagation and selling of raptors, as adopted by the U.S. Department of the Interior (Federal Register, Vol. 48, No. 132, Part 21). The license holder must provide a copy of their current federal permits to the department with their application or renewal.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0550

### Shipping Requirements for Propagated Game Birds

Any game birds shipped within or outside the state by the holder of a Game Bird Propagation License must have affixed to the shipping container a record showing:

(1) Name, address, and Game Bird Propagation License number of shipper;

(2) Name and address of consignee;

(3) Species name (common and scientific) and numbers of game birds contained; and,

(4) Import of game birds into the state of Oregon requires a Certificate of Veterinary Inspection from a federally accredited veterinarian and must be accompanied by an Oregon Department of Agriculture import permit with exceptions listed in OAR 603-011-0255.

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 3-2017, f. & cert. ef. 1-24-17



# ADMINISTRATIVE RULES

## 635-044-0560

### Record Keeping and Reporting Requirements for Game Bird Propagation License

(1) A record of all business transactions involving sale or purchase of eggs or game birds, must be current to date and available at the facility as listed on the permit. Records for the current calendar year must be made available for inspection by Oregon State Police or Oregon Department of Fish and Wildlife personnel.

(2) An annual report of operations must be received with the annual renewal application and fees before the date of permit expiration. The annual report shall include the total number of game birds by species purchased or acquired and all sales or transfers by species, including eggs, births and deaths within the previous calendar year.

(3) Imported or exported game birds must have a certificate of veterinary inspection and any import permit or license and documentation of ownership or other information that may be required by the receiving state.

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0570

### Cancellation and Non-Renewal of Game Bird Propagation License or Wildlife Holding or Wildlife Exhibitor/Animal Entertainment Industry or Wildlife Sanctuary Permit

Failure to comply with any requirements within these rules or conditions of authorization is cause to cancel or deny renewal of the Game Bird Propagation License and/or Wildlife Holding Permit and/or Exhibitor/Animal Entertainment Industry or Sanctuary Permits and confiscate or require disposal of the wildlife being held. A person may appeal cancellation or denial of a license or permit through 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 (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 Director.

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, 183.430, 183.470, 183.484, 183.700

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 3-2017, f. & cert. ef. 1-24-17

## 635-044-0580

### Disposition of Wildlife Upon License Suspension, Revocation, Nonrenewal or Denial

(1) Within 90 days after any of the following events, any person holding wildlife must dispose of the animals:

(a) Suspension, revocation or expiration of the Wildlife Holding Permit or Exhibitor/Animal Entertainment Industry or Sanctuary Permits or Propagation License;

(b) Denial of an application for license; or

(c) Receipt of a notice from the Department informing the holder that the wildlife held is/are not authorized by license.

(2) "Dispose" means to do the following in compliance with these rules:

(a) Euthanize;

(b) Transfer to another licensed Wildlife Holding or Exhibitor/Animal Entertainment Industry or Sanctuary or Propagation facility; or

(c) Export from Oregon.

(3) If the holder fails to dispose of any wildlife held by the deadline specified in paragraph (1), and if the Department determines that the wildlife held pose an imminent threat to wildlife, livestock, or public health requiring prompt action, the Department may humanely euthanize, confine, transfer, or otherwise dispose of the animals as it determines necessary. In all other circumstances, the Department may humanely euthanize, transfer, confine or otherwise dispose of the wildlife held only after providing the holder with notice and an opportunity for hearing. The Department may choose to keep the wildlife held on the holder's property until an appropriate means of disposal is found or pending a hearing. The Department bears no liability for such actions. Any wildlife held for disposal must be treated humanely in compliance with these rules.

(4) The holders of any wildlife of which the Department disposes pursuant to paragraph (3) must compensate the State of Oregon for any and all expenses incurred by the State during disposition.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

## 635-044-0590

### Control of Disease Outbreaks in Captive Wildlife

(1) Diseased captive wildlife may be an imminent danger to public, wildlife, domestic animals, or livestock health.

(2) Upon determination that an outbreak of communicable disease among captive wildlife is an imminent danger to public, wildlife, domestic animals, or livestock health, the Department may order the holder to euthanize, confine or transfer, by a specified deadline, any or all wildlife they hold.

(3) Failure by the holder to take action ordered by the Department pursuant to paragraph (2) may result in the Department or its agents entering the holder's facility to confine, euthanize, or transfer diseased wildlife. The holder is liable for any costs the State of Oregon so incurs. The Department bears no liability for such actions.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052 & 174.106

Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.228, 498.002, 498.019, 498.052, 174.106

Hist.: DFW 3-2017, f. & cert. ef. 1-24-17

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**Rule Caption:** Administrative Rules for Recreational and Commercial Fisheries in the Columbia River.

**Adm. Order No.:** DFW 4-2017

**Filed with Sec. of State:** 1-25-2017

**Certified to be Effective:** 1-25-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 635-014-0090, 635-017-0090, 635-023-0090, 635-500-6705, 635-500-6715, 635-500-6720, 635-500-6725, 635-500-6730, 635-500-6735, 635-500-6740, 635-500-6745, 635-500-6750

**Subject:** These amended or adopted rules, as determined justified, will modify recreational and commercial fisheries in the Columbia River and tributaries. Housekeeping and technical corrections to the regulations were made to ensure rule consistency.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-014-0090

### Inclusions and Modifications

(1) The 2017 Oregon Sport Fishing Regulations provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2017 Oregon Sport Fishing Regulations pamphlet.

(2) Effective February 1, 2017, the use of barbed hooks is allowed when angling for salmon, steelhead, or trout in the following areas: Youngs Bay Select Area (Clatsop Co.) from the Highway 101 Bridge upstream to markers at confluence of Youngs and Klaskanine rivers, including lower Lewis and Clark River upstream to Alternate Highway 101 Bridge and lower Walluski River upstream to Highway 202 Bridge; and Gnat Creek (Clatsop Co.) from railroad bridge upstream to Aldrich Point Road Bridge. Use of barbless hooks is still required when angling for these species in nearby areas within the Columbia Zone.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-

# ADMINISTRATIVE RULES

29-04, cert. ef. 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert. ef. 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-13-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-11-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12; DFW 130-2012(Temp), f. 10-10-12, cert. ef. 10-13-12 thru 12-31-12; DFW 135-2012(Temp), f. 10-22-12, cert. ef. 10-24-12 thru 12-31-12; DFW 139-2012(Temp), f. 10-30-12, cert. ef. 10-31-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 43-2013(Temp), f. 5-29-13, cert. ef. 6-1-13 thru 10-31-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 60-2013(Temp), f. 6-24-13, cert. ef. 6-30-13 thru 9-30-13; Administrative correction 11-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 74-2014(Temp), f. 6-23-14, cert. ef. 6-30-14 thru 9-30-14; DFW 101-2014, f. & cert. ef. 8-4-14; DFW 111-2014(Temp), f. & cert. ef. 8-4-14 thru 9-30-14; DFW 133-2014(Temp), f. 9-16-14 & cert. ef. 9-17-14 thru 12-31-14; DFW 148-2014(Temp), f. 10-13-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 23-2015(Temp), f. & cert. ef. 4-1-15 thru 7-31-15; DFW 73-2015, f. 6-22-15, cert. ef. 6-23-15; DFW 75-2015(Temp), f. 6-23-15, cert. ef. 6-24-15 thru 7-31-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 94-2015(Temp), f. 7-27-15, cert. ef. 8-1-15 thru 12-31-15; DFW 118-2015(Temp), f. 8-28-15, cert. ef. 9-1-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 142-2015(Temp), f. & cert. ef. 10-16-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 43-2016(Temp), f. 4-27-16, cert. ef. 5-1-16 thru 9-30-16; DFW 96-2016(Temp), f. 7-28-16, cert. ef. 8-1-16 thru 12-31-16; DFW 102-2016(Temp), f. 8-3-16, cert. ef. 8-4-16 thru 12-31-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 125-2016(Temp), f. 9-26-16, cert. ef. 10-1-16 thru 12-31-16; DFW 128-2016(Temp), f. 9-29-16, cert. ef. 10-1-16 thru 12-31-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-017-0090 Inclusions and Modifications

- (1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2017 Oregon Sport Fishing Regulations.
- (2) Beginning February 1, 2017, the use of barbed hooks is allowed when angling for salmon, steelhead, or trout in Willamette River downstream of Willamette Falls (including Multnomah Channel and Gilbert River) and in lower Clackamas River upstream to Highway 99E Bridge.
- (3) Pacific Lamprey Harvest:
  - (a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;
  - (b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;
  - (c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;
  - (d) Gear is restricted to hand or hand-powered tools only;
  - (e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.
  - (f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119  
 Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129  
 Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-

1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 67-2013(Temp), f. 7-3-13, cert. ef. 7-11-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 62-2014(Temp), f. & cert. ef. 6-10-14 thru 10-31-14; DFW 70-2014(Temp), f. & cert. ef. 6-13-14 thru 6-30-14; DFW 73-2014(Temp), f. 6-20-14, cert. ef. 6-23-14 thru 10-31-14; DFW 141-2014(Temp), f. 9-25-14, cert. ef. 9-26-14 thru 12-31-14; DFW 150-2014(Temp), f. 10-14-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 49-2015(Temp), f. & cert. ef. 5-27-15 thru 11-22-15; DFW 66-2015(Temp), f. 6-10-15, cert. ef. 6-12-15 thru 11-22-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 152-2015(Temp), f. 11-6-15, cert. ef. 11-17-15 thru 12-31-15; DFW 154-2015(Temp), f. 11-12-15, cert. ef. 11-23-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 30-2016(Temp), f. & cert. ef. 4-8-16 thru 9-30-16; DFW 67-2016(Temp), f. & cert. ef. 6-9-16 thru 9-30-16; DFW 76-2016(Temp), f. 6-15-16, cert. ef. 6-16-16 thru 9-30-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-023-0090 Inclusions and Modifications

- (1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and Snake River Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2017 Oregon Sport Fishing Regulations.
- (2) Effective February 1, 2017, the use of barbed hooks is allowed when angling for salmon, steelhead, or trout in the following areas:
  - (a) Within the Youngs Bay Select Area (Clatsop County) from the Highway 101 Bridge upstream to markers at the confluence of the Youngs and Klaskanine rivers, including the lower Lewis and Clark River upstream

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to the Alternate Highway 101 Bridge and the Walluski River upstream to the Highway 202 Bridge.

(b) Within the Knappa/Blind Slough Select Area (Clatsop County) from markers at the west end of Minaker Island upstream to markers at the mouth of Blind Slough, continuing upstream to the railroad bridge in Blind Slough.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 496.162 & 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 10-2014(Temp), f. 2-12-14, cert. ef. 3-1-14 thru 3-31-14; Administrative correction, 4-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6705

### Guiding Principles for Columbia River fisheries management

- Promote the recovery of ESA-listed species and the conservation of wild stocks of salmon, steelhead, and sturgeon in the Columbia River.
- Continue leadership on fish recovery actions, including improved fish survival through the federal Columbia River hydropower system, improved habitat conditions in the tributaries and estuary, hatchery reform, reduced predation by fish, birds, and marine mammals, and harvest management that meets conservation responsibilities.
- Continue to meet terms of U.S. v. Oregon management agreements with Columbia River Treaty Tribes.
- In a manner that is consistent with conservation and does not impair the resource, seek to enhance the overall economic well-being and stability of Columbia River fisheries in Oregon.
- For steelhead, salmon and sturgeon, prioritize recreational fisheries in the mainstem and commercial fisheries in off-channel areas of the lower Columbia River. Toward this end:
  - Assign mainstem recreational fisheries a sufficient share of ESA-impacts and harvestable surplus to enhance current fishing opportunity and economic benefit.
  - Assign commercial fisheries a sufficient share of the ESA-impacts and harvestable surplus to effectively harvest fish in off-channel areas and harvest surplus fish with selective techniques in the mainstem Columbia River.
  - Limit the use of gill nets in non-tribal commercial fisheries, other than shad and smelt, in the mainstem Columbia River to summer Chinook fisheries and fall fisheries in Commercial Zones 4 and 5. Limit other non-tribal gill net use to off-channel areas only.
  - Enhance the economic benefits of off-channel commercial fisheries, in a manner consistent with conservation and wild stock recovery objectives. Enhancements include:
    - Providing additional hatchery fish for release in off-channel areas by shifting currently available production, and where possible providing new production for release in off-channel areas, emphasizing complementary conservation benefits in tributaries.
    - Expanding existing seasons and boundaries in off-channel areas and/or establishing new off-channel areas, allowing increased harvest in areas where the likelihood of impacting ESA-listed stocks is lower than the mainstem.
    - Develop and implement selective-fishing gear and techniques for commercial mainstem fisheries to optimize conservation and economic benefits consistent with mainstem recreational objectives, combined with incentives to commercial fishers to expand the development and implementation of these gear and techniques.
    - Maintain consistent and concurrent policies between Oregon and Washington related to management of non-tribal Columbia River fisheries, to ensure orderly fisheries as well as the sharing of investments and benefits.
  - To maximize economic return, develop a program that seeks to implement Marine Stewardship Council or other certification of commercial salmon and sturgeon fisheries in the Columbia River as sustainably managed fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 8-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6715

### Spring Chinook

- Transition Period (2013-January 31, 2017).
  - In 2013, assign 65%, then 70% of the ESA-impact for upriver spring Chinook stocks to mainstem recreational fisheries.
  - In 2013, assign 35%, then 30% to off-channel and mainstem commercial fisheries.
  - Long Term (February 1, 2017 and Beyond).
    - Assign 80% of the ESA-impact to mainstem recreational fisheries. If the recreational allocation, including areas upstream of Bonneville Dam and in the Snake River, is unlikely to be fully used, the unused portion of that allocation shall be transferred to the commercial fishery.
    - Assign 20% to commercial fisheries. Mainstem commercial fisheries may occur only after the run size update and will use tangle nets or other selective gear, if developed.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

# ADMINISTRATIVE RULES

## 635-500-6720

### Summer Chinook

(1) Transition Period (2013-January 31, 2017).

(a) In 2013-14, assign 60%, then 70% of the harvestable surplus available for use downstream from Priest Rapids Dam to mainstem recreational fisheries.

(b) In 2013-14, assign 40%, then 30% to off-channel and mainstem commercial fisheries.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign 80% of the harvestable surplus available for use downstream from Priest Rapids Dam to mainstem recreational fisheries.

(b) Assign 20% of the harvestable surplus available for use downstream from Priest Rapids Dam to off-channel and mainstem commercial large mesh gillnet fisheries. If the commercial allocation is unlikely to be fully used, the unused portion of that allocation may be transferred to recreational fisheries above Bonneville Dam.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6725

### Sockeye

(1) Transition Period (2013- January 31, 2017).

(a) Assign 70% of the ESA-impact for Snake River sockeye to mainstem recreational fisheries.

(b) Assign 30% to mainstem commercial fisheries for incidental harvest of sockeye in Chinook-directed fisheries.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign approximately 80% of the ESA-impact for Snake River sockeye to mainstem recreational fisheries.

(b) Assign the remaining balance to commercial fisheries for incidental harvest of sockeye in Chinook-directed fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6730

### Tule Fall Chinook

(1) Transition Period (2013-January 31, 2017).

(a) Assign no more than 70% of the ESA-impact for lower Columbia River Tule fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 30% to off-channel commercial fisheries, mainstem commercial fisheries that target Upriver Bright and Lower River Hatchery Fall Chinook.

(2) Long Term (February 1, 2017 and Beyond).

(a) Seek to create a conservation fishery by reserving a small percentage of overall non-tribal tule fall Chinook ESA-impacts from non-tribal fisheries south of the US/Canada border, including the Columbia River, to establish selective fisheries in the Columbia River downstream of the Lewis River targeting hatchery fall Chinook and hatchery coho.

(b) Assign no more than 66% of the remaining ESA-impact for lower Columbia River Tule Fall Chinook to mainstem recreational fisheries.

(c) Assign not less than 34% of the remaining ESA-impact for lower Columbia River Tule Fall Chinook to off-channel commercial fisheries and mainstem commercial fisheries that target Upriver Bright and Lower River Hatchery Fall Chinook and hatchery coho.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6735

### Upriver Bright Fall Chinook

(1) Transition Period (2013-January 31, 2017).

(a) Assign no more than 70% of the ESA-impact for Snake River Wild Fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 30% to off-channel and mainstem commercial fisheries. Provide additional mainstem commercial harvest when recreational fishery objectives (OAR 635-500-6760) are expected to be met.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign no more than 66% of the ESA-impact for Snake River Wild Fall Chinook to mainstem recreational fisheries.

(b) Assign not less than 34% to off-channel and mainstem commercial fisheries. Provide additional mainstem commercial harvest when recreational fishery objectives (OAR 635-500-6760) are expected to be met.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6740

### Coho

(1) Transition Period (2013-January 31, 2017).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook fisheries.

(b) Assign the remaining balance to in-river mainstem recreational fisheries. If these fisheries are expected to be unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook and hatchery coho fisheries.

(b) Assign the balance to in-river mainstem recreational fisheries. If these fisheries are unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6740

### Coho

(1) Transition Period (2013-January 31, 2017).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook fisheries.

(b) Assign the remaining balance to in-river mainstem recreational fisheries. If these fisheries are expected to be unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for Lower Columbia Natural coho to implement off-channel coho and fall Chinook fisheries and mainstem fall Chinook and hatchery coho fisheries.

(b) Assign the balance to in-river mainstem recreational fisheries. If these fisheries are unable to use all of the ESA-impact for Lower Columbia Natural coho, assign the remainder to mainstem commercial coho fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6745

### Chum

(1) Transition Period (2013-January 31, 2017).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for chum to implement off-channel and mainstem fisheries targeting other salmon species.

(b) Prohibit the retention of chum salmon in recreational and commercial fisheries.

(2) Long Term (February 1, 2017 and Beyond).

(a) Assign commercial fisheries a sufficient share of the ESA-impact for chum to implement off-channel and mainstem fisheries targeting other salmon species.

(b) Prohibit the retention of chum salmon in recreational and commercial fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

## 635-500-6750

### White Sturgeon

(1) Transition Period (2013-January 31, 2017).

(a) In years when retention is allowed, allocate 90% of the harvestable surplus downstream from Bonneville Dam for use in non-tribal fisheries and hold 10% in reserve as an additional conservation buffer above the maximum harvest rate allowed in Oregon's white sturgeon conservation plan.

(b) Assign 80% of the white sturgeon available for harvest to the recreational fishery.

(c) Assign 20% to off-channel and mainstem commercial fisheries.

(2) Long Term (February 1, 2017 and Beyond).

# ADMINISTRATIVE RULES

(a) In years when retention is allowed, allocate 90% of the harvestable surplus downstream from Bonneville Dam for use in non-tribal fisheries and hold 10% in reserve as an additional conservation buffer above the maximum harvest rate allowed in Oregon's white sturgeon conservation plan.

(b) Assign 80% of the white sturgeon available for harvest to the recreational fishery.

(c) Assign the balance (20%) to off-channel and mainstream commercial fisheries.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 147-2016, f. 12-7-16, cert. ef. 12-15-16; DFW 4-2017, f. & cert. ef. 1-25-17

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**Rule Caption:** 2017 Treaty Indian Winter Commercial Fisheries Set In Zone 6 of the Columbia River.

**Adm. Order No.:** DFW 5-2017(Temp)

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-1-17 thru 3-31-17

**Notice Publication Date:**

**Rules Amended:** 635-041-0065

**Subject:** This amended rule sets both the platform hook-and-line and gill net Treaty Indian winter commercial seasons for 2017. The modifications allow commercial sales, in Oregon, of fish caught in the Bonneville, The Dalles, and John Day pools by tribal fishers beginning February 1, 2017. Modifications are consistent with action taken January 31, 2017 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0065

### Spring Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries from all of Zone 6 beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Tuesday, March 21, 2017.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 38 5/4 inches in fork length taken from the Bonneville Pool and between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes. Fish landed during any open commercial period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Saturday, February 18, 2017 (17.5 days); and John Day Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Tuesday, February 7, 2017 (6.5 days).

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 43-54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool described in section (2)(a) above or may be kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 183.325, 506.109, 506.119

Stats. Implemented: ORS 506.129, 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979. Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef.

3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. ef. 2-26-16 thru 3-31-16; DFW 16-2016(Temp), f. 3-3-16, cert. ef. 3-5-16 thru 3-31-16; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. ef. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. ef. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. ef. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 3-31-17

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**Rule Caption:** 2017 Commercial Smelt Season Set for the Columbia River.

**Adm. Order No.:** DFW 6-2017(Temp)

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-2-17 thru 2-27-17

**Notice Publication Date:**

**Rules Amended:** 635-042-0130

**Subject:** This amended rule sets a commercial gill net fishing season for smelt in Zones 1-3 of the Columbia River. The fishery consists of 7-hour fishing periods beginning 7:00 a.m. through 2:00 p.m., Mondays and Thursdays of each week from February 2 through February 27, 2017. Revisions are consistent with the action taken January 31, 2017 by the Oregon and Washington Departments of Fish and Wildlife in a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-042-0130

### Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 3, on Mondays and Thursdays from 7:00 a.m. to 2:00 p.m. (7 hrs.) during the period from February 2 through February 27, 2017.

(2) It is unlawful to use any gear other than gill nets for the taking of smelt in the Columbia River. Mesh size may not exceed two inches

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stretched. Nets may consist of, but are not limited to, monofilament webbing.

Stat. Auth.: ORS 183.325, 506.109 & 506.119  
Stats. Implemented: ORS 506.129 & 507.030  
Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 20-2009, f. & cert. ef. 2-26-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 10-2010(Temp), f. 2-4-10, cert. ef. 2-8-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 156-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 3-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 7-2014(Temp), f. 2-5-14, cert. ef. 2-10-14 thru 3-31-14; Administrative correction, 4-24-14; DFW 8-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 2-28-15; Administrative correction, 3-23-15; DFW 5-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 2-29-16; Administrative correction, 3-17-16; DFW 6-2017(Temp), f. 1-31-17, cert. ef. 2-2-17 thru 2-27-17

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**Rule Caption:** Electronic Fish Tickets Reporting Commercial Sales of Salmon, Sturgeon, Smelt and Shad Required

**Adm. Order No.:** DFW 7-2017(Temp)

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-2-17 thru 7-29-17

**Notice Publication Date:**

**Rules Amended:** 635-006-0210

**Rules Suspended:** 635-006-0210(T)

**Subject:** This amended rule requires, by way of electronic fish receiving tickets (e-ticket), the reporting of commercial sales of salmon, sturgeon, smelt and shad landed downstream of Bonneville Dam and purchased by wholesale fish dealers, wholesale fish bait dealers, and food fish canners. Modifications also require e-tickets be submitted within 24 hours of the closure of a fishing period or within 24 hours of the landing when fishing periods are longer than 24 hours.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-006-0210

### Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisher or commercial bait fisher, the dealer or canner shall prepare at the time of landing a Fish Receiving Ticket, or a separate document in lieu of a Fish Receiving Ticket provided the original dock ticket is attached to the completed dealer copy of the Fish Receiving Ticket and kept on file for inspection by the Director, the Director's authorized agent, or by the Oregon State Police[subsequently submitted to ODFW. Fish dealers shall be required to account for all Fish Receiving Tickets received from the Department]. Fish Receiving Tickets shall be issued in numerical sequence.

(2) Fish Receiving Tickets shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) His or her name from whom purchase is made. If not landed from a vessel, then his or her commercial license number shall be added. If received from a Columbia River treaty Indian, his or her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) For groundfish harvested in the limited entry fixed gear fishery, the federal limited entry fixed gear permit number associated with the landing or portion of landing, which shall be provided by the vessel operator to the preparer of the fish ticket;

(f) Port of first landing. The port of first landing will be recorded as where a vessel initially crosses from the Pacific Ocean to inland waters, or is physically removed from the Pacific Ocean, for the purposes of ending a fishing trip;

(g) Fishing gear used by the fisher;

(h) For salmon and Dungeness crab, zone or area of primary catch;

(i) Species or species group, as determined by the Department, of food fish or shellfish received;

(j) Pounds of each species or species group, as determined by the Department, received:

(A) Pounds must be determined and reported based on condition of the fish when landed, either dressed or round. Dressed pounds may only be used for species with a conversion factor listed at OAR 635-006-0215(3)(g). Measures must be taken using a certified scale.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value. The following species or species groups are exempt from fish ticket requirements when considered "weighbacks":

(i) Sponges;

(ii) Sea Pens;

(iii) Sea Whips;

(iv) Black Corals;

(v) Sea Fans;

(vi) Anemone;

(vii) Jellyfish;

(viii) Whelks;

(ix) Squids other than Humboldt and market;

(x) Octopus other than Pacific giant octopus;

(xi) Mysids;

(xii) Shrimps other than pink shrimp, coonstripe prawns, and spot prawns;

(xiii) Crabs other than Dungeness, tanner, box, Oregon hair, and red rock crabs;

(xiv) Sea Stars including Brittle Stars;

(xv) Urchins;

(xvi) Sand dollars;

(xvii) Sea cucumbers;

(xviii) Eels other than hagfish;

(xix) Blacksmelts;

(xx) Spookfish;

(xxi) Stomiformes including Viperfish and Blackdragons;

(xxii) Slickheads;

(xxiii) Flatnoses;

(xxiv) Lancetfishes;

(xxv) Barricudinas;

(xxvi) Myctophids;

(xxvii) Tomcod;

(xxviii) Eelpouts including Bigfin, Two line, Black, and Snakehead;

(xxix) Dreamers;

(xxx) Anglerfish;

(xxxi) King of the Salmon;

(xxxii) Melamphids;

(xxxiii) Whalefish;

(xxxiv) Oxeye oreo;

(xxxv) Sculpins other than cabezon, buffalo sculpin, red Irish lord, and brown Irish lord;

(xxxvi) Poachers;

(xxxvii) Snailfish;

(xxxviii) Pricklebacks;

(xxxix) Gunnels;

(xl) Scabbardfish;

(xli) Lancetfish;

(xlii) Ragfish;

(xliii) Slender sole;

(xliv) Deepsea sole;

(xlv) Rays including Pacific and electric Rays and Devilfish;

(xlvi) Wolffishes including wolf eels.

(k) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;

(l) Price paid per pound for each species received;

(m) Signature of the individual preparing the Fish Receiving Ticket;

(n) Signature of the vessel operator making the landing;

(o) Species name, pounds and value of fish retained by fisher for take home use.

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(3) Except as provided in OAR 635-006-0212 and 635-006-0213, the original of each Fish Receiving Ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 4034 Fairview Industrial Drive SE, Salem, OR 97302 or through the Pacific States Marine Fisheries Commission West Coast E-Ticket system or as required by Title 50 of the Code of Federal Regulations, part 660 Subpart C. All fish dealer amendments must be conducted in the same system in which the ticket was initially submitted.

(4) For Columbia River non-treaty mainstem and Select Area commercial fisheries downstream of Bonneville Dam, each licensed wholesale fish dealer, wholesale fish bait dealer, limited fish seller, and food fish canner must submit fish receiving tickets electronically through the Pacific States Marine Fisheries Commission (PSMFC) West Coast E-Ticket System for all salmon, sturgeon, smelt and shad landed. Electronic fish tickets (e-tickets) must be submitted within 24 hours of closure of the fishing period, or within 24 hours of landing for fishing periods lasting longer than 24 hours. All fish dealer amendments to electronic fish tickets must be conducted in the same system in which the tickets were initially submitted.

(5) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one Fish Receiving Ticket and to deviate from the time in which Fish Receiving Tickets are due to the Department. Such request shall be in writing, and written authorization from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.036, 506.109, 506.119, 506.129, 508.530, 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040, 508.550

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; DFW 10-2004, f. & cert. ef. 2-13-04; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 100-2015(Temp), f. & cert. ef. 8-4-15 thru 12-31-15; Administrative correction, 1-22-16; DFW 4-2016(Temp), f. 1-26-16, cert. ef. 2-1-16 thru 7-29-16; DFW 90-2016(Temp), f. 7-12-16, cert. ef. 7-29-16 thru 12-31-16; DFW 149-2016, f. 12-7-16, cert. ef. 1-1-17; DFW 7-2017(Temp), f. 2-1-17, cert. ef. 2-2-17 thru 7-29-17

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**Rule Caption:** Commercial Dungeness Crab Health Closure

**Adm. Order No.:** DFW 8-2017(Temp)

**Filed with Sec. of State:** 2-2-2017

**Certified to be Effective:** 2-2-17 thru 7-31-17

**Notice Publication Date:**

**Rules Amended:** 635-005-0465

**Rules Suspended:** 635-005-0465(T)

**Subject:** In coordination with Oregon Department of Agriculture temporary rule making, this amended rule implements a health closure area closed for biotoxins for the ocean commercial Dungeness crab fishery from the Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) due to detection of elevated levels of domoic acid in crab viscera in the specified area. The rule requires that all Dungeness crab taken from the health closure area from 12:01 AM January 25, 2017 through 12:01 AM February 10, 2017 be sold to a food processor licensed by the Oregon Department of Agriculture for evisceration and otherwise prohibits take of Dungeness crab after the effective date and time of this rule. This rule allows crab gear to be left in the area after the closure date so long as it is un-baited with the lids open, and allows vessels with crab on board to transit the area during the closure.

**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:

(a) From the health closure area closed for biotoxins from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) effective at 12:01 AM February 3, 2017. "Health closure area" means an area closed to the public due to health risks of consuming shellfish from the area; and "biotoxins" means naturally occurring shellfish toxins monitored by the Oregon Department of Agriculture;

(2) Notwithstanding subsection (1) of this rule, take, landing, or possession of Dungeness crab from the health closure area is allowed only as consistent with OAR 603-025-0040 provided that:

(a) The Dungeness crab was or is landed before 12:01 AM February 10, 2017; and

(b) Dungeness crab gear that is redeployed after 12:01 February 3, 2017 is unbaited with open lids.

(3) Notwithstanding any other provision in these regulations, Dungeness crab gear may remain in the health closure area after 12:01 AM February 10, 2017 so long as it is left unbaited with open lids;

(4) Notwithstanding subsection (1) of this rule, vessels may continuously transit the area with Dungeness crab onboard at any time. For the purposes of this rule, "continuously transit" means crossing the health closure area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing wind or current.

(5) 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 Point Arena (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.

(6) 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.

(7) 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.

(8) 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-

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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; DFW 166-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16; DFW 146-2016(Temp), f. & cert. ef. 11-23-16 thru 5-21-17; DFW 150-2016(Temp), f. 12-13-16, cert. ef. 12-18-16 thru 6-15-17; DFW 152-2016(Temp), f. & cert. ef. 12-22-16 thru 06-19-17; DFW 8-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

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**Rule Caption:** 2017 Commercial Seasons Set for Columbia River Select Areas

**Adm. Order No.:** DFW 9-2017(Temp)

**Filed with Sec. of State:** 2-6-2017

**Certified to be Effective:** 2-6-17 thru 3-28-17

**Notice Publication Date:**

**Rules Amended:** 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180

**Rules Suspended:** 635-042-0145(T), 635-042-0160(T), 635-042-0170(T), 635-042-0180(T)

**Subject:** These amended rules implement the 2017 winter, spring and summer commercial salmon seasons for the Deep River, Youngs Bay, Blind Slough/Knappa Slough and Tongue Point/South Channel Select Areas. The first authorized fishing period in these Select Area sites is set to begin February 6. Modifications are consistent with action taken January 31, 2017 by the Departments of Fish & Wildlife for the States of Oregon and Washington at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-042-0145

### Youngs Bay Salmon Season

(1) Salmon and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season: Entire Youngs Bay; Mondays, Wednesdays and Thursdays from February 6 through March 3 beginning 6 AM to 6 AM (24 hours) the following day on Mondays and Thursdays, and 6 AM to 6 PM (12 hours) on Wednesdays and Monday March 6 from 6 AM to midnight (18 hours), Wednesday March 8 from 6 AM to 6 PM (12 hours), Thursday March 9 from 6 AM to 6 PM (12 hours), Monday March 13 from 7 PM to 11 PM (4 hours), Wednesday March 15 from 8 AM to Noon (4 hours), Thursday March 16 from 9 AM to 1 PM (4 hours), Monday March 20 from noon to 4 PM (4 hours), Wednesday March 22 from 3 PM to 7 PM (4 hours), Thursday March 23 from 3 PM to 7 PM (4 hours), Monday March 27 from 6 PM to 10 PM (4 hours).

(B) Spring Season: Thursday April 20 from 2 PM to 6 PM (4 hours), Tuesday and Thursday nights from April 25 through April 28 from 7 PM to 7 AM (12 hours), Monday May 1 from 10 AM to Tuesday May 2 4 AM (18 hours), Wednesday May 3 from 9 AM to 9 PM (12 hours), Thursday May 4 from 10 AM to Friday May 5 4 AM (18 hours), noon Monday through noon Friday (4 days/week) from May 8 through June 9 and noon Monday through noon Thursday (3 days) from June 12 through June 15.

(C) Summer Season: Noon Monday through Noon Friday (4 days/week) from June 19 through June 30, Noon Monday July 3 through Noon Thursday July 6 (3 days), and Noon Tuesday through Noon Thursday (2 days/week) from July 11 through July 27.

(b) The fishing areas for the winter, spring and summer fisheries are:

(A) During the winter season described in (1)(A)(a) above, the open fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; including the lower Walluski River upstream to the Highway 202 Bridge. Those waters southerly of the alternate Highway 101 Bridge (Lewis and Clark River) are closed.

(B) During the spring and summer seasons, the Youngs Bay open fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers, and includes the lower Walluski River upstream to the Highway 202 Bridge and the lower Lewis and Clark River upstream to the overhead power lines immediately upstream of Barrett Slough

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom except the use of additional weights and/or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries and upstream of the alternate Highway 101 Bridge in the Lewis and Clark River. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches during the spring and summer seasons. (b) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) Retention and sale of sturgeon is prohibited.

(4) Non-resident commercial fishing and boat licenses are not required for Washington fishers participating in Youngs Bay commercial fisheries. A valid fishing and boat license issued by the state of Washington is considered adequate for participation in this fishery. The open area for non-resident commercial fishers includes all areas open for commercial fishing.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. f. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. & cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-2-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-



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08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; DFW 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; DFW 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; DFW 76-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-29-11; DFW 106-2011(Temp), f. 8-2-11, cert. ef. 8-3-11 thru 10-31-11; DFW 121-2011(Temp), f. 8-29-11, cert. ef. 9-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 24-2012(Temp), f. 3-15-12, cert. ef. 3-18-12 thru 7-31-12; DFW 26-2012(Temp), f. 3-20-12, cert. ef. 3-21-12 thru 7-31-12; DFW 27-2012(Temp), f. 3-27-12, cert. ef. 3-29-12 thru 7-31-12; DFW 28-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-31-12; DFW 30-2012(Temp), f. 4-4-12, cert. ef. 4-5-12 thru 7-31-12; DFW 36-2012(Temp), f. 4-16-12, cert. ef. 4-19-12 thru 7-31-12; DFW 82-2012(Temp), f. 6-29-12, cert. ef. 7-2-12 thru 7-31-12; DFW 96-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 22-2013(Temp), f. 3-12-13, cert. ef. 3-13-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; DFW 36-2013(Temp), f. & cert. ef. 5-22-13 thru 7-31-13; DFW 44-2013(Temp), f. & cert. ef. 5-29-13 thru 7-31-13; DFW 82-2013(Temp), f. 7-29-13, cert. ef. 7-31-13 thru 10-31-13; DFW 87-2013(Temp), f. & cert. ef. 8-9-13 thru 10-31-13; DFW 109-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 18-2014(Temp), f. 3-7-14, cert. ef. 3-10-14 thru 7-30-14; DFW 25-2014(Temp), f. 3-13-14, cert. ef. 3-17-14 thru 7-31-14; DFW 32-2014(Temp), f. 4-21-14, cert. ef. 4-22-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 45-2014(Temp), f. 5-14-14, cert. ef. 5-20-14 thru 7-31-14; DFW 51-2014(Temp), f. & cert. ef. 5-28-14 thru 7-31-14; DFW 55-2014(Temp), f. 6-3-14, cert. ef. 6-4-14 thru 7-31-14; DFW 104-2014(Temp), f. 8-4-14, cert. ef. 8-5-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 17-2015(Temp), f. 3-5-15, cert. ef. 3-9-15 thru 7-30-15; DFW 21-2015(Temp), f. & cert. ef. 3-24-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 42-2015(Temp), f. & cert. ef. 5-12-15 thru 7-31-15; DFW 50-2015(Temp), f. & cert. ef. 5-27-15 thru 7-31-15; DFW 58-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 63-2015(Temp), f. 6-9-15, cert. ef. 6-10-15 thru 7-31-15; DFW 98-2015(Temp), f. 7-30-15, cert. ef. 8-4-15 thru 10-31-15; DFW 110-2015(Temp), f. 8-18-15, cert. ef. 8-24-15 thru 10-31-15; DFW 117-2015(Temp), f. 8-28-15, cert. ef. 8-31-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 20-2016(Temp), f. 3-25-16, cert. ef. 3-28-16 thru 7-31-16; DFW 26-2016(Temp), f. 4-5-16, cert. ef. 4-6-16 thru 7-31-16; DFW 31-2016(Temp), f. 4-11-16, cert. ef. 4-13-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 47-2016(Temp), f. & cert. ef. 5-11-16 thru 7-31-16; DFW 53-2016(Temp), f. 5-19-16, cert. ef. 5-23-16 thru 7-31-16; DFW 60-2016(Temp), f. 5-26-16, cert. ef. 5-31-16 thru 7-31-16; DFW 64-2016(Temp), f. 6-2-16, cert. ef. 6-7-16 thru 7-31-16; DFW 99-2016(Temp), f. 7-29-16, cert. ef. 8-1-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17

## 635-042-0160

### Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the Winter and Spring season fishery in Blind Slough and Knappa Slough in subsection (1)(a)(A), and the spring fishery in Blind Slough and Knappa Slough in subsection (1)(a)(B). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough and Knappa Slough: Monday, Wednesday, and Thursday nights from February 6 through March 10 2017 and Monday and Thursday nights from March 13 through March 31 2017.

(B) Blind and Knappa Sloughs: Tuesday and Thursday nights from April 20 through April 28 2017, and Monday and Thursday nights from May 1 through June 13 2017,

(b) The fishing areas for the winter and spring seasons are:

(A) Winter season: Blind Slough and Knappa Slough are open February 6 through March 17, 2017 and only Blind Slough area is open March 20 through March 31, 2017. Spring season: Blind Slough and Knappa Slough areas are open from April 20 through June 13 2017.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 1 through June 13, the lower boundary of the Knappa Slough fishing area extends downstream to the boundary

lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundary).

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above in subsection (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is less than 7-inches.

(B) During the spring fishery, outlined above in subsection (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(C) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(D) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) Retention and sale of sturgeon is prohibited.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru

# ADMINISTRATIVE RULES

10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 70-2015(Temp), f. 6-15-15, cert. ef. 6-16-15 thru 7-31-15; DFW 76-2015(Temp), f. 6-23-15, cert. ef. 6-25-15 thru 7-31-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 23-2016(Temp), f. & cert. ef. 3-28-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 71-2016(Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 78-2016(Temp), f. 6-23-16 thru 7-31-16; DFW 85-2016(Temp), f. & cert. ef. 6-30-16 thru 7-31-16; DFW 87-2016(Temp), f. & cert. ef. 7-7-16 thru 7-31-16; DFW 92-2016(Temp), f. 7-13-16, cert. ef. 7-14-16 thru 7-31-16; DFW 101-2016(Temp), f. 8-2-16, cert. ef. 8-24-16 thru 10-31-16; DFW 129-2016(Temp), f. 9-29-16, cert. ef. 10-1-16 thru 13-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17

## 635-042-0170

### Tongue Point Basin and South Channel

(1) The winter and spring season Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker "10", northwesterly to a marker on the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(3)(a) Salmon, and shad may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(b) Winter season: Monday and Thursday nights from February 6 through March 10 2017, from 7 PM to 7 AM (12 hours) the following morning and Monday night March 13 2017 from 7 PM to 11 PM (4 hours). Spring season: Thursday night April 20 2017 from 2 PM to 6 PM (4 hours); Tuesday and Thursday nights from April 25 through April 28 2017, and Monday and Thursday nights from May 1 through June 13 2017, 7:00 p.m. to 7:00 a.m. (12 hours) the following morning.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is more than 7 inches during winter season and 9.75-inches during spring season.

(b) In waters described in section (2) as South Channel, nets are restricted to 250 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 7 inches during winter season and 9.75-inches during spring season.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(5) Retention and sale of sturgeon is prohibited.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-

2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 29-2010(Temp), f. 3-9-10, cert. ef. 4-19-10 thru 6-12-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; DFW 122-2011(Temp), f. 8-29-11, cert. ef. 9-19-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 41-2012(Temp), f. 4-24-12, cert. ef. 4-26-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 71-2016(Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 78-2016(Temp), f. 6-23-16 thru 7-31-16; DFW 85-2016(Temp), f. & cert. ef. 6-30-16 thru 7-31-16; DFW 87-2016(Temp), f. & cert. ef. 7-7-16 thru 7-31-16; DFW 92-2016(Temp), f. 7-13-16, cert. ef. 7-14-16 thru 7-31-16; DFW 101-2016(Temp), f. 8-2-16, cert. ef. 8-24-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17

## 635-042-0180

### Deep River Select Area Salmon Season

(1) Salmon and shad, may be taken for commercial purposes from the US Coast Guard navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning February 6 through March 28, 2017;

(b) Spring season: Tuesday and Thursday nights 7:00 a.m. the following morning (12 hours) beginning April 20 through April 28 2017, and Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning May 1 through June 13.

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is unlawful to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department WAC 220-20-010. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches;

(e) During the spring season, outlined above in subsection (2)(b) it is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(4) Retention and sale of sturgeon is prohibited.

(5) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a

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transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 to confirm the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

Stat. Auth.: ORS 183.325, 506.109 & 506.119  
 Stats. Implemented: ORS 506.129 & 507.030  
 Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. & cert. ef. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. & cert. ef. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. & cert. ef. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. & cert. ef. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. & cert. ef. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. & cert. ef. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. & cert. ef. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. & cert. ef. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. & cert. ef. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. & cert. ef. 2-15-09, cert. ef. 7-31-09; DFW 23-2009(Temp), f. & cert. ef. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. & cert. ef. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. & cert. ef. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. & cert. ef. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. & cert. ef. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. & cert. ef. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. & cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. & cert. ef. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. & cert. ef. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. & cert. ef. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 53-2011(Temp), f. & cert. ef. 5-18-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. & cert. ef. 8-15-11 thru 10-31-11; Administrative correction 11-18-11; DFW 12-2012(Temp), f. & cert. ef. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. & cert. ef. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. & cert. ef. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction 8-21-13; DFW 91-2013(Temp), f. & cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. & cert. ef. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 115-2014(Temp), f. & cert. ef. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. & cert. ef. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. & cert. ef. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 102-2015(Temp), f. & cert. ef. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction 11-20-15; DFW 8-2016(Temp), f. & cert. ef. 2-8-16 thru 7-31-16; DFW 23-2016(Temp), f. & cert. ef. 3-28-16 thru 7-31-16; DFW 32-2016(Temp), f. & cert. ef. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 99-2016(Temp), f. & cert. ef. 7-29-16, cert. ef. 8-1-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17

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**Rule Caption:** 2017 Treaty Indian Winter Commercial Season Extended in John Day Pool of the Columbia River  
**Adm. Order No.:** DFW 10-2017(Temp)  
**Filed with Sec. of State:** 2-7-2017  
**Certified to be Effective:** 2-7-17 thru 3-31-17  
**Notice Publication Date:**  
**Rules Amended:** 635-041-0065  
**Rules Suspended:** 635-041-0065(T)  
**Subject:** This amended rule extends the Treaty Indian winter commercial gill net season in the John Day Pool through February 15, 2017. Modifications are consistent with action taken February 7, 2017 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.  
**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0065 Winter Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries from all of Zone 6 beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Tuesday, March 21, 2017.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 38 5/4 inches in fork length taken from the Bonneville Pool and between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes. Fish landed during any open commercial period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Saturday, February 18, 2017 (17.5 days); and John Day Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Wednesday, February 15, 2017 (14.5 days).

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 43-54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool described in section (2)(a) above or may be kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118 & 506.119  
 Stats. Implemented: ORS 506.109, 506.129 & 507.030  
 Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979. Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. & ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. & cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. & cert. ef. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. & cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. & cert. ef. 3-5-99, cert. ef. 3-6-99 thru 3-29-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. & cert. ef. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. & cert. ef. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. & cert. ef. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. & cert. ef. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. & cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. & cert. ef. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. & cert. ef. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. & cert. ef. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. & cert. ef. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. & cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. & cert. ef. 3-1-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. & cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. & cert. ef. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. & cert. ef. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. & cert. ef. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. & cert. ef. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. & cert. ef. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. & cert. ef. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. & cert. ef. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. & cert. ef. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. & cert. ef. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. & cert. ef. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. & cert. ef. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. & cert. ef. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. & cert. ef. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. & cert. ef. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction 8-1-12; DFW 9-2013(Temp), f. & cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. & cert. ef. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. & cert. ef. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. & cert. ef. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction 8-21-13; DFW 6-2014(Temp), f. & cert. ef. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. & cert. ef. 2-25-14, cert. ef. 2-26-14 thru

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7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. ef. 2-26-16 thru 3-31-16; DFW 16-2016(Temp), f. 3-3-16, cert. ef. 3-5-16 thru 3-31-16; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. ef. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. ef. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. ef. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 3-31-17; DFW 10-2017(Temp), f. & cert. ef. 2-7-17 thru 3-31-17

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**Rule Caption:** Commercial Dungeness Crab Evisceration Requirement for Biotoxin Management Area

**Adm. Order No.:** DFW 11-2017(Temp)

**Filed with Sec. of State:** 2-8-2017

**Certified to be Effective:** 2-8-17 thru 8-5-17

**Notice Publication Date:**

**Rules Amended:** 635-005-0465

**Rules Suspended:** 635-005-0465(T)

**Subject:** In coordination with Oregon Department of Agriculture (ODA) temporary rule making (see OAR 635-025-0400), this amended rule implements a biotoxin management area for the ocean commercial Dungeness crab fishery from the Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) due to detection of elevated levels of domoic acid in crab viscera in the specified area. In combination, this rule and ODA rule require that all Dungeness crab taken from the biotoxin management area since 12:01 AM January 25, 2017 be sold to a food processor licensed by the Oregon Department of Agriculture for evisceration. Temporary rules filed February 2, 2017 by ODFW and ODA implemented a short-term evisceration requirement followed by a fishery closure in the biotoxin management area which would have been effective at 12:01 AM February 10, 2017. These rules effectively extend the evisceration requirement until further domoic acid test results are available and removes the fishery closure. These rules prohibit the sale of live crab caught in the affected areas and prohibit the sale of any crab that is not processed consistent with these rules.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-005-0465

### Closed Season and Areas 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 from August 15 through December 1, 08:59 AM.

(2) Take, landing, or possession of Dungeness crab from the area from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) is allowed only as consistent with OAR 603-025-0400.

(3) 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 Point Arena (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.

(4) 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.

(5) 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.

(6) 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; DFW 166-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16; DFW 146-2016(Temp), f. & cert. ef. 11-23-16 thru 5-21-17; DFW 150-2016(Temp), f. 12-13-16, cert. ef. 12-18-16 thru 6-15-17; DFW 152-2016(Temp), f. & cert. ef. 12-22-16 thru 06-19-17; DFW 8-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DFW 11-2017(Temp), f. & cert. ef. 2-8-17 thru 8-5-17

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**Rule Caption:** Commercial Dungeness Crab Evisceration Requirement for Biotoxin Management Area

**Adm. Order No.:** DFW 12-2017(Temp)

**Filed with Sec. of State:** 2-10-2017

**Certified to be Effective:** 2-10-17 thru 8-8-17

**Notice Publication Date:**

**Rules Amended:** 635-005-0465

**Rules Suspended:** 635-005-0465(T)

**Subject:** In coordination with Oregon Department of Agriculture (ODA) temporary rule making (see OAR 635-025-0400), this amended rule implements requirements for a biotoxin management area for the ocean commercial Dungeness crab fishery from the Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) due to detection of elevated levels of domoic acid in crab viscera in the specified area. In combination, this rule and the ODA rule require that all Dungeness crab landed from the biotoxin management area and landed after 12:01 AM January 25, 2017 and before 12:01 AM February 10, 2017 only be sold to a food processor licensed by the Oregon Department of Agriculture for evisceration. These rules prohibit the sale of live crab caught in the affected areas and prohibit the sale of any crab that is not processed consistent with these rules.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

# ADMINISTRATIVE RULES

635-005-0465

## Closed Season and Areas 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 from August 15 through December 1, 08:59 AM.

(2) Take of Dungeness crab from the area from Coos Bay North Jetty (43° 21.60' N. Lat.) northward to Heceta Head (44° 08.30' N. Lat.) landed after 12:01 AM January 25, 2017 and before 12:01 AM February 10, 2017 is allowed only as consistent with OAR 603-025-0400.

(3) 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 Point Arena (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.

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(4) 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.

(5) 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.

(6) 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; DFW 166-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16; DFW 146-2016(Temp), f. & cert. ef. 11-23-16 thru 5-21-17; DFW 150-2016(Temp), f. 12-13-16, cert. ef. 12-18-16 thru 6-15-17; DFW 152-2016(Temp), f. & cert. ef. 12-22-16 thru 06-19-17; DFW 8-2017(Temp), f. & cert.

ef. 2-2-17 thru 7-31-17; DFW 11-2017(Temp), f. & cert. ef. 2-8-17 thru 8-5-17; DFW 12-2017(Temp), f. & cert. ef. 2-10-17 thru 8-8-17

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**Rule Caption:** Treaty Indian Fisheries In the Columbia River

**Adm. Order No.:** DFW 13-2017

**Filed with Sec. of State:** 2-13-2017

**Certified to be Effective:** 2-21-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 635-041-0005, 635-041-0025, 635-041-0030, 635-041-0050, 635-041-0061, 635-041-0063

**Subject:** These amended or adopted rules, as determined justified, will ensure consistent regulatory language and enforcement of Treaty Indian fisheries on the Columbia River by State and Tribal authorities. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0005

### Applicability of Regulations

(1) The right to fish in accordance with OAR 635-041-0005 through 635-041-0085 is restricted to those individuals possessing Indian treaty fishing rights pursuant to the Yakima Treaty (12 Stat. 951), the Warm Springs Treaty (12 Stat. 963), the Umatilla Treaty (12 Stat. 945), or the Nez Perce Treaty (12 Stat. 957).

(2) The fishing activities authorized by the aforementioned treaties for the Columbia River and its tributaries above Bonneville Dam are hereinafter referred to as the Treaty Indian Fishery.

(3) Nothing in these regulations shall prevent any individual having Indian treaty fishing rights from participating equally with other citizens in any other commercial fishery in Oregon so long as such individual complies with the commercial fishing laws and rules of the Commission applicable to such fishery.

(4) The taking of fish from the Columbia River or its tributaries above Bonneville Dam for commercial purposes is prohibited except by the persons, during the times, with the fishing gear, and in the areas specified in OAR 635-041-0005 through 635-041-0085.

(5) It is *unlawful* for any individual to take fish pursuant to the authority of any of the aforementioned treaties and OAR 635-041-0005 through 635-041-0085 unless that person has in possession a valid identification card issued by the tribal registrar showing the person to be a duly enrolled member of the Nez Perce, Umatilla, Warm Springs, or Yakama tribes who can lawfully exercise treaty fishing rights. Upon request, such card shall be presented to any federal, state, or tribal officer.

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

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-79, Renumbered from 635-035-0005; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10; Administrative correction 10-26-10; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

## 635-041-0025

### Subsistence Fishing Gear

(1) It is *lawful* at all times to take fish for subsistence purposes by dip net or bag net of a mesh size not exceeding five inches attached to a hoop 26 feet or less in circumference, or by spear, gaff, club, or fouling-hook. All such fishing gear must be tended at all times. The owner's tribal affiliation and enrollment number must be either placed on the upper side of the hoop, or on a tag attached to the hoop, pole, or cable.

(2) It is *lawful* to use angling gear as defined by the Oregon Wildlife Laws and regulations of the Department.

(3) It is *unlawful* to use gill nets, set nets, hoop nets, stelines, or dip nets or bag nets of a mesh size exceeding five inches, or any other type of fishing gear not otherwise specifically authorized in section (1) of this rule, except during the times and in the areas where such gear is authorized for commercial fishing.

(a) For hoop nets, dip nets, and bag nets, the owner's tribal affiliation and enrollment number must be either placed on the upper side of the hoop, or on a tag attached to the hoop, pole, or cable.

(b) For set nets, drift nets, or stelines, the owner's tribal affiliation and enrollment number must be placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of stelines and submerged nets, and on the anchor floats to which any of these gears are attached.

# ADMINISTRATIVE RULES

(4) Notwithstanding the provisions of this rule a treaty subsistence fishing season with gillnets for salmon may occur provided rules for ceremonial fishing and notice requirement (OAR 635-041-0040) are followed.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0025; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 54-1989 (Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; DFW 43-2010(Temp), f. & cert. ef. 4-15-10 thru 10-11-10; Administrative correction 10-26-10; DFW 40-2011(Temp), f. & cert. ef. 5-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

## 635-041-0030

### Subsistence Fishing Activities

(1) It is unlawful to utilize any fish taken by subsistence fishing for other than subsistence purposes as defined in OAR 635-041-0010 with the exception of shad which may be sold commercially, and with the exception of dipnet caught fish from main stem Columbia and Klickitat River subsistence areas taken during open commercial fishing seasons.

(2) Only white sturgeon with a fork length of 43-54 inches taken from between The Dalles and McNary dams and white sturgeon with a fork length of 38-54 inches taken from between the Bonneville Dam and The Dalles Dam may be retained for subsistence purposes.

(3) All sturgeon not of legal size shall be released to the water unharmed. Sturgeon not captured for legal harvest shall not be possessed on land. For purposes of this regulation, docks and boat ramps are not considered land.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0030; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; DFW(Temp), 37-2000, f. 6-30-00, cert. ef. 7-1-00 thru 7-10-00; DFW 22-2003(Temp), f. & cert. ef. 3-25-03 thru 9-20-03; DFW 3-2005(Temp), f. & cert. ef. 1-20-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 19-2009, f. & cert. ef. 2-26-09; DFW 116-2016(Temp), f. 9-14-16, cert. ef. 9-15-16 thru 12-31-16; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

## 635-041-0050

### Commercial Fishing Gear

It is *unlawful* to:

(1) Take fish for commercial purposes by any means other than set nets, gill nets, dip nets, bag nets, hoop nets, or any gear expressly authorized for subsistence fishing by OAR 635-041-0025.

(2) Fish a set net which is more than 400 feet in length or a drift gill net which is more than 800 feet in length.

(3) Fish more than one set net at any one location.

(4) Fish more than five set nets at any one time.

(5) Have spoiled fish in any fishing gear.

(6) All fishing gear that is actively fishing must be marked as shown below:

(a) For set nets, drift nets, or setlines, the owner's tribal affiliation and enrollment number must be placed upon or adjacent to the end corks of set nets and drift nets, on the anchored ends of setlines and submerged nets, and on the anchor floats to which any of these gears are attached.

(b) For hoop nets, the owner's tribal affiliation and enrollment number must be either placed on the upper side of the hoop or on a tag attached to the hoop, pole, or cable.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0050; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; DFW 9-2008, f. & cert. ef. 2-11-08; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

## 635-041-0061

### Sturgeon Size

(1) White sturgeon may be taken for commercial purposes by treaty Indian fishers during commercial fishing seasons in which sales of sturgeon are authorized.

(2) Sales are limited to white sturgeon with a fork length of 43-54 inches taken from between The Dalles and McNary dams and white sturgeon with a fork length of 38-54 inches taken from between the Bonneville Dam and The Dalles Dam.

(3) All sturgeon not of legal size shall be released to the water unharmed. Sturgeon not captured for legal harvest shall not be possessed on land. For purposes of this regulation, docks and boat ramps are not considered land.

(4) It is *unlawful* to mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 19-2009, f. & cert. ef. 2-26-09; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; Temporary suspended by DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 116-2016(Temp), f. 9-14-16, cert. ef. 9-15-16 thru 12-31-16; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

## 635-041-0063

### Sturgeon Setline Fishery

(1) White sturgeon may be taken by setline for commercial purposes from 12 Noon January 1 through 12 Noon January 31 in all of Zone 6.

(a) In The Dalles and John Day pools white sturgeon taken must be 43-54 inches in fork length.

(b) In the Bonneville Pool white sturgeon taken must be 38-54 inches in fork length.

(c) White sturgeon taken as described in subsections (1)(a) and (1)(b) of this rule may be sold or kept for subsistence use.

(2) Closed areas are set forth under OAR 635-041-0045.

(3) During the white sturgeon setline season it shall be *unlawful* to:

(a) Operate any fishing gear other than setlines except as provided in OAR 635-041-0060;

(b) Operate any setline having more than 100 hooks;

(c) Use other than single hooks size 9/0 or larger;

(4) The owner's tribal affiliation and enrollment number must be placed on the anchored ends of setlines and to the anchor floats to which the setlines are attached.

(5) Notwithstanding OAR 635-041-0045(6)-(11), it is lawful during the open season to fish for white sturgeon by means of set lines in the Columbia River within areas at and adjacent to the mouths of rivers.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0063; FWC 6-1980, f. & ef. 1-28-80; FWC 12-1980, f. & ef. 2-29-80; FWC 64-1980(Temp), f. & ef. 11-7-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 9-1983(Temp), f. & ef. 3-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 12-1989(Temp), f. & cert. ef. 3-21-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 9-1991, f. & cert. ef. 1-31-91; FWC 37-1991(Temp), f. & cert. ef. 4-3-91; FWC 4-1992, f. 1-30-92, cert. ef. 2-1-92; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 41-1992(Temp), f. 6-30-92, cert. ef. 7-1-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 15-1996(Temp), f. & cert. ef. 4-1-96; FWC 25-1996(Temp), f. 5-14-96, cert. ef. 5-15-96; FWC 23-1997(Temp), f. 4-4-97, cert. ef. 4-7-97; FWC 35-1997(Temp), f. & cert. ef. 6-13-97; FWC 40-1997(Temp), f. 6-20-97, cert. ef. 6-23-97; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 50-1998(Temp), f. 6-25-98, cert. ef. 6-26-98 thru 7-24-98; DFW 57-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 22-1999(Temp), f. & cert. ef. 4-1-99 thru 4-23-99; DFW 28-1999(Temp), f. & cert. ef. 4-23-99 thru 7-31-99; DFW 41-1999(Temp), f. & cert. ef. 6-7-99 thru 7-31-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 14-2000(Temp), f. 3-17-00, cert. ef. 3-20-00 thru 7-31-00; DFW 31-2000(Temp), f. 6-9-00, cert. ef. 6-10-00 thru 7-31-00; DMV 43-2000(Temp), f. 8-7-00, cert. ef. 8-8-00 thru 8-20-00; DFW 66-2000(Temp), f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; FWC 43-2001(Temp), f. 5-23-01, cert. ef. 5-24-01 thru 11-20-01; DFW 65-2001(Temp), f. & cert. ef. 1-28-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 114-2001(Temp), f. & cert. ef. 12-13-01 thru 12-31-01; DFW 51-2002(Temp), f. & cert. ef. 5-22-02 thru 9-1-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 121-2002(Temp), f. 10-24-02, cert. ef. 10-27-02 thru 12-31-02; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03; DFW 67-2003(Temp), f. 7-18-03, cert. ef. 7-21-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 69-2006(Temp), f. 7-28-06, cert. ef. 7-31-06 thru 12-31-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 60-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; Administrative correction 1-24-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 19-2009, f. & cert. ef. 2-26-09; DFW 88-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 103-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; DFW 142-2011(Temp), f. 10-6-11, cert. ef. 10-8-11 thru 10-31-11; DFW 150-2011(Temp), f. 10-25-11, cert. ef. 10-26-11 thru 11-30-11; DFW 152-2011(Temp), f. 11-1-11, cert. ef. 11-2-11 thru 12-31-11; DFW 95-2012(Temp), f. 7-27-12, cert. ef. 7-30-12 thru 8-11-12; Administrative correction, 8-27-12; DFW 40-2013(Temp), f. 5-23-13, cert.

# ADMINISTRATIVE RULES

ef. 5-24-13 thru 6-15-13; Administrative correction, 7-18-13; DFW 152-2014(Temp), f. & cert. ef. 10-23-14 thru 11-29-14; DFW 158-2014(Temp), f. & cert. ef. 11-25-14 thru 12-31-14; Administrative correction, 1-27-15; DFW 140-2015(Temp), f. 10-15-15, cert. ef. 10-19-15 thru 11-30-15; DFW 155-2015(Temp), f. 11-12-15, cert. ef. 11-13-15 thru 12-31-15; Administrative correction, 1-22-16; DFW 97-2016(Temp), f. 7-28-16, cert. ef. 8-1-16 thru 8-13-16; Administrative correction, 8-29-16; DFW 136-2016(Temp), f. 10-20-16, cert. ef. 10-24-16 thru 11-30-16; DFW 13-2017, f. 2-13-17, cert. ef. 2-21-17

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**Rule Caption:** 2017 Spring Chinook Seasons in the Hood River  
**Adm. Order No.:** DFW 14-2017(Temp)

**Filed with Sec. of State:** 2-14-2017

**Certified to be Effective:** 4-15-17 thru 6-30-17

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Rules Suspended:** 635-018-0090(T)

**Subject:** This amended rule allows the sport harvest of hatchery spring Chinook salmon in the Hood River from April 15 through June 30, 2017. The Hood River open area extends from the mouth to the mainstem confluence with the East Fork; and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls. The daily bag limit for the Hood River is one (1) adult hatchery salmon per day; and five (5) hatchery jack salmon per day. It is unlawful to continue angle in the Hood River after retaining an adult Chinook. All wild Chinook salmon must be released unharmed.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-018-0090

### Inclusions and Modifications

(1) The **2017 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2017 Oregon Sport Fishing Regulations**.

(2) Hood River from the mouth to the mainstem confluence with the East Fork, and the West Fork from the confluence with the mainstem upstream to the angling deadline 200 feet downstream of Punchbowl Falls is open to angling for hatchery Chinook salmon from April 15 through June 30, 2017.

(a) The catch limit is one (1) adult hatchery Chinook salmon per day, and five (5) hatchery jack salmon per day. All wild Chinook salmon must be released unharmed.

(b) It is *unlawful* to continue angle in the Hood River after retaining an adult Chinook.

(c) All other catch limits and restrictions remain unchanged from those listed for Hood River in the **2017 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 41-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert.

ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 34-2012(Temp), f. 4-13-12, cert. ef. 4-15-12 thru 7-31-12; DFW 55-2012(Temp), f. & cert. ef. 6-4-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 88-2012(Temp), f. 7-16-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 16-2013(Temp), f. 2-25-13, cert. ef. 4-15-13 thru 6-30-13; DFW 75-2013(Temp), f. 7-15-13, cert. ef. 8-1-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 13-2014(Temp), f. 2-18-14, cert. ef. 4-15-14 thru 7-31-14; DFW 83-2014(Temp), f. 7-1-14, cert. ef. 8-1-14 thru 10-31-14; Administrative correction 11-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 27-2015(Temp), f. 4-9-15, cert. ef. 4-15-15 thru 6-30-15; Administrative correction, 7-24-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 99-2015(Temp), f. & cert. ef. 8-3-15 thru 12-31-15; Temporary suspended by DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 128-2015(Temp), f. 9-14-15, cert. ef. 9-18-15 thru 12-31-15; DFW 141-2015(Temp), f. 10-15-15, cert. ef. 10-16-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 17-2016(Temp), f. 3-21-16, cert. ef. 4-15-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 14-2017(Temp), f. 2-14-17, cert. ef. 4-15-17 thru 6-30-17

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**Rule Caption:** Amendments to Rules for Commercial and Recreational Groundfish Fisheries.

**Adm. Order No.:** DFW 15-2017

**Filed with Sec. of State:** 2-15-2017

**Certified to be Effective:** 2-15-17

**Notice Publication Date:** 11-1-2016

**Rules Amended:** 635-004-0275, 635-039-0080

**Subject:** The amended rules establish annual groundfish management measures and harvest limits for 2017 commercial and sport groundfish fisheries by adopting federal regulations by reference. The above rules were included with rules listed on the Notice of Proposed Hearing filed October 14, 2016 for the December 2, 2016 hearing date but filing of these rules was delayed due to delays in publication of federal regulations. Housekeeping and technical corrections to the regulations were made to ensure rule interpretation consistency.

**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, 2016 ed.) as amended; and

(b) Federal Register Vol. 81, No. 226 dated November 23, 2016 (81FR84419).

(c) Federal Register Vol. 82, No. 24, dated February 7, 2017 (82FR9634).

(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.

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

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129

# ADMINISTRATIVE RULES

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 4-29-16; DFW 159-2015(Temp), f. & cert. ef. 11-25-15 thru 5-22-16; DFW 3-2016, f. & cert. ef. 1-19-16; DFW 83-2016(Temp), f. 6-29-16, cert. ef. 7-5-16 thru 12-31-16; DFW 114-2016(Temp), f. 9-12-16, cert. ef. 9-15-16 thru 12-31-16; DFW 15-2017, f. & cert. ef. 2-15-17

## 635-039-0080 Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled 2017 Oregon Sport Fishing Regulations;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2016 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2016 ed.), as amended; and

(d) Federal Register Vol. 82, No. 24, dated February 7, 2017 (82FR9634)

(3) Therefore, persons must consult all publications referenced in this rule in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2000, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 18-2015, f. & cert. ef. 3-10-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 3-2016, f. & cert. ef. 1-19-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 15-2017, f. & cert. ef. 2-15-17

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**Rule Caption:** Extend 2017 Treaty Indian Columbia River Winter Commercial Season in The Dalles/John Day Pool

**Adm. Order No.:** DFW 16-2017(Temp)

**Filed with Sec. of State:** 2-15-2017

**Certified to be Effective:** 2-15-17 thru 3-31-17

**Notice Publication Date:**

**Rules Amended:** 635-041-0065

**Subject:** This amended rule extends the Treaty Indian winter commercial gill net season in The Dalles and John Day Pool through February 22, 2017. Modifications are consistent with action taken February 14, 2017 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, at a meeting of the Columbia River Compact.

**Rules Coordinator:** Michelle Tate—(503) 947-6044

## 635-041-0065

### Winter Salmon Season

(1) Salmon, steelhead, shad walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries

from all of Zone 6 beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Tuesday, March 21, 2017.

(a) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(b) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 38 5/4 inches in fork length taken from the Bonneville Pool and between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool or may be kept for subsistence purposes. Fish landed during any open commercial period may be sold after the period closes.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp, and legal-sized white sturgeon may be taken for commercial purposes in the following Columbia River Treaty Indian gill net fisheries:

(a) The Dalles Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Wednesday, February 22, 2017 (21.5 days); and John Day Pool beginning 6:00 a.m. Wednesday, February 1 through 6:00 p.m. Wednesday, February 22, 2017 (21.5 days).

(b) Gear is restricted to gill nets. There are no mesh size restrictions.

(c) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence purposes. White sturgeon between 43-54 inches in fork length taken from The Dalles and John Day pools may be sold only if caught during open commercial gillnet periods for that pool described in section (2)(a) above or may be kept for subsistence purposes. Fish landed during any open fishing period may be sold after the period closes.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: FWC 89, f. & cert. ef. 1-28-77; FWC 2-1978, f. & cert. ef. 1-31-78; FWC 7-1978, f. & cert. ef. 2-21-78; FWC 2-1979, f. & cert. ef. 1-25-79; FWC 13-1979(Temp), f. & cert. ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & cert. ef. 1-28-80; FWC 1-1981, f. & cert. ef. 1-19-81; FWC 6-1982, f. & cert. ef. 1-28-82; FWC 2-1983, f. 1-21-83, cert. ef. 2-1-83; FWC 4-1984, f. & cert. ef. 1-31-84; FWC 2-1985, f. & cert. ef. 1-30-85; FWC 4-1986(Temp), f. & cert. ef. 1-28-86; FWC 79-1986(Temp), f. & cert. ef. 12-22-86; FWC 2-1987, f. & cert. ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 thru 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-



# ADMINISTRATIVE RULES

31-15; DFW 13-2015(Temp), f. 2-19-15, cert. ef. 2-20-15 thru 3-31-15; DFW 19-2015(Temp), f. 3-11-15, cert. ef. 3-12-15 thru 3-31-15; Administrative correction, 4-21-15; DFW 38-2015(Temp), f. & cert. ef. 5-5-15 thru 7-31-15; DFW 46-2015(Temp), f. 5-18-15, cert. ef. 5-19-15 thru 7-31-15; DFW 48-2015(Temp), f. 5-26-15, cert. ef. 5-27-15 thru 7-31-15; DFW 55-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; DFW 60-2015(Temp), f. 6-8-15, cert. ef. 6-9-15 thru 7-31-15; DFW 67-2015(Temp), f. 6-10-15, cert. ef. 6-11-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 6-2016(Temp), f. 1-28-16, cert. ef. 2-1-16 thru 3-31-16; DFW 10-2016(Temp), f. 2-11-16, cert. ef. 2-12-16 thru 3-31-16; DFW 11-2016(Temp), f. 2-18-16, cert. ef. 2-19-16 thru 3-31-16; DFW 15-2016(Temp), f. 2-25-16, cert. ef. 2-26-16 thru 3-31-16; DFW 16-2016(Temp), f. 3-3-16, cert. ef. 3-5-16 thru 3-31-16; Administrative correction, 4-29-16; DFW 50-2016(Temp), f. 5-12-16, cert. ef. 5-16-16 thru 7-31-16; DFW 55-2016(Temp), f. 5-24-16, cert. ef. 5-25-16 thru 7-31-16; DFW 65-2016(Temp), f. & cert. ef. 6-6-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 5-2017(Temp), f. 1-31-17, cert. ef. 2-1-17 thru 3-31-17; DFW 10-2017(Temp), f. & cert. ef. 2-7-17 thru 3-31-17; DFW 16-2017(Temp), f. & cert. ef. 2-15-17 thru 3-31-17

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

**Rule Caption:** Correction of Expedited Hearing Rights for Potentially Disqualifying Abuse Against Adults

**Adm. Order No.:** DHSD 2-2017(Temp)

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 1-24-17 thru 7-22-17

**Notice Publication Date:**

**Rules Amended:** 407-007-0335

**Subject:** Updates to the criminal records checks and abuse checks on providers (OAR 407-007-0200 to 407-007-0370) on 12-1-2016 inadvertently changed the hearing rights of subject individuals who have only potentially disqualifying abuse involving adult victims. Under guidance from the Department of Human Services' original Abuse Steering Committee, if a weighing test leads to a negative fitness determination, the subject individual shall be notified of an intent to deny and granted expedited hearing rights. This temporary rule restores the correct notice and expedited hearing rights to these subject individuals.

Temporary rules are available on the Department of Human Services website: <http://www.oregon.gov/DHS/POLICIES/Pages/ss-admin-rules.aspx>. For hardcopy requests, call: (503) 947-5250.

**Rules Coordinator:** Jennifer Bittel—(503) 947-5250

### 407-007-0335

#### Decision and Hearing Rights for Potentially Disqualifying Abuse

(1) This rule applies only to:

(a) Background checks in which an SI has potentially disqualifying abuse against an adult under OAR 407-007-0290(11)(a)(C), 407-007-0290(11)(b)(B), 407-007-0290(11)(c)(B), or 407-007-0290(11)(d) with no other potentially disqualifying convictions or conditions; and

(b) After a weighing test under OAR 407-007-0300, BCU determines that more likely than not, the SI poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(2) BCU shall provide the SI a Notice of Intent to Deny in writing.

(a) BCU shall indicate on the Notice of Intent to Deny the date the final fitness determination was made and the date of the intended action if the SI fails to request an expedited hearing.

(b) BCU shall mail the Notice of Intent to Deny to the SI using the mailing address provided by the SI by the next business day after the date of the final fitness determination.

(c) BCU shall include an Expedited Hearing Request form with the Notice of Intent to Deny.

(3) An SI may contest a Notice of Intent to Deny by requesting an expedited hearing. The expedited hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(4) To request an expedited hearing, the SI must submit a completed and signed Expedited Hearing Request form. The request for an expedited hearing must be received by the Department within 10 calendar days after the date of the Notice of Intent to Deny.

(a) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.

(b) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(5) An SI has the right to represent him or herself or have legal representation during the expedited hearing process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative if the SI has provided BCU with such information.

(a) An SI who is appealing a Notice of Intent to Deny regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) If the SI fails to request an expedited hearing under this rule within the allowed time, BCU shall issue a Notice of Denial to the SI and to the QE. The SI shall have no further hearing rights under OAR 407-007-0330.

(7) If the SI requests an expedited hearing in a timely manner, the SI shall remain in the same status made in a preliminary fitness determination under OAR 407-007-0315 until the date of a final order or the Notice of Denial.

(8) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(c) BCU may make an informal disposition based on the administrative review. BCU shall issue a final order and a notice of fitness determination.

(9) The Department shall be represented by a hearing representative in expedited hearings. The Department may also be represented by the Office of the Attorney General.

(a) BCU shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The claimant is entitled to reasonable notice of all hearing documents either through personal service, electronically, regular mail, or certified mail.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(10) The expedited hearing shall be conducted by the OAH by telephone within 10 business days from the receipt of the completed and signed Expedited Hearing Request form.

(a) The expedited hearing is not open to the public.

(b) The administrative law judge shall make a new fitness determination based on evidence and the record.

(c) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(11) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw an expedited hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within four calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review.

(c) If the QE terminates employment or position of the SI for reasons unrelated to the potentially disqualifying abuse, BCU may close the application.

(d) BCU shall dismiss a hearing request when the SI fails to appear at the time specified for the expedited hearing. The order is effective on the date scheduled for the hearing.

(12) After an expedited hearing, the administrative law judge shall issue a final order within three business days.

(a) If the final order maintains BCU's intent to deny, BCU shall issue a Notice of Denial by the next business day after the date of the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

(b) If the final order reverses BCU's intent to deny to an approval or a restricted approval, BCU shall issue a Notice of fitness determination by the next business day after the date of the final order unless BCU formally stays the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

# ADMINISTRATIVE RULES

(13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

Stat. Auth.: ORS 181.516, 181.537, 183.459, 409.027 & 409.050  
Stats. Implemented: ORS 181.516, 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004  
Hist.: DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 2-2017(Temp), f. & cert. ef. 1-24-17 thru 7-22-17

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

**Rule Caption:** ODDS: Nursing Services in Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

**Adm. Order No.:** APD 1-2017(Temp)

**Filed with Sec. of State:** 2-15-2017

**Certified to be Effective:** 2-15-17 thru 8-13-17

**Notice Publication Date:**

**Rules Amended:** 411-360-0140

**Subject:** The Department of Human Services, Office of Developmental Disabilities Services (ODDS) is temporarily amending OAR 411-360-0140 relating to private duty nursing and direct nursing services in an adult foster home for individuals with intellectual or developmental disabilities (AFH-DD).

OAR 411-360-0140 is being amended to —

- Remove the language limiting a Medicaid-enrolled direct nurse provider in an AFH-DD from delivering no more than 40 total hours per week of direct nursing services; and

- Specify that under OAR 410-132-0080 (Limitations for private duty nursing services), an AFH-DD provider is not authorized to deliver private duty nursing services.

**Rules Coordinator:** Kimberly Colkitt-Hallman—(503) 945-6398

## 411-360-0140

### Standards and Practices for Health Care

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes the health and well-being of the individual as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary licensed health care provider whom the individual or the legal representative of the individual has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a licensed health care provider no less than every two years or as recommended by the licensed health care provider.

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

- (A) Prescription medications;
- (B) Non-prescription medications except over the counter topicals;
- (C) Treatments other than basic first aid;
- (D) Modified or special diets;
- (E) Adaptive equipment; and
- (F) Aids to physical functioning.

(e) The provider must implement the order of a physician or licensed health care provider.

(f) Injections may be:

- (A) Self-administered by the individual; or
- (B) Administered by:
  - (i) A relative of the individual;
  - (ii) A currently licensed registered nurse;
  - (iii) A licensed practical nurse under registered nurse supervision; or
  - (iv) The provider, resident manager, or substitute caregiver who has

been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the record for the individual.

(2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the

Department in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status that may be pertinent to current care and services;

(B) A record of visits and appointments to licensed health care providers that includes documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider;

(C) A record of known hospitalizations and surgeries;

(D) Current signed orders for all medications, treatments, therapies, special diets, and adaptive equipment;

(E) Medication administration records (MARs);

(F) Documentation of the consent from the legal representative of the individual for medical treatment that is not routine, including surgery and anesthesia; and

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal representative, Department case manager, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications must be:

(a) Kept in the original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; and

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of the physician or licensed health care provider including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For over the counter topical medications without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (as needed) medication was administered;

(H) Documented effectiveness of any PRN (as needed) medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Documentation of any known allergy or adverse drug reaction.

(b) Any errors in the MAR must be corrected with a circle of the error and the initials of the person making the correction.

(5) SELF-ADMINISTRATION OF MEDICATION.

(a) For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(b) The AFH-DD must ensure that individuals able to self-administer medications keep the medications in a place unavailable to other individuals residing in the AFH-DD and store the medications as recommended by the product manufacturer.

(6) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in an AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current OMMP registry card for the individual must be made available to the provider and maintained in the record for the individual;

(B) Provide a copy of the written statement by the physician that indicates medical marijuana may mitigate the symptoms of the qualifying condition of the individual and includes instructions for the use of medical marijuana;

# ADMINISTRATIVE RULES

(C) Be responsible for obtaining the marijuana from an OMMP approved third party grower who is not the provider, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD; and

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the premises of the AFH-DD;

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on the premises of the AFH-DD;

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a “designated primary caregiver”. The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status, such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the Residency Agreement of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time may be stored on the property of the AFH-DD per card holder. The remainder of the OMMP card holder’s marijuana must be stored at the site of the grower.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual’s MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual’s marijuana. The provider must monitor the individual’s usage of medical marijuana to ensure safety and to document that the individual’s use of medical marijuana is in compliance with the physician’s instructions for using marijuana as documented in the ISP or Service Agreement.

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or licensed health care provider through a written order; and

(B) Monitored by the prescribing physician or licensed health care provider, ISP team, and provider for desired responses and adverse consequences.

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a physician or licensed health care provider.

(c) A provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a physician or licensed health care provider.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to any young adult being prescribed one or more psychotropic medications or any antipsychotic medication.

(A) A mental health assessment is not required in the following situations:

(i) In case of urgent medical need;

(ii) For a change in the delivery system of the same medication;

(iii) For a change in medication within the same classification;

(iv) A one-time medication order given prior to a medical procedure;

or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, the provider must notify and inform the following of the need for a mental health assessment:

(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to a physician or licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

(E) Within one business day after receiving a new prescription or knowledge of a new prescription for a psychotropic medication for the young adult, the provider must notify:

(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain:

(i) The name of the prescribing physician or licensed health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(G) The provider must get a written informed consent from one of the following prior to filling a prescription for any new psychotropic medication, except in case of urgent medical need:

(i) The legal guardian of the young adult; or

(ii) The Department when the Department is the legal guardian of the young adult.

(H) When a young adult has more than two prescriptions for psychotropic medications, an annual review of the psychotropic medications must occur by a physician, licensed health care provider, or a qualified mental health professional who has the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing physician or licensed health care provider using the Balancing Test Form (form APD 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

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(B) The provider must keep signed copies of the balancing test in the medical record for the individual for seven years.

## (8) MEDICATION SAFEGUARDS.

(a) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by the physician or licensed health care provider, from a single pharmacy that maintains a medication profile for the individual;

(B) Maintaining information about each desired effects and side effects of the medication; and

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) The record for an individual must include documentation of the reason when all medications are not provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or contamination. A provider may contact the local Department of Environmental Quality waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage, strength, and amount being disposed;

(c) Name of the individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

## (10) NURSING SERVICES.

(a) When nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(b) COMMUNITY NURSING SERVICES. When community nursing services as described in OAR chapter 411, division 048 are provided to an individual, the foster care provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) PRIVATE DUTY NURSING. Under OAR chapter 410, division 132, young adults aged 18 through 20 who reside in a foster home and who meet the clinical criteria described in OAR 411-300-0120 are eligible for private duty nursing services.

(A) A Nursing Service Plan must be present when Department funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(B) When private duty nursing services are provided to a young adult, the provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the private duty nursing services being delivered are sufficient to meet the health needs of the young adult; and

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(C) Under OAR 410-132-0080, an AFH-DD provider is not authorized to deliver private duty nursing services.

(d) DIRECT NURSING SERVICES. Direct nursing services may be provided to individuals 21 years of age and over as described in OAR chapter 411, division 380.

(A) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(B) When direct nursing services are provided to an individual the provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the direct nursing services being provided are sufficient to meet the health needs of the individual;

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse; and

(iii) While delivering a direct nursing service exclusively to an eligible individual in the AFH-DD, assure the needs of other individuals in the home are met up to and including additional staffing, such as resident managers, substitute caregivers, or additional nurses in the home. Documentation must record staffing coverage.

(C) An AFH-DD provider licensed by the Department may provide direct nursing services to individuals in the AFH-DD under the following conditions:

(i) The provider must meet the qualifications to provide direct nursing services described in OAR 411-380-0060;

(ii) More than one individual resides in the AFH-DD and requires direct nursing services;

(iii) The AFH-DD provider is the choice of the individual or the legal representative of the individual and is not for the convenience of the AFH-DD provider; and

(iv) The AFH-DD provider meets the requirements as an enrolled Medicaid Provider as described in OAR 411-380-0060 and has a separate and distinct Medicaid provider number.

(11) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and a substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 21-2016, f. & cert. ef. 6-29-16; APD 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17

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## Department of Human Services, Child Welfare Programs Chapter 413

**Rule Caption:** Amending rule relating to approving a permanency plan prior to a resource being identified

**Adm. Order No.:** CWP 1-2017

**Filed with Sec. of State:** 1-19-2017

**Certified to be Effective:** 1-19-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 413-070-0518

**Subject:** OAR 413-070-0518 relating to approving a permanency plan prior to a resource being identified was amended effective January 1, 2017. In cases in which the Department recommends changing the permanency plan to guardianship because the plan is no longer in the best interest of the child or young adult (subsection (4)(a) of the rule), the amended rule directs the Department to:

- Comply with OAR 413-070-0660 relating to consideration of guardianship as a permanency plan;

- Schedule a permanency committee and comply with OAR 413-070-0670 relating to approving a permanency plan of guardianship; and

- Diligently recruit and identify the substitute caregiver as a potential guardian per OAR 413-070-0665.

However, once a potential guardian is identified, the Department must also schedule a second permanency committee to approve the guardian. That provision was inadvertently left out of the permanent rulemaking that went into effect on January 1, 2017. The rule is amended to include that requirement.

**Rules Coordinator:** Kris Skaro—(503) 945-6067

### 413-070-0518

#### Approving a Permanency Plan Prior to a Resource Being Identified

(1) A permanency plan may be changed to guardianship or placement with a fit and willing relative prior to a resource having been identified when:

(a) The court changes a permanency plan for a child or young adult before the Department makes a recommendation pursuant to OAR 413-070-0512 to 413-070-0516; or

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(b) The Department must make a recommendation to change the permanency plan for a child or young adult to guardianship or placement with a fit and willing relative because a child or young adult's current permanency plan is no longer in the best interest of the child or young adult.

(2) When subsection (1)(a) of this rule applies, the caseworker does the following:

(a) If the new permanency plan for the child or young adult is guardianship:

(A) Change the permanency plan to guardianship;

(B) Diligently recruit and identify a potential guardian resource for the child or young adult; and

(C) Approve the guardian for the child or young adult as outlined in OAR 413-070-0665 and 413-070-0670.

(b) If the new permanency plan for a child or young adult is placement with a fit and willing relative:

(A) Change the permanency plan to placement with a fit and willing relative;

(B) Diligently recruit and identify a potential relative resource for the child or young adult; and

(C) Approve the relative for placement with a fit and willing relative as outlined in OAR 413-070-1020.

(3) After complying with OAR 413-070-0512 to 413-070-0516, if the Department recommendation is something other than the court-approved permanency plan, the Department must schedule a judicial review of the permanency plan of the child or young adult.

(4) When subsection (1)(b) of this rule applies, the caseworker must comply with the following requirements:

(a) If the recommendation is to change the permanency plan to guardianship:

(A) Comply with OAR 413-070-0660;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-0670 that pertain to approving the permanency plan of guardianship;

(C) Diligently recruit and identify the substitute caregiver as a potential guardian as outlined in OAR 413-070-0665; and

(D) Schedule a second permanency committee and comply with the sections of OAR 413-070-0670 that pertain to approving the substitute caregiver as a guardian.

(b) If the recommendation is to change the permanency plan to placement with a fit and willing relative:

(A) Comply with the sections of OAR 413-070-1000 that pertain to considering the permanency plan of placement with a fit and willing relative;

(B) Schedule a permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the permanency plan of placement with a fit and willing relative;

(C) Diligently recruit and identify the proposed fit and willing relative resource that meets the eligibility as outlined in OAR 413-070-1010; and

(D) Schedule a second permanency committee and comply with the sections of OAR 413-070-1020 that pertain to approving the proposed resource as a fit and willing relative.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 23-2011, f. & cert. ef. 9-19-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17; CWP 1-2017, f. & cert. ef. 1-19-17

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**Rule Caption:** Application of the Indian Child Welfare Act (ICWA)

**Adm. Order No.:** CWP 2-2017(Temp)

**Filed with Sec. of State:** 2-7-2017

**Certified to be Effective:** 2-7-17 thru 8-5-17

**Notice Publication Date:**

**Rules Adopted:** 413-115-0000, 413-115-0010, 413-115-0020, 413-115-0030, 413-115-0040, 413-115-0050, 413-115-0060, 413-115-0070, 413-115-0080, 413-115-0090, 413-115-0100, 413-115-0110, 413-115-0120, 413-115-0130, 413-115-0140, 413-115-0150

**Rules Amended:** 413-015-0115, 413-015-0205, 413-015-0215, 413-015-0415, 413-015-0432, 413-015-0455, 413-020-0000, 413-020-0010, 413-020-0020, 413-020-0050, 413-020-0075, 413-020-0090, 413-030-0000, 413-030-0009, 413-030-0210, 413-030-0445, 413-030-0460, 413-040-0000, 413-040-0010, 413-040-0155, 413-040-0159, 413-040-0310, 413-040-0325, 413-070-0000, 413-070-0010, 413-070-0072, 413-070-0512, 413-070-0516, 413-070-0519, 413-070-0625, 413-070-1050, 413-080-0050, 413-100-0020, 413-100-

0240, 413-110-0000, 413-110-0300, 413-120-0000, 413-120-0020, 413-120-0021, 413-120-0025, 413-120-0057, 413-120-0060, 413-120-0165, 413-120-0175, 413-120-0625, 413-120-0730, 413-120-0750, 413-120-0760, 413-120-0870, 413-120-0880, 413-120-0925, 413-120-0950, 413-200-0260, 413-200-0306, 413-215-0000, 413-215-0081, 413-215-0426, 413-215-0431, 413-215-0441

**Rules Suspended:** 413-070-0100, 413-070-0130, 413-070-0140, 413-070-0150, 413-070-0160, 413-070-0170, 413-070-0180, 413-070-0190, 413-070-0200, 413-070-0210, 413-070-0220, 413-070-0230, 413-070-0240, 413-070-0250, 413-070-0260

**Subject:** On June 14, 2016, the Bureau of Indian Affairs (BIA) published rules relating to implementation of the Indian Child Welfare Act (ICWA). ICWA is the federal law controlling the welfare of Indian children and the Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules to comply with these regulations relating to the Department's responsibilities when serving Indian children. Previous rules governing ICWA, OAR 413-070-0100 to 413-070-0260, are being repealed and the updated requirements will be reflected in new rules, OAR 413-115-0000 to 413-115-0150. Primary changes of the BIA regulations that will be reflected in Department rules include clarification around the following ICWA provisions:

- Definition of key terms;

- Process for determination of tribal membership or enrollment;

- Responsibilities relating to "active efforts" to involve the child's tribe and to prevent removal of an Indian child from his or her family;

- Emergency removal;

- The placement of Indian children;

- Notification and Notice requirements;

- Qualifications for a qualified expert witness; and

- Parental consent for voluntary proceedings.

Additionally, Child Welfare rules throughout OAR chapter 413 that reference the ICWA requirements are being amended where needed to reflect the new rule references or new substantive requirements.

The rule text showing proposed changes is available at [http://www.dhs.state.or.us/policy/childwelfare/policy\\_releases.htm](http://www.dhs.state.or.us/policy/childwelfare/policy_releases.htm).

**Rules Coordinator:** Amie Fender—(503) 945-8986

## 413-115-0000

### Definitions

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 115.

(1) "Active efforts" means affirmative, active, proactive, thorough, and timely efforts intended primarily to maintain or reunite an Indian child with his or her family.

(2) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(3) "Adoptive placement" means the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(4) "BIA" means the U.S. Department of the Interior, Bureau of Indian Affairs.

(5) "Child" means a person under 18 years of age.

(6) "Child-custody proceeding" includes any action, other than an emergency proceeding, that may culminate in one of the following outcomes: a foster-care placement, the termination of parental rights, a pre-adoptive placement, or an adoptive placement. An action that may culminate in one of these four outcomes is considered a separate "child-custody proceeding" from an action that may culminate in a different one of these four outcomes. There may be several child-custody proceedings involving any given Indian child. Within each "child-custody proceeding", there may be several hearings. If a child is placed in foster care or another out-of-home placement as a result of a status offense, that status offense proceeding is a "child-custody proceeding".

(7) "Continued custody" means physical custody, legal custody, or both, under any applicable tribal law or tribal custom or state law that a parent or Indian custodian already has or had at any point in the past.

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(8) “CPS assessment” means a child protective services assessment, which is an investigation into a report of child abuse or neglect pursuant to ORS 419B.020 that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(9) “Department” means the Department of Human Services, Child Welfare.

(10) “Domicile” means:

(a) For a parent or Indian custodian, the place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain indefinitely even though the person may be currently residing elsewhere.

(b) For an Indian child, the “domicile” of the Indian child’s parents or Indian custodian or guardian, or in the case of an Indian child whose parents are not married to each other, the “domicile” of the Indian child’s custodial parent.

(11) “Emergency proceeding” means any court action that involves an emergency removal or emergency placement of an Indian child. An “emergency proceeding” is not a child-custody proceeding.

(12) “Emergency removal” means a removal of an Indian child that occurs because there is a threat of imminent of physical damage or harm to the child.

(13) “Entity” means any organization or agency including, but not limited to a private child placing agency, that is separate and independent of the Department, performs functions pursuant to a contract or subcontract with the Department, and receives federal funds.

(14) “Extended family member” is defined by the law or custom of the Indian child’s tribe or, in the absence of such law or custom, is a person who has reached age 18 and who is the Indian child’s grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(15) “Foster-care placement” means any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

(16) “Grandparent” for purposes of visitation, contact, or communication ordered by the court under ORS 419B.876 means the legal parent of the child or young adult, as defined in ORS 109.119.

(17) “Guardian” means an individual who has been granted guardianship of a child through a judgment of the court.

(18) “ICWA” or “the Act” means the Indian Child Welfare Act of 1978, 25 U.S.C. §§1901-63.

(19) “Impending danger safety threat” means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child 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.

(20) “Indian” means any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in 43 U.S.C. § 1606.

(21) “Indian child” means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(22) “Indian custodian” means any Indian who has legal custody of an Indian child under applicable tribal law or custom or under applicable state law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(23) “Indian foster home” means a substitute care placement where at least one of the licensed or approved foster parents is an Indian.

(24) “Indian organization” means any group, association, partnership, corporation, or legal entity owned or controlled by Indians or a majority of whose members are Indians, such as an Indian Child Welfare Committee.

(25) “Indian tribe” means any “Indian tribe”, band, nation, or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in 43 U.S.C. § 1606, and any tribe whose federal relationship has been terminated by congressional action.

(26) “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.

(27) “Involuntary proceeding” means a child-custody proceeding in which the parent does not consent of his or her free will to the foster-care, pre-adoptive, or adoptive placement or termination of parental rights.

(28) “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 416.610, or by a juvenile court. In cases involving an Indian child under the 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.

(29) “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.

(30) “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.

(31) “QEW” means qualified expert witness.

(32) “Reservation” means Indian country as defined in 18 U.S.C. §1151, and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(33) “Sibling” means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent.

(b) Through the marriage of the legal or biological parents of the children or young adults.

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(34) “Status offense” means an offense that would not be considered criminal if committed by an adult; they are acts prohibited only because of a person’s status as a minor (e.g., truancy, runaway, beyond control).

(35) “Substitute care” means the out-of-home placement of a child or young adult who is in the custody and care of the Department.

(36) “Substitute caregiver” means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(37) “Termination of parental rights” means any action which results in the termination of the parent-child relationship.

(38) “Tribal Affairs Unit” means designated staff who monitor Department policy and procedures for compliance with the ICWA, investigate complaints of non-compliance from tribes, provide consultation to caseworkers relating to related law and administrative rules, and provide ICWA materials and training.

(39) “Tribal court” means the court which holds jurisdiction over Indian child-custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child-custody proceedings.

(40) “Upon demand” means that the parent or Indian custodian can regain custody simply upon verbal request, without any formalities or contingencies.

(41) “Voluntary placement agreement” means a binding, written agreement between the Department and the parent or Indian custodian of a minor child that does not transfer legal custody to the Department but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or Indian custodian, the child and the Department while the child is in placement.

(42) “Young adult” means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.625

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0010

### History, Purpose, and Applicability

(1) History and Purpose.

(a) On November 8, 1978, utilizing its power over Indian affairs and its “responsibility for the protection and preservation of Indian tribes and

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their resources,” while acknowledging “that there is no resource more vital to the continued existence and integrity of Indian tribes than their children,” Congress enacted the Indian Child Welfare Act (the Act or ICWA). The Act was passed because Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children” by courts and welfare departments and placed in non-Indian foster homes and institutions. In 2016, the Bureau of Indian Affairs (BIA) revisited the ICWA and added a subpart to the regulations to improve ICWA implementation (see 25 C.F.R. § 23).

(b) The Act sets forth that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families.

(c) Further, the Department has the responsibility to ensure that active efforts must be made to:

(A) Prevent the removal of such children; and

(B) If removal becomes necessary:

(i) Take remedial actions to promote timely return; and

(ii) Place such children in foster or adoptive homes that comply with the placement preferences of the ICWA.

(2) Applicability and Limitations.

(a) The provisions of the ICWA apply when an Indian child is the subject of:

(A) A child-custody proceeding;

(B) An involuntary proceeding;

(C) A voluntary placement agreement, consent to termination of parental rights or voluntary relinquishment;

(D) A proceeding involving a status offense if any part of the proceeding results in the need for out-of-home placement of the child, including a foster care, pre-adoptive, or adoptive placement or termination of parental rights; or

(E) An emergency proceeding.

(b) If the ICWA applies during a proceeding, it will not cease to apply simply because the child reaches 18 during the pendency of the proceeding.

(c) The ICWA does not apply to:

(A) A tribal court proceeding.

(B) A proceeding regarding a criminal act that is not a status offense.

(C) An award of custody of the Indian child to one of the parents including, but not limited to, an award in a divorce proceeding.

(d) Cultural Heritage Protection. In instances where the ICWA does not apply, but the child is biologically an Indian or considered to be an Indian by the Indian community, the Department must respect the child’s right to participate in the culture of origin in case planning. Participation in the culture includes the language, customary beliefs, social norms, and material traits including, but not limited to, the dress, food, music, and dance of a racial, religious, or social group that are transmitted from one generation to another.

(e) The Act does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure applies. Under constitutional law, the Act takes precedence where it conflicts with state law. When state law affords a higher standard of protection of the rights of the parent or Indian custodian, it applies.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0020

### Department Authority

Once it is found that an Indian child is involved, and the tribe or tribes who have an interest have been determined, the authority of the Department must be established. In some instances, the Department will have no authority to become involved in a case.

(1) Exclusive Tribal Jurisdiction. Indian tribes have exclusive jurisdiction over child-custody proceedings involving children who reside or whose domicile is on a reservation. The only exception is where Congress has transferred jurisdiction over family welfare matters to a state and the tribe in that state has not completed the administrative process to reassume exclusive jurisdiction.

(2) Tribal Court Ward. The Department has no authority in cases involving an Indian child who is a ward of a tribal court, except for an emergency removal, as described in section (3) of this rule.

(3) Emergency Removal—Limited Authority. Notwithstanding sections (1) and (2) of this rule, if an Indian child who resides or whose domicile is on any reservation is located off the reservation and is in danger of suffering imminent physical damage or harm, the Department has the

authority to take physical custody regardless of whether the child is a ward of a tribal court or the tribe has exclusive jurisdiction.

Stat. Auth.: ORS 418.005, 418.627

Stats. Implemented: ORS 418.005, 419B.100, 419B.118

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0030

### Tribal Membership and Enrollment

(1) Tribal Determination of Membership or Eligibility for Membership.

(a) The determination of whether the child is a member of a tribe (or eligible for membership), is solely within the jurisdiction of the tribe, except as otherwise provided in tribal or federal law.

(b) The determination of whether a biological parent is a member of a tribe is solely within the jurisdiction of the tribe, except as otherwise provided by tribal or federal law.

(c) When the Indian child is a member or eligible for membership in only one tribe, that tribe must be designated as the Indian child’s tribe.

(d) When the Indian child meets the definition of Indian child through more than one tribe, deference should be given to the tribe in which the Indian child is already a member, unless otherwise agreed to by the tribe.

(e) When the Indian child meets the definition of Indian child through more than one tribe because the child is a member in more than one tribe, or the child is not a member of but is eligible for membership in more than one tribe, the court must provide an opportunity for the tribes to determine which tribe should be designated as the Indian child’s tribe in any involuntary proceeding.

(f) When the tribes are unable to reach an agreement, the court designates the Indian tribe with which the Indian child has the more significant contacts as the child’s tribe, for purposes of the ICWA. That determination does not constitute a determination for any other purposes.

(2) Department Responsibilities.

(a) When a child may be a member or enrolled or eligible for membership or enrollment in a tribe, the caseworker must follow all notification requirements in OAR 413-115-0050 and notice requirements in OAR 413-115-0120.

(b) The caseworker must assist the parent or Indian custodian in completing and submitting information to the tribe(s) to determine membership or enrollment in the tribe(s).

(c) When a child may be a member of or enrolled in, or eligible for membership of or enrollment in, more than one tribe, the Department must gather and document information to assist the court in making a determination for purposes of the Act. The information, if available, must include, but is not limited to:

(A) The parents’ preference for the membership or enrollment of the child.

(B) The length of past domicile or residence on or near the reservation of each tribe.

(C) Tribal membership or enrollment of the child’s custodial parent or Indian custodian.

(D) Interest asserted by each tribe in the child-custody proceeding.

(E) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes.

(F) Self-identification of the child if the child is of sufficient age and capacity to meaningfully self-identify.

(d) When the Department receives tribal confirmation regarding the status of a child’s membership or enrollment or eligibility for membership or enrollment, the caseworker must:

(A) Document in the Department’s information system either:

(i) The written determination by the tribe of the child’s membership or enrollment or eligibility for membership or enrollment; or

(ii) The written determination by the tribe declaring the child is ineligible for membership or enrollment.

(B) Incorporate into all documents presented at subsequent court hearings the written statement(s) regarding membership or enrollment status.

(e) The Department must:

(A) Identify and work with all of the tribes of which the Department knows or has reason to know the child may be a member (or eligible for membership); and

(B) Treat the child as an Indian child when there is reason to know the child may be an Indian child unless it is determined by the court that the child does not meet the definition of an Indian child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

# ADMINISTRATIVE RULES

## 413-115-0040

### **Inquiry and Actions to Determine a Child's Tribal Membership or Enrollment Under the ICWA; Notification to the Tribe of Initial Contact**

(1) When the Department receives screening information under OAR 413-015-0205, the screener must inquire whether the child is an Indian child. If the screener receives information that the child may be an Indian child, and the tribe(s) is named, the screener must send a copy of the screening report to the tribe(s) promptly after the screening decision is complete.

(2) When a decision is made to open a CPS assessment pursuant to OAR 413-015-0210 or a case for family support services, the CPS worker must inquire into whether the child is an Indian child, and must work with the child's parents or Indian custodian, and if the parents or Indian custodian are not available, any available extended family member, to gather detailed information regarding:

- (a) Tribal membership or enrollment;
  - (b) Whether the child is a ward of a tribal court; or
  - (c) The child or the child's parents' or Indian custodian's domicile.
- (3) If at any time during an open child welfare case the Department

receives information that the child is or may be an Indian child under the ICWA, the caseworker must work with the child's parents or Indian custodian to gather detailed information regarding tribal membership or enrollment.

(4) When information regarding potential tribal membership or enrollment is received under subsection (1), (2) or (3) of this rule and the provisions of the ICWA apply, the caseworker must:

(a) Within one business day of receiving information regarding tribal membership or enrollment, document the information on a form approved by the Department; and

(b) Submit written notification of initial contact and inquiry regarding the child's membership or enrollment eligibility to the tribe(s) in which the child is or may be a member or is enrolled or may be eligible for membership or enrollment.

(A) Oregon tribes. Notification of initial contact and inquiry must be sent to the appropriate tribe(s) within one business day of receiving the information regarding tribal membership.

(B) Out-of-state tribes. The search for the appropriate tribal contact(s) must be initiated within two business days of receiving the information regarding tribal membership. Notification of initial contact and inquiry must be sent to the appropriate tribe(s) within five business days of receiving the information regarding tribal membership.

(c) Inquiry submitted under subsection (4)(b) of this rule must include all of the following information, if known:

- (A) The name, birthdate and birthplace of the child.
- (B) The child's domicile.
- (C) Whether the child is a ward of a tribal court.

(D) The name of each Indian tribe in which the child is a member (or may be eligible for membership or enrollment if a biological parent is a member).

(E) All known names (including maiden, married, former or aliases) of the parents, the parents' birthdates and birthplaces, and tribal enrollment numbers.

(5) When additional consultation is needed, the caseworker may contact the Tribal Affairs Unit.

(6) The caseworker must document each action to determine the child's Tribal membership or enrollment status in the Department's information system within five business days of the assessment being complete.

(7) The caseworker must continue to inquire to obtain a child's status regarding tribal membership or eligibility for membership or enrollment until the documented determination required under OAR 413-115-0030 is completed.

(8) When the caseworker receives confirmation that the child is a member or enrolled or eligible for membership or enrollment, the case must be managed according to the provisions of the ICWA and OAR 413-115-0030(2).

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0050

### **Notification to the Tribe of Placement or Change in Placement**

(1) When the Department knows or has reason to know the child is an Indian child, notification to the tribe or tribes of which the child may be a member, or enrolled or eligible for membership or enrollment in, is required as soon as possible and no later than within 24 hours of knowing when any of the following actions may occur:

- (a) An emergency removal;
- (b) An involuntary placement;
- (c) A change in placement; or
- (d) A voluntary placement agreement has been requested by the parent or Indian custodian.

(2) Notification must include the following information, if known:

- (a) The name, birthdate and birthplace of the child.
- (b) The name of the child's parents.
- (c) Which action is being taken by the Department under section (1) of this rule.

(3) Notification pursuant to this rule may be provided in person, telephonically or electronically, and must be documented in the Department's information system.

(4) Notification pursuant to this rule is in addition to any notice that is required for a court hearing.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005, 419B.878  
Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0060

### **Active Efforts**

(1) Active efforts must begin when the Department has reason to know the child may be an Indian child, and that there is a possibility the Indian child might be removed from the home of the parents or Indian custodian. The ICWA then applies to any emergency proceeding or child custody proceeding, until it is determined by the court that the child does not meet the definition of Indian child. Active efforts must:

(a) Involve assisting the parent or parents or Indian custodian through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan;

(b) Be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the Indian child's tribe whenever possible;

(c) Be conducted in partnership with the Indian child and the Indian child's parents, Indian custodians, extended family members and the tribe whenever possible; and

(d) Be tailored to the facts and circumstances of the case.

(2) During a CPS assessment and prior to a determination that the child must be removed from the home of the parents or Indian custodian, the caseworker must engage in active efforts and offer services of a remedial nature designed to rehabilitate and prevent the breakup of the Indian family. These active efforts must include efforts to:

(a) Counsel and modify the behavior of the parents or Indian custodian.

(b) Ameliorate any present danger safety threat.

(3) The caseworker must involve the Indian child's extended family members, tribe(s), and tribal organizations at the earliest possible point during the assessment to reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families.

(4) In order to demonstrate that active efforts have been made, the caseworker must, at a minimum:

(a) Assure that due consideration has been given to the cultural needs and values of the family and that resources have been diligently sought to provide services to the family.

(b) Collaborate with the parent or Indian custodian, and the Indian child, if the child is competent, when formulating the case plan.

(c) Actively assist and engage with the Indian family in achieving the case plan objectives and work with the parent, parents, or Indian custodian to engage them in remedial services and rehabilitation programs to prevent the breakup, or support the reunification of the family.

(d) Contact potential service providers within the child's tribal community and other community resources to identify placement resources and culturally appropriate services.

(e) Contact and consult with the Indian child's extended family members to determine whether additional support for the Indian child and the Indian child's parents is available from any extended family member.

(f) Tailor the case plan to the facts and circumstances of the case.

(g) Document the active efforts in the Department's information system.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005, 419B.185, 419B.340  
Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17



# ADMINISTRATIVE RULES

## 413-115-0070

### Emergency Removal and Return Upon Demand

(1) During a CPS assessment, the Department may take emergency protective custody of any Indian child, whether or not the child's domicile or residence is on a reservation, and regardless of the jurisdiction held by the child's tribe, if the following criteria are met:

(a) The child is not located on a reservation where the tribe has exclusive jurisdiction over child custody matters;

(b) There is a threat of imminent of physical damage or harm to the child; and

(c) The Department cannot develop a protective action plan under OAR 413-015-0435 in which the Indian child remains in the home, or an in-home initial safety plan per the requirements of OAR 413-015-0437, meeting the requirements of OAR 413-015-0432 to ensure child safety.

(2) If there is reason to know the child may be an Indian child, and in order to determine if the tribe has exclusive jurisdiction, Department staff must immediately inquire as to the child's residence or domicile, since the child may be a resident of or domiciled on a reservation but is temporarily off the reservation.

(3) When emergency removal is necessary, the Department must consult with the tribe and notify the Tribal Affairs Unit as soon as possible, and in no case more than 24 hours after the emergency removal.

(4) If there is reason to know the child is an Indian child, active efforts must be made to place the child during emergency protective custody in a setting which follows the placement priorities established by the ICWA or the tribe and set forth in OAR 413-115-0090.

(5) If there is reason to know the child is an Indian child, and the child is placed in emergency protective custody or the child cannot be returned to the child's parents upon demand during a protective action plan the Department must comply with the following:

(a) Treat the child as an Indian child.

(b) Complete and document all practicable actions to confirm whether the child is an Indian child under OAR 413-115-0030(2).

(c) Immediately notify the child's tribe pursuant to OAR 413-115-0050, the parents, the Indian custodian and if known, the grandparents, of the removal of the child and document the notification in the Department's information system.

(d) Comply with OAR 413-115-0120.

(e) Continually assess whether the removal and placement continues to be necessary to prevent imminent physical damage or harm to the child.

(6) Emergency protective custody can be terminated by one or more of the following actions:

(a) Initiation of a child-custody proceeding subject to the provisions of the ICWA.

(b) Transfer of the case to the jurisdiction of the appropriate tribe.

(c) Returning the child to the parent or Indian custodian.

(7) If an Indian child is removed pursuant to a protective action plan or emergency removal and cannot be returned to the parent or Indian custodian or the case is not transferred to the jurisdiction of the tribe, under ORS 419B.183 the Department must request that the court hold a hearing within 24 hours—excluding Saturdays, Sundays and judicial holidays—to request temporary custody of the child.

(8) A petition filed pursuant to section (7) of this rule must contain the following information, if known, in addition to any information required by state law:

(a) The name, age, and last known address of the Indian child.

(b) The name and address of the child's parents and Indian custodians, if any.

(c) The steps taken to provide notice to the child's parents, custodians, and tribe about the court hearing.

(d) If the child's parents and Indian custodians are unknown, a detailed explanation of what efforts have been made to locate and contact them, including contact with the appropriate BIA Regional Director.

(e) The residence and the domicile of the Indian child.

(f) If either the residence or the domicile of the Indian child is believed to be on a reservation or in an Alaska Native village, the name of the tribe affiliated with that reservation or village.

(g) The tribal affiliation of the child and of the parents or Indian custodians.

(h) A specific and detailed account of the circumstances that led the agency responsible for the emergency removal of the child to take that action.

(i) A statement of the threat of imminent physical damage or harm to the child and any evidence that the emergency removal or placement con-

tinues to be necessary to prevent imminent physical damage or harm to the child.

(j) A statement of the efforts that have been taken to assist the parents or Indian custodians so the Indian child may safely be returned to their custody.

(k) If it is believed that a child's domicile or residence is on a reservation where the tribe exercises exclusive jurisdiction over child-custody matters, a statement of efforts that have been made and are being made to contact the tribe and transfer the child to the tribe's jurisdiction.

(9) Where the danger to the Indian child persists and the child's tribe does not have exclusive jurisdiction and will not request transfer of the case to its court, the caseworker must, in consultation with the child's parents and tribe, if known, explore available placement resources which meet the placement preferences in OAR 413-115-0090, unless such placement has already occurred.

Stat. Auth.: ORS 418.005, 419B.171

Stats. Implemented: ORS 418.005, 418.015, 419B.150, 419B.183

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0080

### Documentation of Imminent Harm to the Child Prior to Removal

Except during an emergency removal described in OAR 413-115-0070, prior to removal of the child from a parent or Indian custodian and filing a petition, the caseworker must document:

(1) The causal relationship between the particular conduct of the parent or Indian custodian or conditions in the home and the serious emotional or physical damage which is likely to result to the child.

(2) If it is likely that such harm will occur, that efforts have been made to counsel and modify the behavior of the parent or Indian custodian or the conditions in the home.

(3) Why those efforts have not been successful.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0090

### Placement of Indian Children

(1) The caseworker must conduct a search for an appropriate placement, which includes, at a minimum:

(a) Contact with the appropriate representative from the child's tribe;

(b) A search for Oregon Indian foster home availability; and

(c) Contact with any Indian tribe and Indian organization that may have a viable placement resource.

(2) Foster-care placement preferences.

(a) In determining the appropriate placement for an Indian child, the caseworker must contact the child's tribe to determine if the tribe has established, by resolution, an order of placement preference or has placement resources different from those described in this rule.

(b) If the Indian child's tribe has established by resolution a different order of placement preference than that specified in subsection (c) of this section for Indian children of the tribe, the tribe's placement preferences apply, so long as the placement is the least-restrictive setting appropriate to the particular needs of the Indian child, as provided in subsection (d) of this section.

(c) If the child's tribe has not established by resolution a different order of preference, and the court has not determined on the record that there is good cause to depart from the ICWA prescribed placement preferences, preference must be given, in descending order as listed below, to placement of the child with:

(A) An extended family member of the Indian child;

(B) A foster home that is licensed, certified, approved, or specified by the Indian child's tribe;

(C) An Indian foster home licensed, certified, or approved by an authorized non-Indian licensing authority; or

(D) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

(d) The child must be placed in the least restrictive setting that:

(A) Most approximates a family, taking into consideration sibling attachment;

(B) Allows the Indian child's special needs (if any) to be met; and

(C) Is in reasonable proximity to the Indian child's home, an extended family member, or siblings.

(e) The caseworker must inform the substitute caregiver that the child is an Indian child.

(3) Adoptive Placements.

# ADMINISTRATIVE RULES

(a) In determining the appropriate adoptive placement for an Indian child, the caseworker must contact the child's tribe to determine if the tribe has established, by resolution, an order of placement preference or has placement resources different from those described in this section for Indian children of the tribe.

(b) If the Indian child's tribe has established by resolution a different order of placement preference than that specified in subsection (c) of this section, the tribe's placement preferences apply for Indian children of the tribe.

(c) If the child's tribe has not established by resolution a different order of preference, and the court has not determined on the record that there is good cause to depart from the ICWA prescribed placement preferences, preference must be given, in descending order as listed below, to adoptive placement of the child with:

- (A) An extended family member of the Indian child;
  - (B) Other members of the Indian child's tribe; or
  - (C) Other Indian families.
- (4) Change of Placement.

(a) When an Indian child is moved from one placement setting to another or if the foster family moves, the placement preferences outlined in this rule must be followed for each subsequent placement, unless the child is returned to the parent or Indian custodian from whose custody the child was originally removed.

(b) The caseworker must notify the parent, Indian custodian, and the child's tribe in writing prior to a change in placement or before the foster family moves, as required in OAR 413-115-0050.

(c) The caseworker must inform the substitute caregiver that the child is an Indian child.

(5) Records of Placement.

(a) The Department must maintain a written record of each placement for each Indian child.

(b) The Department must document, in detail, in the Department's information system, the efforts to comply with the order of placement preferences established by the tribe.

(c) When the Department departs from the order of placement preferences established by the tribe, the Department bears the burden of providing to the court, by clear and convincing evidence, that there is good cause to depart from the order of placement preferences established by the tribe.

(d) Upon the request of the Indian child's tribe or the Department of the Interior, the Department must make available the record of every foster care, pre-adoptive, and adoptive placement of an Indian child for which the Department has records.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419.627, 419B.171, 419B.192

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0100

### Voluntary Placement Agreements

(1) The Department may enter into a voluntary placement agreement with the consent of a parent or Indian custodian of any Indian child, if:

(a) Pursuant to ORS 418.312 and OAR 413-020-0070, the sole reason for placing the child in a child-caring agency, foster home, group home, or institutional child-care setting is the need to obtain services for the child's emotional, behavioral, or mental disorder or developmental or physical disability;

(b) The child is more than ten days old;

(c) The voluntary consent is executed in writing and recorded before a judge in the appropriate jurisdiction; and

(d) The written consent is accompanied by the court's certification that the terms and consequences of the consent were fully explained in detail on the record and that certification complies with section (2) of this rule.

(2) Court Hearing on Consent. The caseworker must request a court hearing to obtain consent from the parent or Indian custodian for the voluntary placement agreement. The caseworker must ensure that the court certifies on the record that the terms and consequences of the consent for the voluntary placement agreement were:

(a) Explained on the record, in detail, in English (or the language of the parent or Indian custodian, if English is not the primary language); and

(b) Fully understood by the parent or Indian custodian.

(3) The signed voluntary placement agreement consent must, at a minimum, contain:

(a) The name and birthdate of the Indian child.

(b) The name of the child's tribe.

(c) The child's and parents' enrollment numbers, if known, or other indication of the child's membership in the tribe.

(d) The name and address, and other identifying information of the consenting parent or Indian custodian.

(e) The name and address of the prospective foster parents, if known.

(f) The name and address of the person, entity or Department, if any, who arranged the placement.

(g) If there were any conditions to the consent, the conditions must be clearly set out.

(4) The caseworker must place the Indian child into a substitute care setting which follows the placement preferences outlined in OAR 413-115-0090(2), unless the court has determined on the record that good cause exists to not apply those placement preferences. If the Indian child is moved to another placement while in substitute care, the placement preferences in OAR 413-115-0090(2) continue to apply.

(5) Request for Anonymity. A request for anonymity does not relieve the Department from any duty of compliance with the ICWA, including the obligation to verify whether the child is an Indian child.

(6) Ending a voluntary placement agreement.

(a) The parent or Indian custodian may withdraw consent to the voluntary placement agreement at any time.

(b) To withdraw consent, the parent or Indian custodian must file a written document with the court or otherwise testify before the court.

(c) When a parent or Indian custodian withdraws consent to a voluntary foster-care placement, the caseworker must arrange the return of the Indian child to that parent or Indian custodian as soon as practicable.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.015

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0110

### Consent to Termination of Parental Rights and Voluntary Relinquishment of Parental Rights

(1) The Department may accept consent for termination of parental rights or voluntary relinquishment of parental rights from the parent of an Indian child if:

(a) The Department is pursuing adoption;

(b) The child is more than ten days old;

(c) The voluntary consent is executed in writing and recorded before a judge in the appropriate jurisdiction; and

(d) The judge certifies in writing that the terms and consequences of the consent were fully explained in detail on the record and that certification complies with section (2) of this rule.

(2) Court Hearing on Consent. The Department must obtain consent from the parent for the termination of parental rights or voluntary relinquishment of parental rights in court. For the consent to be valid, the court must certify on the record that the terms and consequences of the consent to termination of parental rights or voluntary relinquishment of parental rights were:

(a) Explained in detail, in English (or the language of the parent, if English is not the primary language); and

(b) Fully understood by the parent.

(3) The signed consent to termination of parental rights or voluntary relinquishment of parental rights must, at a minimum, contain:

(a) The name and birthdate of the Indian child;

(b) The name of the child's tribe;

(c) The child's and parents' enrollment numbers, if known, or other indication of the child's membership in the tribe; and

(d) The name and address, and other identifying information of the consenting parent.

(4) Request for Anonymity. A parent's request for anonymity does not relieve the Department from any duty of compliance with the ICWA, including the obligation to verify whether the child is an Indian child.

(5) Withdrawal of Consent.

(a) The parent may withdraw consent to the termination of parental rights or voluntary relinquishment of parental rights of an Indian child for any reason at any time prior to the entry of either the final order for termination of parental rights or the decree of adoption, and have the child returned as soon as practicable.

(b) If the parent withdraws consent to the termination of parental rights or voluntary relinquishment of parental rights, and the Department believes the child should not be returned to the custody of the parent because of an imminent threat of physical damage or harm to the child, the Department may petition the court to retain custody of the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.498, 419B.500, 419B.521, 419B.529

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

# ADMINISTRATIVE RULES

## 413-015-0115

### Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) “Caregiver” means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) “Child” means a person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency or proctor foster home.

(3) “Child abuse or neglect” means any form of child abuse, including abuse through neglect and abuse or neglect by a third party, as defined in ORS 419B.005 or, when applicable, Oregon Laws 2016, chapter 106, section 36.

(4) “Child-caring agency” is defined in ORS 418.205 and means a “child-caring agency” that is not owned, operated, or administered by a governmental agency or unit.

(5) “Child protective services” (CPS) means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(6) “Child protective services assessment” (CPS assessment) means an investigation into a report of child abuse or neglect pursuant to ORS 419B.020 that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(7) “Child protective services supervisor” (CPS supervisor) means an employee of the Department trained in child protective services and designated as a supervisor.

(8) “Child protective services worker” (CPS worker) means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(9) “Child Safety Meeting” means a meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(10) “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 ongoing safety plan.

(11) “Day Care Facility” means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider that is exempt from Office of Child Care licensing and that receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(12) “Department” means the Department of Human Services, Child Welfare.

(13) “Department response” means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(14) “Designated medical professional” means (as described in ORS 418.747(9)) a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS 418.782), and who is — or who may designate another physician, physician assistant, or nurse practitioner who is — regularly available to conduct these medical assessments.

(15) “Domestic violence” means a pattern of coercive behavior, which can include physical, sexual, economic, and emotional abuse that an individual uses against a past or current intimate partner to gain power and control in a relationship.

(16) “Face-to-face” means an in-person interaction between individuals.

(17) “Former foster child” means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.

(18) “Founded” means there is reasonable cause to believe that child abuse or neglect, as defined in ORS 419B.005, occurred.

(19) “Guardian” means an individual who has been granted guardianship of a child through a judgment of the court.

(20) “Harm” means any kind of impairment, damage, detriment, or injury to a child’s physical, sexual, psychological, cognitive, or behavioral development or functioning. “Harm” is the result of child abuse or neglect and may vary from mild to severe.

(21) “ICWA” means the Indian Child Welfare Act.

(22) “Impending danger safety threat” means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child 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.

(23) “Indian child” means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(24) “Initial contact” means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; and gathering sufficient information on the family conditions and functioning to determine if present danger safety threats or impending danger safety threats exist.

(25) “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.

(26) “Moderate to high needs” means observable family behaviors, conditions, or circumstances that are occurring now; and over the next year without intervention, are likely to have a negative impact on a child’s physical, sexual, psychological, cognitive, or behavioral development or functioning. The potential negative impact is not judged to be severe. While intervention is not required for the child to be safe, it is reasonable to determine that short-term, targeted services could reduce or eliminate the likelihood that the negative impact will occur.

(27) “Monthly face-to-face contact” means in-person interaction between individuals at least once each and every full calendar month.

(28) “Multi-disciplinary team” (MDT) means a county child abuse investigative team as defined in ORS 418.747.

(29) “Observable” means specific, real, can be seen and described. Observable does not include suspicion or gut feeling.

(30) “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.

(31) “Out of control” means family behaviors, conditions, or circumstances that can affect a child’s safety are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(32) “Personal representative” means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(33) “Pre-adoptive family” means an individual or individuals who:

(a) Has been selected to be a child’s adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(34) “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.

(35) “Proctor foster home” means a foster home certified by a child-caring agency that is not subject to ORS 418.625 to 418.470.

(36) “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.

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(37) "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.

(38) "Protective custody" means custody authorized by ORS 419B.150.

(39) "Reasonable suspicion" means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.

(40) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(41) "Report" means an allegation of child abuse or neglect provided to the Department that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005 or, when applicable, Oregon Laws 2016, chapter 106, section 36.

(42) "Reporter" means an individual who makes a report.

(43) "Safe" means there is an absence of present danger safety threats and impending danger safety threats.

(44) "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.

(45) "Safety services" mean 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.

(46) "Safety threshold" means the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria: be imminent, be out of control, affect a vulnerable child, be specific and observable, and have potential to cause severe harm to a child. The "safety threshold" criteria are used to determine the presence of an impending danger safety threat.

(47) "School administrator" means the principal, vice principal, assistant principal, or any other person performing the duties of a principal, vice principal, or assistant principal at a school, as defined in the Teacher Standards and Practices Commission (TSPC) OAR 584-005-0005.

(48) "Screener" means a Department employee with training required to provide screening services.

(49) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(50) "Severe harm" means:

(a) Significant or acute injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning;

(b) Immobilizing impairment; or

(c) Life threatening damage.

(51) "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.

(52) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over-the-counter medications, or alcoholic beverages.

(53) "Substantiated" means there is reasonable cause to believe that child abuse, as defined in ORS 419B.005 or Oregon Laws 2016, chapter 106, section 36, occurred.

(54) "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.

(55) "Suspicious physical injury" (as defined in ORS 419B.023) includes, but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone in a child under the age of three;

(e) Multiple fractures in a child of any age;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child's developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(k) Any other injury that threatens the physical well-being of the child.

(56) "Teacher" means (as defined in TSPC OAR 584-005-0005) a licensed or registered employee in a public school or charter school, or employed by an education service district, who has direct responsibility for instruction, coordination of educational programs, or supervision or evaluation of teachers; and who is compensated for services from public funds.

(57) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(58) "Unsafe" means the presence of a present danger safety threat or an impending danger safety threat.

(59) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A "vulnerable child" is defenseless, exposed to behaviors, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

(60) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.185, 418.005, 418.747, 419B.017, 419B.024, 419B.035, OL 2016, ch 106

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050, OL 2016, ch 106

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2010(Temp), f. & cert. ef. 6-15-10 thru 12-12-10; CWP 21-2010, f. & cert. ef. 11-15-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16; CWP 11-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; CWP 17-2016, f. & cert. ef. 9-29-16; CWP 23-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0120

### Notice Required Prior to a Court Hearing

(1) Pursuant to the ICWA, notice must be provided for any court hearing regarding an Indian child.

(2) The Department must send notice to:

(a) The parent or parents;

(b) The grandparent or grandparents;

(c) The Indian custodian (if applicable);

(d) The Indian child's tribe or tribes (or the tribes in which the child is eligible for membership if a biological parent is a member);

(e) Any other party to the case; and

(f) The appropriate regional BIA director, only if the identity or location of a potentially interested Indian party to the proceeding cannot be determined, in which case the BIA has fifteen days to locate and notify that party.

(3) Except for an emergency removal made pursuant to OAR 413-115-0070, Department staff may not request a court hearing regarding the custody or termination of parental rights of an Indian child until the following time frames have been met:

(a) Not less than ten days after receipt of notice by any the recipients in (2)(a)-(e) of this rule;

(b) Not less than thirty days after receipt of notice by any of the recipients in (2)(a)-(e) of this rule, if an additional twenty days has been requested the parent, Indian custodian, Indian child's tribe or the BIA; or

(c) Not less than fifteen days after receipt of the notice by the appropriate regional BIA director.

(4) Notice must be provided to a tribe even if the tribe has declined jurisdiction. If a tribe has declined jurisdiction, the tribe maintains the right to participate as an interested party or to intervene at any point in the case.

(5) Service of Notice.

(a) The Department must provide notice of a court hearing by registered or certified mail, with return receipt requested.

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(b) In addition to providing notice of a court hearing by registered or certified mail, the Department may provide personal service, electronic service, or call the notified party.

(6) Content of Notice. Notice must contain, at a minimum:

(a) The name, birthdate, and birthplace of the child;

(b) The name of each Indian tribe in which the child is a member (or may be eligible for membership or enrollment if a biological parent is a member);

(c) All known names (including maiden, married, former or aliases) of the parents, the parents' birthdates and birthplaces, and tribal enrollment numbers, if known;

(d) If known, the names, birthdates, birthplaces, and tribal enrollment information of other direct lineal ancestors of the child, such as a grandparent.

(e) A copy of the petition, complaint, or other document by which the proceeding was initiated;

(f) If a hearing has been scheduled, information on the date, time, and location of the hearing;

(g) The name of the petitioner and the name and address of the petitioner's attorney, if any;

(h) A statement setting forth the right of any parent, Indian custodian or the Indian child's tribe, if not already a party, to intervene and participate in the proceeding;

(i) A statement that if the parent or Indian custodian is unable to afford counsel, counsel may be appointed by the court to represent them;

(j) A statement of the right of the parent or Indian custodian and the Indian child's tribe to have, upon request, twenty additional days to prepare for the hearing;

(k) The location, mailing address, and telephone number of the court;

(l) Information related to all parties to the hearing and individuals notified under this section;

(m) A statement of the right of the parent or Indian custodian or the Indian child's tribe to petition the court to transfer the hearing to the Indian child's tribal court pursuant to 25 U.S.C 1911 and 25 C.F.R. §23.115.

(n) The potential legal consequences of the child custody hearings on future custodial rights of the parent or Indian custodian; and

(o) A statement that the notified party must keep the information contained in the notice confidential and may only reveal it to individuals who need the information in order to exercise their rights under the Act.

(7) Copies of notice.

(a) To the BIA. The Department must provide a copy of these notices to the appropriate regional director of the BIA. The copy must include all the information in section (6) of this rule. A copy of these notices may be provided by personal service, registered or certified mail, with return receipt requested.

(b) To the court. The Department must file with the court a copy of each notice sent pursuant to this section together with any return receipts or other proofs of service.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.875, 419B.878, 419B.923

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0130

### Standards of Evidence and Minimum Qualifications for a Qualified Expert Witness

(1) Foster-care placement. Except during an emergency proceeding, when requesting court authorization for the placement of an Indian child in foster care, the Department must demonstrate, by clear and convincing evidence, that continued custody of the child with the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Department's presentation of evidence must include the testimony of at least one QEW, as defined in section (4) of this rule.

(2) Guardianship Finalization.

(a) "When requesting court appointment of a guardian pursuant to ORS 419B.366, the Department must demonstrate, by clear and convincing evidence, that continued custody of the child with the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Department's presentation of evidence must include the testimony of at least one QEW, as defined in section (4) of this rule.

(b) When requesting court appointment of a guardian pursuant to ORS 419B.365, the Department must demonstrate, by evidence beyond a reasonable doubt, that continued custody of the child with the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Department's presentation of evidence must include the testimony of at least one QEW, as defined in section (4) of this rule.

(3) Termination of Parental Rights. When requesting judicial termination of parental rights, the Department must prove, beyond a reasonable doubt, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The Department's presentation of evidence must include the testimony of at least one QEW, as defined in section (4) of this rule.

(4) Qualified Expert Witness (QEW).

(a) A QEW must be qualified to testify regarding whether the child's continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(b) The Department must work with the Indian child's tribe to determine who should be designated to testify as a QEW. If the Indian child's tribe declines or is unable to designate a QEW, the Department will identify a QEW.

(c) The caseworker assigned to the case may not serve as a QEW in any child-custody proceeding concerning that child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.185, 419B.365, 419B.366, 419B.521

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0140

### Tribal-State Agreement

These rules may be superseded for a particular tribe by a written, signed agreement between the state and that tribe. Such agreement must be retained by the Tribal Affairs Unit and produced upon request.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-115-0150

### Full Faith and Credit

The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe regarding any Indian child-custody proceeding to the same extent that such entities give full faith and credit to Indian tribes.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419B.100

Hist.: CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-015-0205

### Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse or neglect regardless of where the child resides or where the alleged child abuse or neglect may have occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the completed screening report form to the local child welfare office in the county or state where the child resides. The screener must forward the screening report form on the same day the report is received and confirm that it has been successfully forwarded.

(b) Accept and handle anonymous reports of child abuse or neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

(3) Determine the type of information received, Child Protective Services or Family Support Services, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of alleged child abuse or neglect.

(A) Child Protective Services information is documented in the Department's electronic information system.

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a "within 24 hours" response time line is assigned;

(ii) Within the same day when a "within five days" response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

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(A) This information is documented in the Department's electronic information system using a screening report form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement, Information falls within this category when:

(I) A parent or guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services, Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a participant on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services, Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services, Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must gather the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 or, when applicable, Oregon Laws 2016, chapter 106, section 36 and if the information alleges that behaviors, conditions, or circumstances could result in harm to the child:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) After gathering and documenting the information required in subsection (a) of this section, if the report involves a child-caring agency or proctor foster home, the screener must immediately comply with "Department Responsibilities When a Report Involves a Child-Caring Agency or Proctor Foster Home" in OAR 413-015-0620 to 413-015-0640.

(c) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors, teachers, or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(d) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report. If the research reveals an "unable to locate" disposition that has not been assessed, the screener must reference that assessment, the date the

assessment was completed, and those allegations not able to be assessed in the current report summary.

(e) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-115-0040(1)).

(f) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(g) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(h) Immediately comply with "Department Responsibilities During Screening and Assessment of a Child Abuse or Neglect Report Involving the Home of a Department Certified Foster Parent or Relative Caregiver", OAR 413-200-0404 to 413-200-0424, when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or home of a pre-adoptive family.

(i) Immediately comply with the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters the information in all of the following subsections:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter.

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report.

(c) The Department's decisions about paragraphs (A) through (C) of this subsection. If the decisions have not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decisions:

(A) Whether contact with the child was made;

(B) Whether the Department determined child abuse occurred; and

(C) Whether services will be provided.

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the Department's electronic information system.

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with mandatory reporting laws.

Stat. Auth.: ORS 418.005, OL 2016, ch 106

Stats. Implemented: ORS 418.005 & 419B.020, OL 2016, ch 106

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16; CWP 11-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; CWP 23-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-015-0215

### Notifications and Reports to Specific Agencies or Entities

(1) Law Enforcement Agency (LEA). The screener must

(a) Cross report to LEA as required by OAR 413-015-0305(1); and

(b) Notify law enforcement when information is received from a Department caseworker that a child or young adult on an open CPS assessment or a child or young adult on an open Department case is identified as a sex trafficking victim by a Department caseworker.

(2) Office of Child Care, Department of Education, Early Learning Division. The screener must notify the Office of Child Care when a report involves a day care facility, as required by ORS 419B.020(1). If the report is closed at screening, a copy of the completed screening report form must be sent to the Compliance Unit of the Office of Child Care after information related to the reporter's identity and other confidential information is removed.

(3) Office of Adult Abuse Prevention and Investigation (OAAPI). The screener must report to the OAAPI when a report involves a child with intellectual or developmental disabilities in a 24 hour residential setting licensed by the Office of Developmental Disabilities Services.

(4) Office of Developmental Disabilities Services (ODDS). The screener must notify the ODDS when a report involves:

(a) A child with intellectual or developmental disabilities in a home certified by the ODDS or the Department;

(b) A child with intellectual or developmental disabilities in a 24 hour residential setting licensed by the ODDS;

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- (c) A home certified by the ODDS; or
- (d) A 24 hour residential setting licensed by the ODDS.

(5) Indian Tribes. If the screener knows or has reason to know that the child is an Indian child, the screener must comply with OAR 413-115-0040(1).

(6) Teacher Standards and Practices Commission (TSPC). The screener must notify the TSPC when a teacher or school administrator, as defined in OAR 413-015-0115, is identified as an alleged perpetrator in a report. A copy of the report must be sent to the TSPC after information related to the reporter's identity and other confidential information is removed.

(7) Community Mental Health Program, Community Developmental Disabilities Program, or Adult Protective Services. The screener must make a report to the Community Mental Health Program, Community Developmental Disabilities Program, or the local Adult Protective Service office when the screener has reasonable cause to believe:

(a) That any person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older, with whom the screener comes into contact while the screener is acting in an official capacity, has suffered abuse; or

(b) That any person with whom the screener comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness, developmental disability, or physical disability, or any person 65 years of age or older.

Stat. Auth.: ORS 418.005 & 419B.017

Stats. Implemented: ORS 418.005, 419B.015 & 419B.017

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 5-2016(Temp), f. & cert. ef. 4-11-16 thru 10-7-16; CWP 11-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; CWP 17-2016, f. & cert. ef. 9-29-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-015-0415

### CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self-Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Present danger safety threats or impending danger safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior Allegations That Have Not Been Assessed

Because the Department was Unable to Locate the Family. The assigned CPS worker must address in the current assessment any allegations not previously assessed because the Department was unable to locate the family as follows:

(a) Discuss the prior unassessed allegations during interviews;

(b) Consider all information about prior unassessed allegations when determining child safety; and

(c) Document the consideration of prior unassessed allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned Self-Sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior and functioning; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with the Department.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department of Human Services or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a child-caring agency or proctor foster home;

(D) When a CPS worker receives notification from a screener that a closed at screening or new referral was created on an open CPS assessment;

(E) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(F) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(G) Prior to developing an initial safety plan with a Department certified foster parent or relative caregiver;

(H) When the referral involves a child fatality;

(I) When making a disposition in a complicated or sensitive situation or case; or

(J) When closing an assessment with the disposition of "unable to locate".

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to gather and analyze safety-related information, develop a sufficient protective action plan, initial safety plan, or ongoing safety plan, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department of Human Services programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must report to or contact and work with other entities as follows:

(A) Office of Child Care. The CPS worker must notify and coordinate with the Compliance Unit of the Office of Child Care when a report involves a registered day-care home or a licensed day-care center, as required by ORS 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Office of Adult Abuse Prevention and Investigation (OAAPI). The CPS worker must notify the OAAPI when an allegation involves a child with intellectual or developmental disabilities in a 24 hour residential setting licensed by the Office of Developmental Disabilities Services.

(D) Office of Developmental Disabilities Services (ODDS). The CPS worker must notify and coordinate with an ODDS Community Developmental Disabilities Program service coordinator when a report involves:

(i) A child with intellectual or developmental disabilities in home certified by the ODDS or the Department;

(ii) A child with intellectual or developmental disabilities in a 24 hour residential setting licensed by the ODDS;

(iii) A home certified by the ODDS; or

(iv) A 24 hour residential setting licensed by the ODDS.

(E) Community Mental Health Program, Community Developmental Disabilities Program, or Adult Protective Services. The CPS worker must make a report to the Community Mental Health Program, Community

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Developmental Disabilities Program, or the local Adult Protective Service office when the CPS worker has reasonable cause to believe:

(i) That any person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older, with whom the CPS worker comes into contact while acting in an official capacity, has suffered abuse.

(ii) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older.

(F) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(G) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(H) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies (LEA) in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to OAR 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. The CPS worker must, in consultation with a CPS supervisor, determine whether to coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody for the child's safety.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behaviors, conditions, or circumstances could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(I) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker may confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(J) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Complete actions required to comply with the ICWA under OAR 413-115-0040 to 413-115-0090.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable.

During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child, the CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, reasons why the child or parents came to the United States, and ethnic and cultural information relevant to the child's status as a refugee. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) Unless it is a voluntary placement, no refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents a threat to the child's safety;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.



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(g) When a juvenile court petition is filed and a refugee child is placed in care, the CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the International Case Consultant for the Department to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs. The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse or neglect and the observable nature of any present danger safety threat or impending danger safety threat.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if the CPS worker conducting a CPS assessment observes a child who has suffered suspicious physical injury and the CPS worker is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries. Regardless of whether the child has previously been photographed or assessed during a CPS assessment, the CPS worker will photograph or cause to be photographed any suspicious injuries if the CPS worker is certain or has a reasonable suspicion the suspicious injuries are the result of abuse:

(A) During the assessment of a new allegation of abuse; and

(B) Each time, during the assessment, an injury is observed that was not previously observed by the assigned CPS worker.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the Department record labeled with the case name, case number, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and the observable nature of any present danger safety threat or impending danger safety threat in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment. The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety-related information.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury as defined in ORS 419B.023 and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician, physician assistant, or nurse practitioner conducts a medical assessment if, after reasonable efforts to locate a designated medical professional, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in the Department's electronic information system efforts to locate the designated medical professional when an available physician, physician assistant, or nurse practitioner is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information".

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child; or

(iii) Delaying medical examination or treatment could result in severe harm to the child.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety-related information when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

(12) Make Efforts to Locate. When a child or young adult in substitute care is missing, the CPS worker must complete required actions as described in OAR 413-080-0053.

(13) Make Monthly Face-to-Face Contact. The CPS worker must make a minimum of monthly face-to-face contact as described in OAR 413-080-0054.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015, 418.747, 418.785 & 419B.005 - 419B.050

Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. &

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cert. ef. 4-1-08; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; CWP 4-2010, f. & cert. ef. 4-2-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16; CWP 11-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; CWP 17-2016, f. & cert. ef. 9-29-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-015-0432

### Develop Safety Plans

(1) When a present danger safety threat or impending danger safety threat is identified, a CPS worker must put a safety plan in place to manage the threat. There are three types of safety plans: the protective action plan which manages present danger safety threats, and the initial safety plan and the ongoing safety plan, which manage impending danger safety threats.

(2) Shared requirements for a protective action plan, initial safety plan, or ongoing safety plan:

(a) When developing a protective action plan, initial safety plan, or ongoing safety plan, the CPS worker must:

(A) Assure the plan focuses on and controls the identified present danger safety threat or impending danger safety threat;

(B) Not use a parent or caregiver who is the alleged perpetrator of physical abuse, sexual abuse, or domestic violence to provide protection or any other adult who was aware of the threats to child safety and did not protect;

(C) Include safety service providers that have been confirmed to be suitable to provide safety for the child (refer to OAR 413-015-1200 through 413-015-1230, "Assessment of an Individual as a Safety Service Provider");

(D) Involve the child's parent or caregiver;

(E) Involve the child's tribe as a resource and comply with OAR chapter 413, division 115 when the CPS worker knows or has reason to know that the child is an Indian child; and

(F) Assure it has been approved by a Department supervisor.

(b) The protective action plan, initial safety plan, or ongoing safety plan, whether in-home or out-of-home, must:

(A) Be a written document between the parent or caregiver and the Department;

(B) Provide a detailed description of the present danger safety threat or impending danger safety threat;

(C) Describe how identified present danger safety threats or impending danger safety threats will be managed, including:

(i) If impending danger safety threats will be managed in-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were met;

(ii) If impending danger safety threats will be managed out-of-home, an explanation of how the in-home criteria outlined in (2)(c)(B) of this rule were not met; and

(iii) How the plan will be monitored.

(D) Identify the safety service providers and the safety services necessary to implement the plan; and

(E) Establish the time commitments and availability of those involved in the plan.

(c) The CPS worker must determine whether the impending danger safety threat will be managed with an in-home or out-of-home initial safety plan or ongoing safety plan by determining how the impending danger safety threat is occurring and applying the in-home safety plan criteria.

(A) The CPS worker must understand how the impending danger safety threat is occurring as required in OAR 413-015-0428, "Identify How the Impending Danger Safety Threat is Occurring", and use the information about how the impending danger safety threat is occurring to develop the least intrusive plan that can manage the identified impending danger safety threat occurring within the particular family;

(B) An in-home initial safety plan or in-home ongoing safety plan is required when all of the following in-home safety plan criteria are met:

(i) There is a home-like setting where the parent and child live.

(ii) The home is calm enough to allow safety service providers access and activities to occur.

(iii) At least one parent is willing to cooperate with the plan.

(iv) The necessary safety activities and resources are available to implement the plan.

(C) An out-of-home initial safety plan or out-of-home ongoing safety plan is required when any of the in-home safety plan criteria outlined in (B)(i) through (iv) above are not met.

(d) A protective action plan, initial safety plan, or ongoing safety plan may be a combination of in-home and out-of-home in order to assure the least intrusive intervention.

(e) The CPS worker must make modifications to the protective action plan, initial safety plan, or ongoing safety plan, as necessary, to continue to control the identified present danger safety threats or impending danger safety threats.

(f) When assessing an allegation of sexual abuse, if a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home, the CPS worker must notify the local district attorney responsible for the MDT in the county where the child resides that a plan of this type has been developed, pursuant to ORS 418.800. The notice must:

(A) Be in writing; and

(B) Be provided within three business days of the date the parent or caregiver leaves the family home.

(g) When a plan includes a parent or caregiver, who is the alleged perpetrator, consenting to leave the family home without their children or have their children leave the family home without them, the CPS worker must, in consultation with a supervisor, file a petition alleging the child is within the jurisdiction of the juvenile court pursuant to ORS 419B.100 within 10 calendar days of the date the parent or caregiver or their children leave the home if the plan is still necessary to assure child safety and will continue to be necessary for the immediate future.

(3) Additional Requirements for a Protective Action Plan. Refer to OAR 413-015-0435, "Develop a Protective Action Plan", for additional requirements when developing a protective action plan.

(4) Additional Requirements for an Initial Safety Plan. Refer to OAR 413-015-0437, "Develop an Initial Safety Plan", for additional requirements when developing an initial safety plan.

(5) Additional Requirements for an Ongoing Safety Plan. Refer to OAR 413-015-0450, "Develop an Ongoing Safety Plan", for additional requirements when developing an ongoing safety plan.

(6) Documentation. The CPS worker must provide a detailed description of the protective action plan, initial safety plan, or ongoing safety plan developed to manage the present danger safety threat or impending danger safety threat. Documentation must be completed in the Department's electronic information system within five business days following the identification of the threat and must include:

(a) All requirements outlined in paragraphs (2)(b)(A) through (G) of this rule;

(b) A summary of the parents' and caregivers' agreement to and acceptance of the plan; and

(c) The date the plan was reviewed by a supervisor and the name of the supervisor who reviewed it.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.185, 418.005, 418.015 & 419B.005 - 419B.050

Hist.: CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-015-0455

### Protective Custody and Juvenile Court Action

(1) Protective Custody

(a) The CPS worker may take a child into emergency protective custody when there is severe harm or threat of severe harm to a child in the present and law enforcement assistance is not available. If there is any resistance or threatened resistance to taking the child into protective custody, which creates a substantial risk of physical injury to any person, the CPS worker may not take the child into custody, but must wait for law enforcement assistance or obtain an order of protective custody from the juvenile court.

(b) As provided in ORS 419B.171, when a child is taken into protective custody without a court order, the person taking the child into custody must promptly file a brief written report with the court. A written report is required even if the child is released to a parent or other responsible person prior to a shelter care hearing. The written report must be completed and sent to the court the day the child is taken into custody or no later than the morning of the next working day.

(c) If the child is not released to a parent or other responsible person, but is retained in protective custody, a shelter hearing must be scheduled as required by ORS 419B.183.

(d) If a child is placed in protective custody, the CPS worker must notify, in writing, the child's parents, including a non-custodial parent; the child's caregivers; and if the CPS worker knows or has reason to know the child is an Indian child, the child's tribe. If the CPS worker knows or has reason to know the child is an Indian child, the worker must also comply with OAR chapter 413, division 115.

(e) The CPS worker or designee must immediately make diligent efforts to identify the child's legal parents and any putative fathers after a child is taken into protective custody. Information about putative fathers

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must be recorded on form CF 418, "Father(s) Questionnaire" and filed in the case record.

(2) Juvenile Court Petition. When a child is taken into protective custody or juvenile court intervention is necessary to assure the child and family receive appropriate services, the CPS worker must make arrangements for a juvenile court petition to be filed, as provided in ORS 419B.809.

Stat. Auth.: ORS 418.005

Stat. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050, 419B.171, 419B.183, 419B.809

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; Renumbered from 413-015-0410, CWP 3-2007, f. & cert. ef. 3-20-07; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0000

### Definitions

The following definitions apply to OAR chapter 413, division 20.

(1) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(2) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child through a judgment of the court.

(3) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(4) "BRS" means Behavior Rehabilitation Services, a Medicaid-funded program that provides behavioral intervention, counseling, or skill building services in a professional, shelter, or residential (including therapeutic foster care formerly referred to as proctor care) placement setting.

(5) "CANS screener" means an individual, who performs CANS screenings under the supervision of the Level of Care Manager, under a contract with the Department, and who annually completes the training in the use of the Oregon CANS Comprehensive Screening Tool with a documented reliability score of 0.70 or greater.

(6) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult used for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) To determine the level of care payment while in substitute care with a certified family; and

(c) To determine the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(7) "Caseworker" means the agency staff person assigned primary responsibility for a child or young adult served by the Department.

(8) "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 he or she resides, to a child or young adult in the care or custody of the Department.

(9) "Certifier" means a Child Welfare employee who conducts assessments of applicants interested in providing relative or foster care to a child or young adult in the care or custody of the Department, determines whether or not to recommend approval of the operation of a relative care or foster care home, and monitors the compliance of a relative care or foster care home with Child Welfare certification rules.

(10) "Child" means a person under 18 years of age.

(11) "Department" means the Department of Human Services, Child Welfare.

(12) "Designated Consultant Neonatologist" means a neonatologist whose services are available to Child Welfare to review medical information and consult with Child Welfare and other experts deemed necessary in cases of suspected medical neglect.

(13) "Designated hospital liaison" means an individual, usually the hospital administrator, designated by each respective hospital to assist

Child Welfare with coordination, consultation, and prompt notification of suspected cases of medical neglect.

(14) "Disabled infant" means a child of less than one year of age having a physical or mental impairment which may substantially limit one or more major life functions such as breathing, seeing, hearing, walking, caring for one's self, performing manual tasks, learning, and working.

(15) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(16) "Foster parent" means an individual 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.

(17) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(18) "Guardianship assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of payments, medical coverage, or reimbursement of nonrecurring guardianship expenses.

(19) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the guardian of an eligible child or young adult setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(20) "Hospital Review Committee (HRC)" is a committee established by a medical facility or hospital to offer counsel and review in cases involving a disabled infant with life-threatening conditions.

(21) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(22) "Legal custodian" means a person, agency, or institution with legal custody of a child and all of the following duties and authority:

(a) To have physical custody and control of a child.

(b) To supply the child with food, clothing, shelter, and incidental necessities.

(c) To provide the child with care, education, and discipline.

(d) To authorize ordinary medical, dental, psychiatric, psychological, and other remedial care or treatment for the child and, in an emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care.

(e) To make such reports and to supply such information as the court may require.

(f) To apply for any benefits to which the child is entitled and to use them to pay for the child's care.

(23) "Legal custody" means that a person or agency has legal authority:

(a) To have physical custody and control of a child;

(b) To supply the child with food, clothing, shelter and other necessities;

(c) To provide the child with care, education and discipline;

(d) To authorize medical, dental, psychiatric, psychological, hygienic or other remedial care or treatment for the child, and in any emergency where the child's safety appears urgently to require it, to authorize surgery or other extraordinary care; and

(e) "Legal custody" includes temporary custody of a child under an order of a court.

(24) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(25) "Mechanical restraint" means the use of any physical device to involuntarily restrain the movement of all or a portion of a child's body as a means of controlling his or her physical activities in order to protect the child or other persons from injury. "Mechanical restraint" does not apply to movement restrictions stemming from medicinal, dental, diagnostic, or surgical procedures which are based on widely accepted, clinically appropriate methods of treatment by qualified professionals operating within the scope of their licensure.

# ADMINISTRATIVE RULES

(26) “Medical neglect” means the failure to provide adequate medical care, including the withholding of medically indicated treatment, from a disabled infant with life-threatening conditions.

(27) “Medical Neglect Investigator” means Child Welfare staff designated and trained to provide consultation and complete investigations of alleged medical neglect reports.

(28) “Medically indicated treatment” means treatment (including appropriate nutrition, hydration, and medication) which, in the treating physician’s reasonable medical judgment, is most likely to be effective in amelioration or correcting a life-threatening condition. It does not include the failure to provide treatment other than nutrition, hydration, or medication to an infant when, in the treating physician’s reasonable medical judgment, any of the following circumstances apply:

(a) The infant is chronically irreversibly comatose.

(b) The provision of such treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant’s life-threatening conditions, or otherwise be futile in terms of survival of the infant.

(c) The provisions of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under such circumstances would be inhumane.

(29) “Participating tribe” means a federally-recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(30) “Permanent custody” means legal custody of a child:

(a) Who has been permanently committed to the Department by the juvenile court after parental rights have been terminated under ORS 419B.527; or

(b) Who has been released and surrendered to the Department by the parents under ORS 418.270.

(31) “Physical custodian” means a person or agency, including a child’s legal or biological parent, a relative, foster parent, adoptive parent, or a licensed child-caring agency who is authorized by the Department to provide a residence and day-to-day care for a child who is in the legal custody of the Department.

(32) “Physical restraint” means the act of restricting a child or young adult’s voluntary movement as an emergency measure to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult’s behavior. “Physical restraint” does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(33) “Potential guardian” means an individual who:

(a) Has been approved by the Department or participating tribe to be a child’s guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(34) “Pre-adoptive family” means an individual or individuals who:

(a) Has been selected to be a child’s adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(35) “Reasonable and prudent parent standard” means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult to participate in extracurricular, enrichment, cultural, and social activities.

(36) “Reasonable medical judgment” means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities with respect to the medical conditions involved.

(37) “Relative caregiver” means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(38) “Seclusion” means the involuntary confinement of a child alone in a specifically designed room from which the child is physically prevented from leaving.

(39) “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.

(40) “Supervision plan” means a documented set of strategies that is developed to assist a relative caregiver or foster parent in providing the additional support, observation, direction, and guidance necessary to promote and ensure the safety and well-being of a child or young adult.

(41) “Voluntary custody” means legal custody given to the Department, by written agreement, by a parent or guardian of a child.

(42) “Voluntary Custody Agreement” means a written agreement between the Department and the parent or guardian of a child, which transfers legal custody to the Department; the Department assumes all parental authority and responsibilities that the agreement does not specifically reserve to the parents or guardians, as permitted by state law; and the Department provides the child substitute care or treatment, or both, if the family falls within a circumstance described in OAR 413-020-0010(2)(a)–(c).

(43) “Voluntary Placement Agreement” means a binding, written agreement between the Department and the parent or guardian of a child that does not transfer legal custody to the Department but that specifies, at a minimum, the legal status of the child and the rights and obligations of the parent or guardian, the child, and the Department while the child is in placement.

(44) “Withholding of medically indicated treatment” means the failure to respond to an infant’s life-threatening condition.

(45) “Young adult” means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 22-2015, f. & cert. ef. 10-6-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0010

### Voluntary Custody Agreement

(1) Under a “Voluntary Custody Agreement”, the parent or legal guardian gives the Department the legal custody of the child. The Department assumes all parental and legal responsibilities that the agreement does not specifically reserve to the parents or legal guardians as permitted under ORS 418.015 and becomes the child’s legal custodian.

(2) It is appropriate for the Department to place a child in substitute care and provide services if all of the following subsections apply:

(a) The parent or legal guardian requests the Department take custody of the child.

(b) The parent or legal guardian is immediately and temporarily unable to fulfill his or her parental responsibilities.

(c) This inability will be alleviated with short-term placement when one of the following conditions exists:

(A) The child cannot remain at home due to a temporary crisis in the family, and cannot safely stay with a member of the extended family or another responsible adult who is well known to the child.

(B) The parent or legal guardian is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical or mental health condition.

(C) The child needs to be placed outside the home due to problems in the family that could compromise the safety of a family member, and a placement of limited duration in conjunction with intensive services is likely to reunite the family and reduce safety concerns.

(3) A Voluntary Custody Agreement is not appropriate when the Department’s Child Protective Services has determined, within the past 12 months, that the parent or legal guardian was the perpetrator of a founded disposition of child abuse or neglect or when the parent or legal guardian is unwilling to be a permanent resource for the child.

(4) If the Department knows or has reason to know that the child is an Indian child, the Department must comply with OAR 413-115-0050 and OAR 413-115-0090.

(5) A Child Welfare Program Manager must approve entering into a Voluntary Custody Agreement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.056, 418.015, 418.270, 418.275, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0020

### Legal Consent

(1) Only a parent or guardian who has legal custody of the child may enter into a Voluntary Custody Agreement (CF 1005).

(2) All persons who have legal custody of the child must sign the agreement unless one person with legal custody of the child is missing.

(3) If one person with legal custody of the child is missing, all other persons with legal custody of the child must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person’s whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with legal custody of the child to provide him or her notice of the agreement.

# ADMINISTRATIVE RULES

(4) The parent or guardian must provide information to the Department about insurance and other financial resources to meet the medical, dental, and mental health needs of the child by completing a Medical Resource Report Form (DHS 415H).

(5) If the Department knows or has reason to know the child is an Indian child, each parent or Indian custodian who has legal custody must sign the Voluntary Custody Agreement in a hearing before a judge of a court with appropriate jurisdiction. The child must be more than 10 days old.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0050

### Termination of Voluntary Agreement

(1) Either the Department or a parent or legal guardian who signed the agreement may terminate the agreement by providing 48 hours written notice. If an agreement continues after the child reaches 18 years of age, a young adult may terminate the agreement by providing 48 hours written notice.

(2) If a parent or legal guardian requests the termination of the voluntary agreement and there is reason to believe the child will be unsafe if returned to the home of the parent or legal guardian, the caseworker must report the information to a CPS screener.

(3) If the withdrawal of consent is by a parent or Indian custodian concerning a child who is an Indian child under the Indian Child Welfare Act, who is in substitute care and the subject of a "Voluntary Custody Agreement" with the Department, the following applies:

(a) The parent or Indian custodian may withdraw consent orally or in writing at any time;

(b) An Indian child shall immediately be released to the parent or Indian custodian upon withdrawal of a voluntary consent; and

(c) Notification to the court, and other actions are required when return of an Indian child to the parent or Indian custodian would place the child in imminent danger or harm.

Stat. Auth.: ORS 418.005, 418.027

Stats. Implemented: ORS 418.015, 418.027

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 3-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 2-2003, f. & cert. ef. 1-7-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0075

### Legal Consent

(1) Only a parent or guardian who has legal custody of the child may enter into a Voluntary Placement Agreement.

(2) All persons who have legal custody of the child must sign the agreement unless one person with legal custody of the child is missing.

(3) If one person with legal custody of the child is missing, all other persons with legal custody of the child must sign the agreement and must provide the Department the persons and places likely to have knowledge of the missing person's whereabouts. The Department must immediately begin a reasonably diligent search to find the other person with legal custody of the child to provide him or her notice of the agreement.

(4) If the child is an Indian child the Department must comply with OAR 413-115-0100.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-020-0090

### Termination of Voluntary Agreement

(1) Either the Department or a parent or legal guardian who signed the Voluntary Placement Agreement may terminate the agreement by providing 48 hours written notice. The child support agreement may be terminated at the same time by sending a copy of the written termination notice to the Children's Benefits Unit of the Department.

(2) If the parent or legal guardian requests the termination of the Voluntary Placement Agreement and there is reason to believe the child is unsafe, the caseworker must report the information to a CPS screener.

(3) OAR 413-115-0100(6) governs the withdrawal of consent by a parent or Indian custodian concerning an Indian child who is in substitute care and the subject of a Voluntary Placement Agreement with the Department.

(4) A Voluntary Placement Agreement ends when the child reaches 18 years of age.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.015, 418.312, 419C.080

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-030-0000

### Definitions

The following definitions apply to OAR chapter 413, division 30:

(1) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child who has reached the age of 16 or young adult that includes building relationships with significant people in the child or young adult's life that may continue after substitute care. APPLA is the least preferred permanency plan of the five permanency plans for a child or young adult and is appropriate only after the permanency plans of reunification, adoption, guardianship, and placement with a fit and willing relative have been determined not in the best interest of a child or young adult.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(2) "Case plan" means a written, goal-oriented, time-limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well-being.

(3) "Chafee housing" means a payment to assist in covering the costs of room and board made to an eligible individual between 18 and 20 years of age who was discharged from the care and custody of the Department or one of the federally recognized tribes on or after reaching 18 years of age.

(4) "Child" means a person under 18 years of age.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge and when the expert is evaluating a parent or guardian, whether the individual's functioning impacts his or her protective capacity.

(7) "Family support services case plan" means a goal-oriented, time-limited, individualized plan for a child and the child's family or a former foster child. The Department and the family or former foster child jointly develop a "family support services case plan" that addresses the service goals and the identified needs of the child and the child's family or the former foster child.

(8) "Former foster child" means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.

(9) "GED" means a General Educational Development certificate issued pursuant to ORS 351.768.

(10) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(11) "ILP" means the Independent Living Program services provided by the Department to an eligible foster child or former foster child.

(12) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

(13) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(14) "Legal custody" means a legal relationship between a person, agency, or institution and a child that imposes on the person, agency, or institution the duties and authority of the child's legal custodian.

(15) "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.

# ADMINISTRATIVE RULES

(16) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child or young adult. Although the plan may change as more information becomes available, the goal is to develop safe and permanent resources with the parents, relatives, or other people who may assume responsibility for the child or young adult during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(17) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.

(18) "Service Agreement" means a written document between the Department and a parent, guardian, or former foster child that identifies one or more of the service goals in a family support services case plan, and the services and activities that are necessary for the parent, guardian, or former foster child to achieve the goal.

(19) "Service goal" means the observable, sustained change in behavior, condition, or circumstance that, when accomplished, achieves the desired effect.

(20) "Short term services" mean actions or activities that are limited in duration to a maximum of 180 days.

(21) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent.

(22) "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.

(23) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(24) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 22-2015, f. & cert. ef. 10-6-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-030-0009

### Determination of the Service Needs

(1) Within 30 days of receiving the family support services screening information, the caseworker must determine the service needs by completing the following actions:

(a) Provide the parent, guardian, or former foster child with a Service Application.

(b) If the caseworker knows or has reason to know the child is an Indian child, the caseworker must comply with OAR chapter 413, division 115.

(c) Within five working days of receipt of the case, confirm there is no current reported safety threat to the child by reviewing the screening information and the child welfare case records for all family members living in the household.

(d) Within ten working days of receipt of the case, make initial face-to-face contact with the parent, guardian, or former foster child to assess current behaviors, conditions, and circumstances in the family and gather specific information on the needs of the parent, guardian, or former foster child.

(e) Within ten working days of receipt of the case, when the child is in the home of the parent or guardian, make initial face-to-face contact with the child to assess the identified needs of the child.

(f) When the child is in substitute care, make monthly face-to-face contact as required under OAR 413-080-0054.

(g) To determine service needs, the caseworker must, at a minimum, observe:

(A) The parent, guardian, or former foster child in the home environment;

(B) The child or former foster child in his or her home or substitute care placement; and

(C) The interactions between family members.

(h) Obtain from the parent, guardian, or former foster child the names of persons who can provide additional information on the needs of the child, former foster child, or the family, when appropriate.

(i) Ask the parent, guardian, or former foster child to sign an authorization to release information to enable the Department to obtain additional

information from physicians, mental health providers, school employees, or other service and treatment providers, when appropriate.

(j) After obtaining the authorization to release information, contact service and treatment providers, when appropriate, to understand the past and current services and treatment of the family and the child or former foster child.

(k) Obtain expert evaluations when appropriate to determine specific service or treatment needs when a condition or behavior requires additional professional information regarding a person's functioning.

(l) Analyze the behaviors, conditions, and circumstances of the family to determine service or treatment needs based upon information gathered from the activities in subsections (a) to (k) of this section.

(m) Document the findings of the activities in subsections (a) to (k) of this section in the Department's electronic information system.

(2) The caseworker must use the information and determination of service and treatment needs to develop an individualized family support services case plan that addresses the specific identified needs:

(a) The caseworker must also refer to OAR 413-070-0100 to 413-070-0260 if the child is an Indian child.

(b) When a family is eligible for out-of-home placement due to the child's special needs or placement is ordered through the court, the caseworker must also refer to OAR 413-070-0600 to 413-070-0645, 413-020-0060 to 413-020-0090, 413-070-0100 to 413-070-0260 if the child is an Indian child, and OAR 413-080-0040 to 413-080-0067.

(c) When a former foster child requests ILP services, the caseworker must also refer to OAR 413-030-0400 to 413-030-0460 and OAR 413-070-0100 to 413-070-0260 if the child is an Indian child.

(d) When a family requests that the Department take voluntary custody of the child, the caseworker must also refer to OAR 413-070-0600 to 413-070-0645, 413-020-0005 to 413-020-0050, 413-070-0100 to 413-070-0260 if the child is an Indian child, and 413-080-0040 to 413-080-0067.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.312

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-030-0210

### Eligibility Criteria for Substitute Care Placement

For a child to be eligible for initial and continuing substitute care, the Department must meet the following criteria:

(1) Legal Basis. The Department must have a current legal basis for placement:

(a) Temporary custody under ORS 419B.165;

(b) Legal custody of the child through a juvenile court order;

(c) A voluntary custody agreement in accordance with OAR 413-020-0005 to 413-020-0005;

(d) A voluntary placement agreement in accordance with OAR 413-020-0060 to 413-020-0090;

(e) Permanent custody based on a permanent commitment or release and surrender agreement of a parent; or

(f) Verification that the child is an unaccompanied refugee minor.

(2) The child must be under 18 years of age at the time the child is placed in the legal custody of the Department and placement services are first initiated.

(3) Reasonable or Active Efforts. Except in those cases with a Voluntary Custody Agreement or Voluntary Placement Agreement, the Department will make reasonable efforts to prevent or eliminate the need for removal of the child and to alleviate the barriers that keep the child from returning home. This includes an assessment of appropriate treatment and supportive services and providing such services when available through the Department or by referral to other community resources. To aid the court or Citizen Review Board (CRB) in making the findings required by this section, the Department shall present documentation to the court or CRB showing its reasonable efforts or, if the Indian Child Welfare Act applies, active efforts, to prevent or eliminate the need for removal of the child and services provided to safely return the child to the home. The department shall seek a reasonable efforts judicial determination within 60 days of a child's removal from the home, or a determination that due to aggravated circumstances reasonable efforts were not required to prevent the child's removal from the home. If the court does not make the reasonable efforts determination within 60 days, the child is not eligible for Title IV-E foster care maintenance payments program throughout the duration of that child's stay in substitute care. Refer to OAR 413-100-0240.

(4) The child requires substitute care placement because there is no parent or guardian available and able to provide safe care for the child even

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with the assistance of available supportive resources, and no relative is willing and appropriate to assume full responsibility for the child.

(5) Placement is needed for one of the following reasons:

(a) The parent or guardian is not available to care for the child due to death, abandonment, desertion, incarceration, institutionalization, or catastrophic illness;

(b) The child is at significant risk of abuse or neglect;

(c) The child is in the permanent custody of the Department for adoption planning;

(d) The child has a severe disabling condition requiring skilled care that the family cannot provide even with the assistance of community resources but the Department can provide the care the child requires in an available substitute care resource; or

(e) The child's behavior is a serious danger to the child, the child's family, or the community but the child can, without threat to self or others, be managed in an available and appropriate substitute care resource.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.015 – 418.315, 419B.331 – 419B.349

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 21-1999, f. & cert. ef. 10-6-99; SOSCF 17-2000, f. & cert. ef. 7-25-00; SOSCF 10-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 4-2003, f. & cert. ef. 1-7-03; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-030-0445

### Development of the Comprehensive Transition Plan

(1) Development of the comprehensive transition plan. The Department must initiate the development of the comprehensive transition plan for a:

(a) Child 14 years of age or older and in substitute care or a young adult; or

(b) Former foster child who requests services as described in OAR 413-030-0003 to 413-030-0030 and would benefit from a comprehensive transition plan.

(2) The Department must ensure the comprehensive transition plan includes:

(a) The completion of a life skills assessment, which includes:

(A) Assessment of the skills and readiness of the child or young adult through interviews with substitute caregiver, parent or guardian, and any other significant adult; and

(B) Completion of a written independent living assessment in the format required by the Department.

(b) The written life skills assessment must include a description of:

(A) The strengths of the child or young adult; and

(B) His or her need for ongoing skill development in the following ability areas:

(i) Interaction with and connection to adults who can assist in the transition to independent living;

(ii) Transition successfully to independent living;

(iii) Engagement in educational and vocational interests;

(iv) Management of his or her physical and mental health; and

(v) Achievement of residential stability.

(3) After completing the activities in section (2) of this rule, the Department must convene a planning meeting to develop the comprehensive transition plan. The Department must:

(a) Ensure the child or young adult plays a central role in planning for and participating in the meeting, when developmentally appropriate;

(b) Involve the child or young adult in determining who may participate in the planning meeting which may include a parent or guardian, substitute caregiver, service providers, a court appointed special advocate, authorized representative of the Indian child's tribe, the attorney for the child or young adult or other adults important to the child or young adult;

(c) At the option of the child or young adult, involve the two additional members of the case planning team chosen by the child or young adult as described in OAR 413-040-0010(3)(c); and

(d) If the child or young adult makes the request, include any additional members the child or young adult would like to add to his or her comprehensive youth transition planning meeting when it is determined to be in the best interest of the child or young adult.

(4) The comprehensive transition plan must identify goals and services in each of the following domains:

(a) Education;

(b) Employment;

(c) Health;

(d) Housing;

(e) Life skills;

(f) Supportive relationships;

(g) Cultural and community connections; and

(h) Transportation.

(5) The child age 14 or older, young adult, or former foster child must agree to the comprehensive transition plan and the plan is signed by each person who participated in the planning meeting.

(6) A Department supervisor must review and acknowledge the completion of the comprehensive transition plan in the Department's information system.

(7) When a child is placed in another state through the Interstate Compact on the Placement of Children (ICPC), and the Department is unable to complete the comprehensive transition planning process as described in this rule, the Department remains responsible for working with the receiving state and with the child in developing a comprehensive transition plan.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.475, 419B.343, 419B.476

Hist.: SOSCF 1-2002, f. & cert. ef. 1-22-02; SOSCF 8-2002, f. & cert. ef. 5-6-02; CWP 10-2009(Temp), f. & cert. ef. 9-1-09 thru 12-28-09; CWP 16-2009, f. & cert. ef. 11-3-09; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-030-0460

### Requirements at Independence

(1) At least 60 days prior to the date on which the Department is requesting relief of legal custody of a child or young adult reaching independence, the Department must inform the child or young adult of:

(a) The date, time, and location of the hearing;

(b) The right to attend the hearing, and the importance of attending; and

(c) The right to request assistance with transportation to and from the hearing.

(2) When the court relieves the Department of the custody of the child or young adult reaching independence, the Department must provide the child or young adult with the following written records:

(a) Unless the release is prohibited by law or the law requires the child or young adult to make a specific request for the records under ORS 432.250 and ORS 109.425 to 109.507, information concerning the case of the child or young adult, including family and placement history, location and status of each sibling, and contact information the child or young adult may use to seek additional information about his or her case or family history.

(b) Health and education records, including:

(A) Health and immunization records;

(B) Educational summary and records; and

(C) Information on how to identify a Health Care Representative, complete an Oregon Advance Directive, and complete the Former Foster Care Youth Medical Referral Form.

(c) A copy of each of the following, and documentation that each has been provided to the child or young adult in official form:

(A) The birth certificate of the child or young adult.

(B) Official proof of the citizenship or residence status of the child or young adult in a form acceptable to an employer required to verify immigration status.

(C) The social security card, or a copy of the original, of the child or young adult.

(D) A driver's license or another form of state identification, or a copy of the original, of the child or young adult;

(E) Where applicable, a death certificate of a parent of the child or young adult.

(F) Where applicable, the tribal membership or enrollment information of the child's parents.

(G) Written verification of placement in substitute care through the Department or one of the federally recognized tribes of the child or young adult when 14 years of age or older and 18 years of age and younger.

(H) The child or young adult's credit report.

(3) When the Department is unable to provide the documentation and information described in section (2) of this rule prior to the court order by which the Department is relieved of legal custody of the child or young adult, the Department must prepare the written records and either deliver them to the child or young adult or, when the whereabouts of the child or young adult are unknown, retain the records in the case file of the child or young adult until requested by the child or young adult.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.00

Hist.: CWP 16-2009, f. & cert. ef. 11-3-09; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

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413-040-0000

## Definitions

Unless the context indicates otherwise, the following definitions apply to rules in OAR chapter 413, division 040:

(1) "AAICPC" means the Association of Administrators of the Interstate Compact on the Placement of Children, which is the national professional association of state administrators of the Interstate Compact on the Placement of Children, housed at the American Public Human Services Association (APHSA).

(2) "Action agreement" means a written document between the Department and a parent or guardian that identifies one or more of the services or activities provided by the Department or other community partners, in which the parent or guardian will participate to achieve an expected outcome.

(3) "Acquired Immune Deficiency Syndrome (AIDS)" is a disorder in which a person's immune system is severely suppressed. It is caused by the human immunodeficiency virus (HIV). In order for a person to be diagnosed as having AIDS, the virus, immune system suppression, and an opportunistic infection or other condition stipulated by the U.S. Centers for Disease Control must all be present. A laboratory diagnosis of a CD4 less than 200 also is an AIDS defined illness.

(4) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child or young adult based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family.

(b) To determine the level of care payment while in substitute care with a certified family; and

(c) To determine the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(6) "Case plan" means a written goal-oriented, time-limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well-being.

(7) "Child" means a person under 18 years of age.

(8) "Compact administrator" means the person for each party to the Compact responsible for carrying out the provisions of the Compact. In Oregon, it is the Assistant Director, Children, Adults and Families, Department of Human Services.

(9) "Complete judicial review" means a hearing that results in a written order that contains the findings required under ORS 419B.476 or includes substantially the same findings as are required under ORS 419A.116.

(10) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(11) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(12) "Counseling" means group and individual counseling, emotional support groups, one-on-one emotional support, AIDS education, and/or information services.

(13) "Date child entered substitute care" means the earlier of the following two dates:

(a) The date the court found the child within the jurisdiction of the court (under ORS 419B.100); or

(b) The date that is 60 days from the date of removal.

(14) "Department" means the Department of Human Services, Child Welfare.

(15) "Deputy compact administrator" means the person appointed by a compact administrator as the coordinator to assure compliance with the law.

(16) "Expected outcome" means an observable, sustained change in a parent or guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or guardian's protective capacity and reduce or eliminate an identified impending danger safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(17) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or guardian, whether the individual's functioning impacts his or her protective capacity.

(18) "Family member" means any person related to the child or young adult by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(19) "Family plan" means a written document developed at the OFDM that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The "family plan" also includes expectations of the parents of the child and other family members; services the Department will provide; timelines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate. The "family plan" described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

(20) "Grandparent" for purposes of notification, visitation, contact, or communication ordered by the court under ORS 419.B876 means the legal parent of the child or young adult's legal parent, regardless of whether the parental rights of the child or young adult's legal parent have been terminated under ORS 419B.500 to 419B.524.

(21) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(22) "High risk behaviors" means the following:

(a) Having shared a needle with an intravenous drug abuser since 1977;

(b) For a man, having had sex with another man or men since 1977;

(c) Having been sexually active in an area where heterosexual transmission is believed to be high;

(d) Persons with hemophilia;

(e) Having been the sexual partner of a person in one of the previous categories;

(f) Being born to a woman whose history has put her in one of these other categories.

(23) "HIV" is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.

(24) "HIV Infection". People who have been tested and found to have the antibody are referred to as having HIV infection. These people are capable of transmitting the virus through risk behaviors, as described below.

(25) "HIV Positive" means that a blood test has indicated the presence of antibodies to HIV. This means that the person has been infected by the virus and the immune system has responded by producing antibodies. An exception is infants of HIV-infected mothers. They have been exposed to the mother's antibodies and carry these antibodies in their blood for a number of months after birth. A series of tests is necessary to determine if these infants are themselves infected with HIV.

(26) "ICPC approved family" means a family approved by the Interstate Compact on the Placement of Children (ICPC) deputy compact administrator or designee after reviewing a home study.

(27) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and



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understood more fully by evaluating and understanding individual and family function.

(28) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(29) "Indian custodian" means any Indian who has legal custody of an Indian child under applicable tribal law or custom or under applicable state law, or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(30) "Indian tribe" means any Indian tribe, band, nation, or organized group or community of Indians who are recognized as eligible for services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska native village as defined in 43 USC section 1606, and any tribe whose federal relationship has been terminated by congressional action.

(31) "Local Citizen Review Board (CRB)" means a board of not less than three nor more than five members appointed by the Chief Justice of the Supreme Court of the State of Oregon to review the cases of all children in the custody of the Department and placed in an out-of-home placement (ORS 419A.090-419A.094).

(32) "OFDM" means the family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. These meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. The role of the "OFDM" is described in ORS 417.365 to 417.375.

(33) "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.

(34) "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.

(35) "Permanency hearing" means the hearing that determines the permanency plan for the child. The "Permanency Hearing" is conducted by a juvenile court, another court of competent jurisdiction or by an authorized tribal court.

(36) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child or young adult. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child or young adult during the remaining years of dependency and be accessible and supportive to the child or young adult in adulthood.

(37) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(38) "Placement" means the arrangement for the care of a child in a foster home, relative foster home, non-paid relative home, or a child-caring agency or institution. It does not include the arrangement for care in an institute caring for the mentally ill, an institution primarily educational in character, or a hospital or other medical facility.

(39) "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.

(40) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult,

that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.

(41) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority or a private person or agency, whether for placement with a state or local public authority or with a private agency or person.

(42) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.

(43) "Reunification" means placement with a parent or guardian.

(44) "Safety threshold" means the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria: be imminent, be out of control, affect a vulnerable child, be specific and observable, and have potential to cause severe harm to a child. The "safety threshold" criteria are used to determine the presence of an impending danger safety threat.

(45) "SAIP" means Secure Adolescent Inpatient Program.

(46) "SCIP" means Secure Children's Inpatient Program.

(47) "Sending agency" means a party state or an officer or employee thereof; a subdivision of a party state or an officer or employee thereof; a court of a party state; or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

(48) "Sending state" means the state from which a proposed placement is made.

(49) "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.

(50) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(51) "Termination of parental rights" means that a court of competent jurisdiction has entered an order terminating the rights of the parent or parents, pursuant to ORS 419B.500 through 419B.530 or the statutes of another state. The date of the termination order determines the effective date of the termination even if an appeal of that order has been filed (ORS 419A.200).

(52) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; CWP 8-2016, f. & cert. ef. 6-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 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;

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(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 413-115-0030 to 413-115-0130 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; CWP 2-2016, f. & cert. ef. 2-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-040-0155

### Participants in Administrative Reviews and Permanency Hearings

(1) All legal custodians and parents must be invited and encouraged to participate in Administrative Reviews and Permanency Hearings.

(2) Other individuals to invite are:

(a) Substitute care providers;

(b) Children, when it is determined that the child's attendance would be appropriate and the child wishes to attend;

(c) Attorneys and Court Appointed Special Advocates (CASA);

(d) Indian tribe (if applicable).

Stat. Auth.: ORS 418.005

Stats. Implemented: 419A.090 - 419A.122, 419B.440 - 419B.476; ORS 419C.623 - 419C.656

Hist.: CWP 23-2003, f. & cert. ef. 5-22-03; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-040-0159

### Notification and Distribution Requirements for Administrative Reviews and Permanency Hearings

(1) Case records must contain documentation that written advance notice was provided to the persons cited in OAR 413-040-0150 inviting them to attend the Administrative Review or Permanency Hearing.

(2) The Department will provide copies of the Substitute Care Case Plan narrative (CF 147B) to:

(a) Legal custodial and non-custodial parents;

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- (b) Parents out-of-state;
  - (c) Parents who have not had their parental rights terminated or have not signed a release and surrender agreement for adoption;
  - (d) Indian tribes (if applicable);
  - (e) Parents' and child's attorneys; and
  - (f) Court Appointed Special Advocates (CASA).
- Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 419A.090 – 419A.122; 419B.440 – 419B.476; 419C.623 – 419C.656  
Hist.: CWP 23-2003, f. & cert. ef. 5-22-03; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-040-0310

### Independent and Private Agency Adoptions; Documentation Required for Placement in or from Oregon

(1) When a child is placed out of or into Oregon by a sending agency, including a parent or a private licensed agency, for purposes of adoption, the ICPC applies. Independent and private agency adoption referrals are processed as soon as practicable after receipt by the ICPC office of the complete compact placement referral.

(2) Referrals for placement covered by the Compact must be sent to the Oregon ICPC office, after the birth of the child, containing three copies of the following:

- (a) Form CF 100A;
- (b) Cover letter;
- (c) Forms CF 246, 246A, and 246B;
- (d) Medical information on the child;
- (e) The consents and surrenders required by law. A mother must sign the consent and surrender after the birth of the child;
- (f) An affidavit from the child's mother regarding the biological father and, if the legal father is not the biological father, regarding the legal father. The affidavit is not necessary unless the biological or the legal father has not signed a consent and surrender;
- (g) A statement regarding the applicability of the Indian Child Welfare Act;
- (h) If the child is an Indian child, the parental consents for adoption must comply with the ICWA;
- (i) Documentation regarding all known facts about each legal or putative father. If the mother has stated that the identity or whereabouts of the father is unknown, documentation regarding what advice and information the mother was given and the reason why the father's identity or whereabouts are unknown to the mother;
- (j) Affidavit regarding counseling;
- (k) Affidavit regarding the Voluntary Adoption Registry;
- (l) The completed home study;
- (m) An update to the current home study if the completed home study is completed more than one year from the date the ICPC referral is made; and
- (n) A legal risk statement signed by the adoptive family that acknowledges that the child is not legally free for adoption and that there is a risk of having the child removed from the home. This statement is required when one of the biological or legal parents has not signed a consent and surrender.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 - 417.260

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-040-0325

### Termination of Jurisdiction over Child

(1) The sending agency retains jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child that it would have had if the child had remained in the sending agency's state until the child:

- (a) Is adopted;
  - (b) Reaches the age of majority according to the law of the sending state;
  - (c) Becomes self supporting;
  - (d) Is discharged with the concurrence of the appropriate authority in the receiving state; or
  - (e) Is returned to the sending state.
- (2) Interstate services are not terminated until the receiving state's compact office concurs with closure.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 417.200 -260, Article V

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 46-2003, f. 12-31-03, cert. ef. 1-1-04, Renumbered from 413-040-0250; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0000

### Definitions

The following definitions apply to OAR chapter 413, division 70.

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(3) "Affected family members" means biological and legal parents, extended family members, and any person within the fifth degree of consanguinity to the child.

(4) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child or young adult based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(5) "Antipsychotic medication" means a medication, specified in class 28:16:08 by the American Hospital Formulary Service, used to treat psychosis and other conditions.

(6) "APPLA" means Another Planned Permanent Living Arrangement, a permanency plan for a stable secure living arrangement for a child who has reached the age of 16 or young adult that includes building relationships with significant people in the child's life that may continue after substitute care. APPLA is the least preferred permanency plan of the five permanency plans for a child or young adult and is appropriate only after the permanency plans of reunification, adoption, guardianship, and placement with a fit and willing relative have been determined not in the best interests of a child or young adult.

(a) "Planned" means the arrangement is intended, designed, and deliberate.

(b) "Permanent" means enduring and stable.

(7) "Assessment" means the determination of a child or young adult's need for mental health services through interviewing the child or young adult and obtaining all pertinent medical and psychosocial history information from the individual, family, and collateral sources. The "assessment":

(a) Addresses the current complaint or condition presented by the child or young adult;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(8) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food, including the special or unique nutritional needs of the child or young adult;

(b) Clothing, including purchase and replacement;

(c) Housing, including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision, including teaching and directing to ensure safety and well-being at a level appropriate for the age of the child or young adult;

(e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.

(9) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

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(b) To determine the level of care payment while in substitute care with a certified family; and

(c) To determine the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(10) "Caregiver relationship" means a relationship between a person and a child or young adult that meets all of the following requirements:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A "caregiver relationship" does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least twelve consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child or young adult and provided the child or young adult on a daily basis with the love, nurturing, and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(11) "CASA" means a court appointed special advocate: a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419B.112.

(12) "Certificate of Approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(13) "Child" means a person under 18 years of age.

(14) "Child-family contact" means communication between the child or young adult and family and includes, but is not limited to, visitation with the child or young adult, participation in the child or young adult's activities, and appointments, phone calls, e-mail, and written correspondence.

(15) "Child's home" means the home from which the child is removed under the provisions of ORS 419B.150.

(16) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.

(17) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(18) "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 ongoing safety plan.

(19) "Cultural heritage" means the language, customary beliefs, social norms, and material traits including, but not limited to, the dress, food, music, and dance of a racial, religious, or social group that are transmitted from one generation to another.

(20) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the care and custody of the Department and who has a permanency plan or concurrent permanent plan of adoption; and

(b) Has cared for the child or at least one sibling of the child for at least the past 12 consecutive months or for one-half of the child's or sibling's life if the child or sibling is younger than two years of age.

(21) "Department" means the Department of Human Services, Child Welfare.

(22) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(23) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(24) "Entity" means any organization or agency including, but not limited to a private child placing agency, that is separate and independent of the Department, performs functions pursuant to a contract or subcontract with the Department, and receives federal funds.

(25) "Extended family member" means a person ordinarily recognized as the refugee child's parent by the custom of the child's culture, or a person 18 years of age or older who is the child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(26) "Family member" means any person related to the child or young adult by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, and great-grandparents. "Family member" also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. Under the Indian Child Welfare Act (ICWA), "family member" has the meaning given by the law or custom of the child's tribe.

(27) "Fit and willing relative" means an individual who meets the eligibility criteria in OAR 413-070-1010.

(28) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.

(29) "Foster care placement" means any action removing, or which could result in the removal of, a child from his or her parent or Indian custodian, such as court-ordered supervision in the home, for placement in foster care, with a guardian, or in an institution where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated.

(30) "Foster parent" means an individual 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.

(31) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(32) "Grandparent" for purposes of notification, visitation, contact, or communication ordered by the court under ORS 419B.876 means the legal parent of the child or young adult's legal parent, regardless of whether the parental rights of the child or young adult's legal parent have been terminated under ORS 419B.500 to 419B.524.

(33) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(34) "Guardianship assistance" means assistance provided by the Department to the guardian on behalf of an eligible child or young adult to offset costs associated with meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(35) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(36) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(37) "Guardianship assistance base rate" means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult's age.

(38) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(39) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff with expertise in the area of guardianship.

(40) "ICWA" means the Indian Child Welfare Act.

(41) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child 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.

(42) "Incapacity" means a physical or mental illness, or impairment that reduces substantially or eliminates the individual's ability to support, care for, or meet the needs of the child and is expected to be permanent.

(43) "Independent living housing subsidy" means a payment to assist in covering the cost of room, board, or other monthly expenses made to an eligible individual who is at least 16 years of age and is in the care and custody of the Department and living independently.

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(44) “Indian” means any person who is a member of or eligible for membership in an Indian tribe or who is an Alaskan native and a member of a Regional Corporation as defined in 43 USC section 1606.

(45) “Indian child” means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(46) “Indian Child Welfare Act Manager” (“ICWA Manager”) means staff who monitors Department policy and procedures towards compliance with the Indian Child Welfare Act; investigates complaints of non-compliance from tribes; provides consultation to caseworkers relating to law and administrative rules; and provides ICWA materials and training.

(47) “Indian child’s tribe” means the Indian tribe in which an Indian child is a member or eligible for membership. In the case of an Indian child who is a member or eligible for membership in more than one Indian tribe, it is the Indian tribe with which the Indian child has the most significant contacts.

(48) “Interethnic Adoption Provisions of the Small Business Job Protection Act of 1996” (“IEPA”) means section 1808 of the act which is entitled “Removal of Barriers to Interethnic Adoption”, and affirms and strengthens the prohibition against discrimination in adoption or foster care placements, and is codified in 42 USC section 671(a)18.

(49) “Legal assistance specialist” means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a permanency plan for a child in the legal custody of the Department.

(50) “Level of care payment” means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the need for enhanced supervision of a child or young adult determined by applying the CANS algorithm to the results of the CANS screening.

(51) “Licensed medical professional” means an individual who meets the criteria of both of the following subsections:

(a) The individual holds at least one of the following valid licensures or certifications:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse practitioner certified by the Oregon State Board of Nursing under ORS 678.375; or

(C) Physician assistant licensed to practice in the State of Oregon.

(b) The individual’s training, experience, and competence demonstrate expertise in children’s mental health, the ability to conduct a mental health assessment, and the ability to provide psychotropic medication management for children and young adults.

(52) “Medically accepted indication,” defined in ORS 418.517, means any use for a covered outpatient drug that is approved under the Federal Food, Drug and Cosmetic Act, or recommended by the Pharmacy and Therapeutics Committee, or the use of which is supported by one or more citations included or approved for inclusion in any of the following compendia:

(a) American Hospital Formulary Services drug information;

(b) United States Pharmacopoeia drug information or any successor publication;

(c) The DRUGDEX Information System; or

(d) Peer-reviewed medical literature.

(53) “Multiethnic Placement Act of 1994” means federal statutes which prohibit discrimination based on race, color, or national origin as considerations in adoption and foster placements.

(54) “Nonrecurring guardianship assistance agreement” means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(55) “Nonrecurring guardianship expenses” means a one-time payment of up to \$2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(56) “Office of Developmental Disabilities Services” means the Department of Human Services, Office of Developmental Disabilities Services.

(57) “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.

(58) “Participating tribe” means a federally-recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(59) “Permanency committee” means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(60) “Permanency plan” means a written course of action for achieving safe and lasting family resources for the child or young adult. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume responsibility for the child or young adult during the remaining years of dependency and be accessible and supportive to the child or young adult in adulthood.

(61) “Permanent foster care” means the out of home placement of a child or young adult in which there is a long-term foster care agreement between each substitute caregiver and the Department approved by the juvenile court under which the substitute caregiver commits to raise a child in substitute care until the age of majority and be accessible to and supportive of the child into adulthood, until the court determines that APPLA - “permanent foster care” is no longer the appropriate permanency plan for the child or young adult.

(62) “Potential guardian” means an individual who:

(a) Has been approved by the Department or participating tribe to be the guardian of a child; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(63) “Provider” means an individual 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.

(64) “Psychotropic medication,” defined in ORS 418.517, means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including, but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(65) “Qualified mental health professional” means an individual who meets the requirements of both of the following subsections:

(a) Holds at least one of the following educational degrees:

(A) Graduate degree in psychology;

(B) Bachelor’s degree in nursing and is licensed by the state of Oregon;

(C) Graduate degree in social work;

(D) Graduate degree in a behavioral science field;

(E) Graduate degree in recreational, art, or music therapy; or

(F) Bachelor’s degree in occupational therapy and is licensed by the State of Oregon.

(b) Whose education and experience demonstrates the competencies

to:

(A) Identify precipitating events;

(B) Gather histories of mental and physical disabilities, alcohol and drug use, past mental health services, and criminal justice contacts;

(C) Assess family, social, and work relationships;

(D) Conduct a mental status examination;

(E) Document a multiaxial DSM diagnosis;

(F) Develop and supervise a treatment plan;

(G) Conduct a mental health assessment; and

(H) Provide individual, family, or group therapy within the scope of his or her practice.

(66) “Race” means American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, White.

(67) “RCWAC” means the Refugee Child Welfare Advisory Committee.

(68) “Reasonable and prudent parent standard” means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.

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(69) "Refugee child" has the meaning given the term in ORS 418.925.

(70) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.

(71) "Relative" means any of the following:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.

(C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(B) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(C) An individual defined as a relative of a refugee child or young adult under OAR 413-070-0300 to 413-070-0380.

(D) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(E) A registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(F) The adoptive parent or an individual who has been designated as the adoptive resource of a sibling of the child or young adult.

(G) An unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(72) "Relative caregiver" means an individual who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(73) "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.

(74) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(75) "Special immigrant juvenile status" means a legal process to obtain lawful permanent resident status for a child who does not have lawful permanent resident status because he or she entered the United States without inspection and who meets the other criteria required by federal law.

(76) "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.

(77) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(78) "Successor legal guardian" means an individual who has been named in the guardianship assistance agreement, including any amendments to the agreement, as a replacement legal guardian in the event of the death or incapacity of the guardian.

(79) "Supervised visit" means a child-family contact that includes a designated third party to protect the emotional and physical safety of a child or young adult.

(80) "Title VI of Civil Rights Act of 1964" prohibits discrimination on the basis of race, color or national origin under programs receiving federal assistance through the United States Department of Health and Human Services.

(81) "Tribal court" means the court which holds jurisdiction over Indian child custody proceedings and is either a Court of Indian Offenses, a court established and operated under code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(82) "Urgent medical need" means the onset of psychiatric symptoms requiring professional attention within 48 hours to prevent a serious deterioration in a child or young adult's mental or physical condition.

(83) "Visit" means planned, in-person contact between the child or young adult and one or more family members.

(84) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 419A.004

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 13-2000, f. & cert. ef. 7-7-00; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 22-2015, f. & cert. ef. 10-6-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0010

### Purpose and Applicability

(1) OAR 413-070-0010 to 413-070-0030 implement the Multiethnic Placement Act of 1994, which applies to all activities of the Department and to all private child placement and adoption agencies who directly or indirectly receive federal funds.

(2) The purpose of OAR 413-070-0010 to 413-070-0030 is to:

(a) Decrease the length of time a child waits to be adopted;

(b) Prevent discrimination in foster care and adoption; and

(c) Promote the recruitment of ethnic and minority families that reflect the children in the child welfare system. These rules establish a policy of non-discrimination in the practice of foster and adoptive placement of children, and in the recruitment and selection of family resources.

(3) OAR 413-070-0010 to 413-070-0030 do not apply to the placement of children pursuant to the Indian Child Welfare Act. In the case of an Indian child, the Department and entity follow the Indian Child Welfare Act and OAR chapter 413, division 115.

Stat. Auth.: ORS 418.005

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Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 13-2000, f. & cert. ef. 7-7-00; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0072

### Contact with Relatives or Persons with a Caregiver Relationship

(1) Unless a child welfare program manager or designee approves no contact, or a court orders no contact, with an identified individual because contact may compromise the safety of a child or young adult or another individual, the Department must make diligent efforts to contact the following individuals as soon as reasonably possible and no later than 30 calendar days after a child's initial removal from the custody of a parent or guardian, or placement in substitute care through a voluntary placement agreement or voluntary custody agreement:

(a) The child or young adult's parents or legal guardians, grandparents, parents of a sibling of a child where the parent has custody of the sibling, adult relatives, and persons with a caregiver relationship;

(b) When the child or young adult is a refugee, other individuals identified in OAR 413-070-0300 to 413-070-0380; and

(c) When there is reason to know the child or young adult is an Indian child, the tribe, pursuant to OAR chapter 413, division 115.

(2) During the contact required under section (1) of this rule, the Department must:

(a) Provide notice in the individual's primary language that specifies:

(A) Whether the child or young adult has been removed from the custody of a parent or guardian to manage child safety or has been placed in substitute care through a voluntary placement agreement or voluntary custody agreement;

(B) Whether the child or young adult is currently residing with a relative;

(C) The opportunities and requirements associated with being assessed as a safety service provider;

(D) The opportunities and requirements associated with being assessed to become a relative caregiver; and

(E) The rights of relatives set forth in OAR 413-010-0300 to 413-010-0340, and the statutes governing intervention, limited participation, and post-adoption communication agreements.

(b) Request the names of other relatives not previously identified.

(3) The Department must document in the Department's information system:

(a) The approval not to contact an individual under section (1) of this rule;

(b) The name of each individual with whom the Department attempted or made contact;

(c) The individual's relationship to the child or young adult;

(d) The type of contact;

(e) Each individual's response to the notice required in subsection

(2)(a) of this rule when a response is received; and

(f) The individual's contact information.

(4) The Department must respond to inquiries from a relative in person or by telephone as soon as reasonably possible and no later than within 15 business days. When a telephone number or opportunity to meet in person has not been provided, the Department must contact the individual by other means, including by mail or electronic mail.

(5) The caseworker may utilize any meeting or other contact with the family to identify and communicate with relatives for the purposes set forth in OAR 413-070-0060.

(6) Whenever the Department is provided the name of a relative or person with a caregiver relationship previously unknown to the Department, the Department must:

(a) Document the name and contact information in the Department's information system;

(b) Attempt to contact the individual as soon as reasonably possible and no later than within 15 business days; and

(c) Provide notice as required by sections (1) and (2) of this rule.

(7) When the Department is unable to locate contact information for an identified relative or person with a caregiver relationship, the Department must document the efforts to obtain contact information in the Department's information system.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp), f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10; CWP 5-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0100

### Policy Statement and Purpose of Rules

(1) On November 8, 1978, under its power over Indian affairs and its "responsibility for the protection and preservation of Indian tribes and their resources," Congress enacted the **Indian Child Welfare Act** (the Act or ICWA) of 1978. The Act was passed because Congress found that "an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children" by courts and welfare departments and placed in non-Indian homes and institutions.

(2) The Act sets forth that it is the policy of this nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum federal standards for the removal of Indian children from their families. Further, placement of such children will be made in foster or adoptive homes which will reflect the unique values of Indian culture.

(3) This remedial aspect of the **Indian Child Welfare Act** establishes the manner in which the administrative rules will guide the Department of Human Services (DHS) in adhering to the letter and spirit of the Act.

Stat. Auth.: ORS 418.005

Stats. Implemented: 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0130

### Applicability

(1) General:

(a) The Indian Child Welfare Act affects all placements of Indian children taking place after May 8, 1979, and also applies to changes or possible changes in placement of Indian children already under DHS authority as a result of a proceeding prior to May 8, 1979.

(b) The Act does not cover the full range of procedures involved in a juvenile court proceeding; where it is silent, the usual state court procedure should be followed. Under constitutional law, the federal Act takes precedence where it conflicts with state law. When the state law affords a higher standard of protection of the rights of the parents or Indian custodian, it applies.

(2) Exceptions. Child custody proceedings not covered by the Act are:

(a) An award of custody to one of the parents in a divorce proceeding; and

(b) A placement based upon an act which, if committed by an adult, would be a crime (unless the juvenile delinquency proceeding results in the termination of a parental relationship).

(3) Although initial placements of an Indian child based upon a law violation may not be covered by the Act, subsequent placements resulting from petitions alleging dependency, or status offenses that can only be committed by a minor, such as runaway or beyond control, are covered by the Act.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0140

### Department Authority

Once it is found that an Indian child is involved, and the tribe or tribes who have an interest have been determined, the authority of the Department must be established. In some instances, the Department will have no authority to become involved in the case:

(1) Exclusive Tribal Jurisdiction. Indian tribes have exclusive jurisdiction over child custody proceedings involving children who reside or have a permanent home on an Indian reservation. The only exception is where Congress has transferred jurisdiction over family welfare matters to a state and the tribe in that state has not completed an administrative process to reassume exclusive jurisdiction.

(2) Tribal Court Ward. The Department has no authority in cases involving an Indian child who is a ward of a tribal court. Department staff must ask the child's parents or Indian custodian if the child is a ward of the tribal court. If there is reason to believe that the child has previously resided or been domiciled on the reservation, the caseworker must contact the tribal court to determine whether the child is a ward of that court. If so, except as follows, the Department has no authority over the child.

(3) Emergency Removal-Limited Authority. Notwithstanding sections (1) and (2) of this rule, if an Indian child who resides or has a permanent home on any Indian reservation is off the reservation and is in danger of suffering imminent physical damage or harm, the Department has authority to take custody regardless of whether the child is a ward of the

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tribal court or the tribe has exclusive jurisdiction. This authority is subject to the requirements set forth in OAR 413-070-0150.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15;  
Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0150

### Emergency Removals

(1) The Department may take emergency protective custody of any Indian child who resides or is domiciled on a reservation, but who is temporarily located off the reservation, regardless of the jurisdictional status of his or her tribe as long as the following criteria are met:

(a) The child is not located on a reservation where the tribe has exclusive jurisdiction over child custody matters; and

(b) The child is in danger of imminent physical damage or harm.

(2) Whenever a child is taken into protective custody, Department staff must inquire as to the child's racial or ethnic background, unless circumstances do not permit such routine inquiry. In such cases, Department staff must determine racial or ethnic background as described in OAR 413-070-0170(1).

(3) If there is reason to believe the child may be Indian, and in order to determine if the tribe has exclusive jurisdiction, Department staff must immediately inquire as to the child's residence or domicile (since the child may be a resident of or domiciled on a reservation but is temporarily off the reservation). If the child is believed to be an Indian child, efforts must be made to place the child during emergency custody in a setting which follows the placement priorities established by the Indian Child Welfare Act or the tribe and set forth in OAR 413-070-0220.

(4) Emergency custody must be terminated when:

(a) Emergency removal or placement is no longer necessary to prevent imminent physical damage or harm to the child; or

(b) The appropriate tribe exercises jurisdiction over the case.

(5) In order to terminate an emergency removal or placement, the Department must return the child to his or her parent, or the caseworker must initiate an expeditious transfer of jurisdiction to the appropriate Indian tribe. If termination of an emergency removal or placement is not possible, the Department must obtain a court order authorizing continued protective custody within 24 judicial hours of the removal or placement. The petition filed in such proceeding must contain the following, in addition to that information required by state law:

(a) The name, age, tribal affiliations and last known address of the Indian child;

(b) The name and address of the child's parents and Indian custodians, if any, and tribe. If unknown, the Department must provide a detailed explanation of efforts made to locate them;

(c) If known, whether the residence or domicile of the parents, Indian custodians, or child is on or near a reservation, and which reservation;

(d) A specific and detailed account of the circumstances which led the Department to conclude that the child would suffer imminent physical damage or harm;

(e) A specific plan of action the Department is following, including services provided, to restore the child to the child's parent or Indian custodian, or to transfer the child to the jurisdiction of the appropriate Indian tribe.

(6) Where the danger to the Indian child persists and the child's tribe does not have exclusive jurisdiction and will not request transfer of the case to its court, the caseworker must, in consultation with the child's parents and tribe, if known, explore available placement resources which meet the placement requirements in OAR 413-070-0220.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15;  
Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0160

### Remedial Services

(1) Subsequent to an investigation and prior to a determination of the need for out-of-home placement services, the caseworker must offer the provision of services of a remedial nature designed to rehabilitate and prevent the breakup of Indian families to the same extent that they are available to non-Indian families when eligible.

(2) To reduce the potential for cultural bias when evaluating home and family conditions and making decisions affecting Indian children and families, the Department must involve Indian tribes and organizations at the earliest possible point in intervention. Services in the community specifically designed for Indian families are to be used where available, including

resources of the extended family, the tribe, urban Indian organizations, tribal family service programs and individual Indian caregivers. Individual Indian caregivers may include medicine men and other individual tribal members who may have developed special skills that can be used to help the child's family succeed.

(3) Prior to initiating a petition before a state court for foster care placement or termination of parental rights, the caseworker must undertake active efforts to provide remedial services and rehabilitative programs to the family designed to prevent its breakup.

(4) In order to demonstrate that active efforts have been made, the caseworker must:

(a) Assure that due consideration has been given to the cultural needs and values of the family and that resources have been diligently sought to provide family services. Such assurances may be demonstrated by the following:

(A) Making direct contacts with the family, including the parent or Indian custodian, the child and members of the extended family, if known or available;

(B) Making an evaluation of the circumstances of the family taking into account the prevailing social and cultural conditions and way of life of the child's tribe and the Indian community;

(C) Intervening in the parent-child or Indian custodian-child relationship only when intervention is supported by relevant prevailing Indian social and cultural standards regarding intervention into familial relationships by nonfamily members;

(D) Providing a plan formulated with direct collaboration of the parent or Indian custodian, taking into account prevailing social and cultural conditions, designed to effectively address and eliminate problems destructive to the family involving:

(i) Extended family members;

(ii) Tribal social service programs;

(iii) Tribal organization programs aimed at preventing family breakup;

(iv) Traditional tribal community therapy practices, administered by Indian practitioners, where available and applicable. This includes spiritual leaders, medicine men, and other individual tribal members who have developed special skills that can be used to help the child's family succeed.

(E) Providing time and resources in prevention of family breakup in equal measure to time and resources devoted by the Department to all families;

(F) Assuring that while efforts at prevention of family breakup are proceeding, the parent or Indian custodian and the child are encouraged to maintain an ongoing familial relationship in ways that are socially and culturally compatible with the values of the child's Indian community;

(G) Having a plan that encourages maintenance of the Indian child in the familial residence of the Indian child except when to do so would result in serious physical or emotional harm; and

(H) Providing that where the Indian child is of sufficient age, the Indian child is involved in the design and implementation of the plan to prevent family breakup.

(b) Demonstrate to the court that such efforts were made prior to the filing of the petition, including an account of the efforts made and why they failed.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15;  
Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0170

### ICWA Procedures at Initial Contact

This section presents the initial steps to follow in providing services and taking legal action for child custody proceedings covered by the ICWA.

(1) Determination of Indian Status:

(a) Oral inquiry must be made in every case which involves or could involve changes in custody to determine whether the case involves an Indian child. Department staff must routinely request racial or ethnic data of parents or guardian by reading aloud from the intake form the racial and ethnic categories for the client's self-identification. If the child's parents are unavailable or unable to provide a reliable answer regarding the Indian heritage of their child, Department staff must consider:

(A) All documentation in the file, including contact with previous caseworkers, if any;

(B) Close observation of the physical characteristics of the child, parents, and other siblings or relatives accompanying the child;

(C) Consultation with relatives and collateral contacts providing information which suggests the child or parent may be Indian; and



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(D) Examination of any other information bearing on the determination of the child's Indian heritage, such as communication from other sources including Indian tribes and organizations.

(b) If, in following the above steps, information obtained suggests the child may be of Indian heritage but the tribe cannot be determined, staff must contact the Department ICWA Manager to determine if:

(A) The birth place of the child or parent, or the current or former residence of the child or parent is known to be a common residence of Indian families; and

(B) The surname of the child or parent is one which is known to be common among members of Indian tribes.

(2) Determination of Indian Tribe. If it appears the child is of Indian heritage, the caseworker must determine the tribe in which the child is a member or eligible for membership. Department staff must ask the parent or custodian of the child about the tribe with which the child may be affiliated. If this inquiry does not provide the necessary information, Department staff must, at a minimum, contact the following:

(a) Relatives and extended family members.

(b) Indian tribes and organizations in Oregon, such as the Commission on Indian Services.

(c) The appropriate Bureau of Indian Affairs (BIA) Office.

(3) ICWA Eligibility. For a child to be considered an Indian under ICWA, the child must be:

(a) An unmarried person under the age of eighteen; and

(b) A person who is either a member of a federally-recognized Indian tribe or eligible for membership in a federally-recognized Indian tribe and the biological child of a member of an Indian tribe;

(c) In order for the worker to determine if the child is a tribal member or eligible for membership, the tribe or possible tribes identified must be contacted.

(4) Tribal Membership:

(a) A tribal determination of membership is conclusive because each tribe defines the criteria for membership in the tribe and determines who meets those criteria. Inquiries to the tribe must be sent "Return Receipt Requested" to a membership committee, an enrollment clerk, or individual who is accustomed to responding to questions about tribal membership.

(A) If the tribe does not respond, Department staff must contact the tribe by telephone. If the tribe cannot be reached by phone, the caseworker must contact the local Bureau of Indian Affairs Area Office and the ICWA Manager for assistance.

(B) The caseworker must request that all information given be treated confidentially.

(b) If the child is a member of one tribe and eligible for membership in others, the tribe of actual membership is the child's tribe. If the child is not now a member of a tribe, the caseworker must ascertain whether the child is eligible for membership and is the biological child of a member of a federally-recognized Indian tribe. To do this, the caseworker asks:

(A) The child, when the child is old enough to respond;

(B) The parents or relatives, including in-laws, as appropriate; and

(C) The tribe.

(5) Out-of-State Tribes. When an Indian child is a member of or eligible for membership in a federally-recognized tribe located in another state, the Act applies and all applicable provisions, including provisions governing notification of the tribe, must be followed.

(6) Multi-Tribal Membership:

(a) The child may be eligible for membership in more than one tribe. In that case the Indian child's tribe is the tribe with which the child has the most significant contacts. In considering with which tribe the child has the most significant contacts, the caseworker shall investigate:

(A) The length of residence on or near the reservation of each tribe and the frequency of contacts with each tribe;

(B) The child's participation in activities of each tribe;

(C) The child's fluency in the language of each tribe;

(D) Whether there has been a previous adjudication with respect to the child by a court of one of the tribes;

(E) Residence on or near one of the tribes' reservation of the child's relatives;

(F) Tribal membership of custodial parent or Indian custodian; and

(G) Interest asserted by each tribe in response to the notice specified in OAR 413-070-0210.

(b) Documentation of such investigation shall be submitted to the court so that it can consider the comparative interests of each tribe in the child's welfare in making its decision on the matter.

(7) Enrollment of Indian Clients. If the child is not a member of the child's tribe, but is applying to become a member, the caseworker must pro-

ceed as though the child is a member and follow the requirements of the Act. Department staff must assist the family in filling out and returning required paperwork to the appropriate tribe and, as necessary, counsel parents hesitant to enroll a child by emphasizing the positive benefits of tribal enrollment and membership.

(8) ICWA Not Applicable. Once determined, tribal status must be clearly documented in the case record, along with the date and source of documentation. An Indian child who is officially determined by the tribe not to be a member of nor eligible for membership is not subject to the requirements of the Indian Child Welfare Act. In such cases, Department staff must:

(a) Document in the case record steps taken to determine the child's Indian or tribal ancestry and the tribe's written statement declaring the child ineligible for membership; and

(b) Incorporate in any court hearing the tribe's written statement declaring the child ineligible for membership.

(9) Cultural Heritage Protection. In instances where the ICWA does not apply, but the child is biologically an Indian or considered an Indian by the Indian community, the Department must respect the child's right to participate in the culture of origin in case planning, particularly if the child is identifiable Indian by physical features or social relationship.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0180

### Tribal-State Agreement

These rules may be superseded by an agreement signed between the state and a particular tribe. Such agreement must be available in the Assistant Director's Office of Child Welfare Programs.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0190

### Documentation of Serious Emotional or Physical Damage to Child Prior to Removal

(1) Prior to removal of the child from a parent or Indian custodian and initiation of court proceedings, Department records must contain documentation demonstrating that:

(a) It is likely that the conduct or condition of the parents will result in serious physical or emotional harm to the child; and

(b) If it is likely that such harm will occur, efforts have been made to counsel and change the behavior of the parent or Indian custodian and have not worked.

(2) In making such a determination, Department staff must relate indications of the likelihood of serious emotional or physical damage to particular conditions in the home, showing a causal relationship between the conditions and the serious damage which is likely to result to the child. For example, it is not adequate to show that the parent abuses alcohol. It is necessary to show how, because of alcohol abuse, the parent may cause emotional or physical damage to the child.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0200

### Element of Proof

(1) Foster Care Placement. In order to ask the court to authorize the placement of the child in foster care, the Department must demonstrate to the court by clear and convincing evidence, including the testimony of one or more qualified expert witnesses as defined in section (3) of this rule, that continued custody of the child with the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(2) Termination of Parental Rights. In order to ask the court to terminate parental rights, the Department as petitioner must show the court by evidence beyond a reasonable doubt, including the testimony of one or more qualified expert witnesses as defined in section (3) of this rule, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(3) Qualified Expert Witnesses. The following individuals are most likely to meet the requirements of a qualified expert witness for purposes of Indian child custody proceedings:

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(a) A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child rearing practices;

(b) A lay person having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; or

(c) A professional person having substantial education and experience in the area of his or her specialty along with substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community.

(d) This list is not meant to be exhaustive or limited in any fashion. The caseworker should enlist the assistance of the Indian child's tribe or the ICWA Manager in locating persons qualified to serve as expert witnesses. The BIA is also required to provide this assistance.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0210

### Involuntary Proceedings

(1) Notice. Except for emergency placements made pursuant to OAR 413-070-0150, Department staff must not request a court proceeding to authorize foster care placement of an Indian child until the following time frames have been met:

(a) Not less than ten days after receipt of notice by the parent or Indian custodian, or thirty days after receipt of notice by the parent or Indian custodian if an additional twenty days has been requested by the parent or Indian custodian to prepare for the proceeding;

(b) Not less than ten days after the Indian child's tribe has received notice, or thirty days after the Indian child's tribe has received notice if an additional twenty days has been requested to prepare for the proceeding; and

(c) Not less than fifteen days after the receipt of the notice by the Secretary of the Interior.

(2) The caseworker is responsible for providing notice to the parties listed below, notifying the court of Department requirements, and requesting a hearing not be scheduled until the time limits in section (1) of this rule have been met:

(a) Notice to Parent or Indian Custodian. The parent of an Indian child must always receive notice. An Indian custodian, if any is involved, should also receive notice;

(b) Notice to Tribe. When an Indian child's parent or Indian custodian are entitled to notice, the tribe is also entitled to notice. The tribe entitled to notice is the tribe in which the child is a member or eligible for membership. If the child is affiliated with or eligible for membership in more than one tribe, notice must be sent to all potential tribes since the court may permit intervention by more than one tribe; and

(c) Notice to BIA. If the identity or location of a potentially interested Indian party to the proceeding cannot be determined, Department staff must notify the local Bureau of Indian Affairs Office which has fifteen days to locate and notify that party.

(3) Service of Notice. Notice may be given by personal service by handing it directly to the person, if possible, but must always be given by registered mail, return receipt requested.

(4) Form of Notice:

(a) If a tribe has declined jurisdiction, it still retains the right to participate as an interested party or to intervene at any point in the proceeding. If the tribe intervenes, it is a party to the proceeding and has the same rights to notice of every proceeding affecting the tribe's member, including, but not limited to, hearings and motions the right to participate fully in such hearings and assert its interest, the right of access to court records, the right to retain counsel if it chooses, and the right to appeal. Therefore, even if a tribe has declined jurisdiction, notice to the tribe's designated agent or, if no agent has been designated, to the tribal court, of every proceeding affecting the tribe's member must be given. Notice must contain, at a minimum:

(A) The name of the Indian child and his or her tribal affiliation;

(B) A copy of the petition, complaint, or other document by which the proceeding was initiated;

(C) The name of the petitioner and the name and address of the petitioner's attorney, if any;

(D) A statement of the right of the biological parents or Indian custodians to participate and the Indian child's tribe right to intervene in the proceeding;

(E) A statement that if the parents or Indian custodians are unable to afford counsel, counsel may be appointed by the court to represent them;

(F) A statement of the right of the biological parent or Indian custodian and the Indian child's tribe to have, on request, twenty days to prepare for the proceedings;

(G) The location, mailing address, and telephone number of the court;

(H) A statement of the right of the parents or Indian custodians or the Indian child's tribe to petition the court to transfer the proceeding to the Indian child's tribal court;

(I) The potential legal consequences of an adjudication on future custodial rights of the parent or Indian custodian; and

(J) A statement that tribal officials must keep the information contained in the notice concerning the particular proceeding confidential and may only reveal it to individuals who need the information in order to exercise the tribe's rights under the Act.

(b) Department staff must file with the court a copy of each notice sent pursuant to this section together with any return receipts or other proofs of service.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0220

### Placement of Indian Children

(1) General. Department staff must make a diligent attempt to find a suitable placement within priorities described in this rule before considering a non-preference placement. A diligent search for an appropriate placement includes, at a minimum, contact with the child's tribal social services department, a search of Oregon state and county listings of available Indian homes, and contact with other Indian tribes and Indian organizations with available placement resources.

(2) Tribal Placement Priorities. In determining the appropriate placement for an Indian child, the caseworker must contact the child's tribe to see if the tribe has established by resolution an order of placement preference or has placement resources different from those described in this rule.

(3) Foster or Pre-adoptive Placements:

(a) In any foster care or pre-adoptive placement of an Indian child, the child must be placed in the least restrictive setting which most approximates a family and in which the child's special needs, if any, can be met. The child shall also be placed in reasonable proximity to his or her home, except as provided in subsection (7)(b) of this rule;

(b) In considering foster placement for a child, Department staff must follow the placement priorities in this subsection unless the Indian child's tribe changes the order of preference by resolution; or, in absence of such tribal resolution, the court modifies the order of preference by a showing of good cause:

(A) A member of the Indian child's extended family.

(B) A foster home licensed, approved, or specified by the Indian child's tribe.

(C) An Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(4) Adoptive Placements. Where no different order of preference has been established by the child's tribe for adoptive placement, the Department must, in the absence of the court's determination that good cause to the contrary exists, give preference to placing the child with:

(a) A member of the child's extended family;

(b) Other members of the Indian child's tribe; or

(c) Other Indian families.

(5) Change of Placement. If an Indian child in a foster or pre-adoptive placement is to be moved from one placement setting to another; or, if the foster family moves and requires a change in placement, the placement preferences outlined in this rule must be followed, unless the child is returned to the parent or Indian custodian from whose custody the child was originally removed. The caseworker must notify the parent, Indian custodian, and the child's tribe in writing prior to a change in placement or before the foster family moves.

(6) Disrupted Adoptive Placements. If a final decree of adoption is vacated or set aside or the adoptive parents voluntarily consent to the termination of parental rights, a biological parent or prior Indian custodian may petition for a return of custody. In voluntary relinquishments, the caseworker must notify the parent and Indian custodian by registered mail at their last known address of the disruption in the adoption and the right to

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petition for a return of custody. The notification to the parent or Indian custodian of the right to petition must include a statement that the petition will be granted unless it is established by a court of law that return of custody is not in the best interest of the child. In the event that custody is not returned to the parent or Indian custodian or prior to such return of custody, any subsequent placements follow the placement priorities outlined in sections (3) or (4) of this rule, as appropriate. In instances where parental rights have been terminated and the adoption has been disrupted, the Department may elect to notify the parent and Indian custodian of their right to petition the court for a return of custody.

## (7) Records of Placement:

(a) The Department must maintain a written record of each placement of each Indian child and of efforts to comply with the preferences listed above. This record must be maintained on forms separate from the court report and must contain, at a minimum, the petition or complaint, all substantive orders entered during the proceeding, and the complete record of the placement determination; and

(b) Where the placement does not meet the preference priorities set out above, the efforts to find suitable placement within those priorities must be recorded and documented in detail. Documentation must also be provided showing that the placement chosen is in the least restrictive setting possible, meets the child's special needs, and as much as possible, in cases of foster care placement, is close to the child's own home.

(c) At any time, upon the request of the Indian child's tribe or the Department of the Interior, the Department must make available records of every foster care, pre-adoptive, and adoptive placement of each Indian child maintained by the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0230

### Adult Adoptees

(1) An adopted Indian person who is age eighteen or older may apply to the court that entered the final adoption decree for information on the tribal affiliation of the biological parents of the person and any other information necessary to protect any rights flowing from the tribal relationship.

(2) An adopted Indian person may also request from the Secretary of the Department of Interior any information necessary for enrollment in the person's tribe or for information determining any rights or benefits associated with tribal membership. Where the Secretary has an affidavit requesting anonymity from the biological parents of the Indian person, the Secretary certifies whether the person is entitled to enrollment under criteria established by the tribe.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0240

### Voluntary Proceedings

(1) Department May Accept Voluntary Placements. The Department may accept voluntary custody of any Indian child based upon consent of the Indian parent or Indian custodian, but may not accept such consent unless:

(a) The child is more than ten days old;

(b) The voluntary consent is given in writing and recorded before a judge in the appropriate jurisdiction;

(c) The consent is accompanied by a judge's certificate which meets the requirements listed in section (2) of this rule; and

(d) The Department files a petition with the juvenile court pursuant to ORS 419B.100.

(2) Court Hearing on Consent. The caseworker must request a hearing in circuit court to obtain a voluntary consent. The caseworker must assure before the proceeding occurs that the court hearing will be recorded and that the written consent of the parent or Indian custodian is accompanied by a certificate signed by the judge ensuring that the terms and consequences of the consent were:

(a) Fully explained in detail and fully understood by the parent or Indian custodian; and

(b) Fully explained in English, or interpreted into a language understood by the parent or Indian custodian.

(3) Content of Consent Form. The consent form signed by a parent or Indian custodian who voluntarily agrees to placement must, at a minimum, contain:

(a) The name and birthdate of the Indian child;

(b) The name of the child's tribe;

(c) The child's enrollment number or other indication of the child's membership in the tribe;

(d) The name and address of the consenting parent or Indian custodian;

(e) The name and address of the prospective parents, if known, for substitute care placements; and

(f) The name and address of the person or Department through which placement was arranged, if any, for adoptive placement.

(4) Request for Anonymity. If a parent who has voluntarily given custody of his or her child to the Department requests anonymity, the caseworker must discuss the situation with the parent and describe the advantages of working cooperatively with the tribe. If the parent still evidences a desire for anonymity, the caseworker must contact the ICWA Manager who must:

(a) Contact the tribe to determine if a tribal system exists for keeping child custody matters confidential;

(b) Meet with the parent and caseworker to document the parent's reasons for requesting anonymity and to explain the Act's requirement for contacting the tribe in order to learn if there are tribal placement preferences and resources; and

(c) If a parent still request anonymity, the ICWA Manager or caseworker must tell the parent that the Department may not be able to guarantee that the request will be followed, but that it will be taken into consideration. The caseworker must then document the parent's request for anonymity and advise the court that such request must be provided when the child's adoption records are mailed to the Secretary of the Interior.

## (5) Voluntary Foster Care:

(a) Placement Preferences to Follow. Indian children who have voluntarily come into substitute care must be placed according to the preference priorities outlined in OAR 413-070-0220.

(b) Withdrawal of Consent. The parent or Indian custodian may withdraw consent either orally or in writing at any time. If consent is withdrawn no reason needs to be stated, no evidence needs to be produced, and no hearing needs be conducted. The caseworker must:

(A) Except as provided in subsection (c) of this rule, immediately return the child to the parent or Indian custodian; and

(B) Notify the court that consent has been withdrawn and the child has been returned to parental custody.

(c) Initiation of Protective Service Custody. If the caseworker believes that returning custody of the child to the parent or Indian custodian would place the child in imminent danger or harm, the following must occur:

(A) The caseworker immediately initiates further proceedings before the juvenile court and secures an order from the court authorizing the Department to retain custody of the child;

(B) Where court proceedings for protective custody are initiated and the child is not returned to a parent or Indian custodian upon withdrawal of consent, the caseworker notifies the child's tribe of this decision; and

(C) All rules regarding involuntary proceedings are followed.

(d) Changes in Placement Must Follow ICWA. Whenever an Indian child is removed from a foster care home or institution for the purpose of further foster care, pre-adoptive, or adoptive placement, such placement must be in accordance with the ICWA unless the child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

## (6) Voluntary Adoptive Placement:

(a) Voluntary Termination of Parental Rights or Relinquishment. If the parent of an Indian child wants to consent to the termination of parental rights, and free the child for adoption, the caseworker must:

(A) Arrange to have relinquishment documents signed which meet the requirements of sections (1), (2), and (3) of this rule; and

(B) Ensure that the relinquishment is fully understood by the parent and that it is not taken when the parent is under duress since the relinquishment and the adoption may be set aside if the court finds the relinquishment was obtained through fraud or duress.

(b) Placement Preferences to Follow. Placement preferences outlined in OAR 413-070-0220 must be followed in the voluntary adoptive placement of an Indian child.

(c) Withdrawal of Consent. A voluntary consent to termination of parental rights or to the adoption of an Indian child may be withdrawn for any reason at any time prior to the entry of the final decree of termination or adoption, as the case may be. No reason or evidence is needed. The placing agency, when notified, must return the child to the parent or Indian custodian as soon as practicable. Where no placing agency is involved, the court is responsible for notifying the family with whom the child has been

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placed that consent was withdrawn and the child must be returned to the parent or Indian custodian.

(d) Protective Service Custody. If the parent voluntarily withdraws consent to termination of parental rights, and the Department believes the child should not be returned to parental custody, the caseworker may initiate a protective service custody proceeding with the court in order for the Department to retain custody of the child.

(e) Disruption of Foster Care Placement. When a foster care placement is changed prior to a termination or relinquishment, the Department must notify the parent or Indian custodian and the tribe.

(f) Adoption Vacated or Set Aside. When a final decree of adoption has been vacated or set aside, or the adoptive parent has voluntarily consented to the termination or relinquishment of parental rights, Department staff must send a registered letter to the parent or Indian custodian stating the parent or Indian custodian may petition the court for return of the child. The tribe shall also be notified of such changes or disruptions in adoptive placements.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005, 419B.100  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 41-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 12-2015, f. & cert. ef. 7-17-15; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0250

### Invalidation of State Court Action

Any Indian child who is the subject of any action for foster care placement or termination of parental rights under state law, any parent or Indian custodian from whose custody such child was removed, and the Indian child's tribe may petition any court of competent jurisdiction to invalidate such action upon a showing that such action violated provisions of the Act.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0260

### Full Faith and Credit

The United States, every state, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to Indian tribes.

Stat. Auth.: ORS 418.005  
Stats. Implemented: ORS 418.005  
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0512

### Development and Review of the Permanency Plan and Concurrent Permanent Plan

(1) When developing the permanency plan and concurrent permanent plan, the caseworker must complete all of the following actions:

(a) Develop a permanency plan and a concurrent permanent plan for each child or young adult in the Department's custody within 60 days of the placement of the child or young adult into substitute care.

(b) Review the plan every 90 days, pursuant to OAR 413-040-0005 to 413-040-0032.

(c) Involve a team of individuals knowledgeable about the needs of the child or young adult in the development and ongoing assessment of the most appropriate permanency plan and concurrent permanent plan for the child or young adult. The team must include all of the following:

(A) The parents, unless a supervisor approves not including a specified parent because the contact may compromise the safety of a child or young adult or another individual; parental rights have been terminated; or the parent has signed a release and surrender agreement.

(B) The attorney of the parents, unless parental rights have been terminated or the parents have signed a release and surrender agreement.

(C) The child who has attained 14 years of age or young adult and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult as described in OAR 413-040-0010(3)(c).

(D) The CASA.

(E) The attorney of the child or young adult.

(F) A representative of the child's tribe, if the caseworker knows or there is reason to know the child is an Indian child pursuant to OAR 413-115-0060.

(G) A member of the RCWAC, if the child is a refugee child.

(H) The team may include any of the following:

(i) The child at any age, whenever developmentally appropriate.

(ii) The substitute caregiver of the child or young adult.

(iii) The substitute caregiver's certifier.

(iv) The relatives of the child or young adult.

(v) Persons with a caregiver relationship.

(vi) Other individuals with involvement in the life of the child or young adult.

(vii) Individuals with expertise in permanency.

(d) Use ongoing contacts with the individuals in subsection (c) of this section to:

(A) Monitor the progress toward achieving the permanency plan.

(B) Provide the child or young adult, and the parents of the child or young adult, the opportunity to identify available permanency resources should reunification not be achievable.

(C) Review the efforts to identify and place the child or young adult with a relative and to place siblings together.

(D) Consider the parents' acceptance of a plan other than reunification and their preference for continued contact with the child or young adult.

(E) Identify and consider which concurrent permanent plan best meets the current and lifelong safety, permanency, and well-being needs of the child or young adult in the following preferential order:

(i) Adoption.

(ii) Guardianship, which may be considered only when there are compelling reasons why adoption cannot be achieved.

(iii) Placement with a fit and willing relative, which may be considered only when there are compelling reasons why adoption or guardianship cannot be achieved.

(iv) If the child has reached the age of 16, Another Planned Permanency Living Arrangement, which may be considered only when there are compelling reasons why adoption, guardianship or placement with a fit and willing relative cannot be achieved.

(e) Determine the Department has taken action on the potential permanency resources identified by the child or young adult, the family of child or young adult, a member of the team of the child or young adult, or the Department.

(f) Determine which permanency plan best meets the safety, permanency, and well-being needs of the child or young adult and provides the child or young adult with support and connection in adulthood, and document the basis for the determination.

(g) Submit a recommendation to the permanency committee as required in OAR 413-070-0516.

(h) Obtain the approval of a legal assistance specialist before recommending a change of permanency plan to adoption.

(2) Participants in the development and review process must be informed of all of the following:

(a) The purpose of permanency and concurrent planning.

(b) The timelines under which the Department pursues permanency pursuant to federal and state law.

(c) The resources which may be available to relatives when adoption or guardianship is a permanency plan.

Stat. Auth.: ORS 418.005  
Stats Implemented: ORS 418.005

Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04; Renumbered from 413-070-0515 by CWP 27-2010, f. & cert. ef. 12-29-10; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0516

### Composition, Scheduling, Responsibilities, and Recommendations of the Permanency Committee

(1) A permanency committee is composed of the following individuals:

(a) Two individuals who have been appointed by a Child Welfare Program Manager to attend a permanency committee.

(A) A committee facilitator, who must be a Department staff member and who must ensure all of the following:

(i) The meeting is held according to the requirements of OAR chapter 413.

(ii) Individuals are informed of the responsibilities of the committee and the confidentiality of information presented during the meeting.

(iii) Committee recommendations are thoroughly and accurately documented.

(B) A second individual who may be either a community partner or another Department staff member.

(C) The individuals in this subsection must meet the following requirements:

(i) Be knowledgeable about permanency issues.

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(ii) Be knowledgeable of the importance of lifelong family attachment and cultural connections.

(iii) Have no current personal or professional relationship to the child or a potential placement resource or potential adoptive resource being considered.

(b) The following members of the child's team:

(A) The caseworker of the child or young adult;

(B) The attorney of the child or young adult;

(C) The CASA of the child or young adult;

(D) A representative of the child's tribe, if the caseworker knows or there is reason to know the child is an Indian child pursuant to OAR 413-115-0060; and

(E) A member of the RCWAC, if the child or young adult is a refugee child.

(2) The substitute caregiver of the child or young adult, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the permanency committee, may be invited to come and present information to the permanency committee, but is excused after presenting information and responding to questions.

(3) The Child Welfare Program Manager or designee responsible for making the decision on behalf of the Department attends the permanency committee and may ask clarifying questions, but does not participate in the deliberation and recommendation.

(4) The Department is responsible for scheduling and notifying the following individuals of the date, time, and location of the permanency committee:

(a) Appointed permanency committee members;

(b) The Child Welfare Program Manager or designee making a recommendation or decision on the issue before the permanency committee;

(c) Each member of the child's or young adult's team identified in subsection (1)(b) of this rule; and

(d) Any other individual invited to present specific information to the permanency committee.

(5) Each individual attending a permanency committee is bound by Oregon statutes regarding confidentiality and OAR 413-010-0010 to 413-010-0075.

(6) Consideration, review, and recommendation.

(a) The permanency committee must consider and review the information presented by any individual invited to the permanency committee, whether the information is presented in person, by phone, through other electronic communication, or in writing.

(b) The permanency committee may seek clarification of information presented, and may request additional information during the presentations.

(c) The permanency committee must consider the safety, permanency, and well-being needs of the child or young adult and, when there are siblings, the safety, permanency, and well-being needs of each sibling and make a recommendation regarding the issue brought before the committee to the Child Welfare Program Manager or designee as follows:

(A) When the caseworker recommends a change in permanency plan to guardianship, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-0660 and OAR 413-070-0665 subject to OAR 413-070-0518.

(B) When the caseworker recommends a change in permanency plan to placement with a fit and willing relative, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-1020 subject to OAR 413-070-0518.

(C) When a caseworker recommends a change in permanency plan to APPLA, the permanency committee provides a recommendation based upon the considerations in OAR 413-070-0550(1).

(D) When a caseworker considers the separation of siblings in adoption under OAR 413-110-0132, the permanency committee provides a recommendation based upon the considerations in OAR 413-110-0132(2).

(E) When the caseworker requests that a permanency committee review the relationship between a general applicant and a child whose permanency plan is adoption, the permanency committee provides a recommendation based upon the considerations in OAR 413-120-0750(6)(b).

(d) When members of the permanency committee have not come to consensus on a recommendation, the committee facilitator must document all recommendations and the basis provided by the permanency committee member for that recommendation.

(e) The committee facilitator must provide the written documentation of the permanency committee's recommendation or recommendations to the Child Welfare Program Manager or designee within three business days of the date on which the permanency committee was held.

(7) For the purpose of OAR 413-070-0514(4), a current caretaker or relative caregiver request for consideration as an adoptive resource, the following also apply:

(a) The permanency committee is composed of the individuals in sections (1) and (3) of this rule, and:

(A) The assigned certifier for the current caretaker or relative caregiver.

(B) The assigned adoption worker for the current caretaker or relative caregiver.

(b) The current caretaker or relative caregiver of the child or sibling group under consideration for adoption, or any other individual from the child's team who a caseworker, in consultation with the supervisor, believes can provide important input into the issue before the permanency committee, may be invited to present information to the permanency committee, but is excused after presenting information and responding to questions.

(c) The permanency committee must review the following:

(A) The safety, attachment, and well-being needs of the child or sibling group under consideration for adoption together and how the current caretaker or relative caregiver has met those needs to date;

(B) The current caretaker's or relative caregiver's history of meeting the standards of certification pursuant to OAR 413-200-0301 to 413-200-0396;

(C) Any child abuse and neglect reports made to the Department that were assigned for assessment, closed at screening, or documented in the Department's paper or electronic information system;

(D) Recommendations for continued contact with birth parents, birth family, or other significant persons for the child or sibling group under consideration for adoption; and

(E) Any other information pertinent to the evaluation of the ability of the current caretaker or relative caregiver to meet the lifelong safety, attachment, and well-being needs of the child or sibling group under consideration.

(d) The permanency committee must document and provide to the assigned adoption worker any specific information they determine must be explored in the adoption home study for the current caretaker or relative caregiver.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 23-2011, f. & cert. ef. 9-19-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 24-2016, f. 12-23-16, cert. ef. 1-1-17; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-0519

### Decision and Notice

(1) Except when a permanency committee is scheduled for the purpose of a current caretaker or relative caregiver request to be considered as a potential adoptive resource, the Child Welfare Program Manager or designee must:

(a) Consider the recommendations of the permanency committee;

(b) Make a decision within one business day following the receipt of the written recommendations of the permanency committee; and

(c) Provide written notification of the decision and the basis of the decision to the caseworker on a form approved by the Department.

(2) The caseworker must notify the following individuals of the decision under section (1) of this rule:

(a) Each child or young adult, when required by law and developmentally appropriate;

(b) The attorney of each child or young adult, if one has been appointed;

(c) The CASA of each child or young adult, if one has been appointed;

(d) An authorized tribal representative from each child's or young adult's tribe when the ICWA applies to the case, pursuant to OAR 413-115-0010 and 413-115-0050;

(e) The member of the RCWAC when a child or young adult is a refugee child; and

(f) The substitute caregiver of each child or young adult.

Stat. Auth.: ORS 418.005

Stats Implemented: ORS 418.005

Hist.: CWP 27-2010, f. & cert. ef. 12-29-10; CWP 3-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 23-2011, f. & cert. ef. 9-19-11; CWP 12-2015, f. & cert. ef. 7-17-15; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

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## 413-070-0625

### Identifying and Assessing the Child or Young Adult's Needs when Placement in Substitute Care is Required

(1) To select a substitute care placement that will meet the safety, permanency, and well-being needs of the child or young adult, the caseworker must:

(a) Involve the parent or guardian of the child or young adult and the child or young adult as developmentally appropriate in identifying substitute care placement resources whenever possible.

(b) Assess the ability of each potential substitute caregiver to provide safety for the child or young adult.

(c) Assess the potential substitute care placements in the order of preference under OAR 413-115-0090 when the ICWA applies to the case, or under OAR 413-070-0320, when the Refugee Child Welfare Act applies to the case (see ORS 418.925 to 418.945).

(d) Except as provided in subsection (c) of this section, assess the potential substitute care placements in the following order of preference:

(A) A relative of the child or young adult who can be certified by the Department.

(B) A person who has a caregiver relationship with the child or young adult and can be certified by the Department.

(C) A foster parent who is certified by the Department, or a provider who is approved through a licensed child-caring agency.

(e) Consider the use of a family meeting to seek the placement preferences of the family if more than one person requests to have the child or young adult placed with them; and

(f) Consider whether the potential substitute care placement:

(A) Has the ability to provide safety for the child or young adult and, when there are one or more siblings, each of the siblings;

(B) Is willing to cooperate with any restrictions placed on contact between the child or young adult and others;

(C) Has the ability to prevent anyone from influencing the child or young adult in regard to the allegations of the case;

(D) Has the ability to support the efforts of the Department to implement the permanent plan for the child or young adult;

(E) Has the ability to meet the physical, emotional, and educational needs of the child or young adult, including the need of the child or young adult to continue in the same school or educational placement; and

(F) Has the ability to support the interests of the child or young adult to participate in age-appropriate or developmentally appropriate activities, including extracurricular, enrichment, cultural, and social activities.

(g) Ensure that the substitute care placement is the most home-like, least restrictive available to meet the needs of the child or young adult.

(h) Assure that the race, color, or national origin of the child or young adult or substitute care placement is not a consideration when assessing a substitute care placement.

(2) When a child or young adult is placed in substitute care and has a sibling who is currently in or also needs substitute care, the caseworker must make diligent efforts to place siblings together unless placing the siblings together is not in the best interests of the child or young adult or the sibling of the child or young adult.

(3) Within one month of the placement of the child or young adult in a substitute care setting, the caseworker must reconsider whether the substitute caregiver is able to meet the requirements in subsection (1)(f) of this rule and assess whether the following placement considerations are met:

(a) The placement is in close proximity to the parents or guardians of the child or young adult;

(b) The placement is in close proximity to the community of the child or young adult;

(c) If in the best interests of the child and siblings as set forth in section (2) of this rule, the siblings are together in placement; and

(d) The culture and family identity of the child or young adult are supported by the placement.

(4) After consultation with the supervisor, when the caseworker determines the substitute care placement does not meet one or more of the placement considerations in subsection (1)(f) or section (3) of this rule, the caseworker must:

(a) Determine whether remaining in the substitute care placement is in the best interests of the child or young adult;

(b) Work with Department staff to secure another substitute care placement for the child or young adult when appropriate; and

(c) Document the basis for the determination and subsequent actions in the information system of the Department.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 419B.192

Hist.: CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, 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 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-070-1050

### Placement with a Fit and Willing Relative Permanency Plan Reviews

(1) The caseworker must review the placement with a fit and willing relative case plan at least every six months and the review must occur prior to a review by the court or citizen review board as required by ORS 419B.470 and 419A.106(1) respectively.

(a) The review must take place in a face-to-face meeting with the child or young adult, and may include members of the team of the child or young adult.

(A) When appropriate, the meeting may include a parent or guardian, unless the parent or guardian is not available for the review. When a parent or guardian is unavailable, the caseworker must document the reason the parent or guardian was unavailable and the efforts made to involve the parent or guardian.

(B) During the meeting the caseworker must consider input received from the child or young adult and, at the option of the child or young adult, up to two members of the case planning team who are chosen by the child or young adult as described in OAR 413-040-0010(3)(c), other participants in the meeting, and other information received from the child or young adult's service providers, substitute caregivers, attorney, court appointed special advocate, the Indian child's tribe if the child is an Indian child, persons with significant attachments to the child or young adult, and relatives.

(b) After the meeting described in subsection (a) of this section, the caseworker must document in the case record:

(A) Whether the current placement continues to be the least restrictive setting available to meet the safety and permanency needs of the child or young adult; or

(B) Whether a more permanent permanency plan, such as reunification, adoption, or guardianship is more appropriate for the child or young adult.

(2) When a placement with a fit and willing relative plan has been approved by the court as the permanency plan for a child or young adult in the legal custody of the Department, the Department must notify the court and request a review or permanency hearing:

(a) Not less frequently than once every 12 months while the child or young adult remains in substitute care in accordance with ORS 419B.470(2).

(b) Unless good cause is shown, at any time upon the request of the Department, a relative caregiver directly responsible for the care of the child or young adult, a parent of the child or young adult, an attorney for the child or young adult, a court appointed special advocate, a citizen review board, or a tribal court in accordance with ORS 419B.470(5).

(c) By the citizen review board no less frequently than every six months in accordance with ORS 419A.106(1)(a) unless the court has relieved the citizen review board of its responsibility to review a case in accordance with ORS 419A.106(1)(b).

(d) Within 90 days of a placement change that removes the child or young adult from the placement with the fit and willing relative.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: CWP 17-2015, f. 9-28-15, cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-080-0050

### Definitions

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 080:

(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) "Child in care" means a person under 21 years of age who is residing in or receiving care or services from a child-caring agency or proctor foster home subject to ORS 418.205 to 418.328, 418.470, 418.470 or 418.950 to 418.970.

(4) "Child-caring agency" is defined in ORS 418.205 and means a "child-caring agency" that is not owned, operated, or administered by a governmental agency or unit.

(5) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's

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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.

(6) "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.

(7) "Department" means the Department of Human Services, Child Welfare.

(7) "Face-to-face" means an in-person interaction between individuals.

(8) "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.

(9) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(10) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(11) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child 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.

(12) "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.

(13) "Monthly face-to-face contact" means in-person interaction between individuals at least once each and every full calendar month.

(14) "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.

(15) "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.

(16) "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.

(17) "Proctor foster home" means a foster home certified by a child-caring agency that is not subject to ORS 418.625 to 418.645.

(18) "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.

(19) "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.

(20) "Provider" means an employee of a child-caring agency approved to provide care for a child in care or a proctor foster parent.

(21) "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.

(22) "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.

(23) "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.

(24) "Screener" means a Department employee with training required to provide screening services.

(25) "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, har-

boring, 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.

(26) "Social service assistant" means a Department employee with training required to provide services to assist a caseworker on an open case.

(27) "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.

(28) "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; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16; CWP 11-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; CWP 23-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-100-0020

### Definitions

The following definitions apply to OAR 413-100-0000 to 413-100-0345:

(1) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996, excluding changes implemented by the Oregon Options Waiver.

(2) "Assistance unit" means a group of individuals whose needs, income, and resources are considered together to determine their public assistance eligibility and the grant amount.

(3) "Child" means a person under 18 years of age.

(4) "Child care institution" means a private child care institution, or a public child care institution which accommodates no more than 25 children, licensed by the state or tribe in which it is situated or approved by the agency of the state or tribal licensing authority (with respect to child care institutions on or near Indian reservations) responsible for licensing or approval of institutions of this type as meeting the standards established for such licensing or approval. "Child care institution" does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(5) "Child support" means any voluntary or court-ordered contribution by an absent parent. Support includes, but is not limited to, money payments, education, and necessary and proper shelter, food, clothing, and medical attention.

(6) "Constructive removal" means the non-physical, paper, or legal removal of a child who is not living with a specified relative when the voluntary custody or voluntary placement agreement is signed or the judicial order is entered. Constructive removal is described further in OAR 413-100-0135(3)(b).

(7) "Countable income" means the amount of available income, including earned and unearned income not specifically excluded by OAR 461-140-0040, used to determine eligibility for public assistance.

(8) "Date the child is considered to have entered foster care" means the earlier of the following:

(a) The date that the court found the child to be within the jurisdiction of the court under ORS 419B.100; or

(b) 60 days from the date of removal.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Earned income" means all legal reportable income resulting from an individual's employment or self-employment.

(11) "Eligibility month" means:

(a) The month in which the court was petitioned or court action was initiated that resulted in the child's "constructive" or "physical" removal from the home of his or her specified relative; or

(b) The month a voluntary custody or voluntary placement agreement is signed.

(12) "Family" means for purposes of determining Title IV-E foster care eligibility under these rules, the parent or parents, stepparent, or relative or relatives from whom the child is removed.

(13) "First cousin once-removed" means a child of a first cousin.

(14) "Foster care" means 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether

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adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(15) "Foster home", as defined in ORS 418.625(3), means any home maintained by a person who has under the care of the person in such home any child under the age of 21 years unattended by the child's parent or guardian, for the purpose of providing such child with care, food, and lodging. This definition does not include any foster home under the direct supervision of a private child caring agency or institution certified by the Department, any home under the direct supervision of a custodial parent for the purpose of providing respite care, or any developmental disability child foster home as defined in ORS 443.830.

(16) "Incapacity" means a physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the child and may be expected to last a period of at least 30 days.

(17) "Indian child" means any unmarried person who is under age 18 and either:

- (a) Is a member or citizen of an Indian tribe; or
- (b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(18) "Need" means, using the Department AFDC standards, the monetary amount by which an individual or family's requirements exceeds all of the income and resources available to the individual or family.

(19) "Nunc pro tunc order" means, under Oregon law, a court order that restores to the record an action that actually occurred, but was inadvertently or mistakenly omitted from the record.

(20) "Parent" means, under the AFDC rules in effect on July 16, 1996, the biological or legal (step or adoptive) mother or father of a person.

(a) If the mother lives with a male, who either she or he claims is the father of the child, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) The Voluntary Acknowledgment Form (HS 45-21, available from Vital Statistics) jointly signed by the mother and putative father, is a legal document that establishes paternity and allows the father's name to be added to the birth certificate.

(c) A stepparent relationship exists if:

(A) The person is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce or death.

(d) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a parent if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent, who is the adoptive parent, has given up care, control, and supervision of the child.

(21) "Payment or need standard" means the amount set by the Department as the AFDC net income limit. It is used to determine the actual grant amount. This amount refers to the payment or need standard in effect on July 16, 1996.

(22) "Physical removal" means the removal of a child that occurs when a child is placed in substitute care, who was living with the specified relative when the voluntary custody or voluntary placement agreement was signed or court proceedings were initiated.

(23) "Removal home" means the home from which the child was removed as a result of a judicial finding, voluntary custody agreement, or voluntary placement agreement. This term is further described at OAR 413-100-0135(3).

(24) "Resource" means any personal or real property that is or can be made available to meet the need of the assistance unit that the Department does not specifically exclude from consideration.

(25) "Specified relative" means:

(a) A parent as defined in this rule;

(b) Any blood relative or half-blood relative, including persons of preceding generations denoted by the prefixes of grand, great, or great-great (persons with one common biological parent are half-blood relatives);

(c) A sibling, aunt, uncle, nephew, niece, first cousin, and first cousin once-removed;

(d) A person who legally adopts a child or the child's parent, other legally adopted children of such persons, and any persons related to the child through the adoption who meet the degree of relationship specified in subsection (b) or (c) of this section;

(e) A stepmother, stepfather, stepbrother, or stepsister; or

(f) A spouse of anyone listed in subsections (b) to (e) of this section, even if the marriage is terminated by death or divorce.

(26) "Unearned income" means all income that does not directly result from an individual's employment or self-employment.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.010, 409.050, 418.005 & 418.625

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 418.625

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1998, f. 2-5-98, cert. ef. 2-6-98; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 1-2007(Temp), f. & cert. ef. 2-7-07 thru 8-6-07; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 11-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 21-2008, f. & cert. ef. 9-2-08; CWP 19-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-100-0240

### Judicial Finding Requirements for Title IV-E Eligibility

(1) Contrary to the Welfare or Best Interest Findings Requirement. If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement a child is not Title IV-E eligible for the duration of the substitute care episode, unless the first court ruling that addresses the removal includes a determination to the effect that continued residence in the home would be contrary to the welfare of the child or that placement would be in the best interest of the child.

(2) Reasonable Efforts Finding at Removal. If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement a child is not Title IV-E eligible for the duration of the substitute care episode, unless a judicial finding is made, no later than 60 days from the date the child was removed, to the effect that reasonable efforts have been made to prevent or eliminate the need for removal or that reasonable efforts are not required to prevent a child's removal from the home or to reunify the child and family.

(3) When a court determines that reasonable efforts to return the child home are not required, a permanency hearing is held within 30 days of that determination, unless the requirements of the permanency hearing were fulfilled at the court hearing in which the court determined that reasonable efforts to reunify the child and family are not required. Reasonable efforts to prevent a child's removal from the home or to reunify the child and family are not required when the Department obtains a judicial finding that such efforts are not required because one or more of the following subsections applies:

(a) The court has determined that the parent has subjected the child to aggravated circumstances;

(b) As described in ORS 419B.340, the court has determined that the parent has been convicted of:

(A) Murder of another child of the parent;

(B) Voluntary manslaughter of another child of the parent;

(C) Aiding or abetting, attempting, conspiring, or soliciting to commit an offense described in subparagraphs (A) or (B) of this subsection;

(D) A felony assault that results in serious bodily injury to the child or another child of the parent; or

(c) The parental rights of the parent with respect to a sibling have been terminated involuntarily.

(4) Annual Reasonable Efforts Finding.

(a) If the child's removal from the home was not the result of a voluntary placement or voluntary custody agreement unless a judicial finding is made, no later than 12 months from the date the child is considered to have entered foster care, to the effect that reasonable efforts have been made for reunification of the family or to achieve the permanency plan, the child is temporarily ineligible for Title IV-E foster care. The child remains temporarily ineligible for Title IV-E foster care until such a judicial finding is made.

(b) At least once every 12 months thereafter while the child or young adult is in foster care, unless a judicial determination of reasonable efforts to finalize a permanency plan is made, the child or young adult is temporarily ineligible for Title IV-E foster care. The date of the child or young adult's last judicial determination determines the date the next judicial determination is due. The child or young adult remains temporarily ineligible for Title IV-E foster care until such a judicial finding is made.

(5) Judicial orders concerning placements.

(a) If the court disagrees with the Department's placement recommendation, Title IV-E eligibility may continue if:

(A) The court heard the relevant testimony and will continue to work with all parties, including the Department, to make appropriate placement decisions; and

(B) The Department continues to have responsibility for the placement and care of the child or young adult.



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(b) If the court recommends a placement or names the child or young adult's placement in the court order as an endorsement or approval of the Department's placement choice the child or young adult's Title IV-E foster care eligibility is not affected.

(6) Nunc Pro Tunc Orders. The Department considers a nunc pro tunc order to correct the omission of a "best interest" or "reasonable efforts" finding only if a court transcript accompanies the order and verifies that the judicial determination was made at the original removal hearing.

(7) A court order that only references state or tribal law to substantiate judicial determinations is not acceptable, even if the law provides that a removal must be based on a judicial determination that remaining in the home would be contrary to the child's welfare or that removal may be ordered only after reasonable efforts have been made.

Stat. Auth.: ORS 409.010, 409.050, 418.005 & 419B.340

Stats. Implemented: ORS 409.010, 409.050, 418.005 & 419B.340

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 1-1997, f. 2-18-97, cert. ef. 3-1-97; SOSCF 20-2000(Temp), f. & cert. ef. 8-11-00 thru 2-6-01; SOSCF 4-2001, f. & cert. ef. 2-7-01; SOSCF 44-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 30-2003(Temp), f. & cert. ef. 9-2-03 thru 2-28-04; CWP 2-2004, f. & cert. ef. 2-10-04; CWP 14-2007, f. & cert. ef. 8-1-07; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 13-2011, f. & cert. ef. 6-30-11; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-110-0000

### Definitions

The following definitions apply to OAR chapter 413, division 110.

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "Appropriateness of adoption" means the determination that a child can be successfully freed, placed, and maintained in an adoptive placement and that adoption is in the best interest of the child.

(3) "Approved family" means a family that has been selected for a child in accordance with OAR 413-120-0010 to 413-120-0060.

(4) "Birth parent" means the woman or man who holds a legally recognized parental relationship to the child.

(5) "Child" means a person under 18 years of age.

(6) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.

(7) "Compelling reason" means a reason meeting specific criteria and documented in the case plan by the local Department staff for not to file a petition to terminate parental rights of the parents of a child where the Department would otherwise be required to do so under state and federal law.

(8) "Date child entered substitute care": Oregon statute and federal law use the date the child is found to be within the jurisdiction of the court under ORS 419B.100 or 60 days from date of removal, whichever is earlier. The Department uses the date of the child's initial substitute care placement for calculating Citizens Review Board reviews, court, or permanency hearings intervals.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(11) "Legal risk placement" means a placement that occurs when the Department believes that an adoption is in the best interests of the child; that the child is placed in an approved adoptive home; and the agency intends to approve this placement for adoption if the child becomes legally free for adoption.

(12) "Local Office Permanency/Adoption Committee" means the branch committee responsible for certain permanency and adoptions decisions, as specified in these rules. Members are selected by the local office from among the staff of the Department's field offices. The members must not be involved in the case to be heard.

(13) "Permanency/Adoption Council" (Council) means a council consisting of field management staff, permanency and adoption staff, and community partners from several districts, except that the Council in District 2 consists only of representatives from Multnomah County. A Council makes decisions for children whose county of jurisdiction is within their geographic area about appropriateness of adoption as a permanency plan, sibling planning, recruitment, adoption disruptions, and adoption selections

referred by the local office. It also may provide permanency staffings to decide whether to place a child with an out-of-state relative resource prior to receipt by the Department of an approved adoption home study.

(14) "Permanency/Adoption Council Committee" (Committee) means a committee established by the Permanency/Adoption Council that is responsible for decisions regarding adoptive placement selections that are not the responsibility of the local office or the Department's Adoption Services Unit. The district manager or designee responsible for the local office may delegate a decision to the Committee. Each Committee must include at least three members not involved in the case to be heard by the Committee. There are two types:

(a) An ad-hoc committee selected by the child's worker. This committee consists of three people drawn from a pool of qualified permanency and adoption staff designated by the Council.

(b) The Standing Permanency/Adoption Committee. This committee is a standing committee of three persons appointed by the Council or the Council chair. Responsibilities of this committee include making decisions, such as those relating to sibling placement planning or current caretaker placement decisions, delegated by the Local Office Permanency/Adoption Committee to the Council.

(15) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(16) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(17) "Relative" has the same meaning as in OAR 413-070-0000.

(18) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(19) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 18-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 44-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 24-2015, f. & cert. ef. 10-26-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-110-0300

### Purpose

The purpose of OAR 413-110-0300 to 413-110-0360 is to establish the Department's policies for determining whether adoption is an appropriate plan for a child. In the case of an Indian child, the Department follows OAR chapter 413, division 115.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 11-2000, f. & cert. ef. 4-28-00; CWP 47-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 24-2015, f. & cert. ef. 10-26-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0000

### Definitions

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 120:

(1) "Adoption" means a legal or administrative process that establishes a permanent legal parent-child relationship between a child and an adult who is not already the child's legal parent and terminates the legal parent-child relationship between the adopted child and any former parent.

(2) "Adoption agency" means an organization providing the services under any one of the following subsections:

(a) Identifying a child for adoption and arranging an adoption.

(b) Securing the necessary consent to relinquishment of parental rights and to adoption.

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.

(d) Making determinations of the best interests of a child and the appropriateness of adoption placement for a child.

(e) Monitoring a case after placement until final adoption.

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(f) When necessary because of disruption before final adoption, assuming custody and providing child care or other social services for a child pending an alternative placement.

(3) "Adoption committee" means a group of individuals convened by Department staff to make recommendations to an Adoption Decision Specialist (ADS) regarding adoptive resources for a child.

(4) "Adoption decree" means a decree which a court issues, pursuant to a petition for adoption, setting forth the facts of the case and ordering that from the date of the decree the child, to all legal intents and purpose, is the child of the petitioner.

(5) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(6) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for the child.

(7) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(8) "Adoption transition" means activities related to the placement of a child or sibling group under consideration in the home of the family selected as the adoptive resource.

(9) "ADS" means an Adoption Decision Specialist, who is a Department employee appointed by the Adoption Program Manager to attend an adoption committee and make an adoption placement selection for a child.

(10) "Authorized designee" means a Department employee who is designated and authorized by the Department to receive and process criminal records check request forms from subject individuals, receive criminal records information from the Background Check Unit, and make fitness determinations as described in these rules.

(11) "Battery" means the use of physical force to injure, damage, or abuse or to cause offensive physical contact.

(12) "Birth Relatives" means birth parents, grandparents, siblings and other members of the child's birth family, pursuant to ORS 109.305.

(13) "Central authority" means the entity designated as such by a Convention country that is authorized to discharge the duties imposed on Convention countries.

(14) "Central authority functions" means any duty required to be carried out by a central authority or foreign authorized entity under the Convention.

(15) "Certified family" means an individual or individuals who hold a Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(16) "Child" means a person under 18 years of age.

(17) "Child welfare mediator" means a neutral third party who meets or exceeds Department qualifications to provide mediation services for mediation participants in the cooperative adoption mediation process, and has a legal assistance mediation contract with the Department.

(18) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency committee or adoption committee meeting.

(19) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(20) "Consent to the Adoption": The "Consent to the Adoption" documents that the adoptive parents have been investigated and approved by the Department and gives permission for the adoption.

(21) "Contested case hearing" means a hearing conducted under ORS chapter 183 and applicable administrative rules.

(22) "Convention" means the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoptions, concluded at The Hague, the Netherlands, on May 29, 1993, which went into effect in the United States on April 1, 2008.

(23) "Convention adoption" means an adoption of a child who is a habitual resident in a Convention country by an individual in another

Convention country when the child has been, is being, or will be moved between the two Convention countries for the purpose of adoption.

(24) "Convention country" means a country that is a party to the Convention.

(25) "Cooperative adoption mediation" or "Mediation" means a process in which a trained neutral third party assists parties in voluntarily reaching mutually acceptable resolution of issues, as well as assisting the parties in establishing relationships built on mutual trust and respect. Throughout these rules, "cooperative adoption mediation" will be referred to as "mediation".

(26) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the care and custody of the Department and has a permanency plan or concurrent permanent plan of adoption; and

(b) Has cared for the child or at least one sibling of the child for at least the past 12 consecutive months or for one-half of the child's or sibling's life if the child or sibling is younger than two years of age.

(27) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information obtained from other sources.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information sources located in, or regarding, a state or jurisdiction outside Oregon.

(28) "Department" means the Department of Human Services, Child Welfare.

(29) "Disruption" means an approval by the Child Permanency Program Manager to end an adoption process after adoption placement selection but before the adoption is legally finalized.

(30) "Fitness determination" means the decision made by an authorized designee, with regard to information obtained through a criminal records check, to either approve or deny a subject individual under these rules. A subject individual who is approved following a criminal records based "fitness determination" may still be denied approval to be a relative caregiver, foster parent, adoptive resource or another person in the household if the subject individual does not meet other requirements contained in Department rules governing relative care, foster care, and adoption.

(31) "Foreign authorized entity" means a foreign central authority or an accredited entity authorized by the foreign country to perform central authority functions in Convention adoption cases.

(32) "Foster parent" means an individual 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.

(33) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(34) "Hague adoption certificate" means a certificate issued by the Secretary of State in an outgoing Convention adoption certifying that the child has been adopted in the United States in conformity with the Convention and IAA.

(35) "Hague custody declaration" means a declaration issued by the Secretary of State in an outgoing Convention adoption declaring that custody of the child for purposes of adoption has been granted in the United States in conformity with the Convention and IAA.

(36) "Home Study" means a written evaluation of the prospective adoptive parent's suitability to adopt and parent a child who may be placed for adoption. The "home study" is completed prior to the filing of a petition to adopt, in accordance with the Department's reporting format and standards, and states whether or not the prospective adoptive parents meet the minimum standards for adoptive homes as set forth in OAR 413-120-0190 to 413-120-0246.

(37) "IAA" means the Intercountry Adoption Act of 2000, Public Law 106-279, 42 USC 14901 to 14954.

(38) "ICPC" means the Interstate Compact on the Placement of Children (see ORS 417.200).

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(39) "ICWA" or "the Act" means the Indian Child Welfare Act of 1978, 25 U.S.C. §§1901-63.

(40) "Incoming Convention adoption" means a case in which a child who is a resident of another Convention country has been, is being, or will be moved to the United States for placement and adoption.

(41) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(42) "Legal Assistance Mediation Program" means, for the purpose of these rules, services contracted through the Department Legal Assistance program to assist the birth family and the identified adoptive family to participate in a cooperative adoption process that may result in a Post Adoption Communication Agreement (PACA).

(43) "Legal Assistance Referral" means an attorney-client privileged document used to prepare the termination of parental rights petition and or trial preparation work.

(44) "Legal assistance specialist (LAS)" means a central office Department staff who provides a vital link in the execution of the technical and legal processes of the alternative permanent plans for children whose best interests are not served by returning to their families of origin.

(45) "Legalization" means the process of giving an adoptive placement legal validity.

(46) "Mediation communications" means, as defined in ORS 36.110(8):

(a) All communications that are made, in the course of or in connection with a mediation, to a mediator, a mediation program or a party to, or any other person present at, the mediation proceedings; and

(b) All memoranda, work products, documents and other materials, including any draft mediation agreement, that are prepared for or submitted in the course of or in connection with a mediation or by a mediator, a mediation program or a party to, or any other person present at, mediation proceedings.

(47) "Mediation participants" means persons who will be working directly with the mediator in the cooperative adoption mediation process and who will be responsible for the creation and implementation of any PACA that results.

(48) "OSP" means the Oregon State Police.

(49) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. "Other criminal records information" includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a subject individual, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(50) "Other person in the household" means any individual described in one or more of the following subsections:

(a) An individual 18 years of age or older, who is not in the care and custody of the Department pursuant to ORS 418.015, who is living in the home of:

(A) An applicant to adopt a child in the custody of the Department as described in OAR 413-120-0190 to 413-120-0246; or

(B) An applicant to be a foster parent, relative caregiver, or adoptive resource as described in OAR 413-200-0301 to 413-200-0396.

(b) A respite care provider.

(c) A person who volunteers or is employed by a foster parent or relative caregiver to assist with the care of the children placed in the home.

(d) Any of the following individuals if there is reason to believe the individual may pose a risk to children placed in the home: A member of the household under 18 years of age, a babysitter, or a person who frequents the home.

(51) "Outgoing Convention adoption" means a case in which a child in the United States has been, is being, or will be moved to another Convention country for placement and adoption.

(52) "Parties" means those participants whose signatures are necessary for the PACA to be implemented and are subject to enforcement of ORS 109.305.

(53) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or

a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(54) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other individuals who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(55) "Petition for Adoption" means a petition, filed in circuit court by any person, for leave to adopt another person.

(56) "Placement Report" means a comprehensive written report and recommendation to the court prepared after the filing of a petition and after the child is placed for the purpose of adoption. The report is completed in accordance with the Department's prescribed reporting format and includes information about the child's background and placement; medical and genetic history; birth parents' history; status and adjustment of the child in the adoptive home; and status and adjustment of the child's prospective adoptive parents.

(57) "Post-adoption communication" means the manner and frequency of contact and communication between the birth family and the child and/or the birth family and the adoptive family.

(58) "Post Adoption Communication Agreement (PACA)" means a written agreement for post-adoptive communication, signed by birth parents and adoptive parents and is based on an informed decision-making process by the mediation participants. The content of the agreement is based on the best interest of the child.

(59) "Post-placement supervision" means the supervision of a child following placement with an adoptive resource.

(60) "Prospective adoptive parents" means the parents, family members, or other people who reside in the residence, or the physical home location of the family, who have been studied and approved by a foreign authorized entity to adopt a child in the legal and physical custody of the Department and with whom the Department has made an official decision to place the child in the family home for the purpose of adoption.

(61) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(62) "Receiving Convention country" means a Convention country in which a child who is the subject of an outgoing adoption will be placed for the purpose of adoption.

(63) "Refugee child" has the meaning given that term under ORS 418.925.

(64) "Relative" means any of the following:

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great. Individuals with one common biological parent are half-blood relatives.

(C) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(D) A spouse of anyone listed in paragraphs (A) to (C) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(B) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(C) An individual defined as a relative of a refugee child or young adult under OAR 413-070-0300 to 413-070-0380.

(D) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(E) A registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or

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young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(F) The adoptive parent or an individual who has been designated as the adoptive resource of a sibling of the child or young adult.

(G) An unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (C) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (A) to (C) of subsection (a) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(65) "Relative caregiver" means an individual 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.

(66) "Respite care" means a formal planned arrangement to relieve a certified family's responsibilities by an individual temporarily assuming responsibility for the care and supervision of a child or young adult in the home of the respite provider or certified family. "Respite care" must be less than 14 consecutive days.

(67) "Secretary of State" means the Secretary of the United States Department of State, the central authority for the United States.

(68) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(69) "Subject individual" means an individual who:

(a) Applies to adopt a child in the custody of the Department as described in OAR 413-120-0190 to 413-120-0246;

(b) Applies to be a foster parent, relative caregiver, or adoptive resource as described in OAR 413-200-0301 to 413-200-0396; or

(c) Is an other person in the household.

(70) "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.

(71) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(72) "U.S. State Department" means the United States Department of State.

(73) "Violence" means the use of physical force to injure, damage, or abuse.

(74) "Weighing test" means the process in which an authorized designee considers available information to make a fitness determination when a subject individual has potentially disqualifying convictions, arrests, or conditions.

(75) "Young adult" means an individual aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 8-2016, f. & cert. ef. 6-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0020

### Adoption Placement Selection Options

When a child or sibling group has a permanency plan of adoption, the Department uses one of the three options below to make an adoption placement selection:

(1) Selection by Caseworker. After considering the input from the child's team and following consultation with the supervisor, the caseworker may make the adoption placement selection for a child or sibling group using the process in OAR 413-120-0021 when the requirements of at least one of the following is met:

(a) Pursuant to OAR 413-115-0090(3), if the child being considered for adoption alone or as part of a sibling group is an Indian child, and there is a single potential adoptive resource who:

(A) Has been identified as the placement preference through tribal resolution;

(B) Complies with the placement preference order prescribed by the ICWA and OAR 413-115-0090(3)(c); or

(C) Has been identified as the placement preference by the court through a good cause order as required by the ICWA and OAR 413-115-0090(3)(c).

(b) The child is identified as a refugee child and the adoption placement selection complies with OAR 413-070-0300 to 413-070-0380.

(c) A relative of the child or sibling group is being considered alone as the potential adoptive resource unless subsections (c), (d), or (e) of section (3) of this rule apply. Prior to making a selection, ensure the Department has conducted a diligent search and there is no other identified relative who has expressed an interest in, or who is being assessed as a potential adoptive resource and there is no current caretaker who has expressed an interest in, or who is being assessed, as a potential adoptive resource.

(d) A current caretaker of the child or sibling group is being considered alone as a potential adoptive resource unless subsection (c), (d), or (e) of section (3) of this rule applies. Prior to making a selection, ensure the Department has conducted a diligent search and there is no relative who has expressed an interest in, or who is being assessed as, a potential adoptive resource, and there is no other current caretaker who has expressed an interest, or who is being assessed, as a potential adoptive resource.

(e) The child is under six years of age with no extraordinary needs and each potential adoptive resource is a general applicant, unless subsection (d) of section (2) of this rule or subsection (c), (d), or (e) of section (3) of this rule applies. Prior to making a selection, ensure the Department has conducted a diligent search and there is no relative who has expressed an interest in, or who is being assessed as, a potential adoptive resource, and there is no current caretaker who has expressed an interest, or who is being assessed, as a potential adoptive resource.

(2) Local Adoption Committee and ADS. The local adoption committee recommends an adoptive resource and the ADS makes the adoption placement selection when section (3) of this rule does not apply and at least one of the following applies:

(a) The child is six years of age or older.

(b) The child has extraordinary needs.

(c) A sibling group is being placed together for the purpose of adoption and each potential adoptive resource is a general applicant.

(d) The identified potential adoptive resources include the child's current foster parent, who is not a current caretaker, being considered as a general applicant with other general applicants.

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(3) Central Office Adoption Committee and ADS. The central office adoption committee recommends an adoptive resource, and the ADS makes the adoption placement selection when one of the following applies:

(a) The potential adoptive resources include:

(A) More than one relative as defined in OAR 413-120-0000(64)(a)-(c);

(B) A relative as defined in OAR 413-120-0000(64)(a)-(d) and a current caretaker; or

(C) A relative, as defined in OAR 413-120-0000(64)(d) for whom an exception to the order of preference has been granted under OAR 413-120-0760.

(b) The potential adoptive resources include more than one current caretaker being considered for siblings who will be placed together in adoption.

(c) A DHS staff member is a potential adoptive resource, and the requirements of the DHS-060-002, "Conflict of Interest Policy" and the "Conflict of Interest Policy Addendum for CAF Employees" apply.

(d) A non-DHS staff member with a potential conflict of interest with the Department is a potential adoptive resource.

(e) The potential adoptive resource is an individual living outside of the United States.

(4) The caseworker, following consultation with the supervisor, may request that the adoption placement selection be made by an ADS following an adoption committee recommendation based on the complexities or dynamics of a case. The request must be approved by:

(a) The Child Welfare Program Manager or designee for the use of a local adoption committee rather than a caseworker selection; or

(b) The Child Permanency Program Manager, Assistant Child Permanency Program Manager, or designee for the use of a central office adoption committee rather than a local adoption committee.

[ED. NOTE: Policies referenced are available from the agency.]  
Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 2-2007(Temp), f. & cert. ef. 2-26-07 thru 8-24-07; CWP 13-2007, f. & cert. ef. 8-1-07; Administrative correction 9-16-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 19-2011, f. & cert. ef. 9-19-11; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0021

### Adoption Placement Selection by Caseworker

(1) Before making an adoption placement selection, the child's caseworker must comply with the provisions of OAR 413-120-0700 to 413-120-0760.

(2) When the caseworker, after considering the input from the child's team and following consultation with the supervisor, has identified the potential adoptive resources to be considered for adoption placement selection, the caseworker must consult with the adoption worker for each of the identified families to:

(a) Provide the adoption worker with written information, redacted to remove identifying information, about the history and needs of each child under consideration for adoption; and

(b) Discuss the ability of the potential adoptive resource to meet the needs of each child under consideration for adoption.

(3) The adoption workers must complete all of the following:

(a) Provide the identified potential adoptive resources with the information described in subsection (2)(a) of this rule.

(b) Describe the adoption placement selection process to the potential adoptive resources to:

(A) Inform them of the individuals who will be reviewing their adoption home study or other information during the adoption placement selection process; and

(B) Assure all appropriate releases of information described in OAR 413-120-0016(1) and (2) have been obtained.

(c) Confirm with the caseworker for each child who is under consideration that the potential adoptive resource is willing and available to be considered for adoption.

(4) When the caseworker has been informed that the identified potential adoptive resources are available and appropriate to be considered, the caseworker must set a date for the adoption placement selection and notify the adoption worker for each of the identified potential adoptive resources.

(5) At least ten business days before the adoption placement selection, the caseworker must complete all of the following:

(a) Notify the following individuals of the potential adoptive resources to be considered and the date the adoption placement selection will occur:

(A) The CASA;

(B) The child's attorney;

(C) An authorized representative of the child's tribe, if the child is an Indian child; and

(D) A member of the RCWAC, if the child is a refugee child.

(b) Ensure that the individuals identified in subsection (a) of this section are sent copies of the adoption home study and any additional written information released under OAR 413-120-0016 for each potential adoptive resource, unless the individual has notified the caseworker that they do not want a copy of the materials.

(c) Notify the individuals identified in subsection (a) of this section that any input regarding the ability of a potential adoptive resource to meet the current and lifelong needs of the child or sibling group must be received at least two days before the date of the adoption placement selection to assure it will be considered.

(6) When the caseworker has provided the notifications in section (5) of this rule, an adoption selection date has been scheduled by the caseworker or committee, and a child's relative or current caretaker now expresses interest in being considered as a potential adoptive resource, the Child Welfare Program Manager must:

(a) If the newly expressed interest is from a relative, review the diligent efforts to identify a child's relatives required under OAR 413-070-0060 to 413-070-0063;

(b) If the newly expressed interest is from a current caretaker, review the efforts to determine if the current caretaker was given adequate and reasonable time to request consideration as the potential adoptive resource;

(c) Consider the impact of a delay in achieving permanency on the best interests of the child; and

(d) Make a determination whether it is in the best interest of the child for an adoption home study to be conducted with a relative or current caretaker despite the delay in achieving permanency.

(7) The Child Welfare Program Manager in consultation with the Child Permanency Program Manager makes the determination whether to consider a relative or current caretaker under section (6) of this rule.

(8) When a Child Welfare Program Manager informs the caseworker of the determination to consider a relative or current caretaker identified under section (6) of this rule, the caseworker must notify each individual in subsection (5)(a) of this rule and the adoption worker for each identified potential adoptive resource that the adoption selection process has been suspended.

(9) When the adoption selection process has been suspended, the adoption workers must notify each identified potential adoptive resource that the adoption selection process has been suspended.

(10) The timelines in this rule may be changed when the caseworker, the adoption worker for each of the identified potential adoptive resources, and each individual in section (5) of this rule agree on a new timeline.

(11) After considering the input from individuals in section (5) of this rule, the caseworker, following consultation with his or her supervisor, makes the adoption placement selection for a child or sibling group under consideration for adoption when OAR 413-120-0020(1) applies.

(12) On the day that the selection is made, the child's caseworker must notify the adoption workers for each of the identified potential adoptive resources who were considered for the adoption placement selection.

(13) By the end of the next business day following the adoption placement selection, the child's caseworker must send written notification of the adoption placement selection to each of the following individuals:

(a) The CASA;

(b) The child's attorney;

(c) An authorized representative of the child's tribe, if the child is an Indian child; and

(d) A member of the RCWAC, if the child is a refugee child.

(14) By the end of the next business day following the adoption placement selection, written notification on a form approved by the Department must be sent to each identified potential adoptive resource of whether they were selected as the adoptive resource by the following individuals:

(a) A Department adoption worker; or

(b) The child's caseworker when the adoption worker is a private agency employee.

(15) Notifications in sections (12) and (13) of this rule must contain information on the Department's review process as described in OAR 413-120-0060, unless the identified potential adoptive resources were all general applicants.

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(16) Within three days of the adoption placement selection, the caseworker must assure that:

(a) The adoption placement selection and the basis for that selection are documented on a Department-approved form; and

(b) The central office Adoption Program is notified of the adoption placement selection.

(17) Any individual who received a copy of an adoption home study or other written documents during the adoption selection process must return the materials to the Department within seven business days of the notice of the adoption placement selection.

Stat. Auth.: ORS 409.050, 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.280, 418.285, 419B.192

Hist.: CWP 31-2010, f. & cert. ef. 12-29-10; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 19-2011, f. & cert. ef. 9-19-11; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0025

### Composition of an Adoption Committee

(1) An adoption committee must be composed of the following individuals:

(a) The caseworker of each child for whom adoption placement selection is being made;

(b) Three individuals appointed by the Child Welfare Program Manager or designee for a local adoption committee, and by the Child Permanency Program Manager, Assistant Child Permanency Program Manager, or designee for a central office adoption committee:

(A) The committee facilitator, who must be a Department staff person; and

(B) Two other individuals, who may be a community partner or a Department staff person.

(2) In addition to the committee members identified in section (1), the following individuals for each child for whom adoption placement selection is being made must be notified of the adoption committee and may be adoption committee members, if they so choose, under OAR 413-120-0053(1):

(a) The CASA;

(b) The child's attorney;

(c) An authorized representative from the child's tribe, if the child is an Indian child; and

(d) A member of the RCWAC, if the child is a refugee child.

(3) The adoption worker for each identified potential adoptive resource must attend the full adoption committee.

(4) With the approval of the committee facilitator, the following individuals may attend the adoption committee:

(a) The supervisor for an individual identified in section (1), (2), or (3) of this rule;

(b) Department staff who may have information about the child or sibling group under consideration for adoption or the potential adoptive resources being considered; and

(c) Department staff, for training or observation purposes.

(5) Committee members appointed under subsection (1)(b) of this rule must meet the following requirements:

(a) Be knowledgeable of adoption and permanency issues;

(b) Be knowledgeable of the importance of lifelong family and cultural connections;

(c) Be knowledgeable of the importance of attachment and emotional ties to caregivers; and

(d) Have no personal or current professional relationship to any of the children for whom adoption placement selection is being made or to the potential adoptive resources being considered.

(6) The committee facilitator appointed under paragraph (1)(b)(A) of this rule must comply with all of the following subsections:

(a) Hold the meeting in accordance with the requirements of Chapter 413 of the Oregon Administrative Rules;

(b) Inform each individual who is present of the responsibilities of the committee;

(c) Have each individual who is present sign a confidentiality agreement for the proceedings of the adoption committee meeting;

(d) Ensure the individuals who are invited to attend and present information to the committee as described in OAR 413-120-0035(5) are:

(A) Allowed to present information appropriate for consideration for each child for whom adoption placement selection is being made; and

(B) Excused in a timely manner.

(e) Give the committee recommendations to the ADS at the end of the adoption committee meeting.

(7) The ADS:

(a) Is appointed by the Child Permanency Program Manager or designee and must:

(A) Have significant expertise in the areas of adoption and permanency issues;

(B) Have experience with adoption placement planning;

(C) Be knowledgeable of the importance of lifelong family and cultural connections;

(D) Be knowledgeable of the importance of attachment and emotional ties to caregivers; and

(E) Have no personal or current professional relationship to the child, sibling group under consideration for adoption, or the potential adoptive resources being considered.

(b) Must attend the adoption committee and may ask clarifying questions, but does not participate in the deliberations or recommendations of the adoption committee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285, 419B.192

Hist.: CWP 31-2010, f. & cert. ef. 12-29-10; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 8-2016, f. & cert. ef. 6-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0057

### Adoption Placement Selection, Notification, and Documentation

(1) Adoption Placement Selection.

(a) The ADS must make a decision regarding the adoption placement selection no later than the end of the next business day following the scheduled adoption committee.

(b) The ADS may make one of the following adoption placement selection decisions from the identified potential adoptive resources presented at the adoption committee:

(A) Select one adoptive resource.

(B) Select an adoptive resource and identify a second adoptive resource as an alternate in the event that the selected adoptive resource is subsequently found to be unavailable or no longer deemed by the Department to meet the current and lifelong needs of the child under OAR 413-120-0800 to 413-120-0880.

(C) Select none of the potential adoptive resources.

(2) Notification of the Adoption Placement Selection.

(a) The ADS must send written notification to the child's caseworker, the adoption workers, and the committee facilitator of the adoption placement selection, and alternate if one was named, no later than the end of the next business day following the scheduled adoption committee.

(b) By the end of the next business day following the notice sent in subsection (a) of this section, written notification on a form approved by the Department must be sent as follows:

(A) Each potential adoptive resource who was presented at the adoption committee must be notified by the following individuals of whether they were selected:

(i) A Department adoption worker; or

(ii) The child's caseworker when the adoption worker is not a Department employee.

(B) The child's attorney, CASA, an authorized representative from the child's tribe, if the child is an Indian child, a member of the RCWAC, and the private adoption agency representing a potential adoptive resource, as applicable, must be notified of the adoption placement selection by the child's caseworker.

(C) Notices in paragraphs (A) and (B) of this subsection must contain information on the Department's review process as described in OAR 413-120-0060, except when the potential adoptive resources were all general applicants.

(3) The ADS must send written documentation on a form approved by the Department regarding the adoption placement selection, the alternate when one is named, and the basis for those decisions to the central office Adoption Program within two business days following the adoption committee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0060

### Review of the Adoption Placement Selection

(1) A review may not be requested of an adoption placement selection when each potential adoptive resource was a general applicant.

(2) Except as provided in section (1) of this rule:

(a) Each of the following individuals may request a review of the process and the adoption placement selection under OAR 413-120-0021(10) or 413-120-0057(1):

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- (A) The child.
- (B) The child's attorney.
- (C) The CASA.
- (D) An authorized representative from the child's tribe, if the child is an Indian child.
- (E) A member of the RCWAC.
- (F) The child's caseworker, with the approval of the caseworker's supervisor and the Child Welfare Program Manager or designee.
- (G) A relative or current caretaker who was considered as the adoptive resource but was not selected.

(b) A request for review of the process and decision made in the adoption placement selection must be in writing and received by the Child Permanency Program Manager or designee within seven calendar days of the notification of the adoption placement selection under OAR 413-120-0021(12)-(13) or OAR 413-120-0057(2)(b).

(c) When a request for review has been received, the Child Permanency Program Manager, Assistant Child Permanency Program Manager, or designee must notify the Director of Child Welfare or designee and must send written notice of the request to the following individuals:

- (A) Each of the potential adoptive resources considered by the caseworker or adoption committee and ADS;
- (B) The child's caseworker;
- (C) The adoption worker for each of the potential adoptive resources considered;
- (D) The supervisors of the workers;
- (E) The child's attorney;
- (F) The child's CASA;
- (G) An authorized representative from the child's tribe, if the child is an Indian child;
- (H) A member of the RCWAC, if the child is a refugee child; and
- (I) The local Child Welfare Program Manager.

(d) The Director of Child Welfare or designee must decide whether to grant a review of the adoption placement selection within 14 calendar days after the notice of the adoption placement selection under OAR 413-120-0021(12)-(13) or OAR 413-120-0057(2)(b). Written notice of the decision whether or not to conduct a review must be sent to the individuals listed in subsection (c) of this section and to the Child Permanency Program Manager. This written notice is not required to be provided within the 14 calendar day timeline for the decision whether to grant a review.

(e) The Director of Child Welfare or designee may, on his or her initiative and without a request for a review, give notice of intent to review the adoption placement selection when the decision to review is made within seven calendar days following the date of the notice of the adoption placement selection in OAR 413-120-0021(12)-(13) or OAR 413-120-0057(2)(b).

(f) The Director of Child Welfare or designee may conduct the review by any of the following methods:

(A) Personally conduct a review of information considered in making the adoption placement selection and may consider additional, relevant information about the child or potential adoptive resource.

(B) Refer the adoption placement selection to a review committee appointed by and at the discretion of the Director of Child Welfare or designee to:

- (i) Review the information considered in making the original adoption placement selection;
- (ii) Consider additional relevant information about the child or potential adoptive resources; and
- (iii) Issue a recommendation that the Director of Child Welfare or designee affirm or modify the original adoption placement selection of the caseworker or the ADS or recommend a different adoption placement selection.

(C) Appoint another individual to:

- (i) Review the information considered in making the original adoption placement selection;
- (ii) Consider additional relevant information about the child or potential adoptive resources; and
- (iii) Issue a recommendation that the Director of Child Welfare or designee affirm or modify the original adoption placement selection of the caseworker or the ADS, or recommend a different adoption placement selection.

(g) The Director of Child Welfare or designee must provide written notification of the decision affirming or changing the original adoption placement selection to the individuals identified in subsection (2)(c) of this rule and the Adoption Program Manager.

(3) Notwithstanding sections (1) and (2) of this rule, the Director of Child Welfare may reconsider a decision and require the actions in subsection (2)(f) of this rule to occur when the following conditions exist:

- (a) The time to request review of an adoption placement selection under subsection (2)(b) of this rule has expired;
  - (b) There is no request for review pending; and
  - (c) The deadline set by statute for a person entitled to seek judicial review of an adoption placement selection entered under this rule has not expired.
- (4) The adoption placement selection made by the Director of Child Welfare or designee under this rule is final.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005, 418.280, 418.285

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SCF 9-1997(Temp), f. & cert. ef. 8-15-97; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 23-2007(Temp), f. & cert. ef. 12-12-07 thru 6-9-08; CWP 4-2008, f. 5-30-08, cert. ef. 6-1-08; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 5-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 19-2011, f. & cert. ef. 9-19-11; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0165

### Requirements Prior to Proceeding to Legalization of the Adoption

When the supervision period is concluded and the Adoption Services Unit receives a request from the adoptive parent(s) or their legal representative to proceed with finalization of the adoption in the juvenile court, the Adoption Services Unit shall assure that the following requirements have been met or processes have been completed before proceeding with forwarding the matter to the juvenile court for legalization:

(1) The requirements of the ICWA and OAR chapter 413, division 115 have been met.

(2) If applicable, the requirements of the Interstate Compact on Placement of Children have been met (OAR 413-040-0200 through 0330).

(3) The birth parent(s) and petitioners have been advised of the Voluntary Adoption Registry (OAR 413-130-0300 through 0360).

(4) The worker has assessed the child's need for openness in adoption, and if appropriate to the case, has provided information to the adoptive parent(s) and facilitated the development of a Post Adoption Communication Agreement (OAR 413-120-0610 through 0650); and

(5) The child has been referred to the Adoption Assistance Program; and if the child meets the criteria, a written Adoption Assistance Agreement has been completed, (OAR 413-130-0000 through 0110). If the adoptive parent(s) decline to participate in the Adoption Assistance Program, the worker must obtain a statement signed by the adoptive parent(s) which says that they have been fully informed of the availability of the Adoption Assistance Program and waive their rights to these benefits now and in the future.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; SOSCF 48-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 9-2004, f. & cert. ef. 4-1-04; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0175

### Court Filing Requirements

When the requirements of OAR 413-120-0165 have been met, the Adoption Services Unit will send the following to the attorney selected by the adoptive family, and the attorney must file with the court:

(1) A written consent to the adoption.

(2) A placement report requesting the juvenile court to enter a decree of adoption.

(3) Indian Child Welfare Act statement, ORS 109.315(1)(h).

(4) Statement regarding Voluntary Adoption Registry Notification, ORS 109.35.

(5) Documentation regarding compliance with the Interstate Compact on Placement of Children, Article IV, ORS 417.200.

(6) Adoption Disclosure Statement, form CF 960.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; CWP 40-2003(Temp), f. & cert. ef. 11-25-03 thru 5-21-04; CWP 9-2004, f. & cert. ef. 4-1-04; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0625

### Roles and Responsibilities

(1) Child's caseworker: The child's caseworker represents the custodian of the child and assesses the appropriateness of mediation for cooperative post adoption planning for the children on their caseload. The child's caseworker consults with the supervisor and LAS, and seeks input from

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other interested persons. The decision to refer a case to mediation is based on the best interest of the child and whether the child's safety and permanency needs will be met with post-adoption communication. The child's caseworker consults with an adoption worker, if assigned, or the identified adoptive parent(s) and the birth parent(s) about willingness to participate in the cooperative adoption mediation process. The child's caseworker initiates the referral to mediation and is the primary contact for the contract mediator.

(2) Adoption worker: The adoption worker connects to the cooperative adoption mediation process, selected adoptive parents (including preliminary current caretaker families) of children who may benefit from post-adoption communication. The adoption worker collaborates with the child's worker to identify benefits of the cooperative adoption mediation process and documents safety concerns to be communicated on the Mediation Referral Form.

(3) LAS:

(a) The LAS ensures that legal assistance mediation or cooperative adoption mediation services are included in the discussions of the plan to free the child for adoption (by relinquishment or termination of parental rights). The LAS determines, in consultation with the child's worker and the legal assistance attorney, whether cooperative adoption mediation planning meets the child's best interest post adoptively. If the referral is appropriate the LAS approves the Referral for Mediation (CF 0437). The LAS confers with the child's caseworker when the caseworker determines that the PACA may not meet the safety concerns of the child. The LAS advises the child's caseworker on additional requirements related to Indian children.

(b) The outcome of the procedures to terminate parental rights shall not be the basis of ending the cooperative adoption mediation process.

(4) Contract Mediator: The contracted mediator for the cooperative adoption mediation process assists mediation participants in clarifying issues and stating expectations. The mediator is a neutral third party who assists the mediation participants in exploring options and empowers the mediation participants to make decisions through the confidential cooperative adoption planning process. The mediator will not make or impose decisions about the final outcome of the PACA.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.305

Hist.: CWP 33-2003, f. & cert. ef. 10-3-03; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0730

### Order of Preference for Identification of Potential Adoptive Resources

(1) Except as provided in sections (2) and (3) of this rule, when identifying potential adoptive resources for a child or sibling group, the caseworker must consider the needs and the best interest of each child, and assess the knowledge, skills, and abilities of each potential adoptive resource in the following order of preference:

(a) Except when (c) of this section applies, a relative as defined in OAR 413-120-0000(64)(a)-(c).

(b) Except when (c) of this section applies, a relative as defined in OAR 413-120-0000(64)(d).

(c) When a child or sibling group has a current caretaker as defined in OAR 413-120-0000(26), the current caretaker and a relative as defined in OAR 413-120-0000(64)(a)-(d).

(d) A general applicant.

(e) When an individual would otherwise meet the definition of current caretaker, except for being a relative as defined in OAR 413-120-0000(64)(d), the individual is considered a current caretaker for purposes of this section.

(2) For an Indian child, the caseworker must comply with the ICWA and OAR chapter 413, division 115.

(3) For a refugee child, the caseworker must comply with OAR 413-070-0300 to 413-070-0380.

(4) When an exception to the order of preference in section (1) of this rule is determined in the best interest of the child, the Child Welfare Program Manager must submit a written request to the Child Permanency Program Manager

(5) When a request for exception is received, the Child Permanency Program Manager must submit it to the Director of the Department or designee for review and consideration. Within 30 days of receipt of the written request, the Director of the Department or designee must determine whether to grant the exception.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 20-2011, f. & cert. ef. 9-19-11; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 21-2015, f. & cert.

ef. 10-1-15; CWP 3-2016(Temp), f. & cert. ef. 2-24-16 thru 8-21-16; CWP 8-2016, f. & cert. ef. 6-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0750

### Recruitment Efforts

(1) The Department must begin recruitment for the child or sibling group in a timely manner that is appropriate to each child's permanency and concurrent permanent plans.

(2) The Department may consider up to three general applicants as adoptive resources for a child or sibling group.

(3) Except as provided in section (4) of this rule, the Department's recruitment efforts may not consider the race, color, or national origin of a potential adoptive resource or a child.

(4) When recruiting potential adoptive resources for an Indian child, the Department must comply with the ICWA and OAR 413-115-0090.

(5) When a child is not fully free for adoption, the legal assistance specialist must:

(a) Determine when recruitment may begin;

(b) Determine whether recruitment may begin for a child with extraordinary needs before the Department initiates the process to free the child for adoption; and

(c) Notify the caseworker to begin recruitment efforts.

(6) As part of the identification of general applicants who will be considered in the adoption placement selection process, the child's caseworker must conduct recruitment activities including, at a minimum, ensuring a Waiting Child Bulletin has been posted, for at least 30 days, unless one or more of the following subsections applies:

(a) An exception to this timeline has been approved by the Assistant Child Permanency Program Manager or designee.

(b) The Department has determined, under OAR 413-070-0514, an individual known to the child or sibling group should be assessed as a potential adoptive resource, based upon all of the following:

(A) The best interest of each child.

(B) The strength of the relationship between each child and the individual.

(C) The likelihood the individual will have a positive adoption home study and meet the requirements of OAR 413-120-0246(1).

(D) The demonstrated knowledge, skills, abilities, and commitment of the individual to raise each child.

(E) The capacity of the individual to meet the current and lifelong safety, attachment, and well-being needs of the child as required by OAR 413-070-0640.

(7) Recruitment activities under section (6) of this rule are not required when:

(a) The Department has planned for the child or sibling group to be adopted by a relative of at least one of the siblings;

(b) The Department has planned for the child or sibling group to be adopted by a current caretaker; or

(c) In the case of an Indian child, alone or as part of a sibling group, the Department has planned for adoption by an identified potential adoptive resource meeting the order of placement preference in the ICWA and OAR 413-115-0090.

(8) The recruitment efforts of the Department for a child or sibling group must be documented in the Department's electronic information system.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 20-2011, f. & cert. ef. 9-19-11; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0760

### Identification of a Child's Potential Adoptive Resources

(1) When identifying potential general applicant adoptive resources for a child or sibling group, the caseworker may:

(a) After discussion with his or her supervisor and on a case-by-case basis, consult with a birth parent to identify one to three potential adoptive resources; and

(b) Provide a birth parent with non-identifying information from the adoption home study of a potential adoptive resource who is a general applicant not known to the parent or child.

(2) When more than one relative is interested in being an adoptive resource for a child or sibling group, the Department must consult with the interested relatives to facilitate agreement on the most appropriate potential adoptive resource.



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(a) When agreement cannot be reached, the Department considers relatives among both maternal and paternal family members who have expressed an interest, and may choose up to three relatives for adoption home studies.

(b) When an adoption home study has been initiated and the potential adoptive resource is not approved or withdraws, the Child Welfare Program Manager or designee decides whether the Department will initiate adoption home studies with additional relatives based upon:

- (A) The best interest of the child or sibling group; and
- (B) The impact on timeliness to achieving permanency.

(c) For an Indian child alone or as part of a sibling group, the Department must identify potential adoptive resources and initiate adoption home studies as necessary to comply with the ICWA.

(3) The child's caseworker must comply with the requirements of all of the following subsections:

(a) Make reasonable efforts to identify and place the child or sibling group with an adoptive resource in a timely manner.

(b) Request input about the knowledge, skills, abilities, and commitment a potential adoptive resource needs to best meet the current and life-long needs of the child from:

(A) Professionals who have worked closely with the child, when applicable; and

(B) The child's attorney, CASA, an authorized representative from the Indian child's tribe, a RCWAC representative, and substitute caregiver, when applicable.

(c) Receive and review adoption home studies in a timely manner.

(d) Unless section (4) of this rule applies, following consultation with his or her supervisor, identify up to three potential adoptive resources following the order of preference in OAR 413-120-0730 to be considered for adoption placement selection who:

(A) Meet the standards of an adoptive home in OAR 413-120-0246;

(B) Have the knowledge, skills, abilities, and commitment to raise each child; and

(C) Have the capacity to meet the current and lifelong safety, attachment, and well-being needs of the child or sibling group under OAR 413-070-0640.

(4) Upon the recommendation of a caseworker and supervisor, and when it is determined in the best interest of the child, the Child Welfare Program Manager may submit a written request to the Child Permanency Program Manager for an exception to subsection (d) of section (3) of this rule to increase the number of potential adoptive resources to be considered for adoption placement who are in the order of preference as described in 413-120-0730(1)(c).

(5) In consultation with the supervisor, the caseworker must determine the appropriate adoption selection process pursuant to OAR 413-120-0020.

(6) The caseworker must consult with the adoption worker for each of the identified potential adoptive resources pursuant to OAR 413-120-0021(2).

(7) The caseworker must document the actions taken under this rule in the Department's electronic information system.

Stat. Auth.: ORS 109.309, 418.005

Stats. Implemented: ORS 109.309, 418.005, 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10; CWP 4-2011(Temp), f. & cert. ef. 3-22-11 thru 9-18-11; CWP 20-2011, f. & cert. ef. 9-19-11; CWP 16-2015(Temp), f. & cert. ef. 9-1-15 thru 2-27-16; CWP 21-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0870

### Disruption

(1) After the adoption placement selection has been made pursuant to OAR 413-120-0021 or 413-120-0057, but prior to the physical placement of the child with the family selected as the adoptive resource, when circumstances occur or conditions are made known to the Department that give the child's caseworker reason to believe the selected adoptive resource is no longer appropriate for the child or his or her siblings, the child's caseworker must:

(a) Consult with his or her supervisor;

(b) Document the conditions or circumstances of concern; and

(c) Request approval from the Adoption Program Manager to reconsider the adoption placement selection.

(2) When the caseworker for the child determines that a disruption is likely, the caseworker must consult with each of the following to try to preserve the placement, when it is in the best interest of the child to do so:

(a) His or her supervisor;

(b) The adoption worker who is supervising the adoptive placement;

(c) Members of the child's team identified as individuals who can offer additional information or support, and

(d) The family, if possible.

(3) When the Department is supervising an adoptive placement of a child in the custody of another public child welfare agency and concerns arise that indicate that the adoptive resource is no longer appropriate for the child or children, the caseworker must ensure contact is made with the responsible entity and coordinate subsequent actions.

(4) When the caseworker and supervisor recommend to the Child Welfare Program Manager that the adoptive resource for a child in the custody of the Department is no longer appropriate for the child or children, the Child Welfare Program Manager, when in agreement, forwards the request for final approval for a disruption to the Adoption Program Manager.

(5) The caseworker must document the disruption in the Department's information system and notify the central office Adoption Program and the central office ICPC unit, if applicable, of the date of the adoption disruption.

(6) After the disruption of an adoptive placement of a child in the custody of the Department, the child's caseworker must consult with his or her supervisor, the child's team, and individuals with significant adoption experience to staff the case in order to:

(a) Gain a comprehensive understanding of the issues leading to the disruption; and

(b) Increase the likelihood for the child's success in another adoptive placement.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 14-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0880

### No Delay in Placement

(1) The Department may not delay placement of a child for adoption with an adoptive resource based on any criteria listed in the following subsections:

(a) Geographic location; or

(b) Race, color, or national origin of the child or the adoptive resource.

(2) An adoptive resource who believes that the Department violated the prohibition under section (1) of this rule may file a civil rights complaint and request a review under OAR 413-010-0400 to 413-010-0480.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; Renumbered from 413-120-0045, CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-120-0925

### Adoption of a Child Emigrating from the United States (Outgoing Convention Adoption)

(1) The Department may pursue an outgoing Convention adoption provided that:

(a) It is in the best interest of the child;

(b) The child has not been abducted, sold, or trafficked in connection with the adoption; and

(c) The prospective adoptive parent meets all of the following requirements:

(A) Is one of the following:

(i) A relative as described in OAR 413-120-0000(64)(a)(A), (B), or (C);

(ii) A relative as described in OAR 413-120-0000(64)(b)(A) or (G); or

(iii) An individual with a relationship to the child or young adult's half-sibling through the half-sibling's legal or biological father or mother as described in subparagraph (i) or (ii) of this paragraph for the purpose of placing the half-siblings together.

(B) Has been assessed, approved, and trained; and

(C) Has been determined able and willing to permanently provide for the safety, well-being, and special needs of the child.

(2) An outgoing Convention adoption may involve a child who meets the requirements of one of the following subsections:

(a) The child is, or is eligible to become, a:

(A) United States citizen;

(B) Legal United States resident; or

(C) Dual United States and foreign citizen.

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(b) The child is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(3) Adoption planning for a child that may be the subject of an outgoing Convention adoption must comply with other Department rules, including Child Welfare polices: I-AB.4 "CPS Assessment", OAR 413-015-0400 to 413-015-0485; I-F.2 "Determining the Appropriateness of Adoption as a Permanency Plan for a Child", OAR 413-110-0300 to 413-110-0360; I-E.1.1 "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087; I-F.6 "Sibling Adoption Placement Planning", OAR 413-110-0100 to 413-110-0150; I-G.1.2 Identification and Consideration of Potential Adoptive Resources", OAR 413-120-0700 to 413-120-0760; I-G.1.5 "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0060; and I-G.1.10 "Supervision and Support of an Adoptive Placement", OAR 413-120-0800 to 413-120-0880.

(4) Before a child may be placed in a prospective adoptive home in another Convention country the Department must meet the requirements of each of the following subsections:

(a) Make a written determination that the child is eligible for adoption, that an outgoing Convention adoption is in the child's best interests, and that placement with the prospective adoptive parents is in the best interests of the child.

(b) Complete or obtain a written child background study that includes information about the child's identity; upbringing; adoptability; ethnic, religious, and cultural background; social environment; family history; personal medical history; family medical history; and special needs.

(c) Determine that the prospective adoptive parents meet the requirements of paragraph (1)(c)(A) of this rule and document that determination.

(d) Work with the foreign authorized entity in the receiving Convention country to determine whether the prospective adoptive parents are suitable, qualified, and eligible to adopt the child. To do so the Department must meet the requirements in each of following paragraphs:

(A) Provide a copy of the child's background study to the foreign authorized entity in the receiving Convention country.

(B) Obtain from the foreign authorized entity a comprehensive home study on the prospective adoptive parents that is prepared in accordance with the laws of the receiving country; meets the standards established by the Department using the Department's Hague Home Study template; addresses the capacity of the prospective adoptive parents to meet the child's safety, permanency and well-being needs; and includes all of the following:

(i) Information on the prospective adoptive parents, including: identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an inter-country adoption, and the characteristics of a child for whom they would be qualified to care;

(ii) Confirmation that a foreign authorized entity has determined that the prospective adoptive parents are eligible and suitable to adopt and has ensured that the prospective adoptive parents have been counseled as necessary;

(iii) The results of a criminal background check; and

(iv) Information from competent references for the prospective adoptive parents.

(C) Obtain written confirmation from the foreign authorized entity that the prospective adoptive parents have completed a minimum of 10 hours of Department-approved training that includes training on all of the following:

(i) The effects of physical, emotional, and sexual abuse and neglect on a child;

(ii) The effects of drugs and alcohol on a child;

(iii) The effects of relocating a child and transition issues;

(iv) The significance of the birth family, include grief and loss issues;

(v) Openness in adoption;

(vi) Attachment process and attachment difficulties;

(vii) Positive behavior management; and

(viii) The specific needs of the child to be adopted by the prospective adoptive parents.

(D) Provide notice to the foreign authorized entity studying the prospective adoptive family and providing required training to the prospective adoptive parents that the Department does not condone the use of corporal punishment.

(E) Obtain from the foreign authorized entity a written, signed Supervision Agreement using the approved Department form that describes the responsibilities of the Department and foreign authorized entity with

regard to the child's placement with the prospective adoptive parents and includes each of the following:

(i) Requirements for face-to-face visits with the child and the prospective adoptive parents at least every 30 days. These meetings must occur in the prospective adoptive home at least once every 60 days.

(ii) Requirements for face-to-face visits in the prospective adoptive home with other individuals living in the home who can provide information about the child's safety and well-being, as well as any concerns with the placement.

(iii) Requirements for contact at least once every 30 days with professional persons who have established a relationship to the child who can provide collateral observations regarding the child's functioning and the adoptive placement.

(iv) Minimum standards for written reports to be provided every 90 days on contacts with the child, prospective adoptive family, other family members, and collateral contacts.

(v) Confirmation that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the prospective adoptive parents.

(vi) Confirmation that the foreign authorized entity consents to the adoption of the child by the prospective adoptive family.

(vii) Confirmation that the foreign authorized entity agrees that the child's adoption by the prospective adoptive family may proceed.

(e) After the child is fully free for adoption, establish proof of citizenship for the child and apply for applicable passports.

(f) Submit to the foreign authorized entity written confirmation of the reasons the Department determined that the proposed adoptive placement is in the best interests of the child.

(g) Establish a direct means for the child's collateral contacts in the receiving Convention country to communicate any health or safety concerns about the child to the Department.

(h) Counsel and inform the child, as appropriate in light of the child's age and maturity, of the effects of the adoption, consider the child's views regarding the adoption, and document the discussion and how the child's views were considered.

(i) If the child's consent to the adoption is required, counsel and inform the child about the effects of granting consent, obtain written consent from the child in a manner that assures the consent is given freely and without any inducement by compensation of any kind, and document the discussion.

(j) Determine whether the receiving Convention country requires a Hague custody declaration prior to placement of the child in the home of the prospective adoptive parents, and, if required, apply for and obtain a Hague custody declaration from the U.S. State Department, as provided in OAR 413-120-0970.

(k) Assure that the child's move to the receiving Convention country will be made under secure and appropriate circumstances and in the company of the child's prospective adoptive parents, caseworker, or with another adult.

(5) Following completion of all of requirements in section (4) of this rule and prior to the child traveling to the receiving Convention country for placement with the prospective adoptive parents, the Department must obtain an order from the court that makes findings:

(a) In support of an application for a Hague adoption certificate;

(b) That the prospective adoptive placement is in the best interests of the child;

(c) Authorizing the child to travel to the foreign country for placement with the prospective adoptive parents; and

(d) Authorizing release of the court order for purposes of affecting the child's placement.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10; CWP 9-2014, f. & cert. ef. 5-1-14; CWP 28-2015(Temp), f. 12-30-15, cert. ef. 1-1-16 thru 6-28-16; CWP 8-2016, f. & cert. ef. 6-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

### 413-120-0950

#### Adoption Assistance

To be eligible for adoption assistance a child who is the subject of a Convention adoption must be a United States citizen and meet all other eligibility requirements under OAR 413-130-0000 to 413-130-0130.

Stat. Auth.: ORS 417.262, 417.265, 418.005

Stats. Implemented: ORS 417.262, 417.265, 418.005

Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10; CWP 9-2014, f. & cert. ef. 5-1-14; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

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## 413-200-0260

### Definitions

The following definitions apply to OAR chapter 413, division 200.

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child or young adult based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(3) "Applicant" means any individual who applies:

(a) For a Certificate of Approval, Child-Specific Certificate of Approval, Temporary Certificate of Approval, to renew certification, or for a change of status; or

(b) For approval through the Department as a potential adoptive resource.

(4) "Babysitting" means the provision of temporary care for a child or young adult that is:

(a) Ten consecutive hours or less; and

(b) Not overnight care.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(6) "Certificate of Approval" means a document the Department issues to a certified family to approve the operation of a home to provide care for a child or young adult in the care or custody of the Department.

(7) "Certification supervisor" means an employee of the Department, designated as a supervisor, supervising staff responsible for certification, training, and monitoring homes certified by the Department.

(8) "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 the individual or individuals reside, to a child or young adult in the care or custody of the Department.

(9) "Certifier" means a Department employee who:

(a) Conducts assessments of applicants and homes;

(b) Determines whether or not to recommend approval of a potential adoptive resource or that a Certificate of Approval be approved or renewed; and

(c) Monitors the compliance of a certified family and home with OAR 413-200-0301 to 413-200-0396.

(10) "Child" means a person under 18 years of age.

(11) "Child care" means regularly scheduled care, supervision, and guidance of a child by an individual other than the parent, guardian, foster parent, or relative caregiver during any time that the parent, guardian, foster parent, or relative caregiver works or attends school.

(12) "Child protective services assessment" (CPS assessment) means an investigation into a report of child abuse pursuant to ORS 419B.020, that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(13) "Child protective services supervisor" (CPS supervisor) means an employee of the Department trained in child protective services and designated as a supervisor.

(14) "Child protective services worker" (CPS worker) means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(15) "Child-Specific Certificate of Approval" means a document the Department issues to a certified family to approve the operation of a home to provide care for a specific child or young adult in the care or custody of the Department and for whom the Department determines a placement is needed.

(16) "Cohabiting" means the act of two adults, unmarried to each other, living together in an intimate relationship as if married.

(17) "Consulting foster parent or relative caregiver" means an individual who maintains or has held a Certificate of Approval to operate a foster or relative caregiver home, received Department approved training on the role of a "consulting foster parent or relative caregiver", and agrees to serve in this role.

(18) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information obtained from other sources.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information sources located in, or regarding, a state or jurisdiction outside Oregon.

(19) "Day Care Facility" means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider that is exempt from Office of Child Care licensing and that receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(20) "Denial" means the refusal of the Department to approve an application for certification and issue or renew a certification.

(21) "Department" means the Department of Human Services, Child Welfare.

(22) "Discipline" means a training process to help a child or young adult develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(23) "Disqualifying condition" means any information or circumstance related to a person or to the home that does not meet one or more of the requirements in OAR 413-200-0301 to 413-200-0396.

(24) "Electronic monitoring" means the use of video monitoring or listening devices to monitor or record the behavior of a child or young adult. "Electronic monitoring" does not include:

(a) Door monitors;

(b) Window alarms;

(c) Motion detectors;

(d) Audio or video baby monitors used for a child five years and under; or

(e) Monitors approved by a medical provider for medical purposes.

(25) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and assure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(26) "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.

(27) "Home study" means a document containing an analysis of the ability of the applicant to provide safe and appropriate care of a child or young adult.

(28) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. When it is occurring, this type of threat to a child that is not immediate, obvious, or

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occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(29) "Inactive Referral Status" means a period of time, not to exceed 12 months, during which neither the Department nor any other agency may place an additional child or young adult with a certified family.

(30) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The "initial contact" includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, other children and adults living in the home; accessing the home environment; and gathering sufficient information on the family conditions and functioning to determine if present danger safety threats or impending danger safety threats exist.

(31) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the need for enhanced supervision of the child or young adult as determined by applying the CANS algorithm to the results of the CANS screening.

(32) "Listed DHS child care program provider" means a child care provider who has been approved by DHS Self-Sufficiency Program to provide child care to DHS clients.

(33) "Member of the household" means any adult or child living in the home, including the applicant and any caregiving employee or volunteer.

(34) "Personal care services plan" means a written plan to provide personal care services for the child or young adult documenting:

- (a) The determination that the individual is a qualified provider;
- (b) The frequency or intensity of each personal care service to be provided; and
- (c) The date personal care services begin.

(35) "Physical restraint" means the act of restricting the voluntary movement of a child or young adult as an emergency measure in order to manage and protect the child, young adult, or others from injury when no alternate actions are sufficient to manage the behavior of the child or young adult. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child from running onto a busy street.

(36) "Placement support plan" means a documented set of actions or resources that is developed to assist a relative caregiver or foster parent to maintain conditions that provide safety and well-being for a child or young adult in the home.

(37) "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.

(38) "Psychotropic medication" means medication, the prescribed intent of which is to affect or alter thought processes, mood, or behavior, including but not limited to antipsychotic, antidepressant, and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated intended effect when prescribed because it may have many different effects.

(39) "Punishment" means the intentional infliction of emotional or physical pain or suffering.

(40) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.

(41) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(42) "Relative caregiver" means a person defined as a "relative" under OAR 413-070-0000 who operates a home that has been approved by the Department to provide care for a related child or young adult placed in the home by the Department.

(43) "Report" means an allegation of child abuse or neglect provided to the Department that the screener evaluates to determine if it constitutes a "report" of child abuse or neglect as defined in ORS 419B.005.

(44) "Respite care" means a formal planned arrangement to relieve a certified family's responsibilities by a person temporarily assuming responsibility for the care and supervision of a child or young adult in the home of the person or certified family. "Respite care" must be less than 14 consecutive days.

(45) "Revocation" means an administrative act by the Department that rescinds an existing Certificate of Approval, Child-Specific Certificate of Approval, or Temporary Certificate of Approval.

(46) "Screener" means a Department employee with training required to provide screening services.

(47) "Surrogate" means an individual who has been appointed to safeguard a child's rights in the special education decision-making process. The individual may be appointed pursuant to applicable Department of Education administrative rules and statutes or by the juvenile court.

(48) "Temporary Certificate of Approval" means a document the Department issues to a certified family to approve the operation of a home to provide care for a specific child or young adult in the care and custody of the Department. The "Temporary Certificate of Approval" is valid for up to 180 days unless an extension is granted under OAR 413-200-0276(3).

(49) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 409.050, 418.005, 418.015, 418.027, 418.285, 418.315, 418.470, 418.625 - 418.648

Hist.: CWP 20-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-200-0306

### Eligibility for Certified Families and Adoptive Resources

To qualify as a newly certified family or adoptive resource for a child or young adult in the custody of the Department, an individual must:

(1) Be a United States citizen, a qualified non-citizen, or a relative of the child for whom the individual is seeking to be a relative caregiver or adoptive resource, except when a certified family applies for renewal;

(2) Be at least 21 years of age, unless:

(a) Granted an exception by a Child Welfare program manager or designee, who may approve an applicant between 18 and 20 years of age to become a relative caregiver; or

(b) Otherwise specified in the OARs governing the placement of Indian children, OAR 413-115-0090;

(3) Submit a completed application on a form, and in the manner, prescribed by the Department;

(4) Participate in the applicant assessment processes prescribed by the Department, and provide additional information requested by the Department to support the assessment; and

(5) Be determined by the Department to meet the qualifications and standards required by OAR 413-200-0301 to 413-200-0396.

Stat. Auth.: ORS 409.050, 418.005, 418.640

Stats. Implemented: ORS 409.010, 418.005, 418.625 - 418.645

Hist.: SOSCF 7-2001, f. & cert. ef. 3-23-01; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 11-2007(Temp), f. & cert. ef. 6-1-07 thru 11-27-07; Suspended by CWP 12-2007(Temp), f. & cert. ef. 7-13-07 thru 11-27-07; CWP 19-2007, f. & cert. ef. 11-1-07; CWP 25-2008(Temp), f. & cert. ef. 10-1-08 thru 3-30-09; CWP 3-2009, f. & cert. ef. 2-2-09; CWP 37-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 20-2015, f. & cert. ef. 10-1-15; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-215-0000

### Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 215:

(1) "Academic boarding school" means an organization or a program in an organization that:

(a) Provides educational services and care to children 24 hours a day; and

(b) Does not hold itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.

(2) "Adoption agency" means an organization providing any of the following services:

(a) Identifying a child for adoption and arranging an adoption.

(b) Securing the necessary consent to relinquishment of parental rights and to adoption.

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.

(d) Making determinations of the best interests of a child and the appropriateness of adoptive placement for the child.

(e) Monitoring a case after placement until final adoption.

(f) When necessary because of disruption before final adoption, assuming custody and providing childcare or other social services for the child pending an alternative placement.

(3) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children in care of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child in care based on

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the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child in care, activities or items that are suitable for the child in care based on the developmental stages attained by the child in care with respect to the cognitive, emotional, physical, and behavioral capacities of the child in care.

(4) "Approval" means acceptable to the regulatory authority based on conformity with generally recognized standards that protect public health.

(5) "Approved proctor foster parent" means an individual approved by a foster care agency to provide care to children in a proctor foster home.

(6) "Background check" means a check done in compliance with the Department's criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370.

(7) "Birth parent" means each person who holds a legally recognized parental relationship to the child, but does not include the adoptive parents in the adoption arranged by the adoption agency.

(8) "Boarding" means care or treatment services provided on a 24 hour per day basis to children.

(9) "Child in care" means a person who is under 21 years of age who is residing in or receiving care or services from a child caring agency or proctor foster home.

(10) "Child-caring agency" is defined in ORS 418.205 and:

(a) Means any private school, private agency, or private organization providing:

(A) Day treatment for children with emotional disturbances;

(B) Adoption placement services;

(C) Residential care including, but not limited to, foster care or residential treatment for children;

(D) Outdoor youth programs; or

(E) Other similar care or services for children.

(b) Includes the following:

(A) A shelter-care home that is not a foster home subject to ORS 418.625 to 418.645;

(B) An independent residence facility as described in ORS 418.475;

(C) A private residential boarding school; and

(D) A child-caring facility as described in ORS 418.950.

(c) Child-caring agency does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services.

(B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this paragraph, "respite services" means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purposes of providing a parent in crisis with relief from the demands of ongoing care of the parent's child;

(C) A youth job development organization as defined in ORS 344.415;

(D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645; or

(E) A foster home subject to ORS 418.625 to 418.645.

(11) "Clinical supervisor" means an individual who meets the clinical supervisor qualifications in OAR 309-022-0125.

(12) "Contraband" means items the possession of which is prohibited by the child-caring agency including, but not limited to weapons or drugs.

(13) "Criminal history check" means compliance with the Department's criminal records history rules, OAR 407-007-0200 to 407-007-0370.

(14) "Day treatment" means a comprehensive, interdisciplinary, non-residential, community-based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.

(15) "Day treatment agency" means a child-caring agency that provides psychiatric day treatment services.

(16) "Debrief" means to interview a person (such as a child in care or staff member) usually upon return (as from an expedition) in order to obtain useful information.

(17) "Department" means the Oregon Department of Human Services.

(18) "Discipline" means a training process to help a child in care develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.

(19) "Disruption" means the interruption of an adoptive placement prior to the finalization of the adoption in a court of law.

(20) "Employee" means an individual holding a paid position with a child-caring agency.

(21) "Facility" means the physical setting, buildings, property, structures, administration, and equipment of a child-caring agency.

(22) "Family" means related members of a household, among whom at least one adult functions as a parent to one or more minor children.

(23) "Foster care agency" means a child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by the child-caring agency.

(24) "Homeless or runaway youth" means a child in care who has not been emancipated by the juvenile court; lacks a fixed, regular, safe, and stable nighttime residence; and cannot immediately be reunited with his or her family.

(25) "ICWA" or "the Act" means the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-63.

(26) "Indian child" means any unmarried person who is under age 18 and either:

(a) Is a member or citizen of an Indian tribe; or

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.

(27) "Intercountry adoption" means an adoption in which a child who is a resident and citizen of one country is adopted by a citizen of another country.

(28) "Licensee" means a child-caring agency that holds a license issued by the Department.

(29) "Mass shelter" means a structure that contains one or more open sleeping areas in which, on a daily basis, only emergency services are provided to homeless or runaway youth, such as a meal and a safe place to sleep overnight.

(30) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(31) "Outdoor living setting" means an outdoor field setting in which services are provided to children in care either more than 10 days per month for each month of the year or for longer than 48 hours at a location more than two hours from community-based medical services.

(32) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children in care who are enrolled in the program because they have behavioral problems, mental health problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other authority of the Department. It does not include outdoor activities for children in care designed to be primarily recreational.

(33) "Outdoor youth program activity" means an outdoor activity, provided to children in care for the purpose of behavior management or treatment, which requires specially trained staff or special safety precautions to reduce the possibility of an accident or injury. Outdoor youth activities include, but are not limited to, hiking, adventure challenge courses, climbing and rappelling, winter camping, soloing, expeditioning, orienteering, river and stream swimming, and whitewater activities.

(34) "Over the counter medication" means any medication that does not require a written prescription for purchase or dispensing.

(35) "Placement" means when the child is placed in the physical or legal custody of prospective adoptive parents.

(36) "Proctor foster home" means a foster home certified by a child-caring agency under Oregon Laws 2016, chapter 106, section 6 that is not subject to ORS 418.625 to 418.645.

(37) "Program" means a set of one or more services provided by a child-caring agency that make the child-caring agency subject to the rules in OAR chapter 413, division 215.

(38) "Qualified Mental Health Professional (QMHP)" means an individual who meets the QMHP qualifications in OAR 309-022-0125.

(39) "Re-adoption" means a process in which a child whose adoption was completed in another country is re-adopted in this country.

(40) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child in care while encouraging the emotional and developmental growth of the child in care, that a substitute care provider shall use when determining whether to allow a child in care to participate in extracurricular, enrichment, cultural, and social activities.

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(41) "Residential" means care or treatment services provided on a 24 hour per day basis to children. For the purpose of these rules, "residential care or treatment" does not include services provided in family foster homes or adoptive homes.

(42) "Residential care agency" means a child-caring agency that provides services to children 24 hours a day.

(43) "Service plan" means an individualized plan of services to be provided to each child in care based on his or her identified needs and designed to help him or her reach mutually agreed upon goals. The service plan must address, at a minimum, the child in care's physical and medical needs, behavior management issues, mental health treatment methods, education plans, and any other special needs.

(44) "Shelter" means a facility operated by a child-caring agency that provides services for a limited duration to homeless or runaway youth.

(45) "Sole supervision" means being alone with a child in care or being temporarily the only staff in charge of a child in care or subgroup of children in care.

(46) "Special needs" mean a trait or disability of a child that requires special care or attention of the child or that historically has made placement of a child with similar characteristics or disability difficult.

(47) "Staff" means employees of the child-caring agency who are responsible for providing care, services, or treatment to a child in care.

(48) "Stationary outdoor youth program" means an outdoor youth program which remains in a stationary location that houses children in care.

(49) "Therapeutic boarding school" means an organization or a program in an organization that:

(a) Is primarily a school and not a residential care agency;

(b) Provides educational services and care to children for 24 hours a day; and

(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.

(50) "Transitional living program" means a set of services offered by a child-caring agency that provides supervision and comprehensive services for up to 18 months to assist homeless or runaway youth to make a successful transition to independent and self-sufficient living.

(51) "Wilderness first responder" means a medical training course and certification for outdoor professionals.

Stat. Auth.: ORS 409.050, 418.005, 418.240, OL 2016, ch 106

Stats. Implemented: ORS 418.205 - 418.327, OL 2016, ch 106

Hist.: CWP 12-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; CWP 22-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-215-0081

### Application for License, Renewal, or to Add a Program

(1) For purposes of this rule, "applicant" means a child-caring agency that is in the process of applying to the Department for an initial license or license renewal or to add a program to an existing license.

(2) Application required.

(a) A child-caring agency must submit a completed application in each of the following situations:

(A) To obtain an initial license.

(B) To renew a license.

(C) To add a program to an existing license.

(b) An applicant must apply for a license on forms provided by the Department.

(c) A licensee must submit an application for renewal prior to the expiration of the current license. If the Department receives an application for renewal before the license expires, the license remains effective until the Department issues a decision on the application.

(3) Documents to be submitted by a new applicant. The applicant must submit to the Department at the time of application all of the following documents:

(a) An application form that is complete and signed by the board chair and either the executive director or program director.

(b) A copy of the articles of incorporation, bylaws, amendments to the articles of incorporation and bylaws, and documents evidencing each name change or assumed business name.

(c) A completed "CCA Contact Information" form that includes the current board of directors, including names, term, and office held and contact information for the board of directors, management personnel, other regulatory authorities, and state or governmental agencies or units with whom the child-caring agency contracts to provide care or services to children.

(d) A complete personnel list with job titles.

(e) An organization chart with job titles and staff names.

(f) Documentation that a background check was completed as required in OAR 407-007-0200 to 407-007-0370 on the executive director and program director.

(g) A proposed annual budget adequate to finance the program. The budget must clearly indicate all sources of income and anticipated expenditures, as described in OAR 413-215-0026.

(h) A written program description, including admission requirements, population served, gender and ages served, types of programs and services offered, the cost to clients (if any), the geographical area to be served, and the projected staffing pattern. The program description must identify all exclusions that would make a child in care ineligible to be served by the child-caring agency.

(i) For new, expanding, or changing residential programs only, documentary proof of compliance with ORS 336.575, which requires notification of the superintendent or the district school board of possible effect of additional children in care and services, three months before children in care arrive at the agency's facility.

(j) Current copies of all written policies and procedures required by these rules including:

(A) A written policy on conflict of interest that meets the requirements of OAR 413-215-0036.

(B) Written policies regarding the rights of children and families the child-caring agency would serve upon being licensed that meets the requirements of OAR 413-215-0046.

(C) A grievance procedure for children in care and families that meets the requirements of OAR 413-215-0046.

(D) A written policy on mandatory child abuse reporting and training that meets the requirements of OAR 413-215-0056.

(E) A written policy regarding personnel that meets the requirements of OAR 413-215-0061.

(F) A written privacy policy that meets the requirements of OAR 413-215-0066.

(G) Written policies on discipline, behavior management, and suicide prevention that meet the requirements of OAR 413-215-0076.

(H) A written policy for compliance with Interstate Compact on the Placement of Children (ICPC) (see ORS 417.200 to 417.260), if applicable.

(I) A written policy for compliance with the ICWA and OAR chapter 413, division 115, if applicable.

(K) Floor plans for any proposed facility.

(L) Proof of adequate fire, auto, and liability insurance.

(M) Emergency procedures.

(n) Current inspection report of the Fire Marshal and current sanitation inspection reports, unless the application is for a license as an adoption agency or a foster care agency. For an outdoor youth program, these inspection reports are only required for each base camp component.

(o) For the previous 10 years, a copy of each report by a federal or state authority concerning a criminal charge, charge of child abuse, malpractice complaint, or lawsuit against the child-caring agency, a member of the child-caring agency's board of directors, or one of its employees related to the provision of services, and the basis and disposition of each action, if applicable.

(p) Other documents or information requested by the Department.

(4) Documents to be submitted to renew a license. A licensee must submit to the Department at the time of application for renewal all of the following documents:

(a) An application renewal form that is complete and signed by the board chair and either the executive director or program director.

(b) Current "CCA Contact Information" form as described in subsection (3)(d) of this rule.

(c) A complete personnel list with job titles.

(d) An organization chart with job titles and staff names.

(e) Documentation that a background check was completed as required in OAR 407-007-0200 to 407-007-0370 on the executive director and program director.

(f) Proof of adequate fire, auto, and liability insurance.

(g) Current inspection report of the Fire Marshal and current sanitation inspection reports, unless the re-application is for a license as an adoption agency or a foster care agency. For an outdoor youth program, these inspections reports are only required for each base camp component.

(h) The most recent annual audit or review of the child-caring agency required in OAR 413-215-0026(3).

(i) A tax compliance certificate issued by the Oregon Department of Revenue.

(j) Policies required in subsection (3)(j) of this rule.

(k) Other documents or information requested by the Department.

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(5) Documents to be submitted to add a program to an existing license. A child-caring agency must submit documents required in subsections (a), (d), (e), (g), (h), (i), (j), (k), (l), (m), (n), and (p) of section (3) of this rule.

(6) Application fees.

(a) The Department requires no fee to be paid by an applicant for the inspection conducted to determine whether to grant, withhold, suspend, or revoke a license required by these rules.

(b) A child-caring agency may be required to pay for inspections done by other governmental agencies, such as county health departments and the State Fire Marshal, that are necessary to obtain a license from the Department.

(7) Processing the Application. Within 30 days of the receipt of an application and the documents described in section (3), (4), or (5) of this rule, the Department will begin its review to determine whether the applicant is or will be in compliance with applicable rules in OAR chapter 413, division 215 and whether denial is required or appropriate under OAR 413-215-0121. In connection with its evaluations, the Department may examine the records and files of the applicant, inspect and observe the physical premises, and interview children and families served by the program, the staff of the applicant, and persons in the community.

Stat. Auth.: ORS 409.050, 418.005, 418.240, OL 2016, ch 106

Stats. Implemented: ORS 418.205 - 418.327, OL 2016, ch 106

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Renumbered from 413-210-0020, CWP 29-2008, f. & cert. ef. 10-17-08; CWP 12-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; CWP 22-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-215-0426

### Policies and Procedures for Adoption Agencies

An adoption agency must have and follow written policies and procedures for the adoption services it provides including, at a minimum all of the following:

(1) Policies and procedures prescribing safeguards relating to the needs, rights, and responsibilities of the following:

(a) A birth parent who is considering the release of a child for adoption;

(b) A child who becomes available for adoption; and

(c) A family who adopts a child.

(2) Policies and procedures designed to ensure compliance by the adoption agency all applicable federal and state laws, including, but not limited to:

(a) A written policy for compliance with the ICWA and OAR chapter 413, division 115, if applicable.

(b) The Interstate Compact for Placement of Children (ICPC) (see ORS 417.200);

(c) Section 1808 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1903 (1996), amending 42 U.S.C. § 671;

(d) The Howard M. Metzenbaum Multiethnic Placement Act of 1994, Pub. L. No. 103-382, 108 Stat. 4056 (1994);

(e) The Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 114 Stat. 825 (2000), 42 U.S.C. § 14901 to 14954.

(f) ORS chapter 109.

(3) Policies and procedures designed to ensure that the decision to place a child in a specific home or to disrupt a placement is not made autonomously by a social services worker.

Stat. Auth.: ORS 409.050, 418.005, 418.240, OL 2016, ch 106

Stats. Implemented: ORS 418.205 - 418.310, OL 2016, ch 106

Hist.: CWP 32-2008, f. & cert. ef. 10-17-08; CWP 12-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; CWP 22-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-215-0431

### Records Requirements for Adoptions

In addition to compliance with the records and documentation requirements of OAR 413-215-0071 and 413-215-0456:

(1) Permanent record in a domestic adoption. An adoption agency must maintain a permanent record on each birth parent who has consented to and has surrendered a child to the adoption agency. Except as authorized by section (2) of this rule, the record must include all of the following documents or information:

(a) The date and place of the birth parent's initial inquiry with the adoption agency and the persons present when the inquiry was made.

(b) The date, place, and purpose of each subsequent contact between the adoption agency and the birth parent.

(c) Evidence that the following adoption agency forms were provided to the birth parent:

(A) Consent for Service;

(B) Receipt of Grievance Procedures;

(C) Clients' Rights and Responsibilities, including the notice required by ORS 109.346 when applicable; and

(D) Service Plan.

(e) Each alternative to adoption discussed with the birth parent.

(f) A description of each discussion relating to fees, expenses, or other consideration or thing of value relating to the adoption.

(g) The date, time, and place of birth of the child, the name and address of the hospital or birthing center if the child was born in one, and all pertinent prenatal information.

(h) The names, dates of birth, physical description of the birth parents at the time of the child's birth, including age, height, weight, and color of eyes, hair and skin.

(i) Personality traits of the child's birth parents, siblings, and members of the child's extended family.

(j) A medical history of the birth parents, siblings, and extended family of the child, including medical, mental, and emotional history, including the history of the use of drugs or alcohol, gynecologic and obstetric history of the birth mother, and a record of inheritable genetic or physical traits or tendencies of the birth parents or their families.

(k) The ethnicity of the child's birth parents and the members of the child's extended family.

(l) Documentation of the efforts of the adoption agency to determine whether the child is an Indian child, whether the ICWA applies, and if it applies, documentation demonstrating compliance with the ICWA.

(m) The religious background of the child's birth parents and the members of the birth parents' extended family.

(n) The educational level and functioning, employment history, criminal history, and social and emotional functioning of the birth parents, siblings, and the members of their extended family.

(o) A notation that identifies the adoptive parents sufficient to cross-reference the file of the adoption agency on the adoptive parents.

(p) A copy of the placement agreement.

(q) Post-adoption communication agreements.

(r) Details about any termination of parental rights.

(s) A copy of the general judgment of adoption.

(t) Copies of any documents signed by the birth parent.

(2) If the adoption agency is unable to include in the permanent record a document or information required by subsections (1)(f) to (1)(m) of this rule, the adoption agency must include in the record a description of its reasonable effort to obtain the document or information.

(3) Preservation and retention of adoption records for adoptions. An adoption agency giving legal consent to the adoption of a child must permanently retain, to the extent allowed by law, the records concerning the child's adoption, as follows:

(a) The record must include all of the following:

(A) Adoptive parent orientation documentation.

(B) Evaluation documentation of both the birth and adoptive parents.

(C) Placement documentation.

(D) Post-placement supervision documentation.

(E) Originals of photographs, letters, and other personal items provided by the child's birth family.

(b) The adoption agency must store the records in fire-retardant, locked files kept in a secure location.

(c) If more than one adoption agency is involved in an adoption, the adoption agency that placed the child must preserve the permanent case record.

Stat. Auth.: ORS 409.050, 418.005, 418.240, OL 2016, ch 106

Stats. Implemented: ORS 109.342, 418.205 - 418.310, OL 2016, ch 106

Hist.: CWP 32-2008, f. & cert. ef. 10-17-08; CWP 12-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; CWP 22-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-215-0441

### Services for Birth Parents Considering Domestic Adoption

(1) If an adoption agency is serving a birth parent who is considering the adoption of his or her child:

(a) The adoption agency must provide the services described in these rules, OAR 413-215-0401 to 413-215-0481.

(b) If the adoption agency is serving a birth parent who lives in a state other than Oregon, the adoption agency must make the services described in these rules (OAR 413-215-0401 to 413-215-0481) available to the birth parent in the state of residence of the birth parent.

(2) Information.

(a) The adoption agency must make reasonable efforts to provide information described in subsection (2)(c) of this rule to each legal parent.

(b) The adoption agency must make reasonable efforts to provide information described in subsection (2)(c) of this rule to a putative father if:

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(A) The putative father resided with the child within 60 days of the court proceeding about the adoption or custody of the child;

(B) The putative father repeatedly contributed or tried to contribute to the support of the child within 12 months of the court proceeding about the adoption or custody of the child; or

(C) There is a notice of initiation of filiation proceedings on file with the Center for Health Statistics of the Department prior to the initiation of either a court proceeding about the adoption or custody of the child, or the placement of the child in the physical custody of a person for the purpose of adoption by them. There is no requirement to provide information under this paragraph if the notice of initiation of filiation proceedings was not on file at the time of placement.

(c) The adoption agency must provide all of the following information to the persons identified in subsections (2)(a) and (2)(b) this section:

(A) Information regarding support and resources needed to parent a child.

(B) Information regarding options within adoption and the consequences of each option, including the possibility of a birth parent continuing contact with the adopted child and the adopting parents after adoption, the variables and options for such continuing contact, the desire of the child for continuing contact, and the availability of mediation to resolve issues involving contact.

(C) Information regarding grief and loss inherent in adoption.

(D) Information regarding the effects and permanence of adoption.

(E) Information regarding availability of or referral to appropriate support services. The availability of these services may not be made contingent upon the birth parent's decision to select adoption as the plan for the child.

(3) The adoption agency must provide guidance if a child's birth parents disagree with each other about the adoption plan.

(4) Identification of birth fathers. If the adoption agency is working with a birth mother, the adoption agency must ensure all of the following:

(a) The adoption agency asks the birth mother for the identity and whereabouts of the birth father.

(b) The adoption agency does not counsel or advise a birth mother to state that the identity or location of the father is unknown.

(c) If the birth mother indicates that the identity or location of the father is unknown, or if the birth mother refuses to identify the birth father, the adoption agency advises her of the potential ramifications of her knowing failure to provide the information.

(d) The adoption agency must contact the Center for Health Statistics of the Department within a reasonable period of time prior to placement to determine whether the child's legal or putative father can be identified.

(e) The adoption file of the adoption agency includes all reported information about the legal or putative father, even if his identity or location is unknown to the mother.

(5) Disclosures prior to placement:

(a) Potential disclosure of parental identity. The adoption agency must tell each birth parent who is contemplating making their child available for adoption that information related to their identities may subsequently be disclosed to the child in accordance with Oregon law.

(b) Voluntary adoption registry. As required by ORS 109.353, the adoption agency must inform each birth parent of the voluntary adoption registry established under ORS 109.450.

(c) Adoption-related counseling for birth parents. As required by ORS 109.346, the adoption agency must provide notice to each birth parent consenting to an adoption regarding his or her right to adoption-related counseling.

(6) Consent and surrender. The adoption agency may accept the voluntary consent and surrender of a child after taking all of the following actions:

(a) Providing to each birth parent full and accurate information, and the opportunity to discuss the consequences of the documents they are signing.

(b) Discussing with each birth parent the circumstances leading to the decision to choose adoption.

(c) Informing each birth parent of their right to their own legal counsel at their own expense.

(d) Providing each birth parent with written information to assist them in understanding the changes that result from adoption in their parental legal rights, obligations, and responsibilities, including potential ramifications of post-placement establishment of paternity.

(e) After the birth of the child, reassessing the birth mother's ability to understand the consequences of her decision to sign a consent and sur-

render document. This assessment must include consideration of her emotional state and current influence of medication.

(f) In the case of an Indian child, informing the parents that if no different order of preference has been established by the child's tribe for adoptive placement, the adoption agency must, in the absence of the court's determination that good cause to the contrary exists, give preference to placing the child with a member of the child's extended family, other members of the Indian child's tribe, or other Indian families, pursuant to the ICWA.

(g) Informing the birth parent that the adoption agency cannot honor a request of the birth parent to place the child with a family based solely on preferred race, color, or national origin. However, if the child is an Indian child, the licensed agency must follow the ICWA.

(7) Documents. The adoption agency must provide a copy of all documents signed by the birth parents to the birth parents at the time they sign a consent and surrender document.

Stat. Auth.: ORS 409.050, 418.005, 418.240, OL 2016, ch 106  
Stats. Implemented: ORS 109.096, 109.346, 109.353, 418.205 - 418.310, OL 2016, ch 106  
Hist.: SCF 6-1995, f. 12-22-94, cert. ef. 12-29-95; Renumbered from 413-220-0050, CWP 32-2008, f. & cert. ef. 10-17-08; CWP 12-2016(Temp), f. & cert. ef. 7-1-16 thru 12-27-16; CWP 22-2016, f. & cert. ef. 12-1-16; CWP 2-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

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**Rule Caption:** Adopting rules to establish procedure for Critical Incident Response Team required by ORS 419B.024.

**Adm. Order No.:** CWP 3-2017(Temp)

**Filed with Sec. of State:** 2-7-2017

**Certified to be Effective:** 2-7-17 thru 8-5-17

**Notice Publication Date:**

**Rules Adopted:** 413-017-0000, 413-017-0010, 413-017-0020, 413-017-0030, 413-017-0040

**Subject:** The Department of Human Services, Office of Child Welfare Programs, is adopting temporary rules to describe the requirements and procedure when a Critical Incident Response Team (CIRT) is mandated under ORS 419B.024 or when the Director of the Department may convene a Discretionary Critical Incident Response Team (DCIRT). Some of the primary provisions for both a CIRT and DCIRT include: defining the scope and purpose of the teams, membership requirements, responsibilities of the CIRT coordinator, and timelines.

The rule text showing proposed changes is available at [http://www.dhs.state.or.us/policy/childwelfare/policy\\_releases.htm](http://www.dhs.state.or.us/policy/childwelfare/policy_releases.htm).

**Rules Coordinator:** Amie Fender—(503) 945-8986

## 413-017-0000

### Definitions

Unless the context indicates otherwise, the following definitions apply to OAR chapter 413, division 017.

(1) "Child" means a person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency or proctor foster home.

(2) "Child abuse or neglect" means any form of child abuse, including abuse through neglect and abuse or neglect by a third party, as defined in ORS 419B.005 or, when applicable, Oregon Laws 2016, chapter 106, section 36.

(3) "Child protective services assessment (CPS assessment)" means an investigation into a report of child abuse or neglect pursuant to ORS 419B.020 that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(4) "Critical Incident" means a child fatality which was likely the result of child abuse or neglect when:

(a) The child was in the custody of the Department at the time of death; or

(b) The child was the subject of a child protective services assessment by the Department within 12 months preceding the fatality.

(5) "Critical Incident Response Team (CIRT)" means a committee, appointed by the DHS Director, to conduct an executive review of a critical incident.

(6) "Custody" means legal custody described in ORS 419B.373.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "DHS" means the Oregon Department of Human Services.



# ADMINISTRATIVE RULES

(9) Discretionary Critical Incident Response Team (DCIRT)” means a committee, appointed by the DHS Director to conduct an executive review of a serious physical injury as defined in ORS 161.015 that was likely the result of child abuse or neglect when:

(a) The child was in the custody of the Department at the time of the serious physical injury; or

(b) The child was the subject of a child protective services assessment by the Department within 12 months preceding the serious physical injury.

Stat. Auth.: ORS 418.005, 419B.024

Stats. Implemented: ORS 418.005, 419B.024

Hist.: CWP 3-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-017-0010

### Purpose of the Critical Incident Response Team (CIRT)

(1) The purpose of convening the CIRT is to increase child safety by:

(a) Rapidly drawing lessons from a specific incident to improve child welfare practice administered by the Department;

(b) Increasing transparency regarding the Department’s processes and practice;

(c) Identifying and evaluating internal or external systemic issues from a child fatality that impact current practice; and

(d) Ensuring timely responses by the Department with respect to a critical incident.

(2) Reviews conducted as provided in these rules are in addition to and separate from reviews conducted by a local Multi-Disciplinary Team pursuant to ORS 418.747, a State Fatality Review team pursuant to ORS 418.748 or the Department protocols “Notification and Review of Child Fatalities” and “Notification and Review of Sensitive Issues.”

(3) A CIRT has a limited purpose. It is not a final or comprehensive review of all the circumstances surrounding the death of a child. The CIRT review is generally limited to documents in the possession of or obtained by the Department. The CIRT is not an information gathering inquiry and does not include interviews of witnesses to an incident or parties to a juvenile case. A CIRT is not a fact-finding or forensic inquiry nor should it replace or supersede courts, law enforcement agencies, or other entities with legal responsibility to investigate and review some or all of the circumstances of the child fatality.

Stat. Auth.: ORS 418.005, 419B.024

Stats. Implemented: ORS 418.005, 419B.024

Hist.: CWP 3-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-017-0020

### CIRT Membership and Functioning

(1) The DHS Director or designee appoints members of the CIRT.

(a) Unless a conflict of interest exists, CIRT members must include:

(A) The Child Welfare Director or designee;

(B) An attorney from the Department of Justice assigned to provide legal advice and representation to the Department on the matter of the CIRT;

(C) A Department Human Resources representative;

(D) The District Manager for the county or region in which the critical incident occurred;

(E) The Program Manager for the county or region in which the critical incident occurred;

(F) The Department’s Child Protective Services Manager;

(G) The CIRT Coordinator;

(H) Casework supervisors assigned to supervise the workers involved in the identified case;

(I) Casework supervisors assigned to supervise the certification workers involved with the caregiver if the child was in foster care; and

(J) The Department’s Public Affairs Director or designee.

(b) The DHS Director has discretion to invite additional persons to an individual CIRT meeting or appoint additional members to the team for the duration of a particular CIRT.

(2) CIRT members who are appointed under subsection (1)(b) of this rule must:

(a) Be provided a meeting invitation and an agenda prior to each CIRT meeting;

(b) Attend the CIRT meetings in person;

(c) Return any copies of documents or materials reviewed at the meeting at the conclusion of each CIRT meeting; and

(d) Surrender any notes taken at the CIRT meeting to the CIRT Coordinator at the conclusion of the CIRT meeting.

(3) CIRT members appointed under subsection (1)(b) of this rule may review materials prior to a CIRT meeting at the designated location of the CIRT meeting.

(4) The CIRT Coordinator has the following responsibilities:

(a) Convenes the CIRT meetings;

(b) Ensures any members who are not Department staff have signed a confidentiality agreement;

(c) Ensures a thorough review of all records related to the circumstances that led to the critical incident;

(d) Ensures the team identifies the internal or external systemic issues; and

(e) Prepares the CIRT reports based on input from the CIRT pursuant to the timelines in section (4) of this rule.

(5) The CIRT:

(a) Reviews records related to the circumstances that led to the critical incident;

(b) During the course of its review, may include or consult with the District Attorney from the county in which the critical incident occurred pursuant to ORS 419B.024(2);

(c) Identifies internal or external systemic or practice issues; and

(d) Provides input for the following reports prepared by the CIRT coordinator:

(A) An initial report for the DHS Director within 60 days of the CIRT being declared; and

(B) A final report within 180 days of the CIRT being declared, except as provided in section (5) of this rule.

(6) The DHS Director or the Director’s designee has the discretion to grant additional time to complete the reports described in (3) of this rule depending upon the complexity of the case under review.

(5) The DHS Director or the Director’s designee may determine at any time that the CIRT’s work is complete and conclude the CIRT review process.

(6) The DHS Director, or the Director’s designee, shall comply with the Oregon public records law ORS 192.410 through 192.505, and may where appropriate claim an exemption that prevents the release of a CIRT report, either temporarily or permanently.

(7) The DHS Director or the Director’s designee shall:

(a) Review the recommendations of the CIRT; and

(b) Reconvene the CIRT team within six months of receipt of the final report to review the actions taken to improve practice.

Stat. Auth.: ORS 409.050, 418.005, 419B.024

Stat. Implemented: 409.050, 418.005, 419B.024

Hist.: CWP 3-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

## 413-017-0030

### Purpose of the Discretionary Critical Incident Response Team (DCIRT)

(1) The purpose of convening the DCIRT is to increase child safety by:

(a) Rapidly drawing lessons from a specific incident to improve child welfare practice administered by the Department;

(b) Increasing transparency regarding the Department’s processes and practice;

(c) Evaluating and identifying internal or external systemic issues from a serious physical injury as defined in ORS 161.015 that impact current practice; and

(d) Ensuring timely responses by the Department with respect to an incident of serious physical injury to a child.

(2) The determination of whether a serious physical injury has occurred is solely within the discretion of the DHS Director or the Director’s designee.

(3) Reviews conducted as provided in these rules are in addition to and separate from reviews conducted by a local Multi-Disciplinary Team pursuant to ORS 418.747, a State Fatality Review team pursuant to ORS 418.748 or the Department protocols “Notification and Review of Child Fatalities” and “Notification and Review of Sensitive Issues.”

(4) A DCIRT has a limited purpose. It is not a final or comprehensive review of all the circumstances surrounding the serious physical injury of a child. The DCIRT review is generally limited to documents in the possession of or obtained by the Department. The DCIRT is not an information gathering inquiry and does not include interviews of witnesses to an incident or parties to a juvenile case. A DCIRT is not a fact-finding or forensic inquiry nor should it replace or supersede courts, law enforcement agencies or other entities with legal responsibility to investigate and review some or all of the circumstances of the serious physical injury.

Stat. Auth.: ORS 409.050, 418.005, 419B.024

Stat. Implemented: 409.050, 418.005, 419B.024

Hist.: CWP 3-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

# ADMINISTRATIVE RULES

413-017-0040

## DCIRT Membership and Functioning

- (1) The DHS Director or designee appoints members of the DCIRT.
  - (a) Unless a conflict of interest exists, DCIRT members must include:
    - (A) The Child Welfare Director or designee;
    - (B) An attorney from the Department of Justice assigned to provide legal advice and representation to the Department on the matter of the DCIRT;
    - (C) A Department Human Resources representative;
    - (D) The District Manager for the county or region in which the serious physical injury occurred;
    - (E) The Program Manager for the county or region in which the serious physical injury occurred;
    - (F) The Department's Child Protective Services Manager;
    - (G) The CIRT Coordinator;
    - (H) Casework supervisors assigned to supervise the workers involved in the identified case;
    - (I) Casework supervisors assigned to supervise the certification workers involved with the caregiver if the child is in foster care; and
    - (J) The Department Public Affairs Director or designee.
  - (b) The DHS Director has discretion to invite additional persons to an individual DCIRT meeting or appoint additional members to the team for the duration of a particular DCIRT.
- (2) DCIRT members who are appointed under subsection (1)(b) of this rule must:
  - (a) Be provided a meeting invitation and an agenda prior to each DCIRT meeting;
  - (b) Attend the DCIRT meetings in person;
  - (c) Return any copies of documents or materials reviewed at the meeting at the conclusion of each DCIRT meeting; and
  - (d) Surrender any notes taken at the DCIRT meeting to the CIRT Coordinator at the conclusion of the DCIRT meeting.
- (3) DCIRT members appointed under subsection (1)(b) of this rule may review materials prior to a CIRT meeting at the designated location of the DCIRT meeting.
  - (4) The CIRT Coordinator has the following responsibilities:
    - (a) Convenes the DCIRT meetings;
    - (b) Ensures any members who are not Department staff have signed a confidentiality agreement;
    - (c) Ensures a thorough review of all records related to the circumstances that led to the serious physical injury;
    - (d) Ensures the team identifies the internal or external systemic issues; and
    - (e) Prepares the DCIRT reports based on input from the DCIRT pursuant to the timelines in section (4) of this rule.
  - (5) The DCIRT:
    - (a) Reviews records related to the circumstances that led to the serious physical injury;
    - (b) During the course of its review, may include or consult with the District Attorney from the county in which the serious physical injury occurred pursuant to ORS 419B.024(2); and
    - (c) Identifies internal or external systemic or practice issues.
    - (d) Provides input for the following reports prepared by the CIRT coordinator:
      - (A) An initial report for the DHS Director within 60 days of the DCIRT being declared; and
      - (B) A final report within 180 days of the DCIRT being declared, except as provided in section (5) of this rule.
    - (6) The DHS Director or the Director's designee has the discretion to grant additional time to complete the reports described in section (4) of this rule depending upon the complexity of the case under review.
    - (7) The DHS Director or the Director's designee may determine at any time that the DCIRT's work is complete and conclude the DCIRT review process.
    - (8) The DHS Director, or the Director's designee, shall comply with the Oregon public records law ORS 192.410 through 192.505, and may where appropriate claim an exemption that prevents the release of a DCIRT report, either temporarily or permanently.
    - (9) The DHS Director or the Director's designee shall:
      - (a) Review the recommendations of the DCIRT; and
      - (b) Reconvene the DCIRT team within six months of receipt of the final report to review the actions taken to improve practice.

Stat. Auth.: ORS 409.050, 418.005

Stat. Implemented: 409.050, 418.005

Hist.: CWP 3-2017(Temp), f. & cert. ef. 2-7-17 thru 8-5-17

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

**Rule Caption:** Amending rule relating to medical deduction for SNAP clients

**Adm. Order No.:** SSP 1-2017(Temp)

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17 thru 7-30-17

**Notice Publication Date:**

**Rules Amended:** 461-160-0430

**Subject:** The Department is amending OAR 461-160-0430 to benefit SNAP clients who are elderly or have disabilities by changing how the Department determines the medical deduction allowed for them, consistent with an approved waiver from the Food and Nutrition Service (FNS) so these clients qualify for additional food benefits to meet their needs. Under the amended rule, to determine the allowed deduction, the Department will first subtract \$35 from the total unreimbursed medical expenses. Then, for amounts between \$0.01 and \$170.01, \$170 will be deducted from income or, for amounts over \$170, the full cost amount will be deducted from income.

The rule text showing changes is available at [http://www.dhs.state.or.us/policy/selfsufficiency/ar\\_recent.htm](http://www.dhs.state.or.us/policy/selfsufficiency/ar_recent.htm).

**Rules Coordinator:** Kris Skaro—(503) 945-6067

### 461-160-0430

#### Income Deductions; SNAP

(1) Deductions from income are subtracted from countable (see OAR 461-001-0000) income (see OAR 461-140-0010) in the following order to determine adjusted income (see OAR 461-001-0000) for the SNAP program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of:

(A) \$157 per month for a benefit group (see OAR 461-110-0750) of one, two, or three individuals.

(B) \$168 per month for a benefit group of four individuals.

(C) \$197 per month for a benefit group of five individuals.

(D) \$226 per month for a benefit group of six or more individuals.

(c) A dependent care deduction for dependent care costs billed to a member of the filing group (see OAR 461-110-0370) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the filing group to:

(A) Accept or continue employment;

(B) Seek employment, including a job search that meets the requirements of a case plan (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly (see OAR 461-001-0015) individuals and individuals who have a disability (see OAR 461-001-0015) in the filing group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The Department uses the resulting amount to determine the allowable deduction as follows:

(A) For an amount less than \$0, no deduction is allowed.

(B) For an amount greater than \$0 but less than \$170.01, a deduction of \$170 is allowed.

(C) For an amount greater than \$170, a deduction of the amount determined under this subsection is allowed.

(e) A deduction for child support payments (including cash medical support) a member of the filing group makes under a legal obligation to a child (see OAR 461-001-0000) not a member of the filing group, including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For SNAP filing group members required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

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(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the individual can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other filing group members, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly. The limit is \$517 per month.

(2) If a filing group member cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the individual provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816  
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 411.825, 411.837  
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-0, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; 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 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2010(Temp), f. & cert. ef. 11-4-10 thru 5-31-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 28-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 1-2017(Temp), f. & cert. ef. 2-1-17 thru 7-30-17

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**Rule Caption:** Amending rules relating to estate administration

**Adm. Order No.:** SSP 2-2017(Temp)

**Filed with Sec. of State:** 2-13-2017

**Certified to be Effective:** 2-13-17 thru 8-11-17

**Notice Publication Date:**

**Rules Amended:** 461-135-0832, 461-135-0835

**Subject:** OAR 461-135-0832 and OAR 461-135-0835 about limits on estate claims and definitions used in estate administration rules are being amended to implement an adverse Oregon Supreme Court decision by amending the definition of "estate" with respect to the collection of payments for assistance provided and limit when the Department collects against the spouse of a recipient.

**Rules Coordinator:** Robert Trachtenberg—(503) 947-5290

## 461-135-0832

### Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens;

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(8) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(9) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.

(12) "Domestic partner" means an individual joined in a domestic partnership as defined in ORS 106.310.

(13) "Estate" means with respect to the collection of payments made for assistance provided prior to July 18, 1995 all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

(a) Tenancy by the entirety;

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- (b) Joint tenancy;
  - (c) Tenancy in common;
  - (d) Not as tenants in common, but with the right of survivorship;
  - (e) Life estate;
  - (f) Transfer on death deed;
  - (g) Living trust;
  - (h) Annuity purchased on or after April 1, 2001; or
  - (i) Other similar arrangement.
- (14) "General Assistance" means "general assistance" as defined in ORS 411.010.

(15) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(16) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(17) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(18) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(19) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(20) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(21) "Legal title" means legal ownership by a person.

(22) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(23) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(24) "Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.

(25) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to home and community-based care (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(26) "Medicare cost sharing" means medical assistance funds used to pay Medicare premiums, coinsurance, copayments and deductibles.

(27) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or legal title held by a person.

(28) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(29) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(30) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(31) "Probate estate" means all real property, personal property, or other assets included in a decedent's estate as it is defined by applicable state probate law.

(32) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(33) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or

other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(34) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(35) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(36) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.

(39) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient, the "value" would be established based on its fair market value at the time of discovery.

Stat. Auth: ORS 410.075, 411.060, 411.070, 413.042, 416.340, 416.350, 2013 OL 14 Sec. 10  
Stats. Implemented: ORS 93.969, 410.070, 410.075, 411.010, 411.060, 411.708, 411.795,  
416.310, 416.340, 416.350, 2013 OL 14 Sec. 10

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001,  
f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-  
1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f.  
12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06,  
cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef.  
1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 17-  
2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-  
2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 2-2017(Temp), f.  
& cert. ef. 2-13-17 thru 8-11-17

## 461-135-0835

### Limits on Estate Claims

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.

(2) For the OSIP program (see OAR 461-101-0010):

(a) The amount of any payments or benefits, including an overpayment (see OAR 461-195-0501), are a claim against the probate estate (see OAR 461-135-0832) of any deceased recipient.

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or domestic partner (see OAR 461-135-0832), if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a child under age 21 (see OAR 461-135-0832), a child with a disability (see OAR 461-135-0832), or a child with a visual impairment (see OAR 461-135-0832); and the child survives to the closing of the probate estate.

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.

(f) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim

# ADMINISTRATIVE RULES

against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) For General Assistance (see OAR 461-135-0832):

(a) The amounts of any payments or benefits, including overpayments, are a claim against the probate estate of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except that an overpayment of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the probate estate.

(b) The claim for correctly paid payments or benefits under the General Assistance program is deferred until the death of the spouse or domestic partner, if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, then the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under the General Assistance program may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment; and the child survives to the closing of the probate estate.

(e) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or child with a visual impairment, the amount of any assistance paid is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(4) For Medical Assistance (MA, as defined in OAR 461-135-0832):

(a) In determining the extent of the estate resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the value (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a qualified partnership policy was considered and approved. The amount of any MA incurred in a prior MA eligibility period where qualified partnership policy benefits were not considered is not subject to the estate resource disregard.

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the spouse of the recipient, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment, are a claim, against the probate estate of any deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving spouse, if any, of the deceased recipient. After the death of a surviving spouse, the deferred claim of the deceased recipient is a claim against the following assets (see OAR 461-135-0832) or their proceeds in the probate estate of the spouse. The Department has a claim against the probate estate of the spouse for medical assistance (see OAR 461-135-0832) paid to the recipient, but only to the extent that the spouse received property or other assets from the recipient through any of the following:

- (A) Probate.
- (B) Operation of law.

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment.

(f) For recipients who are not permanently institutionalized (see OAR 461-135-0832):

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the probate estate of any deceased recipient.

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.

(g) For permanently institutionalized individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was permanently institutionalized is a claim against the probate estate of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other medical institution (see OAR 461-135-0832) paid after September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.

(6) For trusts that comply with OAR 461-145-0540(10) and (11), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, 416.350  
Stats. Implemented: ORS 93.969, 125.495, 411.404, 411.620, 411.630, 411.708, 411.795, 413.085, 416.310, 416.350, OL 2016, ch 93  
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 16-2010(Temp), f. & cert. ef. 5-27-10 thru 11-23-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 24-2016, f. 6-29-16, cert. ef. 7-1-16; SSP 34-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 2-2017(Temp), f. & cert. ef. 2-13-17 thru 8-11-17

## Department of State Lands Chapter 141

**Rule Caption:** Establish an identification/notification process for historically filled lands, and requirements for creating new lands.

**Adm. Order No.:** DSL 3-2017

**Filed with Sec. of State:** 2-9-2017

**Certified to be Effective:** 2-9-17

**Notice Publication Date:** 12-1-2015

**Rules Amended:** 141-068-0080

**Subject:** Senate Bill 912 was passed during the 2015 regular legislative session. This bill clarifies the distinction between "historically filled lands" and "new lands" for purposes of determining ownership and transfer of ownership of lands created upon submersible or submerged lands by artificial fill or deposit. Re-affirms the State Land Board's authority to sell, lease or trade the newly defined "historically filled lands," identical to their authority over "new lands." Establishes process for State Land Board to identify and declare state's interest in historically filled lands and to provide notice of declaration. This legislation is based on recommendations from the Filled Lands Advisory Group (FLAG) that reported on its work to the State Land Board in June 2014. This rulemaking addresses the recommendations of the FLAG and sets up the process and proce-

# ADMINISTRATIVE RULES

dures for inventorying historically filled lands and notifying affected stakeholders.

OAR 141-067 will be amended to reflect the adoption of OAR 141-068. The process for identifying and selling or exchanging historically filled or new lands will be removed from division 67 and placed in division 68.

This amendment is being submitted to provide clarification verbiage only. Adding the term “Historically Filled” prior to the word lands in subsection 5.

**Rules Coordinator:** Sabrina L. Foward—(503) 986-5236

## 141-068-0080

### Land Sale Approval Process

(1) An applicant and the Department may enter into a negotiated sale at any time. A negotiated sale shall include:

(a) An appraisal or appraisal report must be completed on the land if the initial evaluation determines the value to be over \$100,000. If the initial Department evaluation determines the property to be under \$100,000 in value, the RMV is used to establish the value; and

(b) A schedule of the costs to be borne by the applicant and those administrative costs to be reimbursed to the Department by the applicant.

(2) A negotiated sale may include factors including, but not limited to:

(a) The relative strength of the state’s ownership claim;

(b) Access or lack of access;

(c) The potential loss of public interest values by extinguishing the State’s interest in the property;

(d) An evaluation of any existing authorizations or property rights either on, or adjacent to the land; and

(e) Any requirement to impose deed restrictions or issue easements in order to protect public interest values.

(3) The Department may participate in a negotiated sale for:

(a) A parcel determined to be of “high value” as described in OAR 141-068-0070(11); or

(b) Upon public review and findings, the Department determines that there are “moderate” to “high” public interests in the lands.

(4) All negotiated sales shall go to the State Land Board for final approval.

(5) The Department shall provide the following sale options for historically filled lands determined to have “low” public interest values, and to be of “low value” to “moderate value”:

(a) The Department shall offer to provide a conveyance that clears title to the lands as allowed under these rules.

(b) No compensation is required for the issuance of a conveyance that clears title for a parcel that is determined to be of “low value” as described in OAR 141-068-0070(9).

(c) The Department shall offer to issue a conveyance that clears title for compensation at 50% of real market value of the State’s interest in the property for a parcel that is determined to be of “moderate value” as described in OAR 141-068-0070(10).

(d) A conveyance issued under OAR 141-068-0080(5)(b) may be carried out by the Director and does not require further approval from the State Land Board.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented ORS 274.905-274.956

Hist.: DSL 2-2016, f. 5-13-16, cert. ef. 6-1-16; DSL 2-2017, f. & cert. ef. 1-12-17; DSL 3-2017, f. & cert. ef. 2-9-17

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**Department of State Police,  
Office of State Fire Marshal  
Chapter 837**

**Rule Caption:** Implement HB 3225 coordinated response to oil, hazardous material spills, or releases during rail transport.

**Adm. Order No.:** OSFM 1-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Adopted:** 837-120-0501, 837-120-0510, 837-120-0520, 837-120-0530, 837-120-0540

**Subject:** HB 3225 relates to safe rail transport of hazardous materials.

Requires a plan for coordinated response to oil or hazardous material spills or releases that occur during rail transport.

Requires annual report to be submitted to Legislative Assembly.

Identify a repository to inventory hazardous materials response resources.

**Rules Coordinator:** Valerie Abrahamson—(503) 934-8211

## 837-120-0501

### Purpose and Scope

(1) These rules are promulgated under the Office of State Fire Marshal’s authority contained in ORS 453.392.

(2) The provisions of this rule shall apply to the statewide hazardous material emergency response system established under ORS 453.392 to 453.394.

(3) Identify a repository to inventory hazardous materials response resources.

(4) Ensure continual readiness, maintenance of equipment, and training of personnel.

Stat. Auth.: ORS 453.392

Stats. Implemented: ORS 453.392 – 453.394

Hist.: OSFM 1-2017, f. 1-31-17, cert. ef. 2-1-17

## 837-120-0510

### Definitions

For the purposes of these rules the following definitions apply:

(1) “Coordinated response” means the integration of federal, state, local, and railroad emergency response resources operating under the National Incident Management System, in conjunction with Hazardous Materials Transportation by Rail contingency plans and Emergency Support Functions.

(2) “Hazardous Materials” means “hazardous substance” as that term is defined in ORS 453.307(4).

(3) “Spill or Release” means the discharge or threat of discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking or placing of any oil or hazardous material into the air, on any land or into any waters of the state.

Stat. Auth.: ORS 453.392

Stats. Implemented: ORS 453.392 – 453.394

Hist.: OSFM 1-2017, f. 1-31-17, cert. ef. 2-1-17

## 837-120-0520

### Planning and Coordinated Response

The Office of State Fire Marshal (OSFM) shall:

(1) Develop and annually review a Hazardous Materials Transportation by Rail state agency coordination plan in collaboration with Department of Environmental Quality, Oregon Department of Transportation, and Office of Emergency Management. This plan will work with existing local, state, and federal plans, or as required by federal laws and regulations;

(2) Provide support to local emergency planning committees for administration, outreach, planning, and exercise participation as it relates to oil and hazardous materials transportation by rail;

(3) By February 1 of each year, and in coordination with local governments, state agencies, emergency responders, and railroad industry representatives involved in hazardous materials response, submit a Legislative Report to the Office of Emergency Management and the Legislative Assembly.

Stat. Auth.: ORS 453.392

Stats. Implemented: ORS 453.392 – 453.394

Hist.: OSFM 1-2017, f. 1-31-17, cert. ef. 2-1-17

## 837-120-0530

### Hazardous Materials Response Resource Management

The Office of State Fire Marshal (OSFM) shall:

(1) Inventory oil and hazardous materials emergency response resources available in Oregon by identifying their locations, means to access them, whether they are publicly or privately maintained, and uploading them to the Western Response Resource List;

(2) Identify the need for additional Hazardous Materials Transportation by Rail emergency response resources for spill or release of hazardous materials;

(3) Facilitate the acquisition and strategic deployment of oil and hazardous materials spill response resources to support emergency response to hazardous materials by rail incidents.

Stat. Auth.: ORS 453.392

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Stats. Implemented: ORS 453.392 – 453.394  
Hist.: OSFM 1-2017, f. 1-31-17, cert. ef. 2-1-17

## 837-120-0540

### Training and Exercise Programs

The Office of State Fire Marshal (OSFM) shall:

- (1) Provide support to local responders to attend regional or fixed training within the state for response to crude oil and hazardous materials transportation by rail incidents with authorized funding sources;
- (2) Provide support to OSFM regional hazmat teams to offer outreach training within their response regions;
- (3) Provide support to OSFM regional hazmat teams to participate in large scale exercises, scenario-based training, or specialized courses in hazardous materials transportation by rail emergencies.

Stat. Auth.: ORS 453.392

Stats. Implemented: ORS 453.392 – 453.394

Hist.: OSFM 1-2017, f. 1-31-17, cert. ef. 2-1-17

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

**Rule Caption:** Changes amount DMV will automatically refund when it receives money not legally due

**Adm. Order No.:** DMV 1-2017

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 735-001-0100

**Subject:** ORS 293.445 authorizes state agencies to establish, by rule, the minimum dollar amount that an agency will refund when the agency receives money not legally due to the agency. The amendment of OAR 735-001-0100 changes from \$5.01 to \$10.01 the minimum amount that DMV will automatically refund when it determines it has received money not legally due to the division. DMV changed the amount, which was established in 2006, to help offset DMV's cost to issue refunds.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-001-0100

### Refunds

DMV will issue a refund of moneys received in excess of the amount legally due:

- (1) If DMV determines a person has made an overpayment of more than \$10; or
- (2) Upon written request from a person who made an overpayment, or the person's legal representative, if the request is submitted to DMV within three years of the date that DMV received the overpayment.

Stat. Auth.: ORS 184.616, 184.619, 293.445, 802.010, 802.110

Stats. Implemented: ORS 293.445, 802.110

Hist.: DMV 5-2006, f. & cert. ef. 5-25-06; DMV 1-2017, f. 1-24-17, cert. ef. 2-1-17

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**Rule Caption:** Closure of DMV Record Inquiry Accounts for Misuse or Improper Disclosure of Personal Information

**Adm. Order No.:** DMV 2-2017

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 1-24-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 735-010-0020

**Subject:** OAR 735-010-0020 defines processes and procedures for a person or business entity to apply for a Record Inquiry Account. As part of the application process the person or business entity must provide sufficient information for DMV to determine that the person or business entity is legally entitled to obtain DMV records. At times DMV receives complaints about the use of its records. DMV investigates reports of misuse or unlawful disclosure. DMV has amended OAR 735-010-0020 to give DMV authority to close a record inquiry account if an account holder misuses or improperly discloses personal information from DMV records.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-010-0020

### Procedures for Record Inquiry or TOD Filing Fee Accounts

(1) As used in this rule, "Account Bond" means a bond or undertaking issued by an authorized surety insurer to guarantee payment of the account holder's Record Inquiry Account or TOD (Transitional Ownership Document) Filing Fee Account established in accordance with OAR 735-020-0040 in the amount set forth in sections (7) and (8) of this rule.

(2) DMV will establish a Record Inquiry Account for any person or business entity who:

(a) Submits a completed Application for Record Inquiry Account, including the required account qualification certification and supporting documents;

(b) DMV determines to be qualified to receive personal information after reviewing the Application for Record Inquiry Account, qualification certification and supporting document; and

(c) Pays a \$70 non-refundable fee to cover the cost of processing the account application.

(3) The department will establish a TOD Filing Fee Account, used for billing purposes only, for any person who:

(a) Submits a completed Application for TOD Filing Fee Account; and

(b) Pays a \$70 non-refundable fee to cover the cost of processing the account application.

(4) In addition to the requirements of sections (2) and (3) of this rule, if the applicant is a dealer of new or used motor vehicles, the applicant must be certified as a vehicle dealer by DMV under ORS Chapter 822 before a Record Inquiry Account or TOD Filing Fee Account may be established.

(5) An invoice summarizing the billings for the prior month will be sent monthly to each account holder.

(6) The account holder must return the remittance advice copy of the invoice when making payment on the account.

(7) An Account Bond is required for all Record Inquiry Accounts and TOD Filing Fee Accounts carrying outstanding balances of \$500 or more as follows:

(a) When a Record Inquiry Account or TOD Filing Fee Account has an outstanding balance of \$500 or more for three consecutive months. The Account Bond amount will be the greater of \$1,500 or three times the average outstanding monthly balance for the past year, or since the date the account was opened, whichever period is shorter;

(b) When DMV determines the required Account Bond amount, DMV will notify the account holder and it is the account holder's responsibility to obtain a bond in the amount specified by DMV; and

(c) The bond must be filed by the account holder, with DMV, within 30 days of notification by DMV.

(8) An Account Bond in the minimum sum of \$500 may be required for all Record Inquiry Accounts or TOD Filing Fee Accounts carrying outstanding balances of less than \$500 when:

(a) DMV becomes aware that the account holder has a poor credit rating; or

(b) The account holder has been delinquent in paying the account charges, for over 60 days, at least three times since the account was opened.

(9) DMV may immediately close any Record Inquiry Account or TOD Filing Fee Account if any of the following events occur:

(a) An account has been delinquent for 120 days and the account is not paid within 15 days of written notification of payment demand by DMV;

(b) No transactions are recorded in the account in a one-year period;

(c) An account holder fails to obtain an Account Bond in accordance with section (7) or (8) of this rule;

(d) An account becomes delinquent in excess of the amount of the Account Bond securing the account;

(e) The Record Inquiry Account holder no longer qualifies to receive personal information from motor vehicle records;

(f) The Record Inquiry Account holder fails to immediately notify the department of a change in qualification status for receipt of personal information;

(g) DMV receives notice that the account holder's Account Bond has been canceled or has expired;

(h) DMV receives a notice of bankruptcy for the account holder;

(i) The account holder submits a written request that DMV close their account; or

(j) The account holder uses or discloses personal information from DMV records in violation of applicable law.

(10) Any account that has been closed under section (9) of this rule cannot be reopened. A new account must be established by:

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(a) Submitting a new account application and meeting all requirements of sections (2) through (4) of this rule, including payment of any fees required under section (2) or (3) of this rule; and

(b) Payment, in full, of any previously delinquent account balances.

(11) Account holders are responsible for attorney fees and any other fees incurred by DMV for the collection of any amount not paid when due.

(12) A Record Inquiry Account holder must keep records for five years that identifies:

(a) The DMV record accessed;

(b) The personal information used;

(c) The permitted purpose for which this personal information was used;

(d) Whether this information was released to another person; and

(e) If released, how the person is eligible to receive personal information.

(13) DMV Records Policy Unit may inspect account holder records or request information on a specific record inquiry made by an account holder for reasons including, but not limited to, any indication that personal information is being misused or released to a person who is not eligible to receive personal information.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.010, 802.179, 802.183, 802.220 & 802.230  
Stats. Implemented: ORS 802.179, 802.183, 802.220 & 802.230

Hist.: MV 6-1978, f. 10-3-78, ef. 12-1-78; MV 19-1983, f. 12-30-83, ef. 1-1-84, Renumbered from 735-41-020; MV 9-1984, f. 6-29-84, ef. 7-1-84; MV 44-1989, f. & cert. ef. 10-16-89; DMV 16-1998, f. 12-17-98 cert. ef. 1-1-99; DMV 7-2014, f. & cert. ef. 8-29-14; DMV 2-2017, f & cert. ef. 1-24-17

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**Rule Caption:** Makes a minor revision to language for consistency with other DMV special registration plate rules

**Adm. Order No.:** DMV 3-2017

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 1-24-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 735-040-0115

**Subject:** DMV made a minor revision to OAR 735-040-0115(3) to use language that is consistent with other DMV rules relating to the qualifications, application and approval for special registration plates.

**Rules Coordinator:** Lauri Kunze—(503) 986-3171

## 735-040-0115

### Special Registration Plates; Institutions of Higher Education, Qualifications; Application, Approval

(1) An institution of higher education that wishes to become eligible for a special registration plate issued under ORS 805.222 and 805.225, must submit the following to DMV:

(a) A completed and signed Application for Special Registration Plate (DMV Form 735-7076) and documentation sufficient to DMV that:

(A) The institution is an “institution” as defined in OAR 735-040-0040, including a written certification on the institution’s letterhead from the institution’s president, chancellor, or chief executive officer stating that the institution meets the definition of an institution of higher education as defined in OAR 735-040-0040; and

(B) The institution is physically located in Oregon.

(b) The name, address, phone number and email address of current directors or officers of the institution, or other person authorized by the institution to act as the institution’s representative for purposes of the institution’s special registration plate.

(c) The institution’s requested plate design, in an electronic format designated by the department. The design must comply with the plate design requirements specified in OAR 735-040-0125.

(d) A \$5,000 preapproval fee to cover DMV’s costs to review the institution’s application and requested plate design for compliance with ORS 805.222 to 805.225, and DMV rules. The fee must be in the form of a check or money order payable to Oregon DMV.

(e) Any other information DMV considers necessary to determine the institution is eligible for the issuance of a special registration plate.

(2) Applications and plate designs are reviewed in the order received by DMV.

(3) DMV will not issue special registration plates for an institution with a plate currently issued by DMV under ORS 805.205 and OAR 735-040-0045 until:

(a) The inventory of the institution’s plate is depleted; or

(b) The institution reimburses DMV’s plate manufacturing costs and any costs associated with the destruction of any remaining inventory of the institution’s plate.

(4) DMV may deny an institution’s eligibility for a special registration plate if:

(a) The institution’s application is incomplete or contains false information;

(b) The institution is not authorized to use the requested plate design;

(c) The requested plate design does not meet the requirements specified in OAR 735-040-0125 (plate design); or

(d) The institution fails to provide any information requested by DMV, or fails to meet any requirement for a special registration plate under ORS 805.222 or 805.225, or DMV rule.

(5) DMV will notify the institution in writing if:

(a) The institution’s application or requested plate design requires additional information or modification.

(b) DMV approves the institution’s application or requested plate design.

(c) DMV denies the institution’s application or requested plate design.

(d) DMV withdraws the institution’s eligibility or ceases production or issuance of the institution’s plate.

(6) Upon DMV’s approval of the institution’s application and requested plate design, DMV will send the institution 3,100 sequentially numbered, three-part DMV voucher forms for collection, as specified in ORS 805.225. Once collected, the institution must submit at least 3,000 vouchers and all of the following to DMV:

(a) A fully executed licensing agreement between DMV and the institution for the use of any artwork, image, name, logo, mark, slogan, letter or word requested to appear on the institution’s plate;

(b) A check or money order in an amount that includes:

(A) At least \$120,000, with the total amount determined by the number of vouchers sold multiplied by the \$40 surcharge fee; and

(B) DMV’s anticipated costs of adding the institution’s plate to the special registration plate program. When estimating DMV’s anticipated costs, the department will consider the balance of any unexpended preapproval fees provided under section (1)(d) of this rule.

(c) The “DMV Copy” of each prepaid voucher form;

(d) Any unsold or voided voucher forms;

(e) A reconciliation report showing:

(A) The total number of vouchers sold, including the beginning and ending control numbers;

(B) The total number of vouchers that were lost, stolen, destroyed or voided and the control number of each;

(C) The total number of unsold vouchers; and

(D) Any additional vouchers ordered and received from DMV, including the beginning and ending control numbers.

(f) The name of the financial institution and account number designated by the institution for the deposit of plate surcharge fees (minus DMV’s administrative costs) collected by DMV from the sale of the institution’s special registration plate; and

(g) The institution’s final approved plate design, in an electronic format designated by the department.

(7) The fees submitted to DMV under subparagraph (6)(a)(A) of this rule are nonrefundable.

(8) An eligible institution must submit an Annual Statement of Continuing Eligibility (DMV Form 735-6942) to DMV certifying the institution continues to meet the requirements for a special registration plate under ORS 805.222 to 805.225, and DMV rules. The statement is due no later than 30 days after the date of receiving an annual renewal of eligibility letter from DMV.

(9) The institution must notify DMV immediately if:

(a) There is a change in any information listed on the institution’s application or most recent statement of continuing eligibility; or

(b) The institution ceases to exist, or no longer meets the eligibility requirements for a nonprofit institution under ORS 805.222 to 805.225 or DMV rule.

(10) DMV may withdraw eligibility and cease to issue an institution’s special registration plate if:

(a) The institution fails to provide any information requested by DMV;

(b) DMV determines the institution is not authorized to reproduce or use any artwork, image, name, logo, mark, slogan, letter or word previously approved for the institution’s plate;

(c) The institution fails to submit an Annual Statement of Continuing Eligibility form as required under section (9) of this rule; or

(d) The institution fails to comply with any requirement for a special registration plate under ORS 805.222 to 805.225, or DMV rule.

(11) DMV shall cease production of an institution’s plate if:



# ADMINISTRATIVE RULES

(a) DMV does not issue 2,000 sets of the institution's plate in any one year. For purposes of this subsection, the year begins on the day that the institution's special registration plate is initially offered for sale;

(b) The institution ceases to exist or becomes ineligible for the issuance of special registration plates under ORS 805.222 to 805.225, or DMV rule; or

(c) DMV determines any artwork, image, name, logo, mark, slogan, letter or word that appears on the institution's plate contains an expression of political opinion or religious belief, or violates any provision of the Oregon Vehicle Code, or DMV rule relating to registration plate content.

(12) Except for the reason described in subsection (11)(a) of this rule, when DMV ceases production of an institution's plate it will destroy all remaining plate inventory.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.535, 805.222 & 805.225

Stats. Implemented: 805.222 & 805.225

Hist.: DVM 3-2016, f. 6-22-16, cert. ef. 7-1-16; DMV 3-2017, f. & cert. ef. 1-24-17

## Employment Department Chapter 471

**Rule Caption:** Update Rule to Incorporate 2013 Statutory Change and Clarify Unemployment Coverage for Certain Corporate Officers

**Adm. Order No.:** ED 1-2017

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 471-031-0017

**Subject:** The Department is proposing to amend this rule due to the passage of Senate Bill (SB) 849 in the 2013 Legislative Session. SB 849 amended Oregon Revised Statute (ORS) 657.044 to enable corporations with sole corporate officers to elect not to provide unemployment insurance coverage for the officers. The bill specified that the exclusion applied when Oregon achieved Unemployment Insurance Tax Schedule IV or lower which occurred in 2016.

The proposed amendment also includes the following changes, not resulting from the passage of SB 849, to simplify the rule:

- (1) Clarifies how the Department will review the written election;
- (2) Simplifies how a corporation may cancel said election;
- (3) Specifies when the election is considered revoked due to a corporation no longer meeting the requirements of ORS 657.044; and
- (4) Removes redundant or otherwise unnecessary references to authority and rights established under existing Oregon law.

Lastly, also not resulting from the passage of SB 849, the proposed amendment to the rule defines the term "substantial ownership" to mean that each corporate officer must own at least ten (10%) percent of the total corporation.

The change in rule will not affect employers who currently already qualify for the exclusion. Only corporations with officers electing the exclusion after February 1, 2017 will be affected.

**Rules Coordinator:** Cristina Koreski—(503) 947-1471

### 471-031-0017

#### Corporate Officer/Director Election

(1) For the purposes of ORS 657.044, the term "substantial ownership" means each corporate officer owns at least ten percent of the corporation and the total ownership of the corporation among those officers being excluded is at least seventy-five percent. This definition is effective for all corporations who apply for the election after February 1, 2017.

(2) The Employment Department will notify the corporation, in writing, whether the election meets the statutory requirements and the effective date of the election as determined by ORS 657.044(2)(b). The notice approving or denying the election will be mailed to the corporation's last known address as shown in the Department's records.

(3) If the statutory requirements are met, the election not to provide coverage will continue until revoked or canceled.

(4) Once the election is approved, the corporation must notify the Employment Department in writing of any changes to ownership within thirty (30) days of the change occurring.

(5) The election not to provide coverage will be revoked if there is a change in ownership which causes the corporate officers to no longer meet the requirements of ORS 657.044(1)(a) or (b). The election will be revoked effective the date of the change regardless of when the Employment

Department was notified of the change. If the election is revoked, the Department will mail a notice of revocation to the corporation's last known address as shown in the Department's records.

(6) The corporation may cancel the election at any time by notifying the Employment Department in writing, and the cancellation will be effective in the quarter filed unless a later date is specified in the cancellation notice. If the corporation chooses to cancel the election, then the corporation will not be granted another exclusion for a minimum of two completed calendar years from the effective date of the cancellation.

(7) The notice of denial referred to in section 2 and notice of revocation referred to in section 5 shall become final twenty (20) calendar days after the notice is mailed unless within such time the corporation files a request for a hearing. The request for hearing must be filed in accordance with the provisions of OAR 471-040-0005(3). A request for hearing on the denial of a corporation's election must be in writing and submitted by the employer or the employer's agent. The date of filing any request for hearing under this rule shall be determined in accordance with the provisions of OAR 471-010-0040.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.044

Hist.: ED 1-1998, f. 2-20-98, cert. ef. 2-27-98; ED 6-2002, f. 9-20-02, cert. ef. 9-22-02; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 1-2017, f. & cert. ef. 2-1-17

## Land Conservation and Development Department Chapter 660

**Rule Caption:** Rulemaking regarding protection of historic resource sites under Statewide Planning Goal 5

**Adm. Order No.:** LCDD 1-2017

**Filed with Sec. of State:** 2-10-2017

**Certified to be Effective:** 2-10-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 660-023-0030, 660-023-0200

**Subject:** The purpose of the proposed amendments are to achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Place that can be applied directly without the need to amend local codes; clarify the circumstances under which the owner consent provisions in ORS 197.772(1) apply to resources listed in the National Register; better explain how the standard Goal 5 process described is augmented by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, published by the National Park Service (NPS); and clarify who has standing under the owner consent provisions of ORS 197.772(2) and highlight an alternate path for removing a local historic designation.

**Rules Coordinator:** Casaria Taylor—(503) 373-0050, ext. 322

### 660-023-0030

#### Inventory Process

(1) Inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. The purpose of the inventory process is to compile or update a list of significant Goal 5 resources in a jurisdiction. This rule divides the inventory process into four steps. However, all four steps are not necessarily applicable, depending on the type of Goal 5 resource and the scope of a particular PAPA or periodic review work task. For example, when proceeding under a quasi-judicial PAPA for a particular site, the initial inventory step in section (2) of this rule is not applicable in that a local government may rely on information submitted by applicants and other participants in the local process. The inventory process may be followed for a single site, for sites in a particular geographical area, or for the entire jurisdiction or urban growth boundary (UGB), and a single inventory process may be followed for multiple resource categories that are being considered simultaneously. The standard Goal 5 inventory process consists of the following steps, which are set out in detail in sections (2) through (5) of this rule and further explained in sections (6) and (7) of this rule:

- (a) Collect information about Goal 5 resource sites;
- (b) Determine the adequacy of the information;
- (c) Determine the significance of resource sites; and
- (d) Adopt a list of significant resource sites.

(2) Collect information about Goal 5 resource sites: The inventory process begins with the collection of existing and available information, including inventories, surveys, and other applicable data about potential Goal 5 resource sites. If a PAPA or periodic review work task pertains to certain specified sites, the local government is not required to collect infor-

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mation regarding other resource sites in the jurisdiction. When collecting information about potential Goal 5 sites, local governments shall, at a minimum:

(a) Notify state and federal resource management agencies and request current resource information; and

(b) Consider other information submitted in the local process.

(3) Determine the adequacy of the information: In order to conduct the Goal 5 process, information about each potential site must be adequate. A local government may determine that the information about a site is inadequate to complete the Goal 5 process based on the criteria in this section. This determination shall be clearly indicated in the record of proceedings. The issue of adequacy may be raised by the department or objectors, but final determination is made by the commission or the Land Use Board of Appeals, as provided by law. When local governments determine that information about a site is inadequate, they shall not proceed with the Goal 5 process for such sites unless adequate information is obtained, and they shall not regulate land uses in order to protect such sites. The information about a particular Goal 5 resource site shall be deemed adequate if it provides the location, quality and quantity of the resource, as follows:

(a) Information about location shall include a description or map of the resource area for each site. The information must be sufficient to determine whether a resource exists on a particular site. However, a precise location of the resource for a particular site, such as would be required for building permits, is not necessary at this stage in the process.

(b) Information on quality shall indicate a resource site's value relative to other known examples of the same resource. While a regional comparison is recommended, a comparison with resource sites within the jurisdiction itself is sufficient unless there are no other local examples of the resource. Local governments shall consider any determinations about resource quality provided in available state or federal inventories.

(c) Information on quantity shall include an estimate of the relative abundance or scarcity of the resource.

(4) Determine the significance of resource sites: For sites where information is adequate, local governments shall determine whether the site is significant. This determination shall be adequate if based on the criteria in subsections (a) through (c) of this section, unless contradicted by the department, objectors, or the commission based upon contradictory information. The determination of significance shall be based on:

(a) The quality, quantity, and location information;

(b) Supplemental or superseding significance criteria set out in OAR 660-023-0090 through 660-023-0230; and

(c) Any additional criteria adopted by the local government, provided these criteria do not conflict with the requirements of OAR 660-023-0090 through 660-023-0230.

(5) Adopt a list of significant resource sites: When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as a part of the comprehensive plan or as a land use regulation. Local governments shall complete the Goal 5 process for all sites included on the resource list except as provided in OAR 660-023-0200(2)(c) for historic resources, and OAR 660-023-0220(3) for open space acquisition areas.

(6) Local governments may determine that a particular resource site is not significant, provided they maintain a record of that determination. Local governments shall not proceed with the Goal 5 process for such sites and shall not regulate land uses in order to protect such sites under Goal 5.

(7) Local governments may adopt limited interim protection measures for those sites that are determined to be significant, provided:

(a) The measures are determined to be necessary because existing development regulations are inadequate to prevent irrevocable harm to the resources on the site during the time necessary to complete the ESEE process and adopt a permanent program to achieve Goal 5; and

(b) The measures shall remain effective only for 120 days from the date they are adopted, or until adoption of a program to achieve Goal 5, whichever occurs first.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040 & 197.225 - 197.245

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 1-2017, f. & cert. ef. 2-10-17

## 660-023-0200

### Historic Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Demolition" means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost. This definition applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions

regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.

(b) "Designation" is a decision by a local government to include a significant resource on the resource list.

(c) "Historic context statement" is an element of a comprehensive plan that describes the important broad patterns of historical development in a community and its region during a specified time period. It also identifies historic resources that are representative of the important broad patterns of historical development.

(d) "Historic preservation plan" is an element of a comprehensive plan that contains the local government's goals and policies for historic resource preservation and the processes for creating and amending the program to achieve the goal.

(e) "Historic resources" are those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.

(f) "Locally significant historic resource" means a building, structure, object, site, or district deemed by a local government to be a significant resource according to the requirements of this division and criteria in the comprehensive plan.

(g) "National Register Resource" means buildings, structures, objects, sites, or districts listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

(h) "Owner":

(A) Means the owner of fee title to the property as shown in the deed records of the county where the property is located; or

(B) Means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(C) Means, if the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

(D) Does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or

(E) Means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in (A)-(D).

(F) Means, for National Register Resources, the same as defined in 36 CFR 60.3(k).

(i) "Protect" means to require local government review of applications for demolition, relocation, or major exterior alteration of a historic resource, or to delay approval of, or deny, permits for these actions in order to provide opportunities for continued preservation.

(j) "Significant historic resource" means a locally significant historic resource or a National Register Resource.

(2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.

(a) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8). Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

(b) The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, in conjunction with the requirements of this rule, apply when local governments choose to amend acknowledged historic preservation plans and regulations.

(c) Local governments are not required to apply the ESEE process pursuant to OAR 660-023-0040 in order to determine a program to protect historic resources.

(3) Comprehensive Plan Contents. Local comprehensive plans should foster and encourage the preservation, management, and enhancement of significant historic resources within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, produced by the National Park Service. Local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance in conjunction with inventorying historic resources.

(4) Inventorying Historic Resources. When a local government chooses to inventory historic resources, it must do so pursuant to OAR 660-023-0030, this section, and sections (5) through (7). Local governments are encouraged to provide opportunities for community-wide participation as

# ADMINISTRATIVE RULES

part of the inventory process. Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and provide the inventory to that office in a format compatible with the Oregon Historic Sites Database.

(5) Evaluating and Determining Significance. After a local government completes an inventory of historic resources, it should evaluate which resources on the inventory are significant pursuant to OAR 660-023-0030(4) and this section.

(a) The evaluation of significance should be based on the National Register Criteria for Evaluation, historic context statement and historic preservation plan. Criteria may include, but are not limited to, consideration of whether the resource has:

(A) Significant association with events that have made a significant contribution to the broad patterns of local, regional, state, or national history;

(B) Significant association with the lives of persons significant to local, regional, state, or national history;

(C) Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) A high likelihood that, if preserved, would yield information important in prehistory or history; or

(E) Relevance within the local historic context and priorities described in the historic preservation plan.

(b) Local governments may delegate the determination of locally significant historic resources to a local planning commission or historic resources commission.

(6) Designating Locally Significant Historic Resources. After inventorying and evaluating the significance of historic resources, if a local government chooses to protect a historic resource, it must adopt or amend a resource list (i.e., "designate" such resources) pursuant to OAR 660-023-0030(5) and this section.

(a) The resource list must be adopted or amended as a land use decision.

(b) Local governments must allow owners of inventoried historic resources to refuse historic resource designation at any time during the designation process in subsection (a) and must not include a site on a resource list if the owner of the property objects to its designation on the public record. A local government is not required to remove a historic resource from an inventory because an owner refuses to consent to designation.

(7) Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources designated under section (6). This section replaces OAR 660-023-0050. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior, produced by the National Park Service.

(8) National Register Resources are significant historic resources. For these resources, local governments are not required to follow the process described in OAR 660-023-0030 through 660-023-0050 or sections (4) through (6). Instead, a local government:

(a) Must protect National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations, by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial and considers the following factors: condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination;

(b) May apply additional protection measures. For a National Register Resource listed in the National Register of Historic Places after the effective date of this rule, additional protection measures may be applied only upon considering, at a public hearing, the historic characteristics identified in the National Register nomination; the historic significance of the resource; the relationship to the historic context statement and historic preservation plan contained in the comprehensive plan, if they exist; the goals and policies in the comprehensive plan; and the effects of the additional protection measures on the ability of property owners to maintain and modify features of their property. Protection measures applied by a local government to a National Register resource listed before the effective date

of this rule continue to apply until the local government amends or removes them; and

(c) Must amend its land use regulations to protect National Register Resources in conformity with subsections (a) and (b). Until such regulations are adopted, subsections (a) and (b) shall apply directly to National Register Resources.

(9) Removal of a historic resource from a resource list by a local government is a land use decision and is subject to this section.

(a) A local government must remove a property from the resource list if the designation was imposed on the property by the local government and the owner at the time of designation:

(A) Has retained ownership since the time of the designation, and

(B) Can demonstrate that the owner objected to the designation on the public record, or

(C) Was not provided an opportunity to object to the designation, and

(D) Requests that the local government remove the property from the resource list.

(b) Except as provided in subsection (a), a local government may only remove a resource from the resource list if the circumstances in paragraphs (A), (B), or (C) exist.

(A) The resource has lost the qualities for which it was originally recognized;

(B) Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing;

(C) The local building official declares that the resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

(10) A local government shall not issue a permit for demolition or modification of a locally significant historic resource for at least 120 days from:

(a) The date of the property owner's refusal to consent to the historic resource designation, or

(b) The date of an application to demolish or modify the resource.

(11) OAR 660-023-0200(1)(a) and (1)(h) are effective upon filing of the rule with the Secretary of State.

(12) OAR 660-023-0200(8) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions until the local government has amended its land use regulations as required by OAR 660-023-0200(8)(c).

(13) OAR 660-023-0200(9) is effective upon filing of the rule with the Secretary of State and applies directly to local government decisions until the local government has amended its land use regulations to conform with the rule.

(14) OAR 660-023-0200(10) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040, 197.225 - 197.245 & 197.772

Hist.: LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 1-2017, f. & cert. ef. 2-10-17

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## Landscape Architect Board Chapter 804

**Rule Caption:** Updates to Rules for Business Registration, Code of Professional Conduct, Fees, Advertising, Definitions, Inactive Status

**Adm. Order No.:** LAB 1-2017

**Filed with Sec. of State:** 2-10-2017

**Certified to be Effective:** 2-10-17

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 804-035-0000

**Rules Amended:** 804-003-0000, 804-022-0025, 804-030-0011, 804-035-0010, 804-035-0020, 804-035-0030, 804-035-0035, 804-035-0040, 804-040-0000, 804-050-0005, 804-050-0010, 804-050-0015

**Subject:** Comprehensive update of rules that relate to the Board's business registration program to improve clarity and transparency about purpose for and requirements of this registration type. Established a new fee for filing of statements of responsibility as part of business registration. Adopted miscellaneous other updates, such as clarifying registrant requirements for keeping contact information on file with the Board, to support more efficient management of registration programs.

**Rules Coordinator:** Christine Valentine—(503) 589-0093

# ADMINISTRATIVE RULES

## 804-003-0000

### Definitions

The definitions of terms used in ORS 671.310 to 671.459, and the rules of this chapter are:

(1) "Assumed or Fictitious Name" — A false name taken as one's own.

(2) "Business" — A sole proprietorship, association of persons, corporation, limited liability company, partnership, or other entity that provides landscape architecture services in Oregon.

(3) "Deceit" — An attempt to portray as true or valid something that is untrue or invalid.

(4) "Delinquent" — Status of registration for a registrant who fails to renew on or before the renewal date where the registration is not yet deemed lapsed.

(5) "Direct Supervision" — For purposes of chapter 804 divisions 10, 20, 22, 27 and 50, this is supervision provided by a licensed or registered Landscape Architect to a candidate or applicant for either examination or registration, including a Landscape Architect-in-Training. The supervising Landscape Architect must provide oversight, inspection, control, and direction regarding the services and work being performed by the candidate or applicant. This means the supervisor must:

(a) Be located in close proximity to or be readily accessible to the candidate or applicant;

(b) Be in frequent communication with the candidate or applicant;

(c) Ensure communications with the candidate or applicant are responsive and include face-to-face, e-mail, telephone, internet and other similar forms of direct communication; and

(d) Take responsibility for the services or work done by the candidate or applicant including but not limited to sealing and signing documents when required. The primary goals of direct supervision are to assure that the candidate or applicant understands and is performing services and work within the professional standard of practice and to ensure that public health, safety, and welfare are protected.

(6) "Emeritus" — A type of inactive registration where the individual is retired from practice but retains an honorary title corresponding to that held immediately before retirement.

(7) "Employing" — Hiring a person, not an independent contractor, for compensation.

(8) "Fraud" — Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(9) "Grossly Negligent" — Reckless and wanton disregard for exercising care and caution.

(10) "Impersonate" — To assume, without authority or with fraudulent intent, the identity of another person.

(11) "Inactive" — A non-practice registration status that a registrant in good standing may request by submitting a written request and statement of non-practice to the Board before or on the registration renewal deadline.

(12) "In Good Standing" — For purposes of ORS 671.376(4) and OAR 804-022-0025(1), 'in good standing' means that the registrant when making the request for inactive status has a current active unrestricted registration; is in compliance with all requirements for registration including, but not limited to, payment of all required fees and compliance with all continuing education requirements; and is not the subject of a pending board investigation or action or the subject of a board order.

(13) "Lapsed" — Status of registration when not renewed within 60 days of the annual renewal date for an individual registration or within 30 days of the annual renewal date for a business registration.

(14) Late Fee — A fee assessed when a payment is received after the date due.

(15) "Material Misrepresentation" — An untrue statement that is significant under the circumstances.

(16) "Renewal of Registration" — To annually maintain the current status of a valid (active) registration or to bring a delinquent certificate of registration to current, valid (active) status.

(17) "Responsible Charge" — Having control over or responsibility for landscape architecture services provided directly or by others under the supervision of the Registered Landscape Architect. Responsible charge includes but is not limited to the Registered Landscape Architect being responsible for one or more of the following landscape architecture services performed or provided:

(a) The manner, method, or quality controls of practice;

(b) Ensuring minimum acceptable standards of practice are followed;

(c) Preparing or reviewing designs, calculations, plans, site assessments, maps or other documents with the authority to make final decisions in regards thereto;

(d) Identifying deficiencies found in, correcting errors contained in, or making other changes to designs, calculations, plans, site assessments, maps or other documents;

(e) When providing supervision, being readily accessible to the person(s) being supervised either by being located in close proximity to the person(s) supervised or by being in frequent, immediate and responsive contact with the person(s);

(f) Providing construction observation where authorized or requested by the client; and

(g) Stamping and signing final work products where required under ORS 671.310 to 671.459 and OAR chapter 804.

(18) "Seal" — To use the Registered Landscape Architect's stamp obtained pursuant to ORS 671.379(1).

(19) "Year" — For purposes of qualifying work experience for examination or registration, a year is calculated as one calendar year for full-time work (i.e., 40 hours per week on average) with part-time work prorated (i.e., a year of experience takes two calendar years to acquire at 20 hours per week on average) or the equivalent of 2,000 total hours worked.

Stat. Auth.: ORS 183.335(5), 670.310, 671.415

Stats. Implemented: 671.310-459

Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1985, f. & ef. 7-1-85; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2006, f. & cert. ef. 8-14-06; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 2-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 5-2013, f. & cert. ef. 12-12-13; LAB 1-2014, f. & cert. ef. 11-19-14; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-022-0025

### Inactive and Inactive Emeritus Status

(1) The Board has two types of inactive status as described in this rule.

(2) The Board shall grant Inactive status to any Registered Landscape Architect who while in good standing as defined in 804-003-0000(12) submits:

(a) A written request to the Board by or before the registration renewal date; and

(b) A signed statement of non-practice on a form provided by the Board.

(3) The Board shall grant Inactive Emeritus status to any Registered Landscape Architect who while in good standing as defined in 804-003-0000(11) submits:

(a) A written request to the Board by or before the registration renewal date;

(b) A signed statement of non-practice on a form provided by the Board; and

(c) Validation of twenty-five (25) consecutive years of registration as a Landscape Architect.

(4) A registrant on Inactive or Inactive Emeritus status cannot practice landscape architecture in Oregon. A registrant on Inactive status may not use the Registered Landscape Architect title or any similar title in Oregon. A registrant on Inactive Emeritus status may use the title Registered Landscape Architect, Emeritus or any similar title indicating the Emeritus or Retired status in Oregon.

(5) A registrant on Inactive or Inactive Emeritus status must submit an annual registration fee to cover the Board's administrative cost of maintaining a registration record.

(6) Per ORS 671.376(4), a registrant can remain on Inactive or Inactive Emeritus status for a period of five (5) years. The five (5) year period is counted forward from the last renewal due date. At the end of the five (5) year period, the registration expires and cannot be renewed, but the individual can apply for a new registration subject to current Board registration requirements.

(7) If a registrant on Inactive or Inactive Emeritus status wishes to resume practicing within the five (5) year period described in (5) of this rule, the registrant can request a return to Active status as follows:

(a) Submit a written request asking to return to Active status;

(b) Submit the current year's renewal fee; and

(c) Complete the continuing education requirements for reactivation of registration found at 804-025-0015 as verified by an audit, except:

(A) A Landscape Architect in Training on Inactive status is not subject to continuing education requirements.

(8) The Board delegates to the Administrator the authority to grant Inactive and Inactive Emeritus status upon verification that the requirements of (2) or (3), whichever is applicable, have been met.

(9) The Board delegates to the Continuing Education Coordinator the authority to approve continuing education audits for purposes of return to Active status under (7) of this rule. Documentation of audit completion will be filed in the Board office.

# ADMINISTRATIVE RULES

(10) The Board delegates to the Administrator the authority to grant return to Active status upon confirmation that the audit and all other requirements for return to Active practice have been met.

Stat. Auth.: ORS 671.376(4), 671.415, 671.310  
Stats. Implemented: ORS 671.325, 671.335, 671.365, 671.415  
Hist.: LAB 2-2009, f. & cert. ef. 12-11-09; LAB 2-2015, f. 8-17-15, cert. ef. 9-1-15; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-030-0011

### Advertising

A business registered with the Board to provide landscape architectural services in Oregon may advertise only under the registered business name and must disclose the names of all Registered Landscape Architects in responsible charge for the business to prospective clients and the public upon written request.

Stat. Auth.: ORS 670.310, 671.318  
Stats. Implemented: ORS 671.318  
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006, f. & cert. ef. 6-26-06; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0000

### Business Registration Purpose

The rules in Division 35 implement ORS 671.318 by setting forth registration requirements for businesses providing landscape architecture services in Oregon.

Stat. Auth.: ORS 671.318, 671.415  
Stats. Implemented: ORS 671.318  
Hist.: LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0010

### Business Registration for Business Providing Landscape Architecture Services

(1) A business as defined at OAR 804-003-0000(2) is required to obtain and maintain an active business registration from the Board.

(a) A business must hold a separate business registration for each office of the business from which landscape architecture services are provided in Oregon.

(2) A business that intends to provide landscape architecture services in Oregon may apply for a business registration.

(3) Each business or business office providing landscape architectural services in Oregon must meet the following requirements:

(a) For purposes of ORS 671.318 and Division 35, an "owner or officer" of the business means an individual owning, operating, or employed by the business and having full authority, accountability, and responsibility on behalf of the business to enter into contracts for provision of landscape architectural services in Oregon, to directly provide such services, and to otherwise make decisions regarding the execution and outcome of such services.

(A) At least one "owner or officer" must be a Registered Landscape Architect holding an active registration and in good standing with the Board and who is in responsible charge of the landscape architecture services of the business.

(b) Each business must designate at least one Registered Landscape Architect holding an active registration and in good standing with the Board as being in responsible charge of the landscape architectural services provided in Oregon by the business. In the case of a business with multiple office locations, each office that, regardless of its physical location, is providing landscape architectural services in Oregon must have a designated Registered Landscape Architect in responsible charge of the services provided from that office.

(A) All professional documents issued by the business that are required to be stamped under ORS 671.310 to 671.459 or OAR chapter 804 shall bear the stamp and signature of a Registered Landscape Architect designated as in responsible charge under the business registration on file with the Board. Such professional documents shall also bear the name of the business.

(B) More than one Registered Landscape Architect may be designated as in responsible charge of landscape architecture services provided through a business or business office;

(C) An individual Registered Landscape Architect may be designated as in responsible charge of more than one office of a business provided that the Registered Landscape Architect is able to adequately supervise the landscape architecture services provided in Oregon;

(D) An individual Registered Landscape Architect stamping and signing documents must maintain, and make available to the Board upon request, adequate records to demonstrate the nature and extent of the super-

vision and control over, and detailed knowledge of, the work stamped and signed;

(E) Each Registered Landscape Architect designated as being in responsible charge of landscape architectural services provided by a business must have a Statement of Responsibility with current and accurate information on file with the Board; and

(4) Each business holding a business registration must notify the Board in writing within 30 days of any change in:

(a) Business name, including any assumed, fictitious, trading as or doing business as names the business uses.

(b) Business contact information such as physical and mailing addresses, preferred email address and phone number.

(c) Business status, including closure, opening or other change in business office locations and changes in business owners or officers.

(d) Registered Landscape Architect designated as being in responsible charge of the landscape architectural services provided in Oregon by the business or business office.

(5) When a business holding an active business registration changes its name during a renewal period, a new business registration is not required. However, the Board will assign a new business registration number to the business under the new name.

(6) A business registration issued by the Board must be displayed at the place of business where the public visiting the office can readily view it.

Stat. Auth.: ORS 671.318, 671.415  
Stats. Implemented: ORS 671.318  
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006, f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0020

### Application for Business Registration

(1) A business must submit an application for a business registration to the Board, accompanied by the appropriate fees as set in OAR 804-040-0000.

(2) The application must be on forms prescribed by the Board and will contain the following information:

(a) Business name, including any assumed, fictitious, trading as or doing business as names the business uses;

(b) Contact information for the business or office of the business:

- (A) Physical address;
- (B) Mailing address;
- (C) Preferred email address; and
- (D) Phone number.

(c) Listing of other business offices in Oregon and whether landscape architectural services are provided from those offices, and where applicable, Board business registration numbers for those offices;

(d) Contact information for each Registered Landscape Architect designated as being in responsible charge of the landscape architectural services provided in Oregon by the business or business office.

(e) Signed Statement of Responsibility from each Registered Landscape Architect designated as being in responsible charge.

Stat. Auth.: ORS 671.318, 671.415  
Stats. Implemented: ORS 671.318  
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006, f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0030

### Issuance, Renewal and Expiration of Business Registration

(1) Upon satisfactory completion of requirements, the Board may issue a new business registration for a business. The registration is subject to annual renewal unless earlier revoked, suspended, or surrendered.

(a) the initial date of registration will be the date the application was approved; and

(b) The annual registration renewal date is the last calendar day of the month of the initial date of registration.

(2) A business may renew a registration by submitting a complete renewal including applicable fees:

(a) On or before the registration renewal date or within 30 days (one month) of the registration renewal date without payment of a late fee; or

(b) More than 30 days (one month) after the registration renewal date with payment of a late fee and upon meeting reinstatement requirements as provided in OAR 804-035-0035.

# ADMINISTRATIVE RULES

(3) A business registration that is not renewed timely expires one year from when the registration became delinquent.

Stat. Auth.: ORS 671.318, 671.415

Stats. Implemented: ORS 671.318

Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2006, f. & cert. ef. 6-26-06, Renumbered from 804-030-0011; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0035

### Reinstatement of Expired Business Registration

(1) A business registration that was not renewed within 30 days (one month) of the annual registration renewal date may be reinstated under the following conditions:

(a) The business submits a written request to the Board for reinstatement explaining the reason for failing to renew within 30 days (one month) of the annual registration renewal date; and

(b) The reinstatement request is submitted within one year of when the registration first became delinquent. A business registration expires and cannot be renewed after this time.

(2) The business must also submit the following for reinstatement:

(a) Any additional information the Board may request for purposes of considering the request for reinstatement;

(b) Payment of the current annual renewal fee;

(c) Payment of any delinquent annual renewal fees; and

(d) Payment of late fees.

Stat. Auth.: ORS 671.318, 671.415

Stats. Implemented: ORS 671.318

Hist.: LAB 2-2006, f. & cert. ef. 6-26-06; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-035-0040

### Revocation, Suspension, or Non-Renewal of Business Registration

The Board may revoke, suspend, or refuse to renew a business registration if the Board finds that a Registered Landscape Architect in responsible charge of landscape architectural services for the business or another officer of the business has:

(1) Committed any act of dishonesty, fraud, or deceit in obtaining or attempting to obtain a business registration;

(2) Not timely notified the Board of a change in status under OAR 804-035-0010(3);

(3) Not had a Registered Landscape Architect in responsible charge of the landscape architectural services provided in Oregon by the business;

(4) Not had a Registered Landscape Architect as an owner or officer of the business;

(5) Violated any provision of ORS 671.310 to 671.459, 671.992, or 671.005, or any rule promulgated thereunder.

Stat. Auth.: ORS 671.318, 671.415

Stats. Implemented: ORS 671.318

Hist.: LAB 2-2006, f. & cert. ef. 6-26-06; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-040-0000

### Fees

The following are fees established by the board:

(1) Examination Fees:

(a) Application fee for examination: \$100.

(b) Landscape Architect Registration Examination (LARE): the cost for each section of the LARE is set by the Council of Landscape Architectural Boards (CLARB) and must be paid directly to CLARB.

(2) Registration Fees:

(a) Initial Landscape Architect in Training registration: \$50.00.

(b) Annual renewal for Landscape Architect in Training: \$50.00.

(c) Application fee for initial Landscape Architect registration: \$100.00.

(d) Application fee for Landscape Architect registration by reciprocity: \$100.00.

(e) Initial Landscape Architect registration: \$250.00.

(f) Annual renewal for Landscape Architect: \$250.00.

(g) Inactive and Inactive Emeritus Annual fee: \$25.00.

(3) Business Fees:

(a) Application fee for business registration: \$100.00.

(b) Initial business registration fee: \$112.50.

(c) Annual business registration renewal fee: \$112.50.

(d) Initial or revised statement of responsibility filing for an individual Registered Landscape Architect designated as in responsible charge of landscape architectural services: \$50.00.

(4) Miscellaneous Fees:

(a) Late fee: \$100.00 for each delinquent year.

(b) Duplicate certificate: \$50.00.

(c) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 182.466(4), 670.310, 671.365, 671.415

Stats. Implemented: ORS 671.325, 671.345, 671.365, 671.376

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14; LAB 2-2015, f. 8-17-15, cert. ef. 9-1-15; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-050-0005

### Responsibility to the Board

(1) A Registered Landscape Architect or a Landscape Architect in Training must respond to written requests from the Board within 21 days after the request is mailed to the Registered Landscape Architect or Landscape Architect in Training. Mailed means sent via United States mail with proper postage and addressed to the registrant's preferred address of record on file with the Board.

(2) If a Registered Landscape Architect or a Landscape Architect in Training has information which leads to a reasonable belief that another Registered Landscape Architect or Landscape Architect in Training has committed a violation of this Code of Professional Conduct, or that an individual or business is in violation of the statutes or rules governing the practice of landscape architecture (ORS 671.310 to 671.459 and OAR chapter 804), such information must be promptly reported to the Board.

(3) A Registered Landscape Architect must not dismiss from his or her employment, or take any other action punitive in nature against another Registered Landscape Architect because of the other Registered Landscape Architect's compliance with any part or subsection of this Code of Professional Conduct, or any other provision of OAR chapter 804, or any provisions of ORS 671.310 to 671.459.

(4) A Registered Landscape Architect must not knowingly prepare or stamp construction documents which are in violation of any codes, laws, or regulations.

(5) A Registered Landscape Architect must only verify landscape architecture experience of those applicants for examination or registration that have been under the direct supervision of the Registered Landscape Architect.

(6) A Registered Landscape Architect must only sign the renewal form verifying completion of Professional Development Hours (PDH) if the Registered Landscape Architect has the proper documentation to validate completion of the PDH.

(7) A Registered Landscape Architect in responsible charge of landscape architectural services provided by a business must:

(a) Ensure that the business holds an active business registration with the Board; and

(b) Have a statement of responsibility with current and accurate information on file with the Board as part of that business registration.

(8) A Registered Landscape Architect shall at all times maintain the following contact information with the Board:

(a) Home (personal) mailing address and phone number;

(b) Work mailing address and phone number, if applicable;

(c) One preferred mailing address, i.e. home (personal) or work; and

(d) One preferred email address.

(9) A Registered Landscape Architect shall notify the Board within 30 days of any change in the contact information listed in Section (8) of this rule. Updates may be provided by written letter or email to the Board office. A Registered Landscape Architect with active registration may also provide updates through an online portal, where made available by the Board.

(10) A Landscape Architect in Training must only engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect.

Stat. Auth.: ORS 671.393, 671.415

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-050-0010

### Responsibility to the Profession

(1) Registered Landscape Architects must conduct professional duties with honesty and integrity. Registered Landscape Architects must comply with all rules and laws governing the practice of landscape architecture and with all orders of the Board.

# ADMINISTRATIVE RULES

(2) Registered Landscape Architects and Landscape Architects in Training must not accept, solicit or pay any inducement greater than \$50.00 in the course of professional work during one calendar year to any prospective client in order to gain a necessary approval.

(3) Contemporaneously with government employment, a Registered Landscape Architect must not engage in the private practice of landscape architecture with any person or firm who does business with the Registered Landscape Architect's employing agency if doing so would constitute any violation of applicable government ethics laws.

(4) Registered Landscape Architects must only take credit for work they have performed.

(5) A Registered Landscape Architect must not knowingly misrepresent to clients or the public the results that can be achieved through the use of the Registered Landscape Architect's services, nor state that the Registered Landscape Architect can achieve results by means that violate this code or the law.

(6) Registered Landscape Architects must not reveal information obtained in the course of professional activities which they have been asked to maintain in confidence except when disclosure

(a) Could stop an act which creates a significant risk to the public health, safety or welfare, and could not otherwise be prevented, or

(b) Is necessary in order to comply with applicable laws, orders of a court, or requests or orders of the Board.

(7) A Registered Landscape Architect must perform professional services only when he or she is qualified by education, training, or experience in the specific areas involved.

(8) A Registered Landscape Architect must only sign or seal drawings, specifications, reports, or other professional work for which the Registered Landscape Architect is in responsible charge.

(9) A Registered Landscape Architect must apply technical knowledge and skills for clients in a manner that meets the standard of technical knowledge and skills applied by Registered Landscape Architects in good standing practicing in the State of Oregon.

(10) A Registered Landscape Architect in responsible charge of landscape architectural services provided in Oregon by a business shall exercise reasonable diligence to ensure that other business owners, officers, associates, or employees are in compliance with the statutes and rules of the Board where applicable.

Stat. Auth.: ORS 671.393, 671.415

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08; LAB 1-2017, f. & cert. ef. 2-10-17

## 804-050-0015

### Responsibility to the Employer

(1) A Registered Landscape Architect must be truthful in representing personal qualifications, capabilities and experience to the client, employer, and public.

(2) A Registered Landscape Architect must not take credit for work performed under the direction of a former employer beyond the accurate definition of his or her project involvement.

(3) A Registered Landscape Architect must make full disclosure of all applicable project information to clients, public and other interested parties who rely on the Registered Landscape Architect's advice and professional work product.

(4) A Registered Landscape Architect may complete drawings and specifications intended for permitting and construction on the behalf of a deceased or disabled landscape architect employed by the same employer as though original work provided that the Registered Landscape Architect performs a thorough review and takes full responsibility for that work and the content thereof. The successor Registered Landscape Architect must remove the stamp and signature of the deceased or disabled landscape architect and stamp and sign work products where required under ORS 671.310 to 671.459 and Board rules in OAR Chapter 804.

Stat. Auth.: ORS 671.393, 671.415

Stats. Implemented: ORS 671.393

Hist.: LAB 2-1987, f. & ef. 6-1-87; LAB 2-1998, f. & cert. ef. 4-22-98, Renumbered from 804-050-0001, LAB 3-2008, f. & cert. ef. 7-7-08; LAB 1-2017, f. & cert. ef. 2-10-17

## Occupational Therapy Licensing Board Chapter 339

**Rule Caption:** Amend 339-010-0020 Unprofessional Conduct to include failure to follow principles in AOTA Code of Ethics.

**Adm. Order No.:** OTLB 1-2017

**Filed with Sec. of State:** 1-27-2017

**Certified to be Effective:** 1-27-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 339-010-0020

**Subject:** 339-010-0020 Unprofessional Conduct

(1) Unprofessional conduct relating to patient/client safety, integrity and welfare includes:

(a) Intentionally harassing, abusing, or intimidating a patient/client, either physically or verbally;

(b) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;

(c) Engaging in assault and/or battery of patient/client;

(d) Failing to respect the dignity and rights of patient/client, regardless of social or economic status, personal attributes or nature of health problems;

(e) Engaging in sexual improprieties or sexual contact with patient/client;

(f) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a patient/client to a third person;

(g) Taking property of patient/client without consent.

(h) Failing to follow principles and related standards of conduct as defined in the Occupational Therapy Code of Ethics (2015), by the American Occupational Therapy Association, to the extent they do not conflict with ORS 675.210 through 675.340.

**Rules Coordinator:** Nancy Schuberg—(971) 673-0198

## 339-010-0020

### Unprofessional Conduct

Unprofessional conduct relating to patient/client safety, integrity and welfare includes:

(1) Intentionally harassing, abusing, or intimidating a patient/client, either physically or verbally;

(2) Intentionally divulging, without patient/client consent, any information gained in the patient relationship other than what is required by staff or team for treatment;

(3) Engaging in assault and/or battery of patient/client;

(4) Failing to respect the dignity and rights of patient/client, regardless of social or economic status, personal attributes or nature of health problems;

(5) Engaging in sexual improprieties or sexual contact with patient/client;

(6) Offering to refer or referring a patient/client to a third person for the purpose of receiving a fee or other consideration from the third person or receiving a fee from a third person for offering to refer or referring a patient/client to a third person;

(7) Taking property of patient/client without consent.

(8) Failing to follow principles and related standards of conduct as defined in the Occupational Therapy Code of Ethics (2015), by the American Occupational Therapy Association, to the extent they do not conflict with ORS 675.210 through 675.340.

Stat. Auth.: ORS 675.230, 675.240, 675.250, 675.300 & 675.310

Stats. Implemented: ORS 675.300(1)(a)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 1-1994, f. & cert. ef. 1-24-94; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 1-2001, f. & cert. ef. 1-12-01; OTLB 1-2011, f. 6-13-11, cert. ef. 7-1-11; OTLB 1-2017, f. & cert. ef. 1-27-17

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**Rule Caption:** Amending Rule 339-010-0005 Definitions (b) and (c) to allow routine and general supervision via telehealth.

**Adm. Order No.:** OTLB 2-2017

**Filed with Sec. of State:** 2-15-2017

**Certified to be Effective:** 2-15-17

**Notice Publication Date:** 10-1-2016

**Rules Amended:** 339-010-0005

**Subject:** 339-010-0005

Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible

## ADMINISTRATIVE RULES

ble for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

(b) "Routine supervision" requires the supervisor to have direct contact in person at least every two weeks at the work site with interim supervision occurring by other methods, such as telephone or written communication;

(c) "General supervision" requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in OAR 339-010-0055, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's practice, classroom work, case review and discussion, and review and discussion of professional literature.

(6) "Occupational Therapy" further defines scope of practice as meaning the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life:

(a) Occupational Therapists use selected methods or strategies to direct the process of interventions such as:

(A) Establish, remediate or restore skill or ability that has not yet developed or is impaired;

(B) Compensate, modify, or adapt activity or environment to enhance performance;

(C) Maintain and enhance capabilities without which performance in everyday life activities would decline;

(D) Promote health and wellness to enable or enhance performance in everyday life activities;

(E) Prevent barriers to performance, including disability prevention.

(b) Occupational Therapists evaluate factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(A) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance;

(D) Performance skills, including motor, process, and communication/interaction skills.

(c) Occupational Therapists use the following interventions and procedures to promote or enhance safety and performance in activ-

ities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including

(A) Therapeutic use of occupations, exercise, and activities;

(B) Training in self-care, self-management, home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavior skills;

(D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(E) Education and training of individuals, including family members, caregivers, and others;

(F) Care coordination, case management, and transition services;

(G) Consultative services to groups, programs, organizations, or communications;

(H) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive device, and orthotic devices, and training in the use of prosthetic devices;

(J) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(K) Driver rehabilitation and community mobility;

(L) Management of feeding and eating to enable swallowing performance;

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing, manual therapy techniques) to enhance performance skills as they relate to occupational therapy services.

Stat. Auth.: ORS 675.320(11), (13) & (14)

Stats. Implemented: ORS 675.210(4) & 675.320(13)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2007, f. & cert. ef. 8-1-07

**Rules Coordinator:** Nancy Schubert—(971) 673-0198

### 339-010-0005

#### Definitions

(1) "Supervision," is a process in which two or more people participate in a joint effort to promote, establish, maintain and/or evaluate a level of performance. The occupational therapist is responsible for the practice outcomes and documentation to accomplish the goals and objectives. Levels of supervision:

(a) "Close supervision" requires daily, direct contact in person at the work site;

(b) "Routine supervision" requires the supervisor to have direct contact in person at least every two weeks at the work site with interim supervision occurring by other methods, such as telephone or written communication;

(c) "General supervision" requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods.

(2) "Leisure," as it is used in ORS 675.210(3) means occupational behavior that is developed as part of an individual occupational therapy evaluation and treatment process. This process is goal oriented toward the maximum health of the patient by the interaction of self-care, work and leisure, and is not used as an isolated recreation activity. The use in this way does not include leisure activities as used by therapeutic recreation specialists.

(3) "Licensed occupational therapy practitioner," for purposes of these rules, means an individual who holds a current occupational therapist or occupational therapy assistant license.

(4) "Occupational therapy aide," as it is used in OAR 339-010-0055, means an unlicensed worker who is assigned by the licensed occupational therapy practitioner to perform selected tasks.

(5) "Mentorship," as it is used in these rules, is a collaborative experience of direct contact between currently licensed occupational therapy



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practitioners for the purpose of updating professional skills. Mentorship may include, but is not limited to, mentee observation of the mentor's practice, classroom work, case review and discussion, and review and discussion of professional literature.

(6) "Occupational Therapy" further defines scope of practice as meaning the therapeutic use of everyday life activities (occupations) with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for the purpose of promoting health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect health, well-being, and quality of life:

(a) Occupational Therapists use selected methods or strategies to direct the process of interventions such as:

(A) Establish, remediate or restore skill or ability that has not yet developed or is impaired;

(B) Compensate, modify, or adapt activity or environment to enhance performance;

(C) Maintain and enhance capabilities without which performance in everyday life activities would decline;

(D) Promote health and wellness to enable or enhance performance in everyday life activities;

(E) Prevent barriers to performance, including disability prevention.

(b) Occupational Therapists evaluate factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(A) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems);

(B) Habits, routines, roles and behavior patterns;

(C) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance;

(D) Performance skills, including motor, process, and communication/interaction skills.

(c) Occupational Therapists use the following interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including

(A) Therapeutic use of occupations, exercise, and activities;

(B) Training in self-care, self-management, home management and community/work reintegration;

(C) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavior skills;

(D) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(E) Education and training of individuals, including family members, caregivers, and others;

(F) Care coordination, case management, and transition services;

(G) Consultative services to groups, programs, organizations, or communications;

(H) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles;

(I) Assessment, design, fabrication, application, fitting, and training in assistive technology, adaptive device, and orthotic devices, and training in the use of prosthetic devices;

(J) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(K) Driver rehabilitation and community mobility;

(L) Management of feeding and eating to enable swallowing performance;

(M) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing, manual therapy techniques) to enhance performance skills as they relate to occupational therapy services.

Stat. Auth.: ORS 675.320(11), (13) & (14)

Stats. Implemented: ORS 675.210(4) & 675.320(13)

Hist.: OTLB 1-1979, f. & ef. 6-7-79; OTLB 1-1988, f. & cert. ef. 1-29-88; OTLB 2-1990, f. & cert. ef. 12-20-90; OTLB 1-1996, f. & cert. ef. 4-16-96; OTLB 1-1999, f. & cert. ef. 10-27-99; OTLB 2-2003, f. & cert. ef. 9-11-03; OTLB 1-2005, f. & cert. ef. 8-11-05; OTLB 1-2007, f. & cert. ef. 8-1-07; OTLB 3-2016, f. & cert. ef. 10-28-16; OTLB 2-2017, f. & cert. ef. 2-15-17

**Rule Caption:** Clarifies rules for applicants to apply for license without further examination, approved in October 2016.

**Adm. Order No.:** OBD 1-2017

**Filed with Sec. of State:** 2-13-2017

**Certified to be Effective:** 3-1-17

**Notice Publication Date:** 9-1-2016

**Rules Amended:** 818-021-0011, 818-021-0025

**Subject:** The Board already held a public rulemaking hearing on October 20, 2016 and at the Board Meeting on October 21, 2016 approved these along with other rule changes. The language submitted to amend these two rules was incorrect, so this filing is being submitted to correct that mistake with the correct language, as approved by the Board.

The Board is amending 818-021-0011 Application for License to Practice Dentistry without Further Examination. The amendment to 818-021-0011 is to clarify that teaching clinical dentistry at a CODA accredited dental school can count towards the 3,500 clinical practice hours.

The Board is amending 818-021-0025 Application for License to Practice Dental Hygiene without Further Examination. The amendment to 818-021-0025 is to clarify that 3,500 clinical teaching hours must be in a CODA accredited dental hygiene program.

**Rules Coordinator:** Stephen Prisby—(971) 673-3200

### 818-021-0011

#### Application for License to Practice Dentistry Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dentist who holds a license to practice dentistry in another state or states if the dentist meets the requirements set forth in ORS 679.060 and 679.065 and submits to the Board satisfactory evidence of:

(a) Having graduated from a school of dentistry accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental school located outside the United States or Canada, completion of a predoctoral dental education program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or completion of a postdoctoral General Dentistry Residency program of not less than two years at a dental school accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Having passed the dental clinical examination conducted by a regional testing agency or by a state dental licensing authority; and

(d) Holding an active license to practice dentistry, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dentistry, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, other states or in the Armed Forces of the United States, the United States Public Health Service or the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately preceding application. Licensed clinical practice could include hours devoted to teaching by dentists employed by a dental education program in a CODA accredited dental school, with verification from the dean or appropriate administration of the institution documenting the length and terms of employment, the applicant's duties and responsibilities, the actual hours involved in teaching clinical dentistry, and any adverse actions or restrictions; and

(f) Having completed 40 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

(3) A dental license granted under this rule will be the same as the license held in another state; i.e., if the dentist holds a general dentistry license, the Oregon Board will issue a general (unlimited) dentistry license. If the dentist holds a license limited to the practice of a specialty, the Oregon Board will issue a license limited to the practice of that specialty. If the dentist holds more than one license, the Oregon Board will issue a dental license which is least restrictive.

Stat. Auth.: ORS 679

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Stats. Implemented: ORS 679.060, 679.065, 679.070, 679.080 & 679.090  
Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 2-2016, f. 11-2-16, cert. ef. 3-1-17; OBD 1-2017, f. 2-13-17, cert. ef. 3-1-17

## 818-021-0025

### Application for License to Practice Dental Hygiene Without Further Examination

(1) The Oregon Board of Dentistry may grant a license without further examination to a dental hygienist who holds a license to practice dental hygiene in another state or states if the dental hygienist meets the requirements set forth in ORS 680.040 and 680.050 and submits to the Board satisfactory evidence of:

(a) Having graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association; or

(b) Having graduated from a dental hygiene program located outside the United States or Canada, completion of not less than one year in a program accredited by the Commission on Dental Accreditation of the American Dental Association, and proficiency in the English language; and

(c) Having passed the clinical dental hygiene examination conducted by a regional testing agency or by a state dental or dental hygiene licensing authority; and

(d) Holding an active license to practice dental hygiene, without restrictions, in any state; including documentation from the state dental board(s) or equivalent authority, that the applicant was issued a license to practice dental hygiene, without restrictions, and whether or not the licensee is, or has been, the subject of any final or pending disciplinary action; and

(e) Having conducted licensed clinical practice in Oregon, in other states or in the Armed Forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs for a minimum of 3,500 hours in the five years immediately preceding application. Licensed clinical practice could include hours devoted to teaching by dental hygienists employed by a CODA accredited dental hygiene program with verification from the dean or appropriate administration of the institution documenting the length and terms of employment, the applicant's duties and responsibilities, the actual hours involved in teaching clinical dental hygiene, and any adverse actions or restrictions; and

(f) Having completed 24 hours of continuing education in accordance with the Board's continuing education requirements contained in these rules within the two years immediately preceding application.

(2) Applicants must pass the Board's Jurisprudence Examination.

Stat. Auth.: ORS 680

Stats. Implemented: ORS 680.040, 680.050, 680.060, 680.070 & 680.072

Hist.: OBD 4-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 4-2001, f. & cert. ef. 1-8-01; OBD 12-2001(Temp), f. & cert. ef. 1-9-01 thru 7-7-01; OBD 14-2001(Temp), f. 8-2-01, cert. ef. 8-15-01 thru 2-10-02; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2002(Temp), f. & cert. ef. 7-17-02 thru 1-12-03; Administrative correction 4-16-03; OBD 1-2003, f. & cert. ef. 4-18-03; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 3-2004, f. 11-23-04 cert. ef. 12-1-04; OBD 1-2006, f. 3-17-06, cert. ef. 4-1-06; OBD 2-2009, f. 10-21-09, cert. ef. 11-1-09; OBD 4-2011, f. & cert. ef. 11-15-11; OBD 2-2016, f. 11-2-16, cert. ef. 3-1-17; OBD 1-2017, f. 2-13-17, cert. ef. 3-1-17

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## Oregon Department of Education

### Chapter 581

**Rule Caption:** Dyslexia Related Teacher Training

**Adm. Order No.:** ODE 1-2017

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Adopted:** 581-002-1800, 581-002-1805, 581-002-1810, 581-022-2440

**Subject:** These rules establish requirements for dyslexia related training for teachers. The rules provide details for the list of approved training opportunities. The rules also provide requirements for school districts regarding teacher training. They also provide for a waiver of the training requirements for districts.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-002-1800

### Dyslexia-Related Training: Definitions

The following definitions apply to OAR 581-002-1805 and 581-002-1810

(1) "Dyslexia" means a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate or fluent word recognition, or both, and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

(2) "Explicit" means direct, face-to-face teaching that involves teacher explanation, demonstration, and the provision of ongoing corrective feedback.

(3) "Evidence-based" means instructional practices with a proven record of success based on reliable, trustworthy, and valid evidence that when the practices are implemented with fidelity, students can be expected to make adequate gains in reading achievement.

(4) "Kindergarten through grade five school" means any public school that enrolls students in kindergarten and grade one including, but not limited to, kindergarten through grade eight schools, kindergarten through grade 12 schools, and primary schools serving students in kindergarten through grade two.

(5) "Responsible district" means the school district that is responsible under ORS 343.961(3) for providing the education of a student enrolled in an eligible day treatment program or eligible residential treatment program.

(6) "Systematic" means a carefully planned sequence of instruction with lessons that build on previously taught information, from simple to complex.

Stat. Auth.: ORS 326.726

Stats. Implemented: ORS 326.726

Hist.: ODE 1-2017, f. & cert. ef. 2-1-17

## 581-002-1805

### Annual List of Dyslexia-Related Training Opportunities

(1) The Oregon Department of Education shall annually develop a list of training opportunities related to dyslexia.

(2) To be included on the list of approved training opportunities, the training must

(a) Comply with the knowledge and practice standards of an international organization on dyslexia

(A) The Department shall review knowledge and practice standards from known international organizations on dyslexia annually; and

(B) In the event that more than one set of international standards exist, the Department will review, with stakeholder involvement, all standards to ensure the selection of standards that reflect current evidence-based practices related to dyslexia.

(b) Include content in one or more of the following areas

(A) Understanding and recognizing dyslexia;

(B) Using evidence-based practices to systematically and explicitly teach the foundational skills in reading; and

(C) Intensifying instruction to meet the needs of students with severe reading difficulties, including dyslexia.

(3) The Oregon Department of Education will independently review potential training opportunities and annually post a Request for Information for dyslexia-related training opportunities to solicit information from interested vendors.

(a) The Department will review training opportunities on a rolling basis, beginning as early as January 1 of each year and concluding July 31 of that calendar year.

(b) The Department will post a Request for Information no later than March 31st of each year. The Request for Information will remain posted through the end of June of that calendar year.

(c) The Department will consult with the Teachers Standards and Practices Commission to ensure the approved training opportunities also satisfy professional development requirements for teachers.

(d) The list of approved training opportunities will be posted no later than May 31st of each year. The list will be updated regularly until the review process is completed on July 31 of each year.

(e) Once a training opportunity has been approved by the Department and placed on the list of training opportunities, to remain on the list the Vendor must submit on an annual basis a request for renewal on a form to be provided by the Department.

Stat. Auth.: ORS 326.726

Stats. Implemented: ORS 326.726

Hist.: ODE 1-2017, f. & cert. ef. 2-1-17

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## 581-002-1810

### Waiver from Teacher Training Requirements

(1) A school district may petition the Superintendent of Public Instruction or their designee for a waiver from the teacher training requirement of ORS 581-022-2440. The written petition must specify the reason(s) the district is seeking the waiver and any other relevant information. If it is determined that the request is reasonable, the Superintendent of Public Instruction shall grant the waiver.

(2) The Superintendent of Public Instruction or their designee, upon receipt of a waiver petition, will review the petition and may grant the waiver when:

(a) The designated teacher is unable to complete the training within the required time period;

(b) The trained teacher leaves his or her position in the school and the district is not able to designate and train a replacement by the beginning of the next school year;

(c) A district serving from 1 to 499 students only includes one or two elementary schools with four or fewer licensed teachers per school teaching multiple grade levels and the district receives services from an Education Service District teacher who has completed the required training; or

(d) A Long-Term Care and Treatment program provides services to students in kindergarten through grade 5 and the Education Service District or responsible district has a teacher who has completed the required training available to provide services to students in the Long-Term Care and Treatment program.

(3) Waivers under subsections (2)(a) and (b) may be granted for up to one year. Waivers under subsection (2)(c) would remain in effect as long as the circumstances continue and as long as the district continues to receive services from the Education Service District teacher who has completed the required training. Waivers under subsection (2)(d) would remain in effect as long as the circumstances continue and as long as the Long-Term Care and Treatment program receives services from a teacher who has completed the required training from the Education Service District or responsible district.

Stat. Auth.: ORS 326.726  
Stats. Implemented: ORS 326.726  
Hist.: ODE 1-2017, f. & cert. ef. 2-1-17

## 581-022-2440

### Teacher Training Related to Dyslexia

(1) School districts must ensure that at least one kindergarten through grade five teacher in each kindergarten through grade five school has received training related to dyslexia. The training must be from the Department approved list referenced in 581-002-1805 and must include all of the content requirements in subsection (2)(b).

(2) The teacher who completes the dyslexia-related training must be a licensed or registered teacher serving in a position teaching students in any configuration of grades kindergarten through fifth grade and assigned to the school building at least .50 FTE. The position may include, but is not limited to, that of classroom teacher, reading specialist, special educator or English language learner teacher.

(3) The definitions of terms outlined in OAR 581-002-1800 apply to this rule.

(4) This rule is effective January 1, 2018.  
Stat. Auth.: ORS 326.726  
Stats. Implemented: ORS 326.726  
Hist.: ODE 1-2017, f. & cert. ef. 2-1-17

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**Rule Caption:** School District instructional time and inclement weather.

**Adm. Order No.:** ODE 2-2017(Temp)

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17 thru 7-24-17

**Notice Publication Date:**

**Rules Amended:** 581-022-1920

**Subject:** Districts may request permission under 581-022-1903(3) to count towards the instructional time requirement up to 14 hours for missed instructional time resulting from emergency school closures due to adverse weather conditions and facilities failures.

**Rules Coordinator:** Cindy Hunt—(503) 947-5651

## 581-022-1920

### Waivers and Permission

School districts may request two types of waivers and one permission as follows:

(1) Waiver of a specific standard: To address an immediate concern or need, a school district may petition the State Superintendent of Public Instruction for a waiver of a specific standard. A petition shall specify the reason(s) the district is seeking the waiver and other relevant information. If it is determined that the request conforms with the intent of the standards, the State Superintendent shall recommend the waiver to the State Board. Waivers under this provision may be granted for up to one year.

(2) Educational Flexibility Partnership Demonstration Act (Ed-Flex) Waiver:

(a) This federal Act allows school districts to request a waiver of statutory or regulatory requirements under the following federal programs or Acts:

(A) Elementary and Secondary Education Act (ESEA) Title I, Helping Disadvantaged Children Meet High Standards;

(B) ESEA Title II, Teacher Quality;

(C) ESEA Title IV, Safe Drug Free Schools;

(D) ESEA Title V, Innovative Education Program Strategies;

(E) ESEA Title VII, Part C — Emergency Immigrant Education;

(F) Carl D. Perkins Vocational and Applied Technology Education Act.

(b) The application must demonstrate that the school district, if the waiver is granted, will still meet the underlying purposes of the federal statutory requirements. The request of an Ed-Flex Waiver must be made on the appropriate application form available from the Department of Education. Waivers under this provision may be granted for periods not to exceed five years.

(3) For the 2016-17 school year, a school district may request permission to include in its calculation of instructional time required by OAR 581-022-1620 up to 14 hours for missed instructional time due to emergency school closures for adverse weather conditions and facilities failure. The request must be made in writing to the Deputy Superintendent of Public Instruction. The request must include a statement that the request is made with the approval of the school district's governing school board and must include relevant information explaining why the district needs the permission. The Deputy Superintendent is authorized to grant permission under this section without obtaining approval from the State Board of Education.

Stat. Auth.: ORS 326.051  
Stats. Implemented: ORS 326.051, 329.077 & 329.555  
Hist.: EB 2-1997, f. & cert. ef. 3-27-97; ODE 11-2002, f. & cert. ef. 4-12-02; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 2-2017(Temp), f. & cert. ef. 2-1-17 thru 7-24-17

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## Oregon Department of Education, Early Learning Division Chapter 414

**Rule Caption:** Revisions to Central Background Registry rules to meet federal background check requirements.

**Adm. Order No.:** ELD 1-2017(Temp)

**Filed with Sec. of State:** 1-26-2017

**Certified to be Effective:** 1-26-17 thru 7-24-17

**Notice Publication Date:**

**Rules Amended:** 414-061-0080

**Subject:** The Early Learning Division, Office of Child Care (OCC) administers the Central Background Registry (CBR) pursuant to ORS 329A.030. OCC conducts background checks on individuals associated with child care facilities. Subject individuals may submit an application for enrollment in the CBR to the OCC. OCC then conducts a criminal and child welfare (child abuse and neglect) background check on the applicant and determines whether the applicant is suitable for enrollment in the CBR.

The federal Child Care and Development Block Grant Act of 2014 requires all subject individuals in the Central Background Registry to be fingerprinted by September 30, 2017. Revisions to rules will allow the OCC to conduct FBI fingerprint checks in all circumstances as required by federal law as a condition for receiving fed-

# ADMINISTRATIVE RULES

eral Child Care and Development Block Grant (CCDBG) funds and to conduct the FBI check on individuals currently enrolled.

Temporary rules will allow the OCC to begin fingerprinting all subject individuals in January 2017 in order to meet the September 2017 deadline imposed by the federal law.

**Rules Coordinator:** Lisa Pinheiro—(503) 910-8135

## 414-061-0080

### Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on all subject individuals who:

- (a) Are currently enrolled in the CBR; or
- (b) Are submitting an application for enrollment in the Office of Child Care's Central Background Registry.

(2) The subject individual shall supply to OCC the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block that reads "License/Certificate/Permit ORS 181.534"; and

(b) A properly completed "Instructions to Authorized Fingerprinter" form; or

(c) Electronically submitted fingerprints through an OCC designated fingerprinter. The "reason fingerprinted" field must read "License/Certificate/Permit".

(3) OCC will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled, suspended or removed in or from the Central Background Registry.

(4) OCC will charge the subject individual up to the amount equal to the cost incurred by OCC for an FBI records check, to be paid at the time of the request.

(5) Individuals currently enrolled in the Central Background Registry or with pending applications for enrollment in the Central Background Registry will receive a request to complete an FBI criminal records check from the Office of Child Care and must complete the FBI criminal records check by the date indicated on the request.

(6) Failure to complete and pass the FBI criminal records check is a basis for suspension of enrollment in the Central Background Registry, removal from the Central Background Registry, or denial of the application.

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

Stat. Auth.: ORS 329A.030(7)

Stats. Implemented: ORS 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef. 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15; ELD 1-2017(Temp), f. & cert. ef. 1-26-17 thru 7-24-17

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**Rule Caption:** Rules for license exempt child care facilities accepting federal subsidies

**Adm. Order No.:** ELD 2-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 1-31-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 414-180-0005, 414-180-0010, 414-180-0015, 414-180-0020, 414-180-0025, 414-180-0055

**Subject:** The Child Care Development Block Grant Act of 2014 requires the Early Learning Division to begin annual health and safety inspections of license exempt Child Care providers who accept federal subsidies. ORS 329A.505 authorizes the Office of Child Care to conduct on-site inspections when such inspections are required under federal Law and authorizes the Office of Child Care to require improvements or corrections necessary to bring provider into compliance. The rules establish conditions and standards for compliance and sets forth the Early Learning Division's Office of Child Care (OCC) procedures and requirements for the inspection of exempt child care facilities subject to and in accordance with federal and state laws governing child care providers accepting subsidies.

**Rules Coordinator:** Lisa Pinheiro—(503) 910-8135

## 414-180-0005

### Purpose

Oregon Administrative Rules (OAR) 414-180-0005 through 414-180-0100 are the Early Learning Division's minimum health and safety require-

ments for license exempt child care providers who accept federal child care subsidy payments through the state. The purpose of these rules is to protect the health, safety, and well-being of children in care. These rules apply to child care providers who accept federal child care subsidies from the Oregon Department of Human Services or the Early Learning Division Office of Child Care and are exempt from child care licensing as outlined in ORS 329A.250

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

## 414-180-0010

### Definitions

The following definitions apply to Oregon Administrative Rules 414-180-0015 through 414-180-0100.

(1) "Caregiver" means any person, including the provider, who cares for the children in Regulated Subsidy child care and works directly with the children, providing care, supervision and guidance.

(2) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, legal guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(3) "Child Care Child" means a child at least six weeks of age and under 13 years of age, or a child under 18 years of age with special needs. The provider has supervisory responsibility for the child in the temporary absence of the parent.

(4) "Child Care Facility" means the location where child care is being conducted. This can be either a private residence or commercially zoned building.

(5) "Child with Special Needs" means a child under 18 years of age who requires a level of care over and above the norm for their age due to a physical, developmental, behavioral, mental or medical disability.

(6) "Communicable Disease" means an illness caused by an infectious agent or its toxins.

(7) "Disinfecting" means using a process for destroying or irreversibly inactivating harmful organisms, including bacteria, viruses, germs and fungi.

(8) "Family" means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships are similar to those found in such associations.

(9) "Infant" means a child who is at least six weeks of age up to 12 months of age.

(10) "OCC" means the Office of Child Care, Early Learning Division of the Department of Education.

(11) "Outbreak of Communicable Disease" means two cases from separate households associated with a suspected common source.

(12) "Premises" means the structure where child care is conducted that is identified on the application or listed with the Department of Human Services, including indoors and outdoors and space not directly used for child care.

(13) "Preschool-Age Child" means a child who is 36 months of age up to eligible to attend kindergarten in a public school.

(14) "Provider" means the person or facility who is responsible for the children in care; is the children's primary caregiver; and who is listed with the Department of Human Services as the provider.

(15) "Regulated Subsidy Child Care" means care that is provided to children whose families access federal child care subsidy funds through the state.

(16) "Restrictable Disease" means an illness or infection that would prohibit the child from attending child care.

(17) "Sanitizing" means using a treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease producing organisms, to a safe level on utensils, equipment and toys.

(18) "Substitute Provider" means a person who acts as the child's primary caregiver in the temporary absence of the provider.

(19) "Toddler" means a child who is at least 12 months of age but is not preschool-age.

(20) "Useable Exit" means an unobstructed door or window through which the provider and the children can evacuate the child care facility in case of a fire or emergency. Doors must be able to be opened from the inside without a key.

(a) For buildings built before July 1, 2010, window openings must be at least 20 inches wide and at least 22 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 48 inches above the floor.

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(b) For buildings built after July 1, 2010, window openings must be at least 20 inches wide and at least 24 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 44 inches above the floor.

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

## 414-180-0015

### Health

(1) The child care facility must be a healthy environment for children.

(2) There must be at least one flush toilet and one hand-washing sink available to children.

(3) The provider must comply with local, state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.

(4) Infants shall have a crib, portable crib or playpen with a clean, non-absorbent mattress. All cribs must comply with current Consumer Product Safety Commission (CPSC) standards. There shall be no items in the crib with the infant (e.g. toys, pillows or stuffed animals).

(5) If the parent(s) so request, siblings may share the same bed.

(6) The upper level of bunk beds shall not be used for children under ten years of age.

(7) If an infant uses a blanket, the blanket may not cover the infant's head or face.

(8) Infants must be laid on their backs on a flat surface for sleeping.

(9) Children shall not be laid down with a bottle for sleeping.

(10) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place and kept out of reach of children.

(11) The first aid supplies shall include: band aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, a solution for disinfecting after a blood spill, a sanitary temperature taking device.

(12) Illness:

(a) Except for mild cold symptoms that do not impair a child's daily functioning, sick children shall not be in care.

(b) A provider shall not admit or retain in care, except with the written approval of the local health office, a child who:

(A) Is diagnosed as having or being a carrier of a child care restrictable disease, as defined in Oregon Health Authority administrative rule; or

(B) Has one of the following symptoms or combination of symptoms or illness;

(i) Fever over 100°F, taken under the arm;

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(iii) Vomiting;

(iv) Nausea;

(v) Severe cough;

(vi) Unusual yellow color to skin or eyes;

(vii) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;

(viii) Stiff neck and headache with one or more of the symptoms listed above;

(ix) Difficult breathing or abnormal wheezing; or

(x) Complaints of severe pain.

(c) A child who, after being admitted into child care, shows signs of illness, as defined in this rule, whenever possible will be separated from the other children, and the parent(s) notified and asked to remove the child from the child care facility as soon as possible.

(d) If a child has mild cold symptoms that do not impair his/her normal functioning, the child may remain in the child care facility and the parent(s) notified when they pick up their child.

(13) Section 12 of this rule does not apply when the provider is caring only for children from the same family and no other unrelated child care children are present, except that the provider shall notify the parent if a child who, after being admitted into child care, shows signs of illness.

(14) Parents must be notified if their child is exposed to an outbreak of a communicable disease.

(15) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the child care facility or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present.

(16) No person shall use smokeless tobacco in the child care facility during child care hours or when child care children are present.

(17) No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

(18) No one shall consume alcohol on the child care facility premises during child care hours or when child care children are present.

(19) No one shall be under the influence of alcohol on the child care facility premises during child care hours or when child care children are present.

(20) No one shall possess, use or store illegal controlled substances on the child care facility premises. No one shall be under the influence of illegal controlled substances on the child care facility premises.

(21) No one shall grow or distribute marijuana on the premises of the child care facility. No adults shall use marijuana on the child care facility premises during child care hours or when child care children are present.

(22) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(23) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(24) All marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.

(25) Any animal at the child care facility shall be in good health and be a friendly companion for the children in care.

(26) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(27) Dogs and cats shall be kept free of fleas, ticks and worms.

(28) Animal litter boxes shall not be located in areas accessible to children or areas used for food storage or preparation.

(29) Exotic animals, including, but not limited to: reptiles (e.g. lizards, turtles, snakes) amphibians, monkeys, hook-beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(30) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent.

(31) Prescription and non-prescription medications must be properly labeled and stored.

(32) Non-prescription medications or topical substances must be labeled with the child's name.

(33) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(34) Medication requiring refrigeration must be kept in a separate, tightly covered container, marked "medication," in the refrigerator.

(35) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(36) Sunscreen may be used with written parental authorization.

(a) In instances where parent has provided written permission to use sunscreen, providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

(b) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".

(c) Providers shall not use aerosol sunscreens on child care children.

(d) Sunscreen shall not be used on child care children younger than six months.

(37) Parents must be given the telephone number so they can contact the provider if needed.

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

# ADMINISTRATIVE RULES

## 414-180-0020

### Sanitation

(1) Pre-mixed sanitizers and disinfectants that are EPA registered and meet Oregon Health Authority criteria may be used in all areas of the home per manufacturer instructions.

(2) All caregivers and children must wash their hands with soap and warm, running water:

- (a) Before handling food;
- (b) Before assisting with feeding;
- (c) Before and after eating;
- (d) After diapering;
- (e) After using the toilet;
- (f) After assisting someone with toileting;
- (g) After nose wiping;
- (h) After playing outside; and
- (i) After touching an animal or handling pet toys.

(3) Hand sanitizers shall not replace hand washing. If hand sanitizers are present in the child care facility, they shall be kept out of children's reach and shall not be used on children.

- (4) Clean toys, equipment and furniture used by children when soiled.
- (5) Diaper changing surfaces must be either:
  - (a) Non-absorbent and easily disinfected;
  - (b) Disposed of after each use; or
  - (c) Laundered after each use.

(6) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(7) All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.

(8) The child care facility has safe drinking water.

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

## 414-180-0025

### Safety

(1) The room temperature must be at least 68°F during the hours which child care children are in care.

(2) Rooms child care children are predominantly occupying must have a combination of natural and artificial lighting.

(3) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.

(4) Potentially aggressive animals must not be in the same physical space as the children.

(5) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) All exposed electrical outlets in rooms used by preschool or younger children must have hard-to-remove protective caps or safety devices installed when the outlet is not in use.

(b) Extension cords shall not be used as permanent wiring;

(c) All appliance cords must be in good condition;

(d) Multiple connectors for cords shall not be used;

(e) A grounded power strip outlet with a built-in over-current protection may be used;

(f) A stable barrier shall be installed to prevent children from falling into hazards, including, but not limited to: fireplaces, heaters and woodstoves that are in use when child care children are present;

(g) A secure barrier shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers.

(6) The child care facility has a working smoke detector on each floor level and in any area where a child naps.

(7) Cleaning supplies, paints, matches, lighters, and any plastic bags large enough to fit over a child's head kept under child-safety lock.

(8) Other potentially dangerous items, such as medicine, drugs, sharp knives and poisonous and toxic materials kept under child-safety lock.

(9) Firearms, BB guns, pellet guns and ammunition kept under lock, with ammunition stored and locked separately. Firearms, BB guns and pellet guns must remain unloaded;

(10) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children;

(11) All clear glass panels in doors clearly marked at child level.

(12) Each provider must:

(a) Ensure that the child care facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two useable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a useable exit). If a second floor is used for child care, the provider

must have a written plan for evacuating occupants in the event of an emergency.

(B) The child care facility has a working telephone or telephone service in operating condition.

(C) Emergency telephone numbers for fire, ambulance, police and poison control and the child care facility address must be posted in a visible location.

(D) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(E) Broken toys, furniture and equipment must be removed from areas accessible to children.

(13) Wading pools are prohibited for wading.

(14) The provider is responsible for the children in care. At all times the provider must:

(a) Be within sight or sound of all children;

(b) Be aware of what each child is doing;

(c) Be near enough to children to respond when needed.

(15) A center-based child care facility may not exceed the ratios and group sizes in Table A. [Table not included. See ED. NOTE.]

(16) In a mixed-age group of children, the number of caregivers and group size shall be determined by the age of the youngest child in the group.

(17) 414-180-0025(15) and 414-180-0025(16) apply to center-based child care defined as a child care facility located in a building constructed as other than a single-family dwelling.

(18) The provider must have a written plan for evacuating and removing children to a safe location in an emergency. The plan must be posted in the child care facility, familiar to the children and the caregivers, and practiced at least every other month and must include:

(a) Procedures for notifying parents or other adults responsible for the children, of the relocation;

(b) Procedures to address the needs of individual children, including those with special needs; and

(c) An acceptable method to ensure that all children in attendance are accounted for.

(19) If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

(20) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

(21) Car seats are to be used for transportation only. Children who arrive at and brought into the child care facility asleep in a car seat may remain in the car seat until the child awakens.

(22) The provider must take precautions to protect children from vehicular traffic.

(23) If a passenger van is used to transport child care children it must meet Federal Motor Vehicle Safety Standards for transporting children in education settings.

(24) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:

(a) Take a child on a field trip or other activity away from the child care facility or participate in any water activity; and

(b) Transport a child to or from school or allow a child to bus or walk to or from school or child care facility.

(25) 15-passenger vans shall not be used to transport child care children.

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

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

## 414-180-0055

### Enforcement of Regulatory Requirements

(1) The provider shall allow an inspection of all areas of the child care facility that are accessible to child care children, and a health and safety review of other areas of the child care home to ensure the health and safety of child care children.

(2) The provider or substitute must allow a representative from the Office of Child Care access to the child care facility any time child care children are present.

(3) The provider must allow parents or legal guardians of child care children access to the child care facility during the hours their child or children are in care.

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.505

Hist.: ELD 2-2016, f. & cert. ef. 6-29-16; ELD 2-2017, f. & cert. ef. 1-31-17

# ADMINISTRATIVE RULES

## Oregon Health Authority, Health Licensing Office, Board of Licensed Dietitians Chapter 834

**Rule Caption:** Renewal language for licensed dietitians needs to align with the rest of the rules.

**Adm. Order No.:** BELD 2-2017(Temp)

**Filed with Sec. of State:** 1-17-2017

**Certified to be Effective:** 1-17-17 thru 7-15-17

**Notice Publication Date:**

**Rules Amended:** 834-030-0010

**Subject:** Licensed dietitian issuance and renewal language must be changed to align with the rest of the administrative rules.

**Rules Coordinator:** Samantha Patnode—(503) 373-1917

### 834-030-0010

#### Licensed Dietitian Issuance and Renewal

(1) A license is subject to the provisions of OAR Chapter 331, division 30 regarding the issuance and renewal of a license, provisions regarding authorization to practice, identification, and requirements for issuance of a duplicate license.

(2) To avoid delinquency penalties, a license must be renewed before the license becomes inactive as described in section (3) of this rule. The licensee must:

(a) Submit a renewal application form;

(b) Pay the renewal fee pursuant to 834-040-0000;

(c) Attest to having obtained the required annual CE pursuant to OAR 834-050-0000;

(d) Attest to having provided the required information to OHA pursuant to ORS 676.410; and

(e) Pay fee established by OHA pursuant to ORS 676.410.

(3) A license becomes inactive if it is not renewed before its “active through” date. A license may be inactive for up to three years, but an inactive license does not authorize its holder to practice dietetics under the title, “Licensed Dietitian” or the letters “L.D.” To renew an inactive license, the licensee must:

(a) Submit a renewal application form;

(b) Pay the delinquency and renewal fees pursuant to OAR 834-040-0000;

(c) Attest to having obtained the required annual CE pursuant to OAR 834-050-0000 on a form prescribed by the Office;

(d) Attest to having provided the required information to OHA pursuant to ORS 676.410; and

(e) Pay fee established by OHA pursuant to ORS 676.410.

(4) A licensee holding an expired license must reapply and meet the requirements of OAR 834-030-0000. An expired license does not authorize its holder to practice dietetics under the title, “Licensed Dietitian” or the letters “L.D.”

(5) A license is expired if it has been inactive for more than three years.

Stat. Auth.: ORS 691.475, 691.485

Stats. Implemented: ORS 691.435, 691.445, 691.475, 691.477, 691.479

Hist.: BELD 2-2012, f. 8-16-12, cert. ef. 8-17-12; BELD 1-2016, f. 2-17-16, cert. ef. 3-1-16; BELD 2-2017(Temp), f. & cert. ef. 1-17-17 thru 7-15-17

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## Oregon Health Authority, Health Systems Division: Addiction Services Chapter 415

**Rule Caption:** Clarify Procedures for Issuing and Taking Action on a Substance Use Disorder Treatment License

**Adm. Order No.:** ADS 1-2017(Temp)

**Filed with Sec. of State:** 2-2-2017

**Certified to be Effective:** 2-2-17 thru 7-31-17

**Notice Publication Date:**

**Rules Adopted:** 415-012-0075

**Rules Amended:** 415-012-0010, 415-012-0020, 415-012-0030, 415-012-0035, 415-012-0060

**Subject:** Under Oregon Revised Statutes 443.400 to 443.455, 430.357, 430.335, 430.256, and 413.032, the Authority licenses and has authority to regulate behavioral health treatment providers, including those who provide residential substance use disorder treatment. The Authority’s administrative rules set the minimum stan-

dards for providing services in licensed settings and describe the process by which the Authority regulates the service providers.

The temporary rule provides clarification and procedural detail regarding how an applicant may obtain a license and the circumstances and process by which the Authority may take action regarding a license or application for a license. In particular, the temporary rule clarifies that the Authority may take an action on a license based on reliable evidence of abuse, neglect, or mistreatment. If these immediate amendments were not adopted, there could be delay in providers achieving compliance with administrative rules or delay in the Authority’s response in situations to protect vulnerable persons being served by these providers.

This rule amendment is necessary to provide for and clarify the Authority’s practices and procedures regarding when and under what circumstances it may take action on a license, such as denying, revoking, or imposing a condition on a license.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

### 415-012-0010

#### Definitions

(1) “Applicant” means any person or entity who has requested, in writing, a license.

(2) “Chief Officer” means the Chief Health Systems Officer of the Health Systems Division (Division), or his or her designee.

(3) “Community Mental Health Program (CMHP)” means the organization of all services for individuals with mental or emotional disturbances, drug use problems, mental retardation or other developmental disabilities, and alcoholism and alcohol use problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(4) “Coordinated Care Organization (CCO)” means an entity that has been certified by the Authority to provide coordinated and integrated health services.

(5) “Contract” is the document describing and limiting the relationship and respective obligations between an organization other than a county and the Division for the purposes of operating the alcohol and drug use disorder service within a county’s boundaries, or operating a statewide, regional, or specialized service.

(6) “Division” means the Health Systems Division (Division) of the Oregon Health Authority.

(7) “Individual” means the person requesting or receiving services addressed in these rules.

(8) “Intergovernmental Agreement” or “Agreement” is the document describing and limiting the contractual relationship and respective obligations between a county or other government organization and the Division for the purpose of operating an alcohol and drug use disorder service.

(9) “License” means a license issued by the Division to applicants who are in substantial compliance with applicable administrative rules for alcohol and drug use treatment in a residential setting and which is renewable every two years.

(10) “Licensed Child Care Facility” means a facility licensed under ORS 657A.280.

(11) “Non-Funded Provider” means an organization not contractually affiliated with the Division, a CMHP, or other contractor of the Division.

(12) “Provider” means an organization licensed under these rules that is providing substance abuse prevention, intervention, or treatment services under contract with the Division or under subcontract with a local entity or public body or otherwise receiving public funds for these services.

(13) “Provisional” means a license issued for one year or less pending completion of specified requirements because of substantial failure to comply with applicable administrative rules.

(14) “Quality Assurance” means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of care to identify and resolve identified problems.

(15) “Restriction” means any limitations placed on a license such as age of individuals to be served or number of individuals to be served.

(16) “Revocation” means the removal of authority for a provider to provide certain services under a license.

(17) “School Attended Primarily by Minors” means an existing public or private elementary, secondary, or career school attended primarily by individuals under age eighteen.

# ADMINISTRATIVE RULES

(18) “Service Element” means a distinct service or group of services for persons with alcohol or other drug use disorders defined in administrative rule and included in a contract or agreement issued by the Division.

(19) “Substantial Compliance” means a level of adherence to applicable administrative rules which, even if not meeting one or more of the requirements, does not, in the determination of the Division:

- (a) Constitute a danger to the health or safety of any individual;
- (b) Constitute a willful, repeated, or ongoing violation of administrative rules; or

(c) Prevent the accomplishment of the state’s purposes in approving or supporting the applicant or provider.

(20) “Substantial Failure to Comply” means a level of adherence to applicable administrative rules, statutes, and other applicable regulations, which in the determination of the Division:

(a) Constitutes a danger to the health, welfare, or safety of any individual or to the public;

(b) Constitutes a willful, repeated, or ongoing violation of administrative rules; or

(c) Prevents the accomplishment of the state’s purposes in approving or supporting the applicant or provider.

(21) “Suspension” means a temporary removal of authority for a provider to conduct a service for a stated period of time or until the occurrence of a specified event under a license.

(22) “Temporary” means a license issued for 185 days to a program approved for the first time. A temporary license cannot be extended.

(23) “Variance or Exception” means a waiver of a regulation or provision of these rules granted by the Division upon written application.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.010 - 430.030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADAP 1-2001, f. 3-29-01, cert. ef. 4-1-01; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13; ADS 4-2013, f. & cert. ef. 5-3-13; ADS 2-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; ADS 8-2016, f. & cert. ef. 12-14-16; ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 415-012-0020

### General Requirements

(1) Providers That Must Have a License: Every provider that operates a residential service element by contract with the Division or subcontracts with a local entity or public body or otherwise receives public funds for providing substance abuse prevention, intervention, or treatment services shall have a license:

(a) No provider shall represent themselves as conducting any service described in this rule without first obtaining a license;

(b) A provider that does not have a license for conducting a service described in this rule may not admit a person needing that service; and

(c) The license shall be posted in the facility and available for inspection at all times.

(2) Licensed providers shall also maintain a current certificate of approval for the provision of behavioral health treatment services per OAR 309-008-0100 to 309-008-1600 if also providing an outpatient service.

(3) Facilities Requiring License: Any facility that meets the definition of a residential treatment facility for substance-dependent persons under ORS 443.400 or a detoxification center as defined in ORS 430.306 shall be licensed by the Division:

(a) No individual or entity shall represent themselves as a residential treatment facility for substance-dependent persons or as a detoxification center without first being licensed;

(b) A residential treatment facility or a detoxification center that is not licensed may not admit individuals needing residential or detoxification care or treatment; and

(c) A license shall be posted in the facility and available for inspection at all times.

(4) License is not a Contract: Approval or licensure of a service element pursuant to this rule does not create an express or implied contract in the absence of a fully executed written contract.

Stat. Auth.: ORS 430.256

Stats. Implemented: ORS 430.010-030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13; ADS 4-2013, f. & cert. ef. 5-3-13; ADS 2-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; ADS 8-2016, f. & cert. ef. 12-14-16; ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 415-012-0030

### Initial Application Procedures

(1) Application Packet: The Division shall mail an application packet to all applicants seeking residential licensure under these rules.

(2) Initial Meeting: All programs applying for the first time for a residential license to operate a treatment or prevention program shall schedule a meeting with Division staff for the purpose of receiving needed technical assistance regarding the approval and licensure criteria and procedures.

(3) Multiple Locations: A separate application is required for each location where the provider intends to operate a residential treatment facility.

(4) Withdrawal of Application: The applicant may withdraw the application at any time during the application process by notifying the Division in writing. At such time, all materials shall be returned to the applicant.

Stat. Auth.: ORS 430.256

Stats. Implemented: ORS 430.010-030, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 2-2013(Temp), f. & cert. ef. 1-14-13 thru 7-12-13; ADS 4-2013, f. & cert. ef. 5-3-13; ADS 2-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; ADS 8-2016, f. & cert. ef. 12-14-16; ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 415-012-0035

### Responses To Application

(1) Application Satisfactory: If the application is found to be complete and if the material demonstrates compliance with applicable administrative rules, the Division shall issue a license no later than 30 days after final approval of the application. In determining whether to issue a license, the Division may consider the applicant’s history of compliance with Division rules and orders.

(2) Unsatisfactory Application: If the application is not complete or if the application does not demonstrate compliance:

(a) The applicant shall be provided with written notification that identifies needed information or areas of non-compliance within 60 days of receipt of the application; and

(b) The original application shall be kept on file for 60 days after written notice has been given, at which time, if no further material is submitted to correct the deficiencies noted, the application shall be denied, and all material shall be returned to the applicant.

(3) Application Denied: If a license is denied:

(a) The applicant shall be entitled to a contested case hearing consistent with ORS Chapter 183 if the applicant requests a hearing in writing within 60 days of the receipt of the notice;

(b) If no written request for a hearing is received within the 60-day timeline, the notice of denial shall become the final order by default, and the Chief Officer may designate its file as the record for purposes of order by default.

Stat. Auth.: ORS 413.042 & 430.256

Stats. Implemented: ORS 430.010-30, 430.306, 430.397, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADS 4-2013, f. & cert. ef. 5-3-13; ADS 2-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; ADS 8-2016, f. & cert. ef. 12-14-16; ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 415-012-0060

### Denial, Revocation, or Non-renewal

(1) Denial of Application or Request for Renewal: The Division shall deny an application or request for renewal, or revoke a license where it finds any of the following:

(a) The applicant or provider has substantially failed to comply with applicable administrative rules or with local codes and ordinances or any other applicable state or federal law or rule;

(b) The applicant or provider has had a prior LOA or license to operate an alcohol and drug use disorder treatment program denied, revoked, or refused to be renewed in any county in Oregon within three years preceding the present application for reason of abuse or neglect of individuals or the administrator’s failure to possess adequate physical health, mental health, or good personal character;

(c) If such prior denial, revocation, or refusal to renew occurred more than three years from the present action, the provider is required to establish to the Division by clear and convincing evidence his or her ability and fitness to operate a treatment program. If the applicant or provider does not provide such evidence, the Division shall deny the application;

(d) The applicant or provider submits fraudulent or untrue information to the Division;

(e) The applicant or provider has a history of or currently demonstrates financial insolvency such as filing for bankruptcy, foreclosures, eviction due to failure to pay rent, termination of utility services due to failure to pay bills, failure to pay taxes such as employment or social security in a timely manner;

(f) The applicant or provider refuses to allow immediate access and onsite inspection by the Division; or



# ADMINISTRATIVE RULES

(g) The applicant or provider fails to maintain sufficient staffing or fails to comply with staff qualifications requirements;

(h) The applicant or provider has failed to comply with one or more restrictions or conditions on the license;

(i) The applicant or provider has failed to submit or implement a plan of correction sufficient to comply with these and other applicable rules or regulations;

(j) There is reliable evidence of abuse, neglect, or mistreatment.

(2) Notification of Denial: When the Division determines that an applicant's request for a license should be denied, the Chief Officer or designee shall notify the applicant by certified mail, return receipt requested, of the Division's decision to deny the licensure and the reasons for the denial.

Stat. Auth.: ORS 430.256

Stats. Implemented: ORS 430.397, 430.010-030, 430.306, 430.405, 430.450, 430.630, 430.850, 443.400, 813.020, 813.260 & 813.500

Hist.: ADAP 2-1993, f. & cert. ef. 11-5-93; ADAP 1-1997, f. & cert. ef. 12-18-97; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 4-2013, f. & cert. ef. 5-3-13; ADS 2-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; ADS 8-2016, f. & cert. ef. 12-14-16; ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 415-012-0075

### Conditions

(1) Imposing Conditions. The Division may elect at any time and at its discretion to place conditions on a license upon a finding that:

(a) The applicant or provider employs or contracts with any program staff for whom there is reliable evidence of abuse, neglect, or mistreatment;

(b) The applicant or provider employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, service delivery rules, or other applicable law;

(c) There is reliable evidence of abuse, neglect, or mistreatment;

(d) There is a threat to the health, welfare, or safety of an individual or the public;

(e) The applicant or provider has substantially failed to comply with these rules, service delivery rules, or other applicable law; or

(f) The applicant or provider fails to fully implement a plan of correction or adequately maintain a corrective action.

(2) The Division shall consider the sum of the circumstances, including but not limited to the following criteria, when deciding whether to impose conditions as opposed to denying, suspending, refusing to renew, or revoking a license:

(a) The expressed willingness and demonstrated ability of the applicant or provider to gain and maintain compliance with all applicable administrative rules and law;

(b) The applicant or provider's submitted plan of correction prescribing reasonable, sustained and timely resolution to areas of non-compliance;

(c) The relative availability of alternative providers to address any service needs that would be unmet if the applicant or provider is not issued a license with conditions as an alternative to revocation or refusal to award a license; or

(d) The applicant or provider's historical compliance with Division rules or orders, previous conditions placed on licenses, and previous plans of correction.

(3) Conditions to the license may include:

(a) Requiring corrective actions with associated timeframes for completion necessary for the applicant or provider to correct areas of non-compliance or concern identified by the Division;

(b) Limiting the total number of individuals enrolled in services or on a waitlist for services;

(c) Limiting the population, such as narrowing the age range of individuals, who the applicant or provider may serve;

(d) Limiting the scope and type of services that the applicant or provider may provide;

(e) Other conditions deemed necessary by the Division to ensure the health and safety of individuals and the public; and

(f) Other conditions deemed necessary by the Division for the purpose of ensuring regulatory compliance with this or other applicable administrative rules and law.

(4) Processes for imposing conditions on license: The Division may impose conditions on a license With Notice or Without Notice. In both processes, a provider or an applicant may request an informal conference:

(a) With Notice: The Division may issue the conditions With Notice by issuing a Notice of Impending Imposition of License Condition (Notice) at least 48 hours prior to issuing an Order Imposing License Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the license to indicate the conditions that have been ordered;

(b) Without Notice: The Division may impose the conditions Without Notice only if the Division determines that there is an imminent threat to individuals such that the Division determines that it is not safe or practical to give an applicant or a provider advance notice. The Division may impose the conditions without notice by issuing an Order Imposing License Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the license to indicate the conditions that have been ordered.

(5) Notice of Impending Imposition of License Condition (Notice). The Notice may be provided in writing or orally. When the Notice is provided in writing, it shall be sent by certified or registered mail or delivered in person to the applicant or provider. If the Notice is provided orally, it may be provided by telephone or in person to the applicant, provider, or person represented as being in charge of the program. When the Notice is delivered orally, the Division shall subsequently provide written notice to the applicant or provider by registered or certified mail. The Notice shall:

(a) Generally describe the acts or omissions of the applicant or provider and the circumstances that led to the finding that the imposition of a license condition is warranted;

(b) Generally describe why the acts or omissions and the circumstances create a situation for which the imposition of a condition is warranted;

(c) Provide a brief statement identifying the impending condition;

(d) Identify a person within the Division who the applicant or provider may contact and who is authorized to enter the Order or to make recommendations regarding issuance of the Order;

(e) Specify the date and time the Order is scheduled to take effect; and

(f) Offer that the applicant or provider may request an informal conference prior to the issuance of the Order Imposing License Condition, or if the provider has already requested an informal conference, specify the date and time that an informal conference will be held.

(6) Informal Conference Regarding Conditions. If an informal conference is requested regarding conditions, the conference will be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone. Following the informal conference, the Division may modify the conditions. The timing of the informal conference is described as follows:

(a) For conditions to be imposed With Notice: If a Notice is issued, the applicant or provider may request an informal conference to object to the Division's proposed action before the condition is scheduled to take effect. The request for an informal conference shall be made prior to the date the conditions are intended to be effective. If timely requested, the informal conference shall be held within seven7 days of the request. The Order Imposing Condition may be issued at any time after the informal conference;

(b) For conditions imposed Without Notice: If an Order Imposing Condition is issued without a prior Notice, the applicant or provider may, within 48 hours of the issuance of the Order, request an informal conference. If timely requested, the informal conference will be held within two business days of receipt of the request. Following the informal conference, the Division at its discretion may modify the conditions.

(7) Order Imposing Condition. When an Order is issued, the Division must serve the Order either personally or by registered or certified mail. The Order must include the following statements:

(a) The authority and jurisdiction under which the condition is being issued;

(b) A reference to the particular sections of the statute and administrative rules involved;

(c) The effective date of the condition;

(d) A short and plain statement of the nature of the matters asserted or charged;

(e) The specific terms of the license condition;

(f) Right to request a contested case hearing under ORS Chapter 183;

(g) A statement that if a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider will have waived the right to a hearing under ORS Chapter 183;

(h) Findings of specific acts or omissions of the applicant or provider that are grounds for the condition and the reasons the acts or omissions create a situation for which the imposition of a license condition is warranted; and,

(i) A statement that the Division may combine the hearing on the Order with any other proceeding affecting the license. The procedures for the combined proceeding must be those applicable to the other proceedings affecting the license.

(8) Hearing:

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(a) Right to Hearing. If the Division imposes an Order imposing conditions, the applicant or provider is entitled to a contested case hearing pursuant to ORS Chapter 183;

(b) Hearing Request. The Division must receive the request for a hearing within 21 days of the date of Order. If a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider will have waived the right to a hearing under ORS Chapter 183;

(c) The applicant or provider may request a contested case hearing ORS Chapter 183 regarding the imposition of the conditions in addition to, or in lieu of, an informal conference. Requesting a contested case hearing shall not delay the effective date of the conditions.

(9) Exceptions to Order Imposing Condition. When a restriction of enrollment or intake is in effect pursuant to an Order, the Division in its sole discretion may authorize the provider to admit or serve new individuals for whom the Division determines that alternate placement or provider is not feasible.

(10) Duration of Conditions. Conditions may be imposed for the duration of the license or limited to some other shorter period of time. If the condition corresponds to the license period, the reasons for the condition will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the license.

(11) Request for Re-inspection. When the applicant or provider determines that the circumstances leading to imposition of the condition no longer exist and that effective systems are in place to ensure that similar deficiencies do not recur, the applicant or provider may make written request to the Division for re-inspection.

(12) Re-inspection:

(a) If the Division finds that the situation for which the condition was imposed has been corrected and finds that systems are in place to ensure that similar deficiencies do not recur, the condition will be withdrawn, and the Division must revise the license accordingly. Following re-inspection, the Division will notify the facility by telephone of the decision to withdraw the condition. Telephone notification will be followed by written notification;

(b) If the Division determines after a re-inspection that the situation for which the condition was imposed continues to exist or that there are not sufficient systems in place to prevent similar deficiencies, the license condition may not be withdrawn, and the Division is not obligated to re-inspect again for at least 45 days. A decision not to withdraw the Order shall be given to the applicant or provider in writing, and the applicant or provider shall be informed of the right to a contested case hearing pursuant to ORS Chapter 183. Nothing in this rule is intended to limit the Division's authority to inspect facilities at any time.

(13) The Division may deny, suspend, refuse to renew, or revoke the license where the provider or applicant fails to timely comply with one or more conditions.

(14) When the Division orders a condition be placed on a license under the provisions of this rule, the applicant or provider is entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 413.042 & 430.256 & 430.357

Stats. Implemented: ORS 413.032, 430.010, 430.256, 430.306, 430.335, 430.357, 430.397, 430.405, 430.450, 430.590, 430.630, 430.850, 443.400 to 443.455, 813.020, 813.260 & 813.500

Hist.: ADS 1-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

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## Oregon Health Authority, Health Systems Division: Medical Assistance Programs Chapter 410

**Rule Caption:** EHR IP Rule Updates Following Federal Rule Update

**Adm. Order No.:** DMAP 3-2017(Temp)

**Filed with Sec. of State:** 2-2-2017

**Certified to be Effective:** 2-2-17 thru 7-31-17

**Notice Publication Date:**

**Rules Amended:** 410-165-0000, 410-165-0020, 410-165-0060, 410-165-0080

**Subject:** The Division is amending these rules because new federal legislation from the Centers for Medicare and Medicaid Services (CMS) and updates to Oregon's Medicaid State Plan Amendment affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for a shortened 90-day EHR reporting period in 2016-2017 and new attestation requirements for

meaningful use regarding information blocking and surveillance of Certified EHR Technology. In addition, the program is also adding pediatric optometrists to the program eligible professional types.

**Rules Coordinator:** Sandy Cafourek — (503) 945-6430

### 410-165-0000

#### Basis and Purpose

(1) These rules (OAR chapter 410, division 165) govern the Oregon Health Authority (Authority), Health Systems Division, (Division), Medicaid Electronic Health Record (EHR) Incentive Program. The Medicaid EHR Incentive Program provides incentive payments consistent with federal law concerning such payments to eligible providers participating in the Medicaid program who adopt, implement, upgrade, or successfully demonstrate meaningful use of certified EHR technology and who are qualified by the program.

(2) The Medicaid EHR Incentive Program is implemented pursuant to:

(a) The American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, section 4201;

(b) The Centers for Medicare and Medicaid Services (CMS) federal regulation 42 CFR Part 495 (2010, 2012, 2014, and 2015) pursuant to the Social Security Act sections 1903(a)(3)(F) and 1903(t);

(c) The Division's General Rules program, OAR chapter 410, division 120;

(d) The Authority's Provider Rules, OAR chapter 943, division 120.

(3) The following retroactive effective dates apply to these rules:

(a) For all sections in these rules that refer to pediatric optometrists, the effective date is July 1, 2016.

(b) For rule 410-165-0080 that refers to CMS federal regulation 42 CFR Part 495 (2016), the effective date is January 1, 2017.

(c) For eligible hospitals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is October 1, 2013, which is also the start date for program year 2014;

(d) For eligible professionals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is January 1, 2014, which is also the start date for program year 2014.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

### 410-165-0020

#### Definitions

The following definitions apply to OAR 410-165-0010 through 410-165-0140:

(1) "Acceptance Documents" means written evidence supplied by a provider demonstrating that the provider met Medicaid EHR Incentive Program eligibility criteria or participation requirements according to standards specified by the Division.

(2) "Acute Care Hospital" means a healthcare facility including, but not limited to, a critical access hospital with a Centers for Medicare and Medicaid Services' (CMS) certification number (CCN) that ends in 0001-0879 or 1300-1399 and where the average length of patient stay is 25 days or fewer.

(3) "Adopt, Implement, or Upgrade" means:

(a) Acquire, purchase, or secure access to certified EHR technology capable of meeting meaningful use requirements;

(b) Install or commence utilization of certified EHR technology capable of meeting meaningful use requirements; or

(c) Expand the available functionality of certified EHR technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and training or upgrade from existing EHR technology to certified EHR technology.

(4) "Attestation" means a statement that:

(a) Is made by an eligible provider or preparer during the application process;

(b) Represents that the eligible provider met the thresholds and requirements of the Medicaid EHR Incentive Program; and

(c) Is made under penalty of prosecution for falsification or concealment of a material fact.

(5) "Certified EHR Technology" has the meaning given that term in 42 CFR 495.302 (2010, 2012, and 2014), 42 CFR 495.4 (2010, 2012, and 2015), 42 CFR 495.6 (2014), 42 CFR 495.20 (2015), and 45 CFR 170.102 (2010, 2011, 2012, 2014, and 2015).

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(6) "Children's Hospital" means a separately certified hospital, either freestanding or a hospital within a hospital that predominantly treats individuals under 21 years of age and that:

(a) Has a CCN that ends in 3300-3399; or

(b) Does not have a CCN but has been provided an alternative number by CMS for purposes of enrollment in the Medicaid EHR Incentive Program as a children's hospital.

(7) "Dentist" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.100.

(8) "Eligible Hospital" means an acute care hospital with at least 10 percent Medicaid patient volume or a children's hospital.

(9) "Eligible Professional" means a professional who:

(a) Is a physician, dentist, nurse practitioner, nurse-midwife nurse practitioner, pediatric optometrist, or physician assistant practicing in a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) that is so led by a physician assistant;

(b) Meets patient volume requirements described in OAR 410-165-0060; and

(c) Is not a hospital-based professional.

(10) "Eligible Provider" means an eligible hospital or eligible professional.

(11) "Encounter" means:

(a) For an eligible hospital:

(A) Services rendered to an individual for inpatient discharge; or

(B) Services rendered to an individual in an emergency department on any one day.

(b) For an eligible professional, services rendered to an individual on any one day.

(12) "Enrolled Provider" means a hospital or health care practitioner who is actively registered with the Authority pursuant to OAR 943-120-0320.

(13) "Entity Promoting the Adoption of Certified EHR Technology" means an entity designated by the Authority that promotes the adoption of certified EHR technology by enabling:

(a) Oversight of the business and operational and legal issues involved in the adoption and implementation of certified EHR technology; or

(b) The exchange and use of electronic clinical and administrative data between participating providers in a secure manner including, but not limited to, maintaining the physical and organizational relationship integral to the adoption of certified EHR technology by eligible providers.

(14) "Federal Fiscal Year (FFY)" means October 1 to September 30.

(15) "Federally Qualified Health Center (FQHC)" has the meaning given that term in OAR 410-120-0000.

(16) "Grace Period" means a period of time or specified date following the end of a program year when an eligible provider may submit an application to the Medicaid EHR Incentive Program for that program year.

(17) "Hospital-based Professional" means a professional who furnishes 90 percent or more of Medicaid-covered services in a hospital emergency room (place of service code 23) or inpatient hospital (place of service code 21) in the calendar year (CY) preceding the program year, but does not include a professional practicing predominantly at a FQHC or RHC.

(18) "Individuals Receiving Medicaid" means individuals served by an eligible provider where the services rendered would qualify under the Medicaid encounter definition.

(19) "Meaningful EHR User" means an eligible provider that meets the criteria set forth in OAR 410-165-0080.

(20) "Medicaid Encounter" means:

(a) For an eligible hospital applying for program year 2011 or 2012:

(A) Services rendered to an individual per inpatient discharge where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing; or

(B) Services rendered in an emergency department on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(b) For an eligible hospital applying for program year 2013 or later, either:

(A) Services rendered to an individual per inpatient discharge where the individual was enrolled in Medicaid (or a Medicaid demonstration proj-

ect approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided; or

(B) Services rendered in an emergency department on any one day where the individual was enrolled in Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided.

(c) For an eligible professional applying for program year 2011 or 2012, either:

(A) Services rendered to an individual on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or

(B) Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(d) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where the individual was enrolled in a Medicaid program (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided.

(21) "National Provider Identifier" has the meaning given that term in 45 CFR Part 160 and OAR 410-120-0000.

(22) "Needy Individual" means individuals served by an eligible professional where the services rendered qualify under the needy individual encounter definition.

(23) "Needy Individual Encounter" means:

(a) For an eligible professional applying for program year 2011 or 2012, services rendered to an individual on any one day where:

(A) Medicaid or CHIP or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115 paid for part or all of the service;

(B) Medicaid or CHIP or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115 paid all or part of the individual's premiums, copayments, or cost-sharing;

(C) The services were furnished at no cost and calculated consistent with 42 CFR 495.310(h) (2010); or

(D) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(b) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where:

(A) The services were rendered to an individual enrolled in a Medicaid program or a Medicaid demonstration project approved under the Social Security Act section 1115 or CHIP at the time the billable service was provided;

(B) The services were furnished at no cost and calculated consistently with 42 CFR 495.310(h) (2010); or

(C) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(24) "Nurse Practitioner" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.166.

(25) "Optometrist" has the meaning given that term in OAR 410-120-0000 and ORS chapter 683.

(26) "Panel" means a managed care panel, medical or health home program panel, or similar provider structure with capitation or case assignment that assigns patients to providers.

(27) "Patient Volume" means:

(a) For eligible hospitals, the proportion of Medicaid encounters to total encounters expressed as a percentage;

(b) For eligible professionals who do not meet the definition of "practices predominantly," the proportion of Medicaid encounters to total encounters expressed as a percentage;

(c) For eligible professionals who meet the definition of "practices predominantly," the proportion of needy individual encounters to total encounters expressed as a percentage.

(28) "Pediatric Optometrist" means an optometrist who predominantly treats individuals under the age of 21.

(29) "Pediatrician" means a physician who predominantly treats individuals under the age of 21.

(30) "Physician" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.50.

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(31) "Physician Assistant" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.60.

(32) "Practices Predominantly" means an eligibility criterion to permit use of needy individual patient volume. An eligible professional practices predominantly if:

(a) For program year 2011 or 2012, more than 50 percent of an eligible professional's total patient encounters over a period of six months in the calendar year preceding the program year occur at an FQHC or RHC;

(b) For program year 2013 and later, more than 50 percent of an eligible professional's total patient encounters occur at an FQHC or RHC:

(A) During a six-month period in the calendar year preceding the program year; or

(B) During a six-month period in the most recent 12 months prior to attestation.

(33) "Preparer" means an individual authorized by an eligible provider to act on behalf of the provider to complete an application for a Medicaid EHR incentive via an electronic media connection with the Authority.

(34) "Program" means the Medicaid EHR Incentive Program.

(35) "Program Year" means:

(a) The CY for an eligible professional;

(b) For an eligible hospital:

(A) The federal fiscal year for program years 2011 through 2014 and for program 2015 if the attestation date is before December 15, 2015;

(B) The CY for program year 2015 and later if the attestation date is on or after December 15, 2015.

(36) "Provider Web Portal" means the Authority's website that provides a secure gateway for eligible providers or preparers to apply for the Program.

(37) "Qualify" means to meet the eligibility criteria and participation requirements to receive a payment for the program year. The Program makes the determination as to whether an eligible provider qualifies.

(38) "Rural Health Clinic (RHC)" means a clinic located in a rural and medically underserved community designated as an RHC by CMS. Payment by Medicare and Medicaid to an RHC is on a cost-related basis for outpatient physician and certain non-physician services.

(39) "So Led" means when an FQHC or RHC has a physician assistant who is:

(a) The primary provider in the clinic;

(b) A clinical or medical director at the clinical site of practice; or

(c) An owner of the RHC.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

## 410-165-0060

### Eligibility

(1) There are three categories of eligibility criteria:

(a) Eligible professionals;

(b) Eligible professionals practicing predominately in a FQHC or RHC; and

(c) Eligible hospitals.

(2) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional as listed in Table 165-0060-1 shall meet the Program criteria each year:

(a) To be eligible for an incentive payment, an eligible professional shall at a minimum:

(A) Meet and follow the scope of practice regulations as applicable for each profession as defined in 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade certified EHR technology; or

(II) Meet the definition of a Meaningful EHR user described in OAR 410-165-0020.

(ii) Subsequent years of participation, meet the definition of a Meaningful EHR user described in OAR 410-165-0020.

(C) Either not be a hospital-based professional or for program year 2013 or later meet the requirements that allow a reversal of a hospital-based determination. To be considered non-hospital-based in future program years after an initial reversal determination, the professional shall attest in each subsequent program year that the professional continues to meet the

requirements. To meet the requirements, the professional shall do all of the following:

(i) Fund the acquisition, implementation, and maintenance of certified EHR technology, including supporting hardware and interfaces needed for meaningful use without reimbursement from an eligible hospital and use such certified EHR technology in the inpatient or emergency department of a hospital;

(ii) Provide documentation to the Program for review and approval for the program year and in accordance with OAR 410-165-0040;

(iii) Meet all applicable requirements to receive an incentive payment; and

(iv) If attesting to meaningful use, demonstrate using all encounters at all locations equipped with certified EHR technology, including those in the inpatient and emergency departments of the hospital.

(D) Meet one of the following criteria:

(i) Have a minimum of 30 percent patient volume attributable to individuals receiving Medicaid; or

(ii) Be a pediatrician who has a minimum of 20 percent patient volume attributable to individuals receiving Medicaid.

(b) An eligible professional shall calculate patient volume as listed in Table 165-0060-2 by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data.

(c) An eligible professional shall calculate patient volume as listed in Table 165-0060-2 by using either the patient volume of the eligible professional or the patient volume of the group. The patient volume of the group may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group must use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, then the patient volume calculation includes only those encounters associated with the group and not the eligible professional's outside encounters.

(d) An eligible professional's patient volume must be calculated using one of the following methods:

(A) The patient encounter calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the total Medicaid encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year; or

(ii) For program year 2013 and later, the eligible professional shall divide the total Medicaid encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the twelve-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional shall divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the twelve-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient

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in the preceding calendar year, to the eligible professional's unduplicated Medicaid encounters rendered in the same 90-day period; and

(I) Divide the result calculated above in section (1)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative, 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated Medicaid encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the group's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in section (1)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the group's panel in any representative, 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in section (1)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(3) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional practicing predominantly in an FQHC or an RHC, as listed in Table 165-0060-1, must meet the Program eligibility criteria each year by meeting either section (2) of this rule or by meeting the following FQHC and RHC specific criteria:

(a) At a minimum, the eligible professional shall:

(A) Meet and follow the scope of practice regulations as applicable for each professional as prescribed by 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade certified EHR technology; or

(II) Meet the definition of a meaningful EHR user described in OAR 410-165-0020.

(ii) Subsequent years of participation, meet the definition of a meaningful EHR user described in OAR 410-165-0020.

(C) Have a minimum of 30 percent patient volume attributable to needy individuals.

(b) An eligible professional shall calculate patient volume as listed in Table 165-0060-3 by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data.

(c) An eligible professional must calculate patient volume as listed in Table 165-0060-3 by using either the patient volume of the eligible professional or the patient volume of the group. The group's patient volume may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group shall use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, the patient volume calculation includes only those encounters associated with the group and not the outside encounters.

(d) An eligible professional's needy individual patient volume shall be calculated using one of the following methods:

(A) The patient encounter calculation method based on the eligible professional's patient volume:

(i) For program year 2011 or 2012, the eligible professional shall divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional shall divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the 12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the 12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the eligible professional's unduplicated needy individual encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period either in the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated needy individual encounters rendered the same 90-day period;

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

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(I) Add the total needy individual patients assigned to the group's panel in any representative, 90-day period in the prior calendar year, provided at least one needy individual encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total needy individual patients assigned to the group's panel in any representative, 90-day period either in the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one needy individual encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in section (2)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(4) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible hospital shall meet the Program criteria each year:

(a) To be eligible for an incentive payment, an eligible hospital shall meet the certified EHR technology and meaningful use requirements for the corresponding year of participation:

(A) First year of participation:

(i) Adopt, implement, or upgrade certified EHR technology;

(ii) Eligible hospitals that are children's hospitals shall meet the definition of a meaningful EHR user; or

(iii) Eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs shall demonstrate meaningful use under the Medicare EHR Incentive Program to CMS and be deemed a meaningful EHR user for the program year.

(B) Subsequent years of participation:

(i) Eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs shall demonstrate meaningful use under the Medicare EHR Incentive Program to CMS and be deemed a meaningful EHR user for the program year; or

(ii) Eligible hospitals that are children's hospitals shall meet the definition of a meaningful EHR user;

(b) If an eligible hospital is an acute care hospital, it shall calculate patient volume by dividing the total eligible hospital Medicaid encounters by the total encounters in any representative, continuous 90-day period:

(A) For program year 2011 and 2012, in the preceding federal fiscal year;

(B) For program year 2013 and later, either in the preceding federal fiscal year or in the 12-month timeframe preceding the attestation date. The eligible hospital may not use the same 90-day timeframe to calculate patient volume in different program years.

(5) Table 165-0060-1. [Table not included. See ED. NOTE.]

(6) Table 165-0060-2. [Table not included. See ED. NOTE.]

(7) Table 165-0060-3. [Table not included. See ED. NOTE.]

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

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Stats. Implemented: ORS 413.042 & 414.033

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## 410-165-0080

### Meaningful Use

(1) An eligible provider shall demonstrate being a meaningful EHR user as prescribed by 42 CFR 495.4 (2010, 2012, 2015, and 2016), 42 CFR 495.6 (2010, 2012, and 2014), 42 CFR 495.8 (2010, 2012, and 2014), 42 CFR 495.20 (2015), 42 CFR 495.22 (2015 and 2016), 42 CFR 495.24 (2015 and 2016), and 42 CFR 495.40 (2015 and 2016):

(a) For eligible providers demonstrating meaningful use under the Program in Stage 1 prior to December 15, 2015 to comply with 42 CFR 495.8, the State of Oregon requires the eligible provider to satisfy the objective "Capability to submit electronic data to immunization registries

or immunization information systems and actual submission in accordance with applicable law and practice;"

(b) For eligible hospitals:

(A) If CMS deems an eligible hospital to be a meaningful EHR user for the Medicare EHR Incentive Program for a program year, the eligible hospital is automatically deemed to be a meaningful EHR user for the Program for the same program year;

(B) An eligible hospital deemed to be a meaningful EHR user by CMS for a program year does not have to meet the requirements specified in section (1)(a) for the Program for the same program year.

(2) As prescribed by 42 CFR 495.4 (2010, 2012, 2015, and 2016), the following meaningful use EHR reporting periods shall be used by eligible providers that are demonstrating meaningful use to the Program for:

(a) Program years 2011, 2012, and 2013:

(A) Eligible professionals:

(i) For the first time, either:

(I) Any continuous 90-day period in the calendar year; or

(II) The calendar year.

(ii) For a subsequent time: the calendar year.

(B) Eligible hospitals:

(i) For the first time, either:

(I) Any continuous 90-day period in the federal fiscal year; or

(II) The federal fiscal year.

(ii) For a subsequent time, the federal fiscal year.

(b) Program year 2014:

(A) Eligible professionals, either:

(i) Any continuous 90-day period in calendar year 2014; or

(ii) Any of the following 3-month periods:

(I) January 1, 2014 through March 31, 2014;

(II) April 1, 2014 through June 30, 2014;

(III) July 1, 2014 through September 30, 2014; or

(IV) October 1, 2014 through December 31, 2014.

(B) Eligible hospitals, either:

(i) Any continuous 90-day period in federal fiscal year 2014; or

(ii) Any of the following 3-month periods:

(I) October 1, 2013 through December 31, 2013;

(II) January 1, 2014 through March 31, 2014;

(III) April 1, 2014 through June 30, 2014; or

(IV) July 1, 2014 through September 30, 2014.

(c) Program year 2015, prior to December 15, 2015:

(A) Eligible professionals attesting for the first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) Eligible professionals attesting for a subsequent year, the calendar year;

(C) Eligible hospitals attesting for the first year, either:

(i) Any continuous 90-day period in the federal fiscal year; or

(ii) The federal fiscal year.

(D) Eligible hospitals attesting for a subsequent year, the federal fiscal year.

(d) Program year 2015, on or after December 15, 2015, for program year 2015, any continuous 90-day period in the calendar year;

(e) Program year 2016 before January 1, 2017: (A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year, the calendar year.

(f) Program year 2016 after January 1, 2017:

(A) Any continuous 90-day period in the calendar year; or

(B) The calendar year.

(g) Program year:

(A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year for meaningful use objectives; and

(iii) A calendar year for the Clinical Quality Measures.

(h) Program year 2018 and subsequent program years:

(A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year, the calendar year.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

# ADMINISTRATIVE RULES

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17

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**Rule Caption:** Expanding Services in State Plan for Babies First!, CaCoon TCM Approved by CMS Effective January 1, 2017

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**Filed with Sec. of State:** 2-2-2017

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**Rules Amended:** 410-138-0000, 410-138-0005, 410-138-0007, 410-138-0009, 410-138-0020, 410-138-0040, 410-138-0060, 410-138-0080, 410-138-0390, 410-138-0420

**Subject:** The Division needs to amend these rules to incorporate changes to the State Plan for Targeted Case Management Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership services, approved on 01/19/2017, by Centers for Medicare and Medicaid Services (CMS), effective 01/01/2017. The Division is adding definitions specific to the expanded services, qualifications of case managers, expanded target group, and identified risk criteria for clients eligible in the target group.

**Rules Coordinator:** Sandy Cafourek—(503) 945-6430

## 410-138-0000

### Targeted Case Management Definitions

The following definitions apply to OAR 410-138-0000 through 410-138-0420:

(1) “Assessment” means the act of gathering information and reviewing historical and existing records of an eligible client in a target group to determine the need for medical, educational, social, or other services. To perform a complete assessment, the case manager shall gather information from family members, medical providers, social workers, and educators, if necessary.

(2) “Care Plan” means a Targeted Case Management (TCM) Care Plan that is a multidisciplinary plan that contains a set of goals and actions required to address the medical, social, educational, and other service needs of the eligible client based on the information collected through an assessment or periodic reassessment.

(3) “Case Management” means services furnished by a case manager to assist individuals eligible under the Medicaid State Plan Amendment (SPA) in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18. See also the definition for Targeted Case Management.

(4) “Centers for Medicare and Medicaid Services (CMS)” means the federal agency under the U.S. Department of Health and Human Services that provides the federal funding for Medicaid and the Children’s Health Insurance Program (CHIP).

(5) “Children and Youth with Special Health Care Needs (CYSHCN)” means those children and youth who have or are at increased risk for a chronic physical, developmental, behavioral, or emotional condition and who also require health and related services of a type or amount beyond that required by children generally.

(6) “Department” means the Department of Human Services (Department).

(7) “Division” means the Oregon Health Authority’s Health Systems Division.

(8) “Duplicate Payment” means more than one payment made for the same services to meet the same need for the same client at the same point in time.

(9) “Early Childhood Special Education (ECSE)” means free, specially designed instruction to meet the unique needs of a preschool child with a disability, three years of age until the age of eligibility for public school, including instruction in physical education, speech-language services, travel training, and orientation and mobility services. Instruction is provided in any of the following settings: home, hospitals, institutions, special schools, classrooms, and community childcare or preschool settings.

(10) “Early intervention (EI)” means services for preschool children with disabilities from birth until three years of age, including Indian children and children who are homeless and their families.

(11) “Early Intervention/Early Childhood Special Education (EI/ECSE) Services” means services provided to a preschool child with disabilities, eligible under the Individuals with Disabilities Education Act (IDEA) from birth until they are eligible to attend public school, pursuant to the eligible child’s Individualized Family Service Plan (IFSP).

(12) “EI/ECSE Case Manager (i.e., service coordinator)” means an employee of the EI/ECSE contracting or subcontracting agency meeting the personnel standards requirements in OAR 581-015-2900. The EI/ECSE case manager serves as a single point-of-contact and is responsible for coordinating all services across agency lines for the purpose of assisting an eligible client to obtain needed medical, social, educational, developmental, and other appropriate services (such as housing or transportation) identified in the eligible client’s care plan in coordination with the client’s IFSP.

(13) “EI/ECSE TCM Program” means a service under the State Plan and includes case management services furnished to eligible EI/ECSE preschool children age 0-5 with disabilities, assisting them to gain access to needed medical, social, educational, developmental, and other appropriate services (such as housing or transportation) in coordination with their IFSP. EI/ECSE TCM providers shall meet the criteria for the provision of special education programs approved by the State Superintendent of Public Instruction qualifying such programs for state reimbursement under OAR 581-015-2710 EI/ECSE and shall be contractors with the Oregon Department of Education in the provision of EI/ECSE services or be subcontractors with such a contractor. Medicaid reimbursement for EI/ECSE TCM services is available only to eligible clients in the target group and does not restrict an eligible client’s free choice of providers.

(14) “Eligible Client” means an individual who is found eligible for Medicaid or the Children’s Health Insurance Program (CHIP) by the Oregon Health Authority (Authority) and eligible for case management services (including TCM services) as defined in the Medicaid State Plan at the time the services are furnished.

(15) “Federal Financial Participation (FFP)” means the portion paid by the federal government to states for their share of expenditures for providing Medicaid services. FFP was created as part of the Title XIX, Social Security Act of 1965. There are two objectives that permit claims under FFP. They are:

(a) To assist individuals eligible for Medicaid to enroll in the Medicaid program; and

(b) To assist individuals on Medicaid to access Medicaid providers and services. The second objective involves TCM.

(16) “Federal Medical Assistance Percentage (FMAP)” means the percentage of federal matching dollars available to a state to provide Medicaid services. The FMAP is calculated annually based on a three-year average of state per capita personal income compared to the national average. The formula is designed to provide a higher federal matching rate to states with lower per capita income. No state receives less than 50 percent or more than 83 percent.

(17) “Individualized Family Service Plan (IFSP)” means a written plan of early childhood special education, related services, early intervention services, and other services developed in accordance with criteria established by the State Board of Education for each child eligible for services. (See OAR 581-015-2700 to 581-015-2910, Early Intervention and Early Childhood Special Education Programs.)

(18) “Medical Assistance Program” means a program administered by the Division that provides and pays for health services for eligible Oregonians. The Medical Assistance Program includes TCM services provided to clients eligible under the Oregon Health Plan (OHP) Title XIX and the Children’s Health Insurance Program (CHIP) Title XXI.

(19) “Monitoring” means ongoing face-to-face or other contact to conduct follow-up activities with the participating eligible client or the client’s health care decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to managing the eligible client’s care to ensure the care plan is effectively implemented.

(20) “Oregon Health Plan (OHP)” means the Medicaid program in Oregon that is known as the OHP and governed by a series of laws passed by the Oregon Legislature with the intention of providing universal access to healthcare to Oregonians. OHP is also governed by many federal laws.

(21) “Perinatal (for the purpose of the State Plan amendment for Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership TCM)” means the period inclusive of pregnancy through two years postpartum to the child’s second birthday. Services to a parent or primary caregiver may be available during this same two-year period following the birth of the child.

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(22) "Reassessment" means periodically re-evaluating the eligible client to determine whether or not medical, social, educational, or other services continue to be adequate to meet the goals and objectives identified in the care plan. Reassessment decisions include those to continue, change, or terminate TCM services. A reassessment shall be conducted at least annually or more frequently if changes occur in an eligible client's condition, or when resources are inadequate, or the service delivery system is non-responsive to meet the client's identified service needs.

(23) "Referral" means performing activities such as scheduling appointments that link the eligible client with medical, social, or educational providers, or other programs and services, and follow-up and documentation of services obtained.

(24) "Targeted Case Management (TCM) Services" means case management services furnished to a specific target group of eligible clients under the Medicaid State Plan to gain access to needed medical, social, educational, and other services (such as housing or transportation).

(25) "Unit of Government" means a city, a county, a special purpose district, or other governmental unit in the state.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; 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 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0005

### Payment for Targeted Case Management Services Eligible for Federal Financial Participation

(1) This rule is to be used in conjunction with Targeted Case Management (TCM) rules OAR 410-138-0000 through 410-138-0009 and 410-138-0390 and the Division's General Rules chapter 410, division 120.

(2) The TCM services rules are designed to assist the TCM provider organizations in matching state and federal funds for TCM services defined by Section 1915(g) of the Social Security Act, 42 USC § 1396n(g).

(3) Payment shall be made to the TCM provider enrolled with the Authority as a unit of government provider meeting the requirements set forth in the provider enrollment agreement.

(4) Signing the provider enrollment agreement sets forth the relationship between the State of Oregon, the Authority, and the TCM provider and constitutes agreement by the TCM provider to comply with all applicable Authority rules and federal and state laws and regulations.

(5) The TCM provider shall bill according to administrative rules in chapter 410, division 138 and the TCM supplemental information. Payments shall be made using the Medicaid Management Information System (MMIS), and the TCM provider shall retain the full payment for covered services provided. The TCM provider shall have a Trading Partner Agreement with the Authority prior to submission of electronic transactions.

(6) TCM authorized under these rules is a cost-sharing (Federal Financial Participation (FFP) matching) program in which the TCM provider as a public entity, unit of government, shall pay the non-federal matching share of the amount of the TCM claims, calculated using the Federal Medical Assistance Percentage (FMAP) rates in effect during the quarter when the TCM claims will be paid:

(a) The TCM provider's non-federal matching share means the public funds share of the Medicaid payment amount. Pursuant to the Social Security Act, 42 CFR 433.51, public funds may be considered as the state's share in claiming federal financial participation, if the public funds meet the following conditions:

(A) The public funds are transferred to the Authority from public entities that are units of government;

(B) The public funds are not federal funds, or they are federal funds authorized by federal law to be used to match other federal funds; and

(C) All sources of funds shall be allowable under the Social Security Act 42 CFR 433 Subpart B;

(b) The unit of government TCM provider shall pay the non-federal matching share to the Authority in accordance with OAR 410-120-0035.

(7) Before the Authority pays for TCM claims, the Authority shall receive the corresponding local match payment as described in this rule. Failure to timely pay the non-federal matching funds to the Authority will delay payment.

(8) The Authority shall not be financially responsible for payment of any claim that CMS disallows under the Medicaid program. If the Authority has previously paid the TCM provider for any claim, which CMS disallows, the TCM provider shall reimburse the Authority the amount of the

claim that the Authority has paid to the TCM provider, less any amount previously paid by the unit of government TCM provider to the Authority for the non-federal match portion for that claim.

(9) Providers shall only bill Medicaid for allowable activities in the TCM program that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, and other services. One or more of the following allowable activities shall occur before billing:

(a) Assessment;

(b) Development of a care plan;

(c) Referral and follow up;

(d) Monitoring and follow up.

(10) TCM claims may not duplicate payments made to:

(a) Public agencies or private entities for any other case management activities or direct services provided under the State Plan or OHP, through fee for service, managed care, or other contractual arrangement, that meet the same need for the same client at the same point in time;

(b) A TCM provider by program authorities under different funding authority than OHP, including but not limited to other public health funding;

(c) A TCM provider for administrative expenditures reimbursed under agreement with the Authority or any other program or funding source.

(11) Medicaid is only liable for the cost of otherwise allowable case management services if there are no other third parties liable to pay. However, while schools are legally liable to provide IDEA-related health services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903(c) of the Act requires Medicaid to be primary to the U.S. Department of Education for payment for covered Medicaid services furnished to a child with a disability. These services may include health services included in a child's Individualized Education Program (IEP) or Individual Family Service Plan (IFSP) under the IDEA. Payment for those services that are included in the IEP or IFSP may not be available when those services are not covered Medicaid services.

(12) The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(13) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0007

### Targeted Case Management — Covered Services

(1) Targeted case management (TCM) services shall be furnished only to assist individuals eligible under the Medicaid State Plan in gaining access to and effectively using needed medical, social, educational, and other services (such as housing or transportation) in accordance with 42 CFR 441.18.

(2) TCM services billed to Medicaid shall be for allowable activities and include one or more of the following components:

(a) Assessment of an eligible client in the target group to determine the need for medical, educational, social, or other services as follows:

(A) Taking client history;

(B) Identifying the needs of the client, and completing related documentation;

(C) Gathering information from other sources, such as family members, medical providers, social workers, and educators, if necessary, to form a complete assessment of the eligible client;

(D) Periodically reassessing a client to determine if the client's needs or preferences have changed. A reassessment shall be conducted at least annually or more frequently if changes occur in the client's condition;

(b) Development of a care plan based on the information collected through the assessment or periodic reassessment, specifying the goals and actions to address the medical, social, educational, and other services needed by the eligible client. This may include:

(A) Active participation of the eligible client in the target group; or

(B) Working with the eligible client or the eligible client's authorized health care decision maker and others to develop goals and identify a course of action to respond to the assessed needs of the eligible client;

(c) Referral, linking, and coordination of services and related activities including but not limited to:

(A) Scheduling appointments for the eligible client in the target group to obtain needed services; and



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(B) Activities that help link the eligible client with medical, social, or educational providers, or other programs and services (e.g., food vouchers, transportation, child care, or housing assistance) that address identified needs and achieve goals specified in the care plan. The case management referral activity is completed once the referral and linkage have been made;

(C) Reminding and motivating the client to adhere to the treatment and services schedules established by providers.

(d) Monitoring or ongoing face-to-face or other contact:

(A) Monitoring and follow-up activities include activities and contacts:

(i) To ensure the care plan is effectively implemented;

(ii) To help determine if the services are being furnished in accordance with the eligible client's care plan;

(iii) To determine whether the care plan adequately addresses the needs of the eligible client in the target group;

(iv) To adjust the care plan to meet changes in the needs or status of the eligible client.

(B) Monitoring activities may include contacts with:

(i) The participating eligible client in the target group;

(ii) The eligible client's healthcare decision makers, family members, providers, or other entities or individuals when the purpose of the contact is directly related to the management of the eligible client's care.

(3) TCM services billed to Medicaid shall be documented in the client's case records for all client's receiving case management. The documentation shall include:

(a) The client's name;

(b) The dates of the case management services;

(c) The name of the provider agency (if relevant) and the person providing the case management service;

(d) The nature, content, units of the case management services received and whether goals specified in the care plan have been achieved;

(e) Whether the client has declined services in the care plan;

(f) The need for, and occurrences of, coordination with other case managers;

(g) A timeline for obtaining needed services;

(h) A timeline for reevaluation of the plan.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; 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 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0009

### Targeted Case Management — Services Not Covered

Targeted Case Management (TCM) services do not cover:

(1) Direct delivery of an underlying medical, educational, social, or other service to which the eligible client has been referred.

(2) Providing transportation to a service to which an eligible client is referred.

(3) Escorting an eligible client to a service.

(4) Providing child care so that an eligible client may access a service.

(5) Contacts with individuals who are not categorically eligible for Medicaid or who are categorically eligible for Medicaid but not included in the eligible target population when those contacts relate directly to the identification and management of the non-eligible or non-targeted individual's needs and care.

(6) Assisting an individual who has not yet been determined eligible for Medicaid to apply for or obtain eligibility.

(7) TCM services provided to an individual if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, or federal or state funded parole and probation, or juvenile justice programs.

(8) Activities for which third parties are liable to pay.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; 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 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0020

### Targeted Case Management Programs

(1) This rule includes expanded services in the State Plan for TCM and includes: Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership services approved by CMS effective January 1, 2017.

(2) TCM programs include the following:

(a) Asthma/Healthy Homes;

(b) Early Intervention/Early Childhood Special Education (EI/ECSE);

(c) Human Immunodeficiency Virus (HIV);

(d) Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership;

(e) Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18; and

(f) Federally Recognized Tribal Governments.

(3) The TCM Programs are medical assistance programs operated by public health authorities, unit of government providers, or Federally Recognized Tribal Governments in Oregon who are enrolled as TCM providers with the Authority. Participation by providers is voluntary and subject to approval by the Authority and CMS. With the exception of the Federally Recognized Tribal Governments TCM programs, the TCM programs authorized under these rules are cost-sharing (Federal Financial Participation (FFP) matching) programs in which the public fund agency, public entity, unit of government, shall pay the non-federal matching share of the amount of the TCM claims.

(4) The Public Fund Agency may contract TCM services provided by a Local Public Health Authority or other public or private agency if the public fund agency's obligations for providing payment for the non-federal share for services provided and billed to Medicaid are met in compliance with 42CFR433.51 and the TCM services are provided by an enrolled Medicaid TCM provider who will receive and retain 100 percent of the TCM payments. See OAR 410-138-0005 (Payment for Targeted Case Management Services Eligible for Federal Financial Participation).

(5) Federally Recognized Tribal Governments TCM services authorized under these rules provided to tribal members (American Indian/Alaska Native) at an Indian Health Service (IHS/638) facility operated by the Indian Health Service, by an Indian tribe or tribal organization are reimbursed at 100 percent by Title XIX (Medicaid) and Title XXI Children's Health Insurance Program (CHIP). TCM services provided by IHS/638 facilities to non-tribal American Indian/Alaska Native members shall be reimbursed at the applicable FMAP rate.

(6) The Authority may not authorize services or reimbursement for direct care as part of any TCM activity. The following are TCM programs and services:

(a) The TCM Asthma/Healthy Homes program improves access to needed services for eligible clients with poorly controlled asthma or a history of environmentally induced respiratory distress. The TCM Asthma/Health Homes program services include management of medical and non-medical services, which address medical, social, nutritional, educational, housing, environmental, and other needs. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM Asthma/Healthy Homes case manager consistent with these rules;

(b) The TCM Early Intervention/Early Childhood Special Education (EI/ECSE) program is a medical assistance program provided by enrolled EI/ECSE providers that meet the criteria approved by the State Superintendent of Public Instruction to administer the provision of EI and ECSE. The TCM EI/ECSE program provides services to categorically eligible children with disabilities, receiving EI/ECSE services from birth until they are eligible for public school. These TCM services are available on a fee-for-service basis, within the limitations established by the Division and chapter 410, division 138 rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). This qualifies such programs for state reimbursement under EI/ECSE programs OAR 581-015-2700 through 581-015-2910. An enrolled TCM EI/ECSE provider shall be a contractor/agency designated by the Oregon Department of Education (ODE) to administer the provision of EI and ECSE within selected service areas or be a sub-contractor with such a contractor. TCM EI/ECSE program services include management of medical and non-medical services to assist children with disabilities in gaining access to needed medical, social, educational, developmental, and other appropriate services in coordination with a child's Individualized Family Service Plan (IFSP) developed and implemented pursuant to IDEA and based on information collected through the TCM assessment or periodic reassessment process;

(c) The TCM HIV program improves access to needed medical and non-medical services, which address physical, psychosocial, nutritional,

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educational, and other services for Medicaid categorically eligible clients with symptomatic or asymptomatic HIV disease. Home visits constitute an integral part of the delivery of TCM services, provided by a TCM HIV case manager consistent with these rules. Without TCM case management services, an eligible client's ability to remain safely in their home may be at risk;

(d) The TCM Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership program improve access to needed medical and non-medical services that address medical, social, educational, and other services. These programs are expanded to include Medicaid eligible perinatal women, eligible infants and children through four years of age who have one or more risk factors for poor perinatal, birth, and other poor health outcomes. TCM services may be provided to a parent (primary caregiver) during this same two years following the birth of the eligible child. See Table 1 Risk Criteria as outlined in OAR 410-138-0040 risk criteria. The TCM CaCoon program improves access to needed medical, psychosocial, educational, and other services for infants, children, and youth and shall be provided to Medicaid eligible Children and Youth with Special Health Care Needs (CYSHCN), up to age 21, who have one or more diagnosis or very high risk factor listed in Table 2 as outlined in OAR 410-138-0040 risk criteria. Home visits constitute a significant part of the delivery of targeted case management services, provided by a Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case manager consistent with these rules;

(e) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 program improves access to needed medical and non-medical services, which address physical, psychosocial, educational, nutritional, and other services to Medicaid categorically eligible pregnant women or custodial parents with children under the age of 18 who have alcohol or drug addiction issues. Targeted clients are those who are not yet ready to actively engage in addiction treatment services. TCM services are provided by an enrolled TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children under age 18 provider consistent with these rules. Participation by all TCM providers is voluntary and subject to approval by the Division and CMS;

(f) The TCM Federally Recognized Tribal Government program improves access to needed medical and non-medical services, which address health, psychosocial, economic, educational, nutritional, and other services for Medicaid categorically eligible tribal members served by tribal programs, provided by an enrolled tribal TCM provider consistent with these rules. The target group includes those members receiving elder care; individuals with diabetes; children and adults with health and social service care needs, and pregnant women.

(7) Refer to the State Plan Amendments for participating counties for each TCM program. The State Plan Amendments are located at <http://www.oregon.gov/oha/healthplan/Pages/stateplan.aspx>.

(8) Provision of any TCM Program services may not restrict an eligible client's choice of providers, in accordance with 42 CFR 441.18 (a):

(a) Eligible clients shall have free choice of available TCM Program service providers or other TCM service providers available to the eligible client, subject to the Social Security Act, 42 USC 1396n and 42 CFR 441.18(b);

(b) Eligible clients shall have free choice of the providers of other medical care within their benefit package of covered services.

Stat. Auth.: ORS 413.042 & 414.065  
Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0040

### Targeted Case Management Babies First/CaCoon Program Risk Criteria

(1) This rule is in effect for expanded services approved by CMS effective for services rendered beginning January 1, 2017, and sets forth the criteria for risk factors for the TCM Expanded Babies First! programs for infants and preschool children (birth through age four) to include perinatal and parental eligibility criteria in Table 1 and risk factors for TCM infant and children eligibility criteria and diagnosis in Table 2.

(2) January 1, 2017, Table 1 risk criteria for TCM perinatal and parental eligibility and Table 2 risk criteria for TCM infant and children eligibility and diagnosis criteria become effective and may be accessed at.

Stat. Auth.: ORS 413.042 & 414.065  
Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0060

### Targeted Case Management Program — Provider Requirements

(1) This rule is in effect for services rendered retroactive to July 1, 2009, except for the TCM Asthma/Healthy Homes Program that is retroactive to July 1, 2010, and Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership for services rendered effective January 1, 2017.

(2) TCM Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case managers may be an employee of a Local County Health Department or other public or private agency contracted by a Local Public Health Authority with the demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program and the ability to link with the Maternal and Child Health (MCH) Data System.

(3) TCM Asthma/Healthy Homes, Early Intervention/Early Childhood Special Education (EI/ECSE), and Human Immunodeficiency Virus (HIV) provider organizations shall be unit of government providers. TCM EI/ECSE providers may also be a subcontractor of a government entity.

(4) TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 provider organizations shall be locally based agencies.

(5) TCM Federally Recognized Tribal Governments providers shall be Indian Health Services/638 facilities.

(6) All providers shall demonstrate the ability to provide all core elements of case management services including:

(a) Comprehensive assessment, which may include triage and environmental assessment of client needs. All providers for the Public Health Nurse Home Visiting, Expanded Babies First!, CaCoon, and Nurse-Family Partnership targeted case managers program shall provide comprehensive nursing assessment of client needs;

(b) Reassessment of the client's status and needs annually or more frequently with a significant change in the client's condition;

(c) Development and periodic revision of a comprehensive care and service plan;

(d) Referral and linking/coordination of services;

(e) Ongoing monitoring and follow-up of referral and related services;

(f) A financial management capacity and system that provides documentation of services and costs and provides computerized tracking and monitoring to assure adequate follow-up and avoid duplication.

(7) Except for Federally Recognized Tribal Governments providers, the TCM provider shall provide the non-federal matching share from public funds in compliance with OAR 410-138-0005.

(8) If the provider is a subcontractor of a governmental entity, the governmental entity shall make the non-federal matching share with public fund payments in compliance with OAR 410-138-0005.

(9) All program providers shall demonstrate the following TCM experience and capacity:

(a) Understanding and knowledge of local and state resources and services available to the target population;

(b) Demonstrated case management experience in coordinating and linking community resources as required by the target population;

(c) Demonstrated and documented experience providing services for the target population;

(d) An administrative capacity to ensure quality of services in accordance with state and federal requirements;

(e) A financial management capacity and system that provides documentation of services and costs;

(f) Capacity to document and maintain client case records in accordance with state and federal requirements, including requirement for recordkeeping on OAR 410-138-0007 and 410-120-1360; confidentiality requirements in ORS 192.518 – 192.524, 179.505 and 411.320; and HIPAA Privacy requirements applicable to case management services;

(g) A sufficient number of staff to meet the case management service needs of the target population;

(h) Demonstrated ability to meet all state and federal laws governing the participation of providers in the state Medicaid program; and

(i) Enrolled as a TCM provider with the Authority and meeting the requirements set forth in the provider enrollment agreement.

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(10) TCM Asthma/Healthy Homes Program case managers shall possess the following additional qualifications:

- (a) A current active Oregon registered nurse (RN) license; or
- (b) A registered environmental health specialist; or
- (c) An asthma educator certified by the National Asthma Education and Prevention Program; or
- (d) A community health worker certified by the Stanford Chronic Disease Self-Management Program; or
- (e) A case manager working under the supervision of a licensed registered nurse or a registered environmental specialist.

(11) The TCM case managers for the Public Health Nurse Home Visiting, Babies First!, CaCoon, and Nurse-Family Partnership program:

- (a) May be an employee of a local county health department or other public or private agency contracted by a Local Public Health Authority;
- (b) Shall be a licensed registered nurse with experience in community health, public health, or child health nursing; and
- (c) May be a community health worker, family advocate, or promotor working under the supervision of a licensed registered nurse. The minimum qualifications of the Community Health Workers, Family Advocates, or Promotoras are as follows:

(A) High School Graduate or GED with additional course work in human growth and development, health occupations, or health education; and

(B) Two years' experience in public health, mental health, or alcohol drug treatment settings; or

(C) Any satisfactory combination of experience and training that demonstrates the ability to perform case management duties;

(D) The case manager shall work under the policies, procedures, and protocols of the state MCH Program.

(12) Additional qualifications for TCM EI/ECSE provider organizations include the following:

(a) TCM EI/ECSE providers shall meet the criteria to administer the provision of EI and ECSE within selected service areas designated by the Oregon Department of Education, qualifying such programs for state reimbursement under EI/ECSE Programs (OAR 581-015-2700 through 581-015-2910);

(b) Shall be contractors with the Oregon Department of Education in the provision of EI/ECSE services or sub-contractors with such a contractor and shall meet the following qualifications:

(A) Demonstrated case management experience in conjunction with service coordination under OAR 581-015-2840 specified on a child's Individualized Family Service Plan (IFSP) for coordinating and linking such community resources as required by the target population; and

(B) Capacity to document and maintain individual case records in accordance with confidentiality requirements in the Individuals with Disabilities Education Act, ORS 192.518 – 192.524, ORS 179.505, and ORS 411.320, and HIPAA Privacy requirements in 45 CFR 160 and 164, if applicable.

(13) Qualifications for TCM EI/ECSE Supervisors of EI/ECSE service coordinators of targeted case management services shall:

(a) Possess a minimum of a master's degree in early childhood special education or a related field and have three years of experience with infants, toddlers, young children, and families;

(b) Hold a Teacher Standard and Practices Commission (TSPC) administrative endorsement or within 12 months of employment, complete authorization as an Early Childhood Supervisor under OAR 581-015-2910; and

(c) Have a professional development plan based on the content of the EI/ECSE competencies.

(14) Qualifications of EI and ECSE Specialists performing case management/Targeted Case Management services shall:

(a) Possess a minimum of a baccalaureate degree in early childhood, special education, or a related field;

(b) Have a professional development plan based on the content of the EI/ECSE competencies; and

(c) Hold one of the following credentials:

(A) TSPC licensure or endorsement in EI/ECSE;

(B) TSPC licensure or endorsement in a related field; or

(C) Within 12 months of employment, authorization as an Early Childhood Specialist under OAR 581-15-2905.

(15) Qualifications of EI and ECSE Related services personnel shall possess a minimum of a baccalaureate degree and a valid license necessary to practice in Oregon. Related services personnel who also provide service coordination as outlined in OAR 581-015-2840 shall have:

(a) TSPC licensure in their area of discipline; or

(b) State licensure in their area of discipline; and

(c) A professional development plan based on the content of the EI/ECSE competencies;

(d) Knowledge and understanding of the Individuals with Disabilities Education Act (IDEA);

(e) Knowledge and understanding of the nature and scope of services available under the Oregon EI/ECSE programs.

(16) In addition to the above, all shall be employees of the ODE, its contractors or subcontractors, and shall have demonstrated knowledge and understanding about:

(a) The ODE EI/ECSE programs OAR 581-015-2700 through 581-015-2910, including these rules and the applicable Medicaid State Plan Amendment;

(b) Case Management experience in conjunction with service coordination under OAR 581-015-2840 for coordinating and linking such community resources as required by the target population to assist clients in gaining access to needed medical, social, educational, developmental, and other appropriate services in coordination with the eligible child's IFSP;

(c) The Individuals with Disabilities Education Act (IDEA);

(d) The nature and scope of services available under the Oregon EI/ECSE program, including the TCM services, and the system of payments for services and other pertinent information.

(17) TCM HIV providers shall have the financial management capacity and system that provides documentation of services and costs and is able to generate quarterly service utilization reports that can be used to monitor services rendered against claims submitted and paid. The service utilization reporting requirements are as follows:

(a) Report on the number of unduplicated clients receiving services during the reporting period;

(b) Report on the number of full time equivalent (FTE) case managers providing services during the reporting period; and

(c) Report on the number of distinct case management activities performed during the reporting period (Triage Assessments, Comprehensive Assessments, Re-Assessments, Care Plan Development, Referral and Related Services, and Monitoring Follow-Up) along with the total number of 15-minute increments associated with each activity category.

(18) TCM HIV case managers shall possess the following education and qualifications:

(a) A current active Oregon registered nurse (RN) license or Bachelor of Social Work, or other related health or human services degree from an accredited college or university; and

(b) Documented evidence of completing the Authority's HIV Care and Treatment designated HIV Targeted Case Manager training and shall participate in the Authority's on-going training for HIV targeted case managers. The training may either be provided by the Authority or be approved by the Authority and provided by the TCM provider organization.

(19) The TCM Substance Abusing Pregnant Women and Substance Abusing Parents with Children Under Age 18 case manager shall:

(a) Possess a combination of education and experience necessary to support case planning and monitoring. The case manager shall be able to demonstrate an understanding of issues relating to substance abuse and community supports;

(b) Demonstrate continuous sobriety under a nonresidential or independent living condition for the immediate past two years;

(c) Meet at least one of the following qualifications:

(A) Be a licensed Medical Provider, Qualified Mental Health Professional, or Qualified Mental Health Associate; or

(B) Possess certification as an Alcohol and Drug Counselor (CADC) level I, II, or III; or

(C) Complete a Peer Services Training Program following a curriculum approved by the Authority's Addictions and Mental Health Division and be:

(i) A self-identified person currently or formerly receiving mental health services; or

(ii) A self-identified person in recovery from a substance use disorder who meets the abstinence requirements for recovering staff in alcohol and other drug treatment programs; or

(iii) A family member of an individual who is a current or former recipient of addictions or mental health services;

(d) Work under the supervision of a clinical supervisor. The clinical supervisor shall:

(A) Meet the requirements in Oregon administrative rule for alcohol and other drug treatment programs;

(B) Be certified or licensed by a health or allied provider agency to provide addiction treatment; and

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(C) Possess one of the following qualifications:

(i) Five years of paid full-time experience in the field of alcohol and other drug counseling; or

(ii) A Bachelor's degree and four years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience; or

(iii) A Master's degree and three years of paid full-time experience in the social services field with a minimum of two years of direct alcohol and other drug counseling experience;

(e) Satisfy continuing education requirements as specified by the agency providing clinical supervision specific to alcohol and other drug treatment; and

(f) Work in compliance with Medicaid policies, procedures, and protocols.

(20) A Federally Recognized Tribal Governments TCM provider shall be an organization certified as meeting the following criteria:

(a) A minimum of three years' experience of successful work with Native American children, families, and elders involving a demonstrated capacity to provide all core elements of tribal case management including: assessment, case planning, case plan implementation, case plan coordination, and case plan reassessment;

(b) A minimum of three years case management experience in coordinating and linking community medical, social, educational, or other resources as required by the target population;

(c) Administrative capacity to ensure quality of services in accordance with tribal, state, and federal requirements; and

(d) Evidence that the TCM organization is a federally recognized tribe located in the State of Oregon.

(21) The following are qualifications of Tribal Case Managers within provider organizations:

(a) Completion of training in a case management curriculum;

(b) Basic knowledge of behavior management techniques, family dynamics, child development, family counseling techniques, emotional and behavioral disorders, and issues around aging;

(c) Skill in interviewing to gather data and complete needs assessment in preparation of narratives/reports, in development of service plans, and in individual and group communication;

(d) Ability to learn and work with state, federal and tribal rules, laws and guidelines relating to Native American child, adult, and elder welfare and to gain knowledge about community resources and link tribal members with those resources;

(e) Knowledge and understanding of these rules and the applicable Medicaid State Plan Amendment.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 50-2004, f. 9-9-04, cert. ef. 10-1-04; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0080

### Targeted Case Management Program Billing Policy

(1) Reimbursement is based on cost-based rate methodology and subject to all rules and laws pertaining to federal financial participation. The Authority's acceptance of cost data provided by provider organizations for the purpose of establishing rates paid for TCM services does not imply or validate the accuracy of the cost data provided.

(2) The cost-based rate shall be derived by considering the following expenditures directly attributable to TCM staff:

(a) TCM staff salaries and other personnel expenses;

(b) Supervisory salaries and other personnel expenses;

(c) Administrative support salaries and other personnel expenses;

(d) Services and supply expenses;

(e) Various overhead expenditures, if not already considered in the indirect rate.

(3) The Division shall accept a claim up to 12 months from the date of service. See provider rules OAR 943-120-0340 (Claim and PHP Encounter Submission) and OAR 410-120-1300, (Timely Submission of Claims).

(4) Providers shall only bill for allowable activities in the TCM programs that assist individuals eligible under the Medicaid State Plan to gain access to needed medical, social, educational, housing, environmental, and other services.

(5) The Division may not allow duplicate payments to other public agencies or private entities under other program authorities for TCM services under the eligible client's care plan. Medical services shall be provided

and billed separately from case management services. The Authority shall recover duplicate payments.

(6) The Division may not reimburse for TCM services if the services are case management services funded by Title IV-E or Title XX of the Social Security Act, federal or state funded parole and probation, or juvenile justice programs. These services shall be billed separately.

(7) In general, the Medicaid program is the payer of last resort, and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment sources, including other federal or state funding sources, shall be used before the Authority may be billed for covered TCM services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) TCM Early Intervention/Early Childhood School Education (EI/ECSE) services are provided under the Individuals with Disabilities Education Act (IDEA), 1903(c) of the Social Security Act and 34CFR300.154 Methods of Ensuring Services wherein Medicaid and the Children's Health Insurance Program (CHIP) are the primary payers before the Oregon Department of Education (ODE) or the Educational Agency (EA) for a covered TCM EI/ECSE service provided to a Medicaid-eligible child receiving Service Coordination/Case Management pursuant to the Medicaid-eligible child's Individualized Family Service Plan (IFSP). The services are documented as required under the TCM rules and are subject to the applicable reimbursement rate;

(b) If TCM EI/ECSE services are provided under Title V of the Social Security Act Maternal and Child Health Services Block Grant, Medicaid-covered TCM services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) CMS recognizes that while public education agencies are required to provide IDEA services at no cost to eligible children, Medicaid reimbursement is available for these services because section 1903 (c) of the Social Security Act requires Medicaid to be primary to the U.S. Department of Education for payment of covered services that may also be considered special education, related services, or early intervention services, or services provided under IDEA.

(8) Any place of service is valid.

(9) Prior authorization is not required.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 20-1992, f. & cert. ef. 7-1-92; HR 37-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 61-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 28-2008(Temp), f. 6-30-08, cert. ef. 7-1-08 thru 12-28-08; DMAP 32-2008(Temp), f. & cert. ef. 10-2-08 thru 3-27-09; DMAP 43-2008, f. 12-17-08, cert. ef. 12-28-08; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## 410-138-0390

### Targeted Case Management Retroactive Payments

(1) Providers may submit claims retroactively for services provided to the targeted populations described in OAR 410-138-0020(2)(a)-(f) if the claims meet the following criteria:

(a) Services were provided less than 12 months prior to the date of first claim submission and were provided on or after the date indicated in the rule listed above and were allowable services in accordance with OAR 410-138-0007;

(b) The maximum number of units billed does not exceed the maximum allowed under each TCM program.

(c) The case manager was appropriately licensed or certified and met all current requirements for case managers at the time the service was provided, as described in the provider requirements rule OAR 410-138-0060 appropriate for the TCM program;

(d) Documentation regarding provider qualifications and the services that the provider retroactively claims shall have been available at the time the services were performed.

(2) The Division may not allow duplicate payments to be made to the same or different providers for the same service for the same client, nor will payment be allowed for services for which third parties are liable to pay (see also OAR 410-138-0005).

(3) Reimbursement is subject to all rules and laws pertaining to federal financial participation.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: DMAP 34-2009(Temp), f. & cert. ef. 11-16-09 thru 5-1-10; DMAP 43-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 48-2012(Temp), f. & cert. ef. 10-31-12 thru 4-28-13; DMAP 21-2013, f. & cert. ef. 4-26-13; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

# ADMINISTRATIVE RULES

## 410-138-0420

### Targeted Case Management Asthma/Healthy Home — Risk Criteria

(1) This administrative rule will be implemented contingent on CMS approval for the TCM Asthma/Healthy Home Program. This rule is to be used in conjunction with the Division's General Rules (chapter 410, division 120) and other Targeted Case Management Program rules OAR 410-138-0000 through 410-138-0009.

(2) The target group is Medicaid eligible children with poorly controlled asthma or a history of environmentally induced respiratory distress, which can result in a life threatening asthma exacerbation or exacerbation of respiratory distress.

(3) Risk factors for the target group could include, but are not limited to:

- (a) Unscheduled visits for emergency or urgent care;
  - (b) One or more in-patient stays;
  - (c) History of intubation or Intensive Care Unit care;
  - (d) A medication ratio of control medications to rescue medications of less than or equal to .33 indicating less than desirable control of asthma;
  - (e) Environmental or psychosocial concerns raised by medical home;
  - (f) School day loss greater than two school days per year;
  - (g) Inability to participate in sports or other activities due to asthma;
  - (h) Homelessness;
  - (i) Inadequate housing, heating, or sanitation.
- Stat. Auth.: ORS 413.042 & 414.065  
Stats. Implemented: ORS 414.065  
Hist.: DMAP 22-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 41-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 76-2016, f. 12-29-16, cert. ef. 1-1-17; DMAP 2-2017(Temp), f. & cert. ef. 1-13-17 thru 7-11-17; DMAP 4-2017(Temp), f. 2-2-17, cert. ef. 2-10-17 thru 7-11-17

## Oregon Health Authority,

### Health Systems Division: Mental Health Services

#### Chapter 309

**Rule Caption:** Temporary amendments to OAR 309-019 titled Behavioral Health Treatment Services.

**Adm. Order No.:** MHS 1-2017(Temp)

**Filed with Sec. of State:** 1-17-2017

**Certified to be Effective:** 1-18-17 thru 6-23-17

**Notice Publication Date:**

**Rules Amended:** 309-019-0150, 309-019-0151, 309-019-0225, 309-019-0226, 309-019-0235, 309-019-0242, 309-019-0248, 309-019-0250, 309-019-0270, 309-019-0275, 309-019-0280, 309-019-0285, 309-019-0290, 309-019-0295

**Subject:** These rules prescribe minimum service delivery standards for services and supports provided by providers certified by the Health Systems Division of the Oregon Health Authority.

In addition to applicable requirements in OAR 410-120-0000 through 410-120-1980 and 943-120-0000 through 943-120-1550, these rules specify standards for behavioral health treatment services and supports provided in:

- (1) Outpatient Community Mental Health Services and Supports for Children and Adults;
- (2) Outpatient Substance Use Disorders Treatment Services; and
- (3) Outpatient Problem Gambling Treatment Services.

**Rules Coordinator:** Nola Russell—(503) 945-7652

## 309-019-0150

### Outpatient Mental Health Services to Children and Adults

(1) Crisis services must be provided directly or through linkage to a local crisis services provider and must include the following:

- (a) 24 hours, seven days per week telephone or face-to-face screening within one hour of notification of the crisis event to determine an individual's need for immediate community mental health services; and
- (b) 24 hour, seven days per week capability to conduct, by or under the supervision of a QMHP, an assessment resulting in a Service Plan that includes the crisis services necessary to assist the individual and family to stabilize and transition to the appropriate level of care.

(2) Available case management services must be provided, including the following:

- (a) Assistance in applying for benefits to which the individual may be entitled. Program staff must assist individuals in gaining access to, and maintaining, resources such as Social Security benefits, general assistance, food stamps, vocational rehabilitation, and housing. When needed, program

staff must arrange transportation or accompany individuals to help them apply for benefits; and

(b) Referral and coordination to help individuals gain access to services and supports identified in the Service Plan;

(3) When significant health and safety concerns are identified, program staff must ensure that necessary services or actions occur to address the identified health and safety needs for the individual.

(4) Peer Delivered Services must be made available.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630 and 430.634

Hist.: MHS 6-2013(Temp), f. 8-8-13, cert. ef. 8-9-13 thru 2-5-14; MHS 4-2014, f. & cert. ef. 2-3-14; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0151

### Mobile Crisis Services

(1) The effectiveness of Mobile Crisis Services in de-escalating a crisis and diverting hospitalization or arrest is enhanced by team members competent in performing an assessment and delivering an effective course of intervention. These services provide access to a multi-disciplinary support team, ready resources such as access to urgent appointments, brief respite services and the ability to provide brief follow-up care when indicated. Effective mobile crisis services are those that planned and delivered with local stakeholders. Mobile crisis programs shall be developed in coordination with the Local Public Safety Coordinating Council as outlined in ORS § 423.560.

(2) CMHP shall provide Mobile Crisis Services as a component of crisis services according to OAR 309-019-0150 for individuals experiencing mental health crisis within their respective geographic service area to meet the following objectives:

(a) Reduce acute psychiatric hospitalization of individuals experiencing mental health crisis; and

(b) Reduce the number of individuals with mental health diagnoses who are incarcerated as a result of mental health crisis events involving law enforcement.

(3) CMHP shall provide Mobile Crisis Services including, but not limited to:

(a) 24 hours a day, 7 days a week screening to determine the need for immediate services for any individual requesting assistance or for whom assistance is requested;

(b) A face-to-face therapeutic response delivered in a public setting at locations in the community where the crisis arises including, but not limited to, a person's home, schools, residential programs, nursing homes, group home settings, and hospitals to enhance community integration;

(c) Services that are generally delivered in a natural environment by or under the supervision of a QMHP, such as QMHAs and peers, and resulting in a Service Plan. Disposition of services shall maintain as the primary goal, with diversion from hospitalization and incarceration through clinically appropriate community-based supports and services;

(d) Eliminating the need for transportation (frequently by law enforcement officers or emergency services) to a hospital emergency department or a community crisis site;

(e) Are not intended to be restricted to services delivered in hospitals or at residential programs;

(f) Mental Health crisis assessment;

(g) Brief crisis intervention;

(h) Assistance with placement in crisis respite or residential services;

(i) Initiation of commitment process if applicable;

(j) Assistance with hospital placement; and,

(k) Connecting individuals with ongoing supports and services.

(4) County shall track and report response time. County shall respond to crisis events in their respective geographic service area with the following maximum response times:

(a) Counties classified as "urban" shall respond within one (1) hour.

(b) Counties classified as "rural" shall respond within two (2) hours.

(c) Counties classified as "frontier" shall respond within three (3) hours.

(d) Counties classified as "rural" and "frontier" shall contact an individual experiencing a crisis event via telephone by a staff member who is trained in crisis management (such as a person from a crisis line or a peer) within one (1) hour of being notified of the crisis event.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

# ADMINISTRATIVE RULES

309-019-0225

## Definitions

(1) In addition to the definitions identified in OAR 309-019-0105, the definitions below apply to this and subsequent rule sections.

(2) "Collateral Contacts" are members of the individual's family or household, or significant others (e.g. landlord, employer, etc.) who regularly interact with the individual and are directly affected by or have the capability of affecting his or her condition, and are identified in the treatment plan as having a role in the individual's recovery. For the purpose of the Assertive Community Treatment (ACT) program, a collateral contact does not include contacts with other mental health service providers or individuals who are providing a paid service that would ordinarily be provided by the ACT team (e.g. meeting with a shelter staff who is assisting an ACT recipient in locating housing).

(3) "Community-based" means that services and supports must be provided in a participant's home and surrounding community and not solely based in a traditional office-setting. ACT services may not be provided to individuals residing in an RTF or RTH licensed by HSD unless:

(a) The individual is not being provided rehabilitative services; or

(b) The individual has been identified for transition to a less intensive level of care. When identified for transition to a less intensive level of care, the individual may receive ACT services for up to six months prior to discharge from the RTH or RTF.

(4) "Competency" means one year of experience or training in the specialty area and demonstration of the specific skills or knowledge.

(5) "Competitive Integrated Employment" means full-time or part time work: at minimum wage or higher, at a rate that 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 skill; with eligibility for the level of benefits provided to other employees; 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 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.

(6) "Comprehensive Assessment" means the organized process of gathering and analyzing current and past information with each individual and the family and/or support system and other significant people to evaluate: 1. mental and functional status; 2. effectiveness of past treatment; 3. current treatment, rehabilitation and support needs to achieve individual goals and support recovery; and, 4. the range of individual strengths (e.g., knowledge gained from dealing with adversity, personal/professional roles, talents, personal traits) that can act as resources to the individual and his/her recovery planning team in pursuing goals. The results of the information gathering and analysis are used to: 1. establish immediate and longer-term service needs with each individual; 2. set goals and develop the first person directed recovery plan with each individual; and, 3. optimize benefits that can be derived from existing strengths and resources of the individual and his/her family and/or natural support network in the community.

(7) "Co-Occurring Disorders (COD) Services" include integrated assessment and treatment for individuals who have co-occurring mental health and substance use condition.

(8) "Division approved reviewer" means the Oregon Center of Excellence for Assertive Community Treatment (OCEACT). OCEACT is the Division's contracted entity that is responsible for conducting ACT fidelity reviews, training, and technical assistance to support new and existing ACT programs statewide.

(9) "Fidelity" for the purposes of the ACT program means the provider is providing services that are faithful to the evidence-based practice model and obtains a satisfactory score from the Oregon Center of Excellence for ACT as part of their regular reviews.

(10) "Fixed point of responsibility" means the ACT team itself provides virtually all needed services, rather than sending clients to different providers. If the team cannot provide a service (e.g. dental services) the team ensures that the service is provided.

(11) "Full-Time Equivalent" (FTE) for the purpose of ACT services is a way to measure how many full-time employees are required to provide the appropriate level of services to fulfill minimum fidelity requirements.

(12) "Hospital discharge planning" for the purposes of the ACT program means a process that begins upon admission to the Oregon State Hospital and that is based on the presumption that with sufficient supports

and services, all individuals can live in an integrated community setting. Discharge planning is developed and implemented through a person-centered planning process in which the individual has a primary role and is based on principles of self-determination. Discharge planning teams at OSH include a representative of a community mental health provider from the county where the individual is likely to transition.

(13) "Individual Placement and Support (IPS) Supported Employment Services" are individualized services that assist individuals to obtain and maintain integrated, paid, competitive employment. Supported employment services are provided in a manner that seeks to allow individuals to work the maximum number of hours consistent with their preferences, interests and abilities and are individually planned, based on person-centered planning principles and evidence-based practices.

(14) "Individual Treatment Team (ITT)" is a group or combination of three to five ACT team staff members who together have a range of clinical and rehabilitation skills and expertise. The core members are the case manager, the psychiatrist or psychiatric nurse practitioner, one clinical or rehabilitation staff person who backs up and shares case coordination tasks and substitutes for the service coordinator when he or she is not working, and a Peer Support and Wellness Specialist. The individual treatment team has continuous responsibility to: 1) be knowledgeable about the individual's life, circumstances, goals and desires; 2) collaborate with the client to develop and write the treatment plan; 3) offer options and choices in the treatment plan; 4) ensure that immediate changes are made as an individual's needs change; and 5) advocate for the client's wishes, rights, and preferences.

(15) "Initial Assessment and Individualized Treatment Plan" as it pertains to the ACT program is the initial evaluation of: 1. the individual's mental and functional status; 2. the effectiveness of past treatment; and 3. the current treatment, rehabilitation, and support service needs. The results of the information gathering and analysis are used to establish the initial treatment plan to support recovery and help the individual achieve his or her goals.

(16) "Large ACT Team" means an ACT team serving 80 to 120 individuals.

(17) "Life skills training" means training that help individuals develop skills and access resources needed to increase their capacity to be successful and satisfied in the living, working, learning, and social environments of their choice.

(18) "Medication Management" is the prescribing and/or administering and reviewing of medications and their side effects, includes both pharmacological management as well as supports and training to the individual. For the purposes of Assertive Community Treatment (ACT), medication management is a collaborative effort between the individual receiving services and the prescribing psychiatrist or psychiatric nurse practitioner with the ACT treatment team.

(19) "Mid-Size Act Team" means an ACT team serving between 41 and 79 individuals.

(20) "Natural Supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; association with fellow students or employees in regular classrooms and work places; and associations developed through participation in clubs, organizations, and other civic activities.

(21) "Psychiatry services" for the purposes of the ACT program in Oregon means the prescribing and/or administering and reviewing of medications and their side effects, includes both pharmacological management as well as supports and training to the individual. Psychiatry services must be provided by a psychiatrist or a psychiatric nurse practitioner who is licensed by the Oregon Medical Board.

(22) "Single Point of Contact" (SPOC) is a designated individual(s) in a service region that is responsible for coordinating, tracking referrals to ACT programs within their geographic service area.

(23) "Small ACT Team" means an ACT team serving between ten (10) to 40 individuals.

(24) "Symptom management" means to prevent or treat as early as possible the symptoms of a disease, side effects caused by treatment of a disease, and psychological, social, and spiritual problems related to a disease or its treatment.

(25) "Tele psychiatry" as it pertains to the ACT program means the application of telemedicine to the specialty field of psychiatry. The term typically describes the delivery of psychiatric assessment and care through telecommunications technology, usually videoconferencing.

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(26) “Time-unlimited services” means services are provided not on the basis of predetermined timelines but as long as they are medically appropriate.

(27) “Vocational services” for the purposes of the ACT program in Oregon means employment support services that will lead to competitive integrated employment. The Division encourages the use of fidelity IPS Supported Employment for providing vocational services within the ACT program.

(28) “Warm Handoff” means the process of transferring an individual from one provider to another, prior to discharge, which includes face-to-face meeting(s) with an individual, and which coordinates the transfer of responsibility for the individual’s ongoing care and continuing treatment and services. A warm handoff shall either (a) include a face-to-face meeting with the community provider and the individual, and if possible, hospital staff, or (b) provide a transitional team to support the individual, serve as a bridge between the hospital and the community provider, and ensure that the individual connects with the community provider. For warm handoffs under subparagraph (b), the transitional team shall meet face to face with the individual, and if possible, with hospital staff, prior to discharge. Face-to-face in person meetings are preferable for warm handoffs. However, a face-to-face meeting may be accomplished through technological solutions that provide two-way video-like communication on a secure line (“telehealth”), when either distance is a barrier to an in person meeting or individualized clinical criteria support the use of telehealth.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640  
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270  
Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0226

### ACT Assertive Community Treatment (ACT) Overview

(1) The Substance Abuse and Mental Health Services Administration (SAMHSA) characterizes ACT as an evidence-based practice for individuals with a serious and persistent mental illness. ACT is characterized by:

- (a) A team approach;
  - (b) Community based;
  - (c) A small client to staff caseload, typically 10:1, to consistently provide necessary staffing diversity and coverage;
  - (d) Time-unlimited services;
  - (e) Flexible service delivery;
  - (f) A fixed point of responsibility; and
  - (g) 24/7 availability for response to psychiatric crisis.
- (2) ACT services must include, but are not limited to:
- (a) Hospital discharge planning;
  - (b) Case management;
  - (c) Symptom management;
  - (d) Psychiatry services;
  - (e) Nursing services;
  - (f) Co-occurring substance use and mental health disorders treatment services;

(g) Individual Placement and Support (IPS) supported employment services;

- (h) Life skills training; and
- (i) Peer support services.

(3) SAMHSA characterizes a high fidelity ACT Program as one that includes the following staff members:

- (a) Psychiatrist or Psychiatric Nurse Practitioner;
- (b) Psychiatric Nurse(s);
- (c) Qualified Mental Health Professional (QMHP) ACT Team Supervisor;
- (d) Qualified Mental Health Professional(s) (QMHP) Mental Health Clinician;
- (e) Substance Abuse Treatment Specialist;
- (f) Employment Specialist;
- (g) Mental Health Case Manager(s); and
- (h) Certified Peer Support Specialist(s).

(4) SAMHSA characterizes high fidelity ACT Programs as those that adhere to the following:

(a) Provision of explicit admission criteria with an identified mission to serve a particular population utilizing quantitative and operationally defined criteria;

(b) Manage intake rates: ACT eligible individuals are admitted to the program at a low rate to maintain a stable service environment;

- (c) Maintain full responsibility for treatment services which includes, at a minimum, the services required under OAR 309-019-0230(2)(a)–(i);
- (d) Twenty four-hour responsibility for covering psychiatric crises;
- (e) Involvement in psychiatric hospital admissions;
- (f) Involvement in planning for hospital discharges; and
- (g) As long as medically appropriate, time-unlimited services.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640  
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270  
Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0235

### Continued Fidelity Requirements

(1) In addition to the minimum requirements established in OAR 309-019-0230, in order to maintain an ACT provider designation on the Division issued certificate, a provider must submit to their CCO an annual fidelity review report by the Division approved reviewer with a minimum score of 114. Extension of a certification period has no bearing on the frequency or scope of fidelity reviews or re-certification reviews required under OAR 309-008.

(2) Fidelity reviews will be conducted utilizing the Substance Abuse and Mental Health Services ACT Toolkit Fidelity Scale, which will be made available to providers electronically

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640  
Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270  
Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0242

### ACT Program Operational Standards

(1) Hours of operation. All ACT teams must be available seven days a week, 24 hours a day by direct phone link and regularly accessible to individuals who work or who are involved in other scheduled vocational or rehabilitative services during the daytime hours. ACT teams may utilize split staff assignment schedule to achieve coverage.

(2) Crisis intervention. ACT teams are primarily responsible for crisis response and for after-hours calls related to individuals they serve. The ACT team must operate continuous and direct after-hours on-call system with staff experienced in the program and skilled in crisis intervention procedures. The ACT team must have the capacity to respond rapidly to emergencies, both in person and by telephone. To ensure direct access to the ACT team, recipients must be given a phone list with the responsible ACT staff to contact after hours.

(3) Service Intensity

(a) The ACT team must have the capacity to provide the frequency and duration of staff-to-recipient contact required by each recipient’s individualized service plan and their immediate needs;

(b) The ACT team must provide a minimum of 40% of all services in-community as demonstrated by the average in-community encounters reviewed in case record reviews;

(c) The ACT team must have the capacity to increase and decrease contacts based upon daily assessment of the individual’s clinical need, with a goal of maximizing independence;

(d) The team must have the capacity to provide multiple contacts to persons in high need and a rapid response to early signs of relapse;

(e) The ACT team must have the capacity to provide support and skills development services to individuals’ natural supports and collateral contacts;

(f) Natural supports and collateral contacts may include family, friends, landlords, or employers, consistent with the service plan. Natural supports and collateral contacts are typically not supports that are paid for services;

(g) The ACT team Psychiatrist and the Psychiatric Nurse Practitioner (PNP) must have scheduling flexibility to accommodate individual needs. If the individual will not come to meet the Psychiatrist and/or the PNP at the ACT office, the Psychiatrist and/or PNP must provide services as clinically indicated for that individual in the community. Secure tele psychiatry is also acceptable when clinically indicated;

(h) The ACT team must have the capacity to provide services via group modalities as clinically appropriate; e.g. for individuals with substance abuse disorders, and for family psychoeducation and wellness self-management services.

(4) ACT Staffing Requirements. An ACT team shall have sufficient staffing to meet the varying needs of individuals. As an all-inclusive treat-

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ment program, a variety of expertise must be represented on the team. ACT team staffing is to be clearly defined and dedicated to the operation of the team.

(5) Staffing Guidelines for ACT teams:

(a) A single ACT team cannot serve more than 120 individuals unless:

(A) It is expanding for the expressed purpose of splitting into two ACT teams within a 12 month period; and

(B) Also hires the appropriate staff to meet the required 1:10 staff to individuals served ratio.

(b) ACT team individual to clinical staff ratio cannot exceed 10:1;

(c) ACT team staff must be comprised of individual staff members in which a portion or all of their job responsibilities are defined as providing ACT services;

(d) Other than for coverage when a staff member has a leave of absence, ACT teams shall not rotate staff members into the ACT team that are not specifically assigned to the team as part of their position's job responsibilities;

(6) Minimum ACT team staffing requirements: No individual ACT staff member should be assigned less than .20 FTE for their role on the team unless filling the role of Psychiatrist or PNP. The ACT team psychiatrist or PNP who should not be assigned less than .10 FTE).

(7) Maximum ACT team staffing requirements: ACT teams will not exceed the following upper staffing limits:

(a) No more than eight (8) individual staff members per small ACT team;

(b) No more than 12 individual staff member per mid-size ACT team.

(b) No more than 18 individual staff members per large ACT team.

(8) ACT team staffing is multi-disciplinary. The core minimum staffing for an ACT team includes:

(a) Team Leader: This position is to be occupied by only one person. The team leader is a QMHP level clinician qualified to provide direct supervision to all ACT staff except the psychiatric care provider and nurse. Per the table in 309-019-0242 (13), the Team Leader FTE is dictated by the number of individuals served by the ACT team.:

(b) Per the table in 309-019-0242(11), Psychiatric Care Provider (Psychiatrist or PNP) FTE is dictated by the number of individuals served by the ACT team.

(c) Per the table in 309-019-0242(11), the nurse FTE is dictated by the number of individuals served by the ACT team.

(d) The Program Administrative Assistant FTE is not counted in the clinical staff ratio.

(9) Other clinical staff to achieve minimum staffing per ACT team model. ACT team minimum staffing must include clinical staff with the following FTE and specialized competencies:

(a) Per the table in 309-019-0242(11), the Substance Abuse Specialist FTE is dictated by the number of individuals served by the ACT team as follows: Substance Abuse Specialist specialized competencies must include:

(A) Substance abuse assessment and substance abuse diagnosis

(B) Principles and practices of harm reduction

(C) Knowledge and application of motivational interviewing strategies

(b) Per the table in 309-019-0242(11), the Employment Specialist FTE is dictated by the number of individuals served by the ACT team. Employment Specialist specialized competencies must include:

(A) Competent in the IPS Supported Employment fidelity model;

(B) Vocational assessment;

(C) Job exploration and matching to recipient's interest and strengths;

(D) Skills development related to choosing, securing, and maintaining employment;

(c) Per the table in 309-019-0242(11), the Peer Support and Wellness Specialist FTE is dictated by the number of individuals served by the ACT team: Employment Specialist specialized competencies must include:

(A) Trained by an OHA Approved Peer Support Specialist or Peer Wellness Specialist Training Program as described in OAR 410-180-0300 – 410-180-0380. A directory of Approved Peer Support Specialist or Peer Wellness Specialist Training Programs can be found at Division's Peer Delivered Services website; and

(B) Be an OHA Office of Equity and Inclusion (OEI) Certified Peer Support Specialist or Peer Wellness Specialist before providing ACT services.

(10) ACT Team Staffing Core Competencies.

(a) At hire, all clinical staff on an ACT team must have experience in providing direct services related to the treatment and recovery of individuals with a serious and persistent mental illness. Staff should be selected

consistent with the ACT core operating principles and values. Clinical staff should have demonstrated competencies in clinical documentation and motivational interviewing;

(b) All staff will demonstrate basic core competencies in designated areas of practice, including the Assertive Community Treatment core principles, integrated mental health and substance abuse treatment, supported employment, psycho-education and wellness self-management;

(c) All staff must complete ACT receive ACT 101 training from the Division approved reviewer prior to receiving HSD provisional certification; and

(d) All professional ACT team staff must have obtained the appropriate licensure to provide services in Oregon for their respective area of specialization.

(11) ACT Team Size Staff (FTE) to Individual Ratio Table:[Table not included. See ED. NOTE.]

(12) ACT Team meetings. The ACT team shall conduct daily organizational staff meetings at least four (4) days per week and regularly scheduled times per a schedule established by the team leader. These meetings will be conducted in accordance with the following procedures:

(a) The ACT team shall maintain in writing:

(A) A roster of the individuals served in the program; and

(B) For each individual, a brief documentation of any treatment or service contacts that have occurred during the last 24 hours and a concise, behavioral description of the individual's status that day;

(b) The daily organizational staff meeting includes a review of the treatment contacts which occurred the day before and provides a systematic means for the team to assess the day-to-day progress and status of all clients.

(c) During the daily organizational staff meeting, the ACT team shall also revise treatment plans as needed, plan for emergency and crisis situations, and add service contacts to the daily staff assignment schedule per the revised treatment plans.

(13) Treatment planning meetings. The ACT team shall conduct treatment planning meetings under the supervision of the team leader and the Psychiatrist or PNP. These treatment planning meetings shall:

(a) Convene at regularly scheduled times per a written schedule set by the team leader;

(b) Occur and be scheduled when the majority of the team members can attend, including the psychiatrist or psychiatric nurse practitioner, team leader, and all members of the treatment team;

(c) Require individual staff members to present and systematically review and integrate an individual's information into a holistic analysis and prioritize problems; and

(d) Occur with sufficient frequency and duration to make it possible for all staff to:

(A) Be familiar with each individual and their goals and aspirations;

(B) Participate in the ongoing assessment and reformulation of problems;

(C) Problem-solve treatment strategies and rehabilitation options;

(D) Participate with the individual and the treatment team in the development and the revision of the treatment plan; and

(E) Fully understand the treatment plan rationale in order to carry out each individual's plan.

(14) ACT Assessment and Individualized Treatment Planning.

(a) An initial assessment and treatment plan is completed upon each individual's admission to the ACT program; and

(b) Individualized treatment plans for ACT team served individuals must be updated at least every six (6) months.

(15) Service Note Content.

(a) More than one intervention, activity, or goal may be reported in one service note, if applicable.

(b) ACT team staff must complete a service note for each contact or intervention provided to an individual. Each service note must include all of the following:

(A) Individual's name;

(B) Medicaid identification number or client identification number;

(C) Date of service provision;

(D) Name of service provided;

(E) Type of contact;

(F) Place of service;

(G) Purpose of the contact as it relates to the goal(s) on the individual's Treatment Plan;

(H) Description of the intervention provided. Documentation of the intervention must accurately reflect substance abuse related treatment for the duration of time indicated;



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(I) Duration of service: Amount of time spent performing the intervention;

(J) Assessment of the effectiveness of the intervention and the Individual's progress towards the individual's goal;

(K) Signature and credentials or job title of the staff member who provided the service; and

(L) Each service note page must be identified with the beneficiary's name and client identification number.

(c) Documentation of discharge or transition to lower levels of care must include all of the following:

(A) The reasons for discharge or transition as stated by both the individual and the ACT team;

(B) The Individual's biopsychosocial status at discharge or transition;

(C) A written final evaluation summary of the Individual's progress toward the goals set forth in the Person Centered Treatment Plan;

(D) A plan for follow-up treatment, developed in conjunction with the Individual; and

(E) The signatures of the individual, the team leader, and the Psychiatrist or PNP.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0248

### Admission Process

(1) A comprehensive assessment as described in OAR 309-019-0105(6) that demonstrates medical appropriateness must be completed prior to the provision of this service. If a substantially equivalent assessment is available, that reflects current level of functioning, and contains standards consistent with OAR 309-019-0135, to include sufficient information and documentation to justify the presence of a diagnosis that is the medically appropriate reason for services, the equivalent assessment may be used to determine admission eligibility for the program.

(2) Admission to ACT is managed through a referral process that is coordinated by a designated single point of contact (SPOC) that represents the Coordinated Care Organization's (CCO) and/or Community Mental Health Program's (CMHP) geographical service area.

(a) The designated single point of contact shall accept referrals and verify the required documentation supports the referral for services when an approximate, reasonable date of admission to the ACT program is anticipated.

(b) OHA will work with the CCOs and the CMHPs to identify regional SPOCs.

(c) OHA will work with the CCOs and the CMHPs to identify a process where referrals can be received and tracked.

(3) An admission decision by the designated SPOC must be completed and reported to the Division within seven (7) business days of receiving the referral. To accomplish this, the SPOC must be fully informed as to the current capacity of ACT programs within the SPOC's geographic service area at all times.

(4) All referrals for ACT services must be submitted through the designated regional SPOC, regardless of the origin of the referral when an approximate, reasonable date of admission to the ACT program is anticipated. The designated regional SPOC shall accept and evaluate referrals from mental health outpatient programs, residential treatment facilities or homes, families and/or individuals, and other referring sources.

(5) Given the severity of mental illness and functional impairment of individuals who qualify for ACT-level services, the final decision to admit a referral rests with the provider. Any referral to a provider should therefore present a full picture of the individual by means of the supporting medical documentation attached to the OHA Universal ACT Referral and Tracking Form and include an approximate date the referred individual will be able to enroll in an ACT program. An admission decision by the ACT services provider must be completed within five (5) business days of receiving the referral.

(a) The individual's decision not to take psychiatric medication is not a sufficient reason for denying admission to an ACT program.

(b) ACT capacity in a geographic regional service area is not a sufficient reason for not providing ACT services to an ACT eligible individual. If an individual who is ACT eligible cannot be served due to capacity, the SPOC must provide individual with the option of being added to a waiting list until such time the ACT eligible individual can be admitted to a certified ACT program.

(A) The ACT eligible individual who is not accepted into an ACT program due to capacity will be offered alternative community-based rehabilitative services as described in the Oregon Medicaid State Plan which includes evidence-based practices to the extent possible.

(B) Alternative rehabilitative services will be made available to the individual:

(i) Until the individual is admitted into an ACT program;

(ii) Alternative rehabilitative services are medically appropriate and meet the individual's treatment goals; or

(iii) The individual refuses alternative medically appropriate rehabilitative services.(6) Upon the decision to admit an individual to the ACT program, the OHA Universal ACT Referral and Tracking Form shall be updated, to include:

(a) An admission is indicated.

(b) When an admission is not indicated, notation shall be made of the following:

(A) The reason(s) for not admitting;

(B) The disposition of the case; and

(C) Any referrals or recommendations made to the referring agency, as appropriate.

(7) Individuals who meet admission criteria and are not admitted to an ACT program due to program capacity, may elect to be placed on a waiting list. The waiting list will be maintained by the appropriate regional SPOC. OHA will monitor each regional waiting list until sufficient ACT program capacity is developed to meet the needs of the ACT eligible population.

(8) In addition if an individual is denied ACT services and has met the admission criteria set forth in OAR 309-019-045, the individual who is denied services or their guardian may appeal the decision by filing a grievance in the manner set forth in OAR 309-008-1500.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0250

### Transition to Less Intensive Services and Discharge

Transition to less intensive services shall occur when the individual no longer requires ACT level of care and is no longer medically appropriate for ACT services. This shall occur when individuals receiving ACT:

(1) Have successfully reached individually established goals for transition.

(2) Have successfully demonstrated an ability to function in all major role areas (i.e. work, social, and self-care) without ongoing assistance from the ACT provider;

(3) When the individual requests discharge, declines, or refuses services; and

(4) When the individual moves outside of the geographic area of the ACT program's responsibility. In such cases, the ACT team shall arrange for transfer of mental health service responsibility to an ACT provider or another provider wherever the individual is moving. The ACT team shall maintain contact with the individual until this service is implemented.

Stat. Auth.: ORS 161.390, 413.042, 430.256, 428.205 - 428.270, 430.640

Stats. Implemented: ORS 109.675, 161.390 - 161.400, 413.520 - 413.522, 430.010, 430.205-430.210, 430.240 - 430.640, 430.850 - 430.955, 461.549, 743A.168, 813.010 - 813.052 & 813.200 - 813.270

Hist.: MHS 11-2016(Temp), f. 6-29-16, cert. ef. 7-1-16 thru 12-27-16; MHS 18-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0270

### Definitions

(1) "Competitive Integrated Employment" means full-time or part time work: at minimum wage or higher, at a rate that 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 skill; with eligibility for the level of benefits provided to other employees; 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 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.

(2) "Division Approved Reviewer" means the Oregon Supported Employment Center for Excellence (OSECE). OSECE is the Division's

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contracted entity that is responsible for conducting IPS Supported Employment fidelity reviews, training, and technical assistance to support new and existing IPS Supported Employment programs statewide.

(3) "Fidelity" for the purposes of the IPS Supported Employment program means the provider is providing services that are faithful to the evidence-based practice model and obtains a satisfactory score from the Oregon Supported Employment Center for Excellence for IPS Supported Employment as part of their regular reviews.

(4) "Vocational services" for the purposes of the ACT program in Oregon means employment support services that will lead to competitive integrated employment. The Division encourages the use of fidelity IPS Supported Employment for providing vocational services within the ACT program.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0275

### Individual Placement and Support (IPS) Supported Employment Overview

(1) Supported Employment is an evidence-based practice for individuals with serious mental illness.

(2) Supported Employment is characterized by:

(a) Emphasis on competitive employment;

(b) Every person who is interested in work is eligible for services regardless of symptoms, substance use disorders, treatment decisions, or any other issue;

(c) Employment services are integrated with mental health treatment;

(d) Individuals have access to personalized benefits planning;

(e) Job search begins soon after a person expresses interest in working; and

(f) Client preferences for jobs, and preferences for service delivery, are honored.

(3) Supported Employment services include, but are not limited to:

(a) Job development;

(b) Supervision and job training;

(c) On-the-job visitation;

(d) Consultation with the employer;

(e) Job coaching;

(f) Counseling;

(g) Skills training; and/or

(h) Transportation.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0280

### Supported Employment Providers

(1) In order to be eligible for Medicaid or State General Fund reimbursement, Supported Employment services shall be provided only by those providers meeting the following minimum qualifications:

(a) The provider must hold and maintain a current certificate under OAR 309-008, issued by the Division, for the purpose of providing behavioral health treatment services; and

(b) The provider must hold and maintain a current certificate, issued by the Division, under OAR 309-019-0225 through 309-019-026055, 309-019-019-for the purpose of providing Assertive Community Treatment; and

(c) A provider certified to provide Supported Employment services under this rule must be reviewed annually for fidelity adherence by the Division approved reviewer and achieve a minimum score of 100 on the fidelity scale. Providers shall not bill Medicaid or use General Funds unless they are subject to an annual fidelity review by the Division approved reviewer.

(A) The Division approved reviewer shall forward a copy of the annual fidelity review report to the Division approved reviewer and provide a copy of the review to the provider.

(B) The provider shall forward a copy of the annual fidelity review report to the appropriate CCO. To be eligible for Medicaid reimbursement, Supported Employment services must be provided by a Certified Supported Employment Provider.

(2) A Provider already holding a certificate of approval under OAR 309-008 may request the addition of ACT services be added to their certificate of approval via the procedure outlined in OAR 309-008-0400 and 309-008-1000(1). In addition to application materials required in OAR 309-008 and this rule, the provider must also submit to the Division a let-

ter of support which indicates receipt of technical assistance and training from the Division approved Supported Employment reviewer.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0285

### Continued Fidelity Requirements

(1) In addition to the minimum requirements established in OAR 309-019-0275, in order to maintain a Supported Employment provider designation on the Division issued certificate, a provider must submit to their CCO an annual fidelity review report by the Division approved reviewer with a minimum score of 100.

(2) Providers certified to provide Supported Employment services under this rule that achieve a fidelity score of 100 or better when reviewed by the Division Approved Supported Employment Reviewer are certified for 12 months. Extension of Fidelity reviews has no bearing on the frequency of re-certification reviews required under OAR 309-008.

(3) Fidelity reviews will be conducted utilizing the Substance Abuse and Mental Health Services Supported Employment Fidelity Scale, which will be made available to providers electronically.

(4) Provider shall cooperate with the Division Approved Supported Employment Reviewer for the purpose of improving Supported Employment Services.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0290

### Failure to Meet Fidelity Standards

In addition to any plan of correction requirements issued by the Division under 309-008-0800(4)(c); If a Provider certified under these rules to provide Supported Employment services does not receive a minimum score of 100 on a fidelity review, the following shall occur:

(1) Technical assistance shall be made available by the Division approved reviewer for a period of 90 days to address problem areas identified in the fidelity review;

(2) At the end of the 90 day period, a follow-up review will be conducted by the Division approved reviewer; and

(3) The provider shall forward a copy of the amended fidelity review report to the provider's appropriate CCO.

(4) The Division approved reviewer shall forward a copy of the fidelity review report to the Division.

(a) In addition to the standards set for suspension and revocation of a certificate in OAR 309-008-1100(1) & (2) a provider of Supported Employment services may also have their certificate of approval suspended or revoked if the 90 day re-review results in a fidelity score of less than 100.

(b) A provider issued a notice of intent to apply a condition, revoke, suspend, or refusal to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183 and OAR 309-008-1300.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

## 309-019-0295

### Reporting Requirements

Providers certified by the Division to provide Supported Employment services shall submit quarterly outcomes reports, using forms and procedures prescribed by the Division, within 45 days following the end of each subject quarter to the Division or the Division approved reviewer. Each quarterly report shall provide the following information: All individuals who received Supported Employment in the reporting quarter:

(1) Individuals who receive Supported Employment services who are employed in competitive integrated employment; and

(2) Individuals who discontinued receiving Supported Employment services and are employed in competitive integrated employment; and

(3) Individuals who received Supported Employment services as a part of the Assertive Community Treatment Program.

Stat. Auth.: ORS 413.042

Stats Implemented: 430.630, 430.634

Hist.: MHS 26-2016(Temp), f. 12-27-16, cert. ef. 12-28-16 thru 6-23-17; MHS 1-2017(Temp), f. 1-17-17, cert. ef. 1-18-17 thru 7-16-17

# ADMINISTRATIVE RULES

## Oregon Health Authority, Public Health Division Chapter 333

**Rule Caption:** Nursing Staff Member Overtime

**Adm. Order No.:** PH 3-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 333-510-0130

**Rules Repealed:** 333-510-0130(T)

**Subject:** The Oregon Health Authority, Public Health Division is permanently amending OAR 333-510-0130 relating to hospital nurse staffing in response to legislation (SB 469; Oregon Laws 2015, chapter 669) that was passed in the 2015 legislative session and to address an unintended gap in the rule language.

The rule amendments clarify the definition of the word “require” as a verb and the application of the 10-hour rest period after a nursing staff member has worked an agreed-upon and prearranged shift in excess of 12 hours in a 24-hour period.

**Rules Coordinator:** Brittany Hall—(971) 673-1291

### 333-510-0130

#### Nursing Staff Member Overtime

(1) For purposes of this rule “require” means to make compulsory as a condition of employment whether as a result of a previously scheduled shift or hours actually worked during time spent on call or on standby.

(2) A hospital may not require a nursing staff member to work:

(a) Beyond the agreed-upon and prearranged shift, regardless of the length of the shift;

(b) More than 48 hours in any hospital-defined work week;

(c) More than 12 hours in a 24-hour period;

(d) During the 10-hour period immediately following the 12th hour worked during a 24-hour period. This work period begins when the nursing staff member begins a shift; or

(e) During the 10-hour period immediately following any agreed-upon and prearranged shift in which the nurse worked more than 12 hours in a 24-hour period.

(3) Time spent by the nursing staff member in required meetings or receiving education or training shall be included as hours worked for the purpose of section (2) of this rule.

(4) Time spent on call or on standby when the nursing staff member is required to be at the hospital shall be included as hours worked for the purpose of section (2) of this rule.

(5) Time spent on call or on standby when the nursing staff member is not required to be at the hospital may not be included as hours worked for the purpose of section (2) of this rule.

(6) Nothing in this rule precludes a nursing staff member from volunteering to work overtime.

(7) A hospital may require an additional hour of work beyond the hours authorized in section (2) of this rule if:

(a) A staff vacancy for the next shift becomes known at the end of the current shift; or

(b) There is a potential harm to an assigned patient if the nursing staff member leaves the assignment or transfers care to another nursing staff member.

(8) Each hospital must have a policy and procedure in place to ensure, at minimum, that:

(a) Mandatory overtime, when required, is documented in writing; and

(b) Mandatory overtime policies and procedures are clearly written, provided to all new nursing staff and readily available to all nursing staff.

(9) If a nursing staff member believes that a hospital unit is engaging in a pattern of requiring direct care nursing staff to work overtime for non-emergency care, the nursing staff member may report that information to the staffing committee. The staffing committee shall consider the information when reviewing the staffing plan as described in OAR 333-510-0115.

(10) The provisions of sections (2) through (8) of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan; or

(b) In emergency circumstances that include:

(A) Sudden and unforeseen adverse weather conditions;

(B) An infectious disease epidemic suffered by hospital staff;

(C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(D) Unplanned direct care staff vacancies of 20 percent or more of the nursing staff for the next shift hospital-wide at the Oregon State Hospital if, based on the patient census, the Oregon State Hospital determines the number of direct care staff available hospital-wide cannot ensure patient safety.

(11) Nothing in section (10) of this rule relieves the Oregon State Hospital from contacting voluntary replacement staff as described in OAR 333-510-0125 and documenting these contacts.

(12) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon scheduled shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing OAR, chapter 851.

(13) Until the Authority defines “other nursing staff” as that term is described in ORS 441.166(1), this rule applies only to “nursing staff member” as that term is defined in these rules.

Stat. Auth.: ORS 413.042, 441.166 & 441.168

Stats. Implemented: ORS 441.166 & 441.168

Hist.: PH 22-2016, f. & cert. ef. 7-1-16; PH 29-2016(Temp), f. & cert. ef. 10-25-16 thru 4-21-17; PH 3-2017, f. & cert. ef. 1-23-17

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**Rule Caption:** Requiring thyroid collar for pediatric patients and administrative changes to radioactive licensees

**Adm. Order No.:** PH 4-2017

**Filed with Sec. of State:** 1-26-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 333-102-0005, 333-102-0015, 333-102-0101, 333-106-0325, 333-125-0040, 333-125-0120

**Subject:** The Oregon Health Authority, Public Health Division, Center for Health Protection permanently amending Oregon Administrative rules relating to the X-ray and radioactive materials programs within the Radiation Protection Services (RPS) section.

The Radioactive Materials Licensing (RML) program is amending rules for a mathematical error by amending Gy to microGy within division 102 and make minor corrections within divisions 102 and 125 in order to be compatible with the Nuclear Regulatory Commission’s regulations. These amendments will have no impact to Oregon’s licensees since federal regulations are currently being enforced by the RML program.

The X-ray program is amending rules in division 106 to require all pediatric patients to wear a 0.25 mm lead equivalent thyroid collar to protect the thyroid during intraoral X-ray exposures.

**Rules Coordinator:** Brittany Hall—(971) 673-1291

### 333-102-0005

#### Exemptions: Unimportant Quantities of Source Material

(1) Any person is exempt from this division to the extent that such person receives, possesses, uses, owns or transfers source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution or alloy.

(2) Any person is exempt from this division to the extent that such person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material; provided that, except as authorized in a specific license, such person must not refine or process such ore.

(3) Any person is exempt from this division and divisions 111 and 120 to the extent that such person receives, possesses, uses or transfers:

(a) Any quantities of thorium contained in:

(A) Incandescent gas mantles;

(B) Vacuum tubes;

(C) Welding rods;

(D) Electric lamps for illuminating purposes provided that each lamp does not contain more than 50 milligrams of thorium;

(E) Germicidal lamps, sun lamps and lamps for outdoor or industrial lighting provided that each lamp does not contain more than two grams of thorium;

(F) Rare earth metals and compounds, mixtures and products containing not more than 0.25 percent by weight thorium, uranium or any combination of these; or

(G) Personnel neutron dosimeters, provided that each dosimeter does not contain more than 50 milligrams of thorium.

(b) Source material contained in the following products:

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(A) Glazed ceramic tableware manufactured before August 27, 2013, provided that the glaze contains not more than 20 percent by weight source material;

(B) Piezoelectric ceramic containing not more than two percent by weight source material;

(C) Glassware containing more than two percent by weight source material or, for glassware manufactured before August 27, 2013, not more than ten percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile or other glass or ceramic used in construction; or

(D) Glass enamel or glass enamel frit containing not more than ten percent by weight source material imported or ordered for importation into the United States, or initially distributed by manufacturers in the United States, before July 25, 1983.

(c) Photographic film, negatives and prints containing uranium or thorium;

(d) Any finished product or part fabricated of, or containing tungsten-thorium or magnesium-thorium alloys, provided that the thorium content of the alloy does not exceed four percent by weight and that this exemption must not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

(e) Uranium contained in counterweights installed in aircraft, rockets, projectiles and missiles or stored or handled in connection with installation or removal of such counterweights, provided that:

(A) Each counterweight has been impressed with the following legend clearly legible through any plating or other covering: "DEPLETED URANIUM";

**NOTE:** The requirements specified in paragraphs (3)(e)(A) and (3)(e)(B) of this rule need not be met by counterweights manufactured prior to December 31, 1969 provided, that such counterweights were manufactured under a specific license issued by the Atomic Energy Commission and are impressed with the legend required by paragraph (3)(e)(B) of this rule in effect on June 30, 1969.

(B) Each counterweight is durably and legibly labeled or marked with the identification of the manufacturer and the statement: "UNAUTHORIZED ALTERATIONS PROHIBITED"; and

(C) This exemption must not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such counterweights other than repair or restoration of any plating or other covering.

(f) Natural or depleted uranium metal used as shielding constituting part of any shipping container, provided that:

(A) The shipping container is conspicuously and legibly impressed with the legend "CAUTION — RADIOACTIVE SHIELDING — URANIUM"; and

(B) The uranium metal is encased in mild steel or equally fire resistant metal of minimum wall thickness of 1/8 inch (3.2 mm).

(g) Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens does not contain more than 10 percent by weight of thorium or uranium or, for lenses manufactured before August 27, 2013, 30 percent by weight of thorium; and that this exemption must not be deemed to authorize either:

(A) The shaping, grinding or polishing of such lens or mirrors or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without any alteration of the lens or mirror; or

(B) The receipt, possession, use or transfer of uranium or thorium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

(h) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy, provided that:

(A) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(B) The thorium content in the nickel-thoria alloy does not exceed four percent by weight.

(4) The exemptions in section (3) of this rule do not authorize the manufacture of any of the products described.

(5) No person may initially transfer for sale or distribution a product containing source material to persons exempt under this rule, U.S. Nuclear Regulatory Commission or equivalent regulations of an Agreement State, unless authorized by a license issued under OAR 333-102-0300 and 333-102-0305 to initially transfer such products for sale or distribution.

(a) Persons initially distributing source material in products covered by the exemptions in this rule before August 27, 2013, without specific authorization may continue such distribution for one year beyond this date. Initial distribution may also be continued until the Authority takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond this date.

(b) Persons authorized to manufacture, process, or produce these materials or products containing source material by an Agreement State, and persons who import finished products or parts, for sale or distribution must be authorized by a license issued under OAR 333-102-0300 and 333-102-0305 for distribution only and are exempt from the requirements of divisions 111 and 120 of this chapter, and OAR 333-102-0200(2) and (3).

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

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1987, f. & ef. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 25-2016, f. 8-26-16, cert. ef. 9-1-16; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

## 333-102-0015

### Exempt Items — Certain Items Containing Radioactive Material

(1) Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products, any person is exempt from these rules to the extent that he or she receives, possesses, uses, transfers, owns or acquires the following products:

**NOTE:** Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(a) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation:

(A) 25 millicuries (925 MBq) of tritium per timepiece;

(B) Five millicuries (185 MBq) of tritium per hand;

(C) 15 millicuries (555 MBq) of tritium per dial (when used, bezels must be considered as part of the dial);

(D) 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;

(E) 20 microcuries (0.74 MBq) of promethium-147 per watch hand or

40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;

(F) 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial (when used, bezels must be considered as part of the dial);

(G) 0.15 microcurie (5.55 kBq) of radium per timepiece;

(H) 0.03 microcurie (1.11 kBq) of radium per hand;

(I) 0.09 microcurie (3.33 kBq) of radium per dial (when used, bezels must be considered as part of the dial);

(J) The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

(i) For wrist watches, 0.1 millirad (one microGy) per hour at 10 centimeters from any surface;

(ii) For pocket watches, 0.1 millirad (one microGy) per hour at one centimeter from any surface; and

(iii) For any other timepiece, 0.2 millirad (two microGy) per hour at 10 centimeters from any surface.

(K) One microcurie (37 kBq) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007.

(b) Precision balances containing not more than one millicurie (37 MBq) of tritium per balance or not more than 0.5 millicurie (18.5 MBq) of tritium per balance part manufactured before December 17, 2007;

(c) Marine compasses containing not more than 750 millicuries (27.8 GBq) of tritium gas and other marine navigational instruments containing not more than 250 millicuries (9.25 GBq) of tritium gas manufactured before December 17, 2007;

(d) Electron tubes: Provided, that each tube does not contain more than one of the following specified quantities of radioactive material:

(A) 150 millicuries (5.55 GBq) of tritium per microwave receiver protector tube or 10 millicuries (370 MBq) of tritium per any other electron tube;

(B) One microcurie (37 kBq) of cobalt-60;

(C) Five microcuries (185 kBq) of nickel-63;

(D) 30 microcuries (1.11 MBq) of krypton-85;

(E) Five microcuries (185 kBq) of cesium-137; or

(F) 30 microcuries (1.11 MBq) of promethium-147.

(G) And provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed one millirad (10 Gy) per hour at one centimeter from any surface when measured through seven milligrams per square centimeter of absorber.

**NOTE:** For purposes of, subsection (1)(d) of this rule "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other com-

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pletely sealed tube that is designed to conduct or control electrical currents.

(e) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(A) Each source contains no more than one exempt quantity set forth in 10 CFR Part 30.71 Schedule B; and

(B) Each instrument contains no more than 10 exempt quantities. For purposes of this requirement, an instrument's source(s) may contain either one or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in 10 CFR Part 30.71 Schedule B provided that the sum of such fractions must not exceed unity.

(C) For americium-241, 0.05 microcuries (1.85 kBq) is considered an exempt quantity under paragraph (1)(e)(A) of this rule. Ionization chamber smoke detectors containing not more than one microcurie (uCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(f) Static elimination devices that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 microcuries (18.5 MBq) of polonium 210 per device.

(g) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 500 millicuries (18.5 MBq) of polonium 210 per device or of a total of not more than 50 millicuries (1.85 GBq) of hydrogen 3 (tritium) per device.

(h) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR Part 31.3 and equivalent regulations of Agreement States and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Nuclear Regulatory Commission.

(2) The exemptions contained in this rule must not authorize any of the following:

(a) The manufacture of any product listed;

(b) The application or removal of radioactive luminous material to or from meters and timepieces or hands and dials therefore;

(c) The installation into automobile locks of illuminators containing tritium or promethium-147 or the application of tritium to balances of precision or parts thereof;

(d) Human use, or the use in any device or article, except timepieces, which is intended to be placed on or in the human body;

(e) As applied to radioactive material exempted under section (1) of this rule, the production, packaging, repackaging or transfer of radioactive material for purposes of commercial distribution or the incorporation of radioactive material into products intended for commercial distribution.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 4-2010, f. & cert. ef. 2-16-10; PH 20-2010, f. & cert. ef. 9-1-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

## 333-102-0101

### General Licenses — Small Quantities of Source Material

(1) A general license is hereby issued authorizing commercial and industrial firms, research, educational and medical institutions, and state and local government agencies to use and transfer uranium and thorium, in their natural isotopic concentrations and in the form of depleted uranium, for research, development, educational, commercial, or operations purposes in the following forms and quantities:

(a) No more than 1.5 kg (3.3 lb) of uranium and thorium in dispersible forms such as gaseous, liquid, or powder, at any one time. Any material processed by the general licensee that alters the chemical or physical form of the material containing source material must be accounted for as a dispersible form. A person authorized to possess, use, and transfer source material under this paragraph may not receive more than a total of 7 kg (15.4 lb) of uranium and thorium in any one calendar year. Persons possessing source material in excess of these limits as of August 27, 2013, may continue to possess up to 7 kg (15.4 lb) of uranium and thorium at any one time for one year beyond this date, or until the Authority takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and receive up to 70 kg (154 lb) of uranium or thorium in any one calendar year until December 31, 2014, or until the Authority takes final action on a pending application submitted on or before August 27, 2014, for a specific license for such material; and

(b) No more than a total of 7 kg (15.4 lb) of uranium and thorium at any one time. A person authorized to possess, use, and transfer source mate-

rial under this section may not receive more than a total of 70 kg (154 lb) of uranium and thorium in any one calendar year. A person may not alter the chemical or physical form of the source material possessed under this section unless it is accounted for under the limits of subsection (1)(a) of this rule; or

(c) No more than 7 kg (15.4 lb) of uranium, removed during the treatment of drinking water, at any one time. A person may not remove more than 70 kg (154 lb) of uranium from drinking water during a calendar year under this section; or

(d) No more than 7 kg (15.4 lb) of uranium and thorium at laboratories for the purpose of determining the concentration of uranium and thorium contained within the material being analyzed at any one time. A person authorized to possess, use, and transfer source material under this section may not receive more than a total of 70 kg (154 lb) of source material in any one calendar year.

(2) Any person who receives, possesses, uses, or transfers source material in accordance with the general license in section (1) of this rule:

(a) Is prohibited from administering source material, or the radiation therefrom, either externally or internally, to human beings except as may be authorized by the Authority in a specific license.

(b) Shall not abandon such source material. Source material may be disposed of as follows:

(A) A cumulative total of 0.5 kg (1.1 lb) of source material in a solid, non-dispersible form may be transferred each calendar year, by a person authorized to receive, possess, use, and transfer source material under this general license to persons receiving the material for permanent disposal. The recipient of source material transferred under the provisions of this paragraph is exempt from the requirements to obtain a license under this rule to the extent the source material is permanently disposed. This provision does not apply to any person who is in possession of source material under a specific license issued under this chapter; or

(B) In accordance with OAR 333-120-0500, Waste Disposal — General Requirements.

(c) Is subject to the provisions in OAR 333-100-0005, 333-100-0015, 333-100-0035, 333-100-0045, 333-100-0055, 333-100-0060, 333-100-0065, 333-100-0080, 333-102-0001, 333-102-0075, 333-102-0203, 333-102-0305, 333-102-0330, 333-102-0335, 333-102-0350, and 333-102-0355.

(d) Shall not export such source materials except in accordance with 10 CFR Part 110.

(3) Any person who receives, possesses, uses, or transfers source material in accordance with section (1) of this rule shall conduct activities so as to minimize contamination of the facility and the environment. When activities involving such source material are permanently ceased at any site, if evidence of significant contamination is identified, the general licensee shall notify the Authority about such contamination and may consult with the Authority as to the appropriateness of sampling and restoration activities to ensure that any contamination or residual source material remaining at the site where source material was used under this general license is not likely to result in exposures that exceed the limits in 10 CFR Parts 20.1402.

(4) Any person who receives, possesses, uses, or transfers source material in accordance with the general license granted in section (1) of this rule is exempt from the provisions of division 111 and 120 of this chapter and 10 CFR Part 21 to the extent that such receipt, possession, use, and transfer are within the terms of this general license, except that such person shall comply with the provisions of CFR 10 Parts 20.1402 and 20.2001 to the extent necessary to meet the provisions of subsection (2)(b) and section (3) of this rule. However, this exemption does not apply to any person who also holds a specific license issued under this division.

(5) No person may initially transfer or distribute source material to persons generally licensed under subsection (1)(a) or section (2) of this rule, or equivalent regulations of the NRC or an Agreement State, unless authorized by a specific license issued in accordance with OAR 333-102-0102 or equivalent provisions of the NRC or an Agreement State. This prohibition does not apply to analytical laboratories returning processed samples to the client who initially provided the sample. Initial distribution of source material to persons generally licensed by section (1) of this rule before August 27, 2013 without specific authorization may continue for one year beyond this date. Distribution may also be continued until the Authority takes final action on a pending application for license or license amendment to specifically authorize distribution submitted on or before August 27, 2014.

(6) A general license is hereby granted authorizing the receipt of title to source material without regard to quantity. This general license does not authorize any person to receive, possess, use or transfer source material.

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(7) Persons who receive, acquire, possess or use source material pursuant to the general license granted by section (1) of this rule must develop and maintain procedures to establish physical control over the source material and prevent transfer of such source material to persons not authorized to receive the source material.

(8) A person who receives, acquires, possesses or uses source material pursuant to the general license granted by section (1) of this rule:

(a) Must not introduce such source material, in any form, into a chemical, physical, or metallurgical treatment or process;

(b) Must not abandon such source material; and

(c) Must transfer or dispose of such source material only by transfer in accordance with the provisions of OAR 333-102-0330 or 333-120-0500.

Stat. Auth.: ORS 453.635, 453.665

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 10-1987, f. & ef. 7-28-87; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

## 333-106-0325

### Additional Requirements for Radiographic Machines: Intraoral Dental Radiographic Systems

In addition to the provisions of OAR 333-106-0010 through 333-106-0101, the requirements of this rule apply to X-ray equipment and facilities where intraoral dental radiography is conducted. Requirements for extraoral dental radiographic systems are covered in OAR 333-106-0301 through 333-106-0320. Intraoral dental radiographic systems must meet the following requirements:

(1) Source-to-Skin Distance (SSD). X-ray systems designed for use with an intraoral image receptor shall be provided with means to limit source-to-skin distance, to not less than 18cm.

(2) Beam Limitation. Radiographic systems designed for use with an intraoral image receptor shall be provided with means to limit the X-ray beam such that:

(a) If the minimum source-to-skin distance (SSD) is 18 centimeters or more, the X-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than seven centimeters; or

(b) If the minimum SSD is less than 18 centimeters, the X-ray field, at the minimum SSD, shall be containable in a circle having a diameter of no more than six centimeters.

(3) Radiation Exposure Control (Timers). Means shall be provided to control the radiation exposure through the adjustment of exposure time in seconds, milliseconds (ms) or, number of pulses, or current/milliamps (mA), or the product of current and exposure time (mAs) or adjustment of kVp. In addition:

(a) Exposure Initiation. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, such as the depression of a switch. Radiation exposure shall not be initiated without such an action; and

(b) It shall not be possible to make an exposure when the timer is set to a "0" or "off" position if either position is provided;

(c) Exposure Indication. Means shall be provided for visual indication, observable at or from the operator's protected position, whenever X-rays are produced. In addition, a signal audible to the operator shall indicate that the exposure has terminated.

(d) Timer Reproducibility. With a timer setting of 0.5 second or less, the average exposure time (T) shall be greater than or equal to five times the minimum exposure time (Tmin) minus the minimum exposure time (Tmin) when four timer tests are performed:  $(T) > 5 (Tmax - Tmin)$ .

(A) Means shall be provided to terminate the exposure at a preset, time interval, mAs, number of pulses, or radiation to the image receptor.

(B) An X-ray exposure control shall be incorporated into each system such that an exposure can be terminated by the operator at any time, except for exposures of 0.5 second or less.

(C) Termination of an exposure shall cause automatic resetting of the timer to its initial setting or to "0".

(4) Radiation Exposure Control Location and Operator Protection. Each X-ray control must be located in such a way as to meet the following requirements:

(a) The exposure switch shall be able to be operated in a protected area, as defined in OAR 333-106-0005(78), and the operator shall remain in that protected area during the entire exposure; and

(b) The operator's protected area shall provide visual indication of the patient during the X-ray procedure.

(c) Mobile and portable X-ray systems which are:

(A) Used for greater than one week in the same location, such as a room or suite, shall meet the requirements of subsections (4)(a) and (4)(b) of this rule.

(B) Used for less than one week at the same location, such as a room or suite, shall be provided with:

(i) Either a protective barrier of at least 6.5 feet (2 meters) high for operator protection; or

(ii) A means to allow the operator to be at least nine feet (2.7 meters) from the tube housing assembly while making exposures; or

(iii) A full length protective apron, of not less than 0.25 millimeter lead equivalent for operator protection, when using a hand-held dental intraoral X-ray machine.

(5) Exposure Reproducibility. The coefficient of variation shall not exceed 0.05 when all technique factors are held constant. This requirement shall be deemed to have been met if, when four exposures are made at identical technique factors, the value of the average exposure (E) is greater than or equal to five times the maximum exposure (Emax) minus the minimum exposure (Emin):  $E > 5 (Emax - Emin)$

(6) Accuracy.

(a) Deviation of technique factors from the indicated values for kVp and exposure time (if time is independently selectable) shall not exceed the limits specified for that system by its manufacturer.

(b) kVp Limitations. Dental X-ray machines with a nominal fixed kVp of less than 55 kVp shall not be used to make diagnostic dental radiographs on humans.

(7) Administrative Controls.

(a) Patient and film holding devices shall be used when the techniques permit;

(b) The tube housing and the PID shall not be hand held during an exposure;

(c) The X-ray system shall be operated in such a manner that the useful beam at the patient's skin does not exceed the requirements of section (2) of this rule or its updated version;

(d) All pediatric patients shall wear a 0.25 mm lead equivalent thyroid collar to protect the thyroid during intraoral X-ray exposures;

(e) Dental fluoroscopy without image intensification shall not be used; and

(f) Pointed cones shall not be utilized unless specific authorization has been granted by the Authority.

(8) Hand-held X-ray systems.

(a) Registrants must provide for security and safe storage while not in use. A report must be filed with the Authority within 72 hours if the hand-held unit is lost or stolen.

(b) The image receptor used with hand-held dental X-ray systems must either be:

(A) A speed class of intra-oral film designated as "E/F", "F" or faster; or

(B) A digitally acquired image (CR or DR).

(c) The hand-held X-ray system must be equipped with a permanently attached backscatter shield of 0.25 mm Pb equivalent.

(d) The backscatter shield must be designed to appropriately protect the operator during an exposure. The manufacturer of the hand-held unit must provide documentation to the Authority of the design specifications of the backscatter shield's protection to the operator prior to sale and distribution in the State of Oregon.

(e) The hand-held unit must be capable of a minimum of 60 kVp and 2.0 mA.

(f) Hand-held units not meeting the requirements of subsections (8)(c), (8)(d) and (8)(e) of this rule may not be sold, distributed or used in the State of Oregon.

(9) Hand-held dental X-ray administrative controls.

(a) The hand-held unit shall not be used for patient examinations in hallways and waiting rooms.

(b) The unit can only be operated in an enclosed room when possible. All individuals except the X-ray operator and the patient must leave the room and stand behind a protective barrier or be at least six feet from the X-ray source if a protective barrier is not available during radiographic exposures.

(c) Operators must complete machine specific applications training as described in OAR 333-106-0055(9) before using a hand-held unit. Training on the safe use of the unit shall be documented and include at a minimum:

(A) Proper positioning of the unit to ensure an adequate protected position;

(B) Limitations on the use of position indicating devices that require longer distances to the patient's face;

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(C) Diagrams such as drawings, illustrations, or schematics of protected position and location in relationship to the unit;

(D) Diagrams such as drawings, illustrations, or schematics of the effect of improper distance or removal of shielding device; and

(E) Diagrams such as drawings, illustrations, schematics of common examples of improper positioning of the unit and or location of the operator.

(d) An appropriate receptor holder must be used during the X-ray exposure.

(e) A PID must be used during the X-ray exposure.

(f) A hand-held unit shall be held without any motion during a patient examination. A tube stand may be utilized to immobilize the hand-held unit during a patient examination.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.605 - 453.807

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 12-2006, f. & cert. ef. 6-16-06; PH 14-2008, f. & cert. ef. 9-15-08; PH 20-2010, f. & cert. ef. 9-1-10; PH 10-2011, f. 9-30-11, cert. ef. 10-1-11; PH 4-2013, f. & cert. ef. 1-29-13; PH 24-2014, f. & cert. ef. 8-15-14; PH 32-2014, f. 12-22-14, cert. ef. 1-1-15; PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 25-2016, f. 8-26-16, cert. ef. 9-1-16; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

## 333-125-0040

### Background Investigations and Access Control Program: Determination Basis

(1) The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements within this division.

(2) The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this division and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

(3) The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

(4) The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual had been granted unescorted access authorization.

(5) Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or has become ineligible to meet access authorization requirements, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.635

Hist.: PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

## 333-125-0120

### Physical Protection Requirements During Use: Security Program, Protection of Information

(1) Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall secure from public disclosure and limit access to their security and implementation plans, and the list of individuals that have been approved for unescorted access.

(2) Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of the security and implementation plans.

(3) Before granting an individual access to the security plan or implementation plans, the licensee shall:

(a) Evaluate an individual's need to know of the security or implementation plans; and

(b) If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in OAR 333-125-0060(2)(b) through (2)(e)(B).

(4) Licensees need not subject the following individuals to the background investigation elements for protection of information:

(a) The categories of individuals listed in OAR 333-125-0085(1)(a) through (m); or

(b) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in OAR 333-125-0060(2)(b) through (2)(e)(B) has been provided by the security service provider.

(5) The licensee shall document the basis for concluding that an individual is trustworthy and reliable and allowed access to the security and implementation plans.

(6) Licensees shall maintain a list of persons currently approved for access to the security and implementation plans. When a licensee determines that a person no longer needs access to the security and implementation plans, or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementation procedures.

(7) When not in use, the licensee shall store its security and implementation plans in a manner to prevent unauthorized access. Information stored in non-removable electronic form must be password protected.

(8) The licensee shall retain as a record for three years after the document is no longer needed:

(a) A copy of the information protection procedures; and

(b) The list of individuals approved for access to the security plan or implementing procedures.

Stat. Auth.: ORS 453.635

Stats. Implemented: ORS 453.635

Hist.: PH 19-2015, f. 9-30-15, cert. ef. 10-1-15; PH 25-2016, f. 8-26-16, cert. ef. 9-1-16; PH 4-2017, f. 1-26-17, cert. ef. 2-1-17

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**Rule Caption:** Manufacturer Disclosure of High Priority Chemicals of Concern for Children's Health in Children's Products: Fees

**Adm. Order No.:** PH 5-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 333-016-2080

**Rules Amended:** 333-016-2040, 333-016-2060, 333-016-2070

**Subject:** The Oregon Health Authority (Authority), Public Health Division, is permanently adopting and amending administrative rules in chapter 333, division 16. The rules establish a schedule of fees for manufacturers of children's products required to disclose high priority chemicals of concern for children's health used in children's products sold or offered for sale in Oregon. The fees, as specified in the Toxic Free Kids Act of 2015, are based on the cost to the Authority for administering the Act and its requirements.

**Rules Coordinator:** Brittany Hall — (971) 673-1291

## 333-016-2040

### Purpose and Scope

OAR 333-016-2035 through 333-016-2090:

(1) Require manufacturers of children's products to disclose high priority chemicals of concern for children's health used in children's products, unless the manufacturer is exempt;

(2) Establish requirements for disclosure;

(3) Establish a process for a manufacturer to apply for an exemption from the disclosure requirements;

(4) Establish a fee schedule; and

(5) Describe the Authority's civil penalty authority and enforcement process.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 431A.253-431A.280

Hist.: PH 34-2016, f. & cert. ef. 12-1-16; PH 5-2017, f. 1-31-17, cert. ef. 2-1-17

## 333-016-2060

### Notification Requirements

(1) No later than January 1, 2018, and every other year thereafter, a manufacturer of a children's product sold or offered for sale in this state that contains a HPCCH listed in OAR 333-016-2020 in an amount at or above a de minimis level must submit:

(a) A notice to the Authority that contains all the information required in these rules, unless the manufacturer or product is exempt; and

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(b) Any applicable fee in OAR 333-016-2080.

(2) The first manufacturer's notice due on January 1, 2018, applies to children's products sold or offered for sale in this state between January 1, 2017 and December 31, 2017.

(3) Future notices apply to children's products sold or offered for sale during the previous two year period. For example, for the reporting year 2020, a manufacturer must include children's products sold or offered for sale between January 1, 2018, and December 31, 2019, that contain a HPC-CCH listed in OAR 333-016-2020.

(4) The notice required in section (1) of this rule must include the following:

(a) The name and Chemical Abstracts Service Registry Number of the chemical contained in the children's product;

(b) The product category of the children's product that contains the chemical;

(c) A description of the function of the chemical in the children's product;

(d) The amount of the chemical used in each unit of the children's product reported as a range rather than an exact amount;

(e) The name and address of the manufacturer, and the name, address and telephone number of the contact person for the manufacturer; or

(f) The name, address and contact information for the trade association submitting the notification on behalf of the affected industry; and

(g) Any other information that the manufacturer deems relevant to the appropriate use of the children's product.

(5) The second biennial notice will cover the period of January 1, 2018 through December 31, 2020.

(6) If a manufacturer has included a children's product in a notice required under these rules, and determines that there is no change to the information submitted to the Authority in the previous notice, the manufacturer may, in lieu of including the children's product again in a subsequent notice, submit a written statement, or if available, an electronic notification indicating that the previous reported data is still valid for that children's product.

(7) A trade association may provide the notice required in these rules on behalf of a member manufacturer.

(8) A trade association who fulfills the notice or exemption requirements of these rules on behalf of a member manufacturer will not be held liable for a violation or penalty as a result of the member manufacturer's noncompliance with the requirements of these rules.

(9) A manufacturer may, during the notification process, submit to the Authority recommendations regarding technical, financial or logistical support considered necessary for the implementation of innovation and green chemistry solutions related to HPCCCH used in children's products.

Stat. Auth.: ORS 413.042, 431A.258

Stats. Implemented: ORS 431A.258

Hist.: PH 34-2016, f. & cert. ef. 12-1-16; PH 5-2017, f. 1-31-17, cert. ef. 2-1-17

## 333-016-2070

### Exemptions from Notice Requirement

(1) A manufacturer of children's products with annual worldwide gross sales of less than \$5 million, as reported on the most recent tax return filed by the manufacturer before the notification required under OAR 333-016-2060, is exempt from all the requirements of these rules.

(2) If, following the filing of the most recent tax return, a manufacturer's annual worldwide gross sales are \$5 million or more, the manufacturer must submit a notice as required under OAR 333-016-2060. The notice must be submitted during the next applicable reporting period or within 180 days of the filing, whichever is later.

(3) A manufacturer or trade association may submit to the Authority a request for an exemption from these rules if the HPCCCH in a children's product is present only as a contaminant at or above the de minimis level, and a manufacturing control program is in place. A request for an exemption must be accompanied by any applicable fees in OAR 333-016-2080.

(4) In order to meet the standards for an exemption a manufacturing control program must be structured using at least one of the following categories:

(a) Manufacturing processes, for example polymerization of plastic resin, injection-molding of plastic, pad-transfer printing, silk screening;

(b) Materials or group of materials, for example multiple styrenic plastics;

(c) Component parts;

(d) A HPCCCH present as a contaminant at or above the de minimis level; or

(e) Finished products.

(5) In addition to the information provided in section (4) of this rule a manufacturer must document in its exemption request the specific HPC-CCH present as a contaminant at or above the de minimis level that the manufacturing control program is intended to address and the product categories where the HPCCCH are found.

(6) In order for the manufacturer to demonstrate that a manufacturing control program meets the minimum standards for an exemption, the manufacturing control program must meet generally-recognized industry best manufacturing practices and processes for the control of a HPCCCH, such as but not limited to:

(a) The most current and appropriate International Standards Organization (ISO) requirements for a specific manufacturing process or facility. The manufacturer must demonstrate how the ISO certification held by the manufacturer or supplier is controlling the contaminant in a component part or in the finished children's product;

(b) Another established certification or standards manufacturing control program such as, but not limited to, Sony Corporations Green Partners Standards, the European ROHS (Restriction of Hazardous Substances in Electronic Parts), EN 79.

(c) The most current American Society for Testing and Materials (ASTM) International standards that provide the recommended industry standards for materials used or produced in the manufacturing process;

(d) Any proven alternative methodology that will enable the manufacturer to demonstrate:

(A) That the methodology controls the contaminant to the lowest practicable levels in the finished children's product; and

(B) That the alternative methodology is as or more effective at controlling the contaminant than the standards in subsections (a) through (c) of this section.

(7) In addition to meeting one of the requirements of subsections (6)(a) through (d) of this rule a manufacturer must document and describe, in its exemption request, whether the manufacturer's or the manufacturer's supplier's manufacturing control process, include any of the following:

(a) Procedures to ensure the quality and purity of feedstock, whether raw or recycled;

(b) Contract specifications for manufacturing process parameters, for example material purity, drying and curing times when relevant to the presence of high priority chemicals in the finished children's product components;

(c) Periodic testing for the presence and amount of HPCCCH in the finished children's product, including documentation of how tests were conducted and applicable lab results from an accredited third party laboratory;

(d) Procedures and approaches to audit the methods used by contractors or suppliers to control a HPCCCP present as a contaminant in a children's product; and

(e) Education and outreach to members of a supply chain about the importance to the manufacturer of controlling the amount of HPCCCH in supplied materials through activities such as discussions with suppliers, oral presentations, written materials or webinars.

(8) The Authority, upon receipt of an exemption request will date stamp the document. Once date stamped the Authority must approve or deny an exemption request within 180 days.

(a) If the Authority does not approve or disapprove the exemption request within 180 days the manufacturing control program exemption is deemed approved.

(b) If the Authority approves the exemption the Authority will notify the manufacturer of the approval, in writing.

(c) If an exemption request is disapproved, the Authority will provide written notice to the manufacturer of the disapproval and the reason for the disapproval.

(9) If the Authority disapproves an exemption request, the manufacturer may submit a revised exemption request for consideration within 180 days after the Authority's notice of disapproval.

(10) If the exemption request is denied a second time, the manufacturer will have 90 days from the date of the written notification of disapproval to submit a notification in accordance with OAR 333-016-2060.

(11) At any time the Authority may request additional information from a manufacturer requesting an exemption.

(12) If a manufacturer submits information to the Authority as part of its request for an exemption under this rule that the manufacturer believes is a trade secret, the manufacturer must mark the information "confidential – trade secret."

(a) If the Authority receives a public records request for records related to a request for an exemption under this rule, it will review all docu-



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ments submitted by the manufacturer to determine whether the documents contain trade secrets that would be exempt from disclosure under Oregon's Public Records Act, ORS 192.501(2).

(b) For purposes of this section "trade secret" has the meaning given that term in ORS 192.501(2).

Stat. Auth: ORS 413.042, 431A.258, 431A.268

Stats. Implemented: 431A.258, 431A.268

Hist.: PH 34-2016, f. & cert. ef. 12-1-16; PH 5-2017, f. 1-31-17, cert. ef. 2-1-17

## 333-016-2080

### Fees

The following fees are established:

(1) Notification. A nonrefundable fee of \$250 for the notification of each HPCCCH reported to the Authority under OAR 333-016-2060(1).

(2) Exemption request:

(a) A non-refundable fee of \$1,500; and

(b) An initial fee of \$12,000 for the review of a Manufacturing Control Program; and

(c) Additional Manufacturing Control Program review fees in increments of \$12,000, if applicable.

(3) The fee for review of a Manufacturing Control Program is \$200 per hour.

(a) The Authority shall refund any unexpended portion of Manufacturing Control Program fees submitted under subsection (2)(b) or (c) of this rule.

(b) If the cost of the review exceeds the initial \$12,000, the Authority shall notify the applicant and request an additional \$12,000. If the cost of review exceeds any subsequent incremental fee of \$12,000, the Authority shall continue to request additional fees under subsection (2)(c) of this rule.

(4) The Authority shall not review a Manufacturing Control Program unless the fees required under this rule are paid by the manufacturer and a request for exemption may be denied on the basis that the required fees were not paid.

Stat. Auth: ORS 413.042, 431A.270

Stats. Implemented: ORS 431A.270

Hist.: PH 5-2017, f. 1-31-17, cert. ef. 2-1-17

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## Oregon Military Department, Office of Emergency Management Chapter 104

**Rule Caption:** Implementation of Fuel Storage Facility Compatibility Fund Grant.

**Adm. Order No.:** OEM 1-2017

**Filed with Sec. of State:** 1-27-2017

**Certified to be Effective:** 1-27-17

**Notice Publication Date:** 1-1-2017

**Rules Adopted:** 104-055-0000, 104-055-0010, 104-055-0020, 104-055-0030, 104-055-0040, 104-055-0050, 104-055-0060, 104-055-0070, 104-055-0080, 104-055-0090, 104-055-0100

**Subject:** ORS 85 created the Fuel Storage Facility Compatibility funds and tasked the Oregon Office of Emergency Management with creating a grant program to disperse the funds. This rulemaking implements rules for the administration and implementation of the grant.

**Rules Coordinator:** Genevieve Ziebell—(503) 378-2911, ext. 22221

### 104-055-0000

#### Purpose

These rules establish a grant program pursuant to ORS 85 for the disbursement of money from the Fuel Storage Facility Compatibility Fund established by the Oregon Legislative Assembly for the purpose of installing Generator Connectors on Fuel Sources at Cardlock Facilities in the state.

Stat. Auth: ORS 85

Stats Implemented: ORS 85

Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

### 104-055-0010

#### Definitions

(1) "Applicant" means an Oregon licensed owner/operator of a public or private Cardlock Facility.

(2) "Authority" means the Oregon Office of Emergency Management.

(3) "Cardlock Facility" means a fuel dispensing facility that is licensed by the Office of the Oregon State Fire Marshal under ORS 480.350 and that permits nonretail customers to dispense fuel using a card activated or key activated device in accordance with ORS 480.345.

(4) "Emergency" has the meaning given that term in ORS 401.025.

(5) "Fuel Source" means a storage tank from which fuel is dispensed.

(6) "Generator" means a portable device capable of converting fuel into electricity.

(7) "Generator connector" means a connector on a fuel source that allows a generator to connect to the fuel source for the purpose of fueling the generator.

(8) "Grant Agreement" means an agreement between the Authority and the licensed owner/ operator of a public or private Cardlock Facility specifying the legal requirements for grant management, reporting and record keeping as well as the Authority's monitoring and grant closeout procedures.

(9) "Grant Application Package" means a package of information prepared by the Authority containing grant guidance, application forms and other supplementary information.

(10) "Grant Program" means the Fuel Storage Facility Compatibility Fund Grant Program.

(11) "Grant Selection Committee" means the committee charged with evaluating grant applications for the purpose of determining which Projects will receive funding. The Grant Selection Committee membership may include representatives of the Oregon Department of Transportation, Office of the State Fire Marshal, Oregon Military Department, Oregon Department of Energy, Oregon Office of Emergency Management, Oregon Emergency Management Association, and others who possess expertise in the industry.

(12) "Grantee" means an Applicant awarded grant funds for fuel storage facility compatibility.

(13) "Project" means activity at the eligible Cardlock Facility which enables the Generator Connector to be installed for the purpose of dispensing fuel with a Generator.

Stat. Auth: ORS 85

Stats Implemented: ORS 85

Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

### 104-055-0020

#### Eligible Applicants

(1) The following entities and organizations are eligible to apply for the Fuel Storage Facility Compatibility Fund grant:

(a) All public and private Cardlock Facility owner/operators currently licensed by the Office of the Oregon State Fire Marshal under ORS 480.310 through 480.385 for commercial fuel dispensing in the State of Oregon.

(2) A public or private Cardlock Facility determined by the Authority to be in non-compliance with a prior Fuel Storage Facility Compatibility Fund Grant Agreement is ineligible to apply.

Stat. Auth: ORS 85

Stats Implemented: ORS 85

Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

### 104-055-0030

#### Eligible Activities

(1) To be eligible for this Grant Program, a proposed Project must involve the installation of a Generator Connector at a currently licensed commercial public or private Cardlock Facility within the State of Oregon.

(2) Grant funds cannot be used for the installation of a Generator or power generation/backup power capability.

Stat. Auth: ORS 85

Stats Implemented: ORS 85

Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

### 104-055-0040

#### Grant Application Process

(1) Grant Application Package

(a) The Authority shall prepare a Grant Application Package. The package will contain guidance, application forms and other supplementary information to help eligible Applicants prepare grant applications.

(b) The guidance will include a description of eligibility criteria and ranking factors used to evaluate and select applications for funding.

(c) The Authority shall announce how to obtain a Grant Application Package and the deadline for submitting an application.

(d) The Grant Application Package on file with the Authority is incorporated as part of these rules by reference.

(2) Grant Application Submission

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(a) An eligible commercial public or private Cardlock Facility owner/operator may submit an application which includes more than one facility location. All submissions must be in the form provided by the Authority and must contain all required information.

(b) All applications must be received prior to the application deadline announced by the Authority.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0050

### Grant Application Review

(1) The Authority will review all applications to ensure they are complete and meet grant eligibility requirements.

(2) The Authority may convene a Grant Selection Committee to evaluate and score all applications meeting grant and eligibility requirements.

(3) The Authority will use the prioritized list of applications along with the amount of funds available in the Fuel Storage Facility Compatibility Fund to determine which Applicants will receive grant awards.

(4) All Applicants will be notified of the status of their applications within 90 days of the due date for application submission.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0060

### Grant Awards and Match

(1) The maximum grant award for each Cardlock Facility is \$4,000.

(2) Grants will be awarded only when there are sufficient funds available in the Fuel Storage Facility Compatibility Fund.

(3) Award recipients are expected to use the grant funds, along with agency/organization funds when necessary, to install Generator Connectors meeting the requirements of ORS 85 and these rules at each of their licensed commercial public or private Cardlock Facilities selected to receive grant funds.

(4) Grant funds shall be distributed on a reimbursement basis to the licensed commercial public and private Cardlock Facility owner/operators selected to receive grant funds.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0070

### Grant Agreements and Conditions

(1) The Authority shall provide a Grant Agreement to each Fuel Storage Facility Compatibility Fund Grantee which specifies the legal requirements for grant management, reporting and record keeping as well as the Authority's monitoring and grant closeout procedures.

(2) The Authority will only enter into new agreements or may amend agreements with prior Grantees if all reporting obligations under the earlier agreements have been met.

(3) The Authority and the Applicant must execute a Grant Agreement or amendment prior to any funds being expended for eligible expenses for which the Applicant will request reimbursement.

(4) If the Grant Agreement or amendment has not been fully executed by all the parties within 60 days of the Grantee receiving the agreement, funding will be terminated. The money allocated to the grant will then be available for reallocation by the Authority consistent with the application rankings established by the Grant Selection Committee.

(5) The Authority shall establish Grant Agreement conditions. Grantees shall comply with all grant agreement conditions. In addition, Grantees shall comply with all applicable federal, state and local laws and ordinances.

(6) Upon notice to a Grantee in writing, the Authority may terminate funding for Projects not completed in the prescribed time and manner. Money allocated to the Project but not used will be available for reallocation by the Authority consistent with the application rankings established by the Grant Selection Committee.

(7) The Grantee will obtain the necessary permits and licenses from local, state or federal agencies or governing bodies.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0080

### Project Administration

(1) The Authority shall administer Fuel Storage Facility Compatibility Fund grants in compliance with the requirements of applica-

ble statutes and rules and the guidance provided in the Grant Application Package.

(2) Documentation of Project costs incurred by each Grantee must be submitted to the Authority prior to reimbursement of funds.

(3) Reimbursement of funds to each Grantee will be made on a schedule established by the Authority.

(4) The Authority will require a letter from the Office of the Oregon State Fire Marshal following the annual inspection of each Cardlock Facility receiving a grant award certifying that the Generator Connector installed pursuant to the Grant Program meets safety requirements and is otherwise properly installed.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0090

### Waivers, Exceptions and Appeals

(1) The Authority may waive non-statutory requirements of the Grant Program if it is demonstrated such a waiver would serve to further the goals or objectives of the program.

(2) The Authority may consider appeals of the Grant Selection Committee's funding decisions. Only the Applicant may appeal. Appeals must be submitted in writing to the Authority within 30 days of the event or action that is being appealed. The Authority's decision is final.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## 104-055-0100

### Program Sanctions

The Grantee shall be responsible for taking all actions necessary to enforce the terms of the Grant Agreement against any private or public participant who fails to comply with applicable provisions of the Grant Agreement and to recover on behalf of the state any liabilities that may arise as the result of a breach of the Grant Agreement by any participant. Nothing in this paragraph shall restrict the state's right to enforce independently the terms of any Grant Agreement or to recover any sums that may become due as the result of a breach of such an agreement.

Stat. Auth.: ORS 85  
Stats Implemented: ORS 85  
Hist.: OEM 1-2017, f. & cert. ef. 1-27-17

## Oregon Public Employees Retirement System Chapter 459

**Rule Caption:** Updates reflect the 2017 Internal Revenue Code annual limitations regarding retirement contributions and benefits.

**Adm. Order No.:** PERS 1-2017

**Filed with Sec. of State:** 1-27-2017

**Certified to be Effective:** 1-27-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 459-005-0525, 459-005-0545, 459-080-0500

**Subject:** The Internal Revenue Service (IRS) revises various dollar limits annually based on cost-of-living adjustments. These revisions are used throughout the PERS plan's statutes and rules, but revisions to the limits must be adopted by the legislature or PERS Board to be effective.

The proposed rule modifications incorporate these federal adjustments and are necessary to ensure compliance with the IRC's limits on the amount of annual compensation allowed for determining contributions and benefits, annual benefits, and annual additions to PERS.

**Rules Coordinator:** Daniel Rivas—(503) 603-7713

## 459-005-0525

### Ceiling on Compensation for Purposes of Contributions and Benefits

(1) The purpose of this rule is to assure compliance of the Public Employees Retirement System (PERS) with Internal Revenue Code (IRC) Section 401(a)(17) relating to the limitation on annual compensation allowable for determining contribution and benefits under ORS Chapters 238 and 238A.

(2) Definitions:

(a) "Annual compensation" means "salary," as defined in ORS 238.005 and 238.205 with respect to Chapter 238 and in 238A.005 with respect to Chapter 238A paid to the member during a calendar year or other 12-month period, as specified in this rule.

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(b) "Eligible participant" means a person who first becomes a member of PERS before January 1, 1996.

(c) "Employer" means a "public employer" as defined in ORS 238.005, for the purposes of this rule as it applies to Chapter 238. For the purposes of this rule as it applies to Chapter 238A, an "employer" means a "participating public employer" as defined in 238A.005.

(d) "Noneligible participant" means a person who first becomes a member of PERS after December 31, 1995.

(e) "Participant" means an active or inactive member of PERS.

(3) For eligible participants, the limit set forth in IRC Section 401(a)(17) shall not apply for purposes of determining the amount of employee or employer contributions that may be paid into PERS, and for purposes of determining benefits due under ORS Chapters 238 and 238A. The limit on annual compensation for eligible participants shall be no less than the amount which was allowed to be taken into account for purposes of determining contributions or benefits under former ORS 237.001 to 237.315 as in effect on July 1, 1993.

(4) For noneligible participants, the annual compensation taken into account for purposes of determining contributions or benefits under ORS Chapters 238 and 238A shall be measured on a calendar year basis, and shall not exceed \$270,000 per calendar year beginning in 2017.

(a) The limitation on annual compensation will be indexed by cost-of-living adjustments in subsequent years as provided in IRC Section 401(a)(17)(B).

(b) A noneligible participant employed by two or more agencies or instrumentalities of a PERS participating employer in a calendar year, whether concurrently or consecutively, shall have all compensation paid by the employer combined for determining the allowable annual compensation under this rule.

(c) PERS participating employers shall monitor annual compensation and contributions to assure that reports and remitting are within the limits established by this rule and IRC Section 401(a)(17).

(5) For a noneligible participant, Final Average Salary under ORS 238.005 with respect to Chapter 238 and under 238A.130 with respect to Chapter 238A shall be calculated based on the amount of compensation that is allowed to be taken into account under this rule.

(6) Notwithstanding sections (4) and (5) of this rule, if the Final Average Salary as defined in ORS 238.005 with respect to Chapter 238 and as defined in 238A.130 with respect to Chapter 238A is used in computing a noneligible participant's retirement benefits, the annual compensation shall be based on compensation paid in a 12-month period beginning with the earliest calendar month used in determining the 36 months of salary paid. For each 12-month period, annual compensation shall not exceed the amount of compensation that is allowable under this rule for the calendar year in which the 12-month period begins.

(7) With respect to ORS Chapter 238, creditable service, as defined in 238.005, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17). With respect to Chapter 238A, retirement credit as determined in 238A.140, shall be given for each month that an active member is paid salary or wages and allowable contributions have been remitted to PERS, or would be remitted but for the annual compensation limit in IRC Section 401(a)(17).

(8) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238 & 238A

Hist.: PERS 4-1995, f. 11-14-95, cert. ef. 12-1-95; PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 19-2005, f. 11-1-05, cert. ef. 1-1-06; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12; PERS 3-2013, f. & cert. ef. 3-29-13; PERS 3-2014, f. & cert. ef. 1-31-14; PERS 7-2015, f. & cert. ef. 5-29-15; PERS 1-2017, f. & cert. ef. 1-27-17

## 459-005-0545

### Annual Addition Limitation

(1) Applicable Law. This administrative rule shall be construed consistently with the requirements of the Internal Revenue Code (IRC) Section 415(c) and the Treasury regulations and Internal Revenue Service rulings and other interpretations issued thereunder.

(2) Annual Addition Limitation. Except as otherwise provided in this rule, a member's annual additions to PERS for any calendar year after 2016 may not exceed \$54,000 (as adjusted under IRC Section 415(d)).

(3) Annual Additions. For purposes of this rule, the term "annual additions" has the same meaning as under IRC Section 415(c)(2).

(4) Permissive Service Credit. The following special rules shall apply with respect to purchases of permissive service credit, as defined in OAR 459-005-0540, Permissive Service Credit:

(a) If a member's after-tax contributions to purchase permissive service credit are included in the member's annual additions under section (3) of this rule, the member shall not be treated as exceeding the limitation under section (2) of this rule solely because of the inclusion of such contributions.

(b) With respect to any eligible participant, the annual addition limitation in section (2) of this rule shall not be applied to reduce the amount of permissive service credit to an amount less than the amount that could be purchased under the terms of the plan as in effect on August 5, 1997. As used in this subsection, the term "eligible participant" includes any individual who became an active member before January 1, 2000.

(5) Purchase of Service in the Armed Forces Under ORS 238.156 or 238A.150. If a member makes a payment to PERS to purchase retirement credit for service in the Armed Forces pursuant to 238.156(3)(c) or 238A.150 and the service is covered under Internal Revenue Code Section 414(u), the following special rules shall apply for purposes of applying the annual addition limitation in section (2) of this rule:

(a) The payment shall be treated as an annual addition for the calendar year to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member shall be treated as having received the following amount of compensation for the period of service in the Armed Forces to which the payment relates:

(A) The amount of compensation the member would have received from a participating employer had the member not been in the Armed Forces; or

(B) If the amount in paragraph (A) of this subsection is not reasonably certain, the member's average compensation from the participating employer during the 12-month period immediately preceding the period of service in the Armed Forces (or, if shorter, the period of employment immediately preceding the period of service in the Armed Forces).

(6) The provisions of this rule are effective on January 1, 2004.

Stat. Auth.: ORS 238.630, 238.650, 238A.370 & 238A.450

Stats. Implemented: ORS 238.005 - 238.715, 238A.370

Hist.: PERS 5-1999, f. & cert. ef. 11-15-99; PERS 11-2002, f. & cert. ef. 7-17-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 8-2005, f. & cert. ef. 2-22-05; PERS 14-2008, f. & cert. ef. 11-26-08; PERS 1-2012, f. & cert. ef. 2-1-12; PERS 3-2013, f. & cert. ef. 3-29-13; PERS 3-2014, f. & cert. ef. 1-31-14; PERS 7-2015, f. & cert. ef. 5-29-15; PERS 1-2017, f. & cert. ef. 1-27-17

## 459-080-0500

### Limitation on Contributions

(1) Definitions. For purposes of this rule:

(a) "Annual addition" has the same meaning given the term in 26 U.S.C. 415(c)(2).

(b) "Compensation" has the same meaning given the term in 26 U.S.C. 415(c)(3)(A).

(2) Annual addition limitation. Except as otherwise provided in this rule, the annual addition to a member account for any calendar year may not exceed \$54,000 effective January 1, 2017.

(3) Payment for military service. If a payment of employee contributions for a period of military service is made under OAR 459-080-0100:

(a) The payment shall be treated as an annual addition for the calendar year(s) of military service to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) For the purpose of allocating payments under this section, the member's compensation shall be the amount described in OAR 459-080-0100(3)(d).

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.370

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04; PERS 8-2012, f. & cert. ef. 3-28-12; PERS 3-2013, f. & cert. ef. 3-29-13; PERS 3-2014, f. & cert. ef. 1-31-14; PERS 7-2015, f. & cert. ef. 5-29-15; PERS 1-2017, f. & cert. ef. 1-27-17

## Oregon Racing Commission Chapter 462

**Rule Caption:** Rule to govern Pick (n) Position (x) Pool wagers  
**Adm. Order No.:** RC 1-2017

**Filed with Sec. of State:** 1-23-2017

**Certified to be Effective:** 1-23-17

**Notice Publication Date:** 1-1-2017

**Rules Adopted:** 462-200-0665

## ADMINISTRATIVE RULES

**Subject:** Rule governs Pick (n) Position (x) Pool wager as adopted by the Association of Racing Commissioners International, Inc. Model Rules of Racing.

**Rules Coordinator:** Karen Parkman—(971) 673-0208

### 462-200-0665

#### Pick (n) Position (x) Pools

(1) The Pick (n) Position (x) Pool requires selection of the first (x) finishers, in their exact positions, in each of a designated number of (n) contests. For example, in a Four Position Pool ( $x = 4$ ), the bettor chooses four finishers in each contest. If the bettor has chosen “1, 2, 3 and 4”, and the actual finishers are “4, 2, 3 and 1”, the bettor has correctly chosen 2 positions [the second and third place finishers.]

(2) The licensee must obtain written approval from the Commission concerning the scheduling of Pick (n) Position (x) contests, the designation of one of the methods prescribed in subsection 3 and 6, the percentages of the net pool apportioned between the major share of the Position (x) Pool and the minor share(s) of the Position (x) Pool, and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) Position (x) format require prior approval from the Commission.

(3) Unless otherwise stated, the major share of the net Pick (n) Position (x) Pool [hereafter, “Position (x) Pool”] shall be distributed as a single price pool to those who selected all (x) finishers, in exact position, in a minimum specified number of positions in the (n) contests (considered as a whole) that comprise the Position (x) Pool, based upon the official order of finish. The minimum specified number of positions may be all (x) positions in all (n) contests (for instance, four positions in each of six contests, for a total of 24 positions) or a lesser specified number (for instance, 22 or more accurate positions within the six contests taken as a whole.)

(4) The Pick (n) Position (x) Pool shall be apportioned under one of the following methods:

(a) Method 1, Position (x) With No Minor Pool and No Carryover

(A) The net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) If there are no wagers qualifying for the major share, the net Position (x) Pool shall be distributed as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests.

(C) If there are no winning wagers, the entire pool shall be refunded on Position (x) wagers for those contests.

(b) Method 2, Position (x) With No Minor Pool and Carryover Instead of a Refund

(A) The net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) If there are no wagers qualifying for the major share, the net Position (x) Pool and the carryover shall be distributed as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests.

(C) If there are no winning wagers, the net Position (x) Pool shall be added to the carryover.

(c) Method 3, Position (x) With No Minor Pool and Carryover

(A) The net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) If there are no wagers qualifying for the major share, the net Position (x) Pool shall be added to the carryover.

(d) Method 4, Position (x) With Minor Pool and No Carryover

(A) The major share of the net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) The minor share of the net Position (x) Pool shall be distributed as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests (but less than the number of positions qualifying for the major share), based upon the official order of finish.

(C) If there are no wagers qualifying for the major share, the major share of the net Position (x) Pool shall be combined with the minor share for distribution as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests.

(D) If there are no wagers correctly selecting any finishers, in exact position, in Position (x) contests, other than winners of the major share of the net Position (x) Pool, the minor share of the net Position (x) Pool shall

be combined with the major share for distribution as a single price pool to those who qualified for the major share.

(E) If there are no winning wagers, the pool shall be refunded on Position (x) wagers for those contests.

(e) Method 5, Position (x) With Minor Pool and Carryover

(A) The major share of the net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) The minor share of the net Position (x) Pool shall be distributed as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests (but less than the number of positions qualifying for the major share), based upon the official order of finish.

(C) If there are no wagers qualifying for the major share, the minor share of the net Position (x) Pool shall be distributed as a single price pool to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests, and the major share shall be added to the carryover.

(D) If there are no wagers correctly selecting any finishers, in exact position, other than winners of the major share of the net Position (x) Pool, the minor share of the net Position (x) Pool shall be combined with the major share for distribution as a single price pool to those who qualified for the major share, or if there are no such winning wagers, added to the carryover.

(f) Method 6, Position (x) With Minor Pool(s) and Carryover

(A) The major share of the net Position (x) Pool shall be distributed in accordance with the method for distributing the major share as described in subsection 2, above.

(B) A principal minor share of the net Position (x) Pool may be designated, and distributed as a single price pool, to those who correctly selected finishers, in exact position, in the greatest number of positions in Position (x) contests (but less than the number of positions qualifying for the major share), based upon the official order of finish.

(C) Additional minor shares of the net Position (x) Pool may be designated, and distributed as single price pools, to those who correctly selected the designated number, or range, of finishers, in exact position, in Position (x) contests (but less than the number of positions qualifying for the major share), based upon the official order of finish.

(D) Those qualifying for the principal minor share may also qualify for one of the additional minor shares. When this occurs, the two unbroken prices shall be summed before surcharging or rounding the prices for breakage. For example:

(i) Suppose there are \$5 of wagers correctly selecting 12 positions, \$3 of wagers selecting 13 positions, and \$2 of wagers selecting 14 positions, and 14 is the greatest number of positions correctly selected.

(ii) Suppose that the principal minor share of the net pool is \$20,000.16. Further, one of the other minor shares is designated for a range of 12 to 15 positions, and this share of the net pool is \$10,000.80. (These amounts are chosen only to illustrate the following steps.)

(iii) Then the principal minor share is divided among those selecting 14 positions, and the other minor share is divided among all the wagers selecting 12, 13, and 14 positions, so the 14-position winners receive the sum of two winning prices.

(iv) The principal minor share \$20,000.16 divided among the \$2 of 14 position winners yields an unbroken price of \$10,000.08 per dollar, and the other minor share \$10,000.80 divided among the \$10 of 12, 13, and 14-position winners yields an unbroken price of \$1,000.08 per dollar.

(v) The sum  $\$10,000.08 + \$1,000.08 = \$11,000.16$  is the combined unbroken price for choosing 14 finishers.

(vi) If the rounding for breakage is to the next lower \$0.10, the final broken prices are \$11,000.10 for 14 finishers, and \$1,000.00 for 12 or 13 finishers.

(E) The Commission shall approve the number of minor shares, and the designated number, or range, of finishers, in exact position, in Position (x) contests qualifying as the winning selection in any such minor share.

(F) If there are no wagers qualifying for the major share, the major share shall be added to the carryover. If there are no wagers qualifying for a designated minor share, the minor share of the net Position (x) Pool shall be combined with the major share for distribution as a single price pool to those who qualified for the major share, or if there are no such winning wagers, added to the carryover.

(g) Method 7, Position (x) With Minor Pool(s) Based Upon Any One Contest, and No Carryover

(A) The major share of the net Position (x) Pool shall be distributed as a single price pool to those who selected all (x) finishers, in exact posi-

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tion, in each (or a specified minimum number) of the Position (x) contests, based upon the official order of finish.

(B) The minor shares of the net Position (x) Pool shall be distributed as single price pools to those (including recipients of the major share of the net Position (n) Pool) who selected all (x) finishers, in exact position, in at least one of the Position (x) contests, based upon the official order of finish, as follows:

(C) There may be separate minor pools for those who selected all (x) finishers, in exact positions of finish, in the most Position (x) contests, those who selected all (x) finishers, in exact positions of finish, in the second most position (x) contests, and so forth down to those who selected all (x) finishers, in exact positions of finish, in one position (x) contest. Not all such minor shares need to be designated for the wager.

(D) If there are no wagers qualifying for the major share, the major share of the net Position (x) Pool shall be combined with the highest level minor share for distribution as a single price pool. If there are no wagers qualifying for a designated minor share of the net Position (x) Pool, that minor share shall be combined with the next (lower) minor share for distribution as a single price pool.

(E) If there are no winning wagers, the pool is refunded.

(h) Method 8, Position (x) With Minor Pool(s) Based Upon Any One Contest, and Carryover

(A) The major share of the net Position (x) Pool and the carryover, if any, shall be distributed as a single price pool to those who selected all (x) finishers, in exact position, in each (or a specified minimum number) of the Position (x) contests, based upon the official order of finish.

(B) The minor shares of the net Position (x) Pool shall be distributed as single price pools to those (including recipients of the major share of the net Position (x) Pool) who selected all (x) finishers, in exact position, in at least one of the Position (x) contests, based upon the official order of finish, as follows:

(C) There may be separate minor pools for those who selected all (x) finishers, in exact positions of finish, in the most Position (x) contests, those who selected all (n) finishers, in exact positions of finish, in the second most Position (x) contests, and so forth down to those who selected all (x) finishers, in exact positions of finish, in one Position (x) contest. Not all such minor shares need to be designated for the wager.

(D) If there are no wagers qualifying for the major share, the major share shall be added to the carryover.

(E) If there are no wagers selecting all finishers, in exact position, in a number of the Position (x) contests that qualify for a designated minor share, that minor share of the net Position (n) Pool shall also be added to the carryover.

(i) Method 9, Position (x) With Minor Pool(s) Based Upon Any One Contest, and Carryover

(A) The major share of the net Position (x) Pool and the carryover, if any, shall be distributed as a single price pool to those who selected all (x) finishers, in exact position, in each (or a specified minimum number) of the Position (x) contests, based upon the official order of finish.

(B) The minor shares of the net Position (x) Pool shall be distributed as single price pools to those (including recipients of the major share of the net Position (x) Pool) who selected all (x) finishers, in exact position, in at least one of the Position (x) contests, based upon the official order of finish, as follows:

(C) There may be separate minor pools for those who selected all (x) finishers, in exact positions of finish, in the most Position (x) contests, those who selected all (x) finishers, in exact positions of finish, in the second most Position (x) contests, and so forth down to those who selected all (x) finishers, in exact positions of finish, in one Position (x) contest. Not all such minor shares need to be designated for the wager.

(D) If there are no wagers qualifying for the major share, the major share shall be added to the carryover.

(E) If there are no wagers selecting all finishers, in exact position, in a number of the Position (x) contests that qualify for a designated minor share, that minor share of the Position (x) Pool shall be added to the next (lower) minor share of the Position (x) Pool. If there is no lower designated minor share of the Position (x) Pool, the minor share shall also be added to the carryover.

(j) Method 10, Position (x) With Minor Pool Based Upon Any One Contest, and Carryover; 100% Carryover if no Winning Wagers

(A) The major share of the net Position (x) Pool and the carryover, if any, shall be distributed as a single price pool to those who selected all (x) finishers, in exact position, in each (or a specified minimum number) of the Position (x) contests, based upon the official order of finish.

(B) The minor share of the net Position (x) Pool shall be distributed as a single price pool based upon the sum of the dollar value of wagers, for each of the Position (x) contests considered separately, in which all (x) finishers, in exact position, were correctly selected, based upon the official order of finish. The minor share of the net Position (x) Pool shall be distributed as a single price pool to those (including recipients of the major share of the net Position (x) Pool) who selected all (x) finishers, in exact position, in one or more of the Position (x) contests. Each recipient of a minor share shall receive an amount equal to the single price times the number of Position (x) contests in which the recipient correctly selected the winning combination.

(C) If there are no wagers qualifying for the major share, the major share shall be added to the carryover. If there are no winning wagers, the minor share shall also be added to the carryover.

(5) Apportionment of Net Position (x) Pool Between Major and Minor Pool(s) The commission shall approve the method of apportioning the net Position (x) Pool between winners of the Major share of the Position (x) Pool and winners of the Minor share(s) of the Position (x) Pool. Example (utilizing Method 8): A Four Position Pool ( $x = 4$ ) consisting of 5 contests ( $n = 5$ ). The major share goes to those who correctly choose all 20 positions. Assume the Commission has approved three minor shares: The highest minor share goes to those who have picked all positions, in exact order, in 4 of the contests. The next minor share goes to those who have picked all positions, in exact order, in 3 of the contests. The final minor share goes to those who have picked all positions, in exact order, in 1 or 2 of the contests. One apportionment of payouts could be 40% of the net Position (x) pool for the major share, and 20% of the net Position (x) Pool for each of the three minor shares. Another apportionment of payouts could be 50% of the net Position (x) Pool for the major share, 25% for the highest minor share, 15% to the next minor share, and 10% to the final minor share.

(6) Dead Heats. In the event of a dead heat in any of the Position (x) contests, based upon the official order of finish:

(a) For purposes of determining whether a wager correctly selected the finishers, in exact position, contestants in a dead heat are deemed to jointly occupy both (or all) positions in the dead heat. For example, if 5 and 6 finish in a dead heat for first, then a selection of 5 for either first or second is correct, and a selection of 6 for either first or second is also correct.

(b) Each share of the net Position (x) Pool shall be distributed as a single price pool regardless of dead heats.

(7) Scratches

(a) If, due to a late scratch, the number of betting interests in a contest of the Position (x) Pool is reduced to fewer than (x), for purposes of the Position (x) Pool only, such contest shall be declared "no contest" and the Position (x) Pool shall be subject to the rules set forth in the "Cancelled Contests" section (subsection 7) of these rules.

(b) Should a betting interest in any contest of the Position (x) Pool be scratched or excused from the contest, no more wagers shall be accepted selecting that scratched contestant.

(c) Existing wagers that select a scratched betting interest shall be handled under one of the following methods. The Commission shall make its determination of which of these alternatives shall apply at the time of approving the wagering pool, which alternative shall remain in effect until and unless changed by the Commission.

(A) Method 1, Substitute a higher contestant number:

(i) The next higher live contestant number that is not already part of the wager shall be substituted for the scratched contestant number. If no higher contestant number is eligible, the search shall then proceed upward from contestant number 1.

(ii) If a wager selects more than one scratched contestant for a contest, the substitutions shall begin with the lowest scratched contestant number in the wager and proceed in order to the highest.

(iii) Substitution shall be performed on the basis of single wagers, regardless of whether a wager was placed as part of any type of multiple wager format such as "box" or "wheel".

(iv) The totalizer shall produce reports showing each of the wagering combinations with substituted contestants that became winners as a result of the substitution, in addition to the normal winning combination.

(B) Method 2, Substitute favorite contestant number:

(i) The actual favorite, as evidenced by total amounts wagered in the Win pool at the close of wagering on that contest, shall be substituted for the scratched contestant for all purposes, including pool calculations.

(ii) If the Win pool total for two or more favorites is identical, the substitution selection shall be the contestant with the lowest contestant number not already selected in the wager as part of the contest.

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(iii) If such favorite has already been selected in the wager as part of the contest, the next favorite(s) shall be used, as evidenced by the total amounts wagered in the Win pool, ordered from the highest amount to the lowest.

(iv) If a wager selects more than one scratched contestant for a contest, the substitutions shall begin with the lowest scratched contestant number in the wager and proceed in order to the highest.

(v) Substitution shall be performed on the basis of single wagers, regardless of whether a wager was placed as part of any type of multiple wager format such as “box” or “wheel”.

(vi) The totalizator shall produce reports showing each of the wagering combinations with substituted contestants that became winners as a result of the substitution, in addition to the normal winning combination.

(C) Method 3, Scratched contestant wins

(i) The scratched contestant is deemed to be a correct selection of a winning finisher, for purposes of the Position (x) Pool only.

(ii) The totalizator shall produce reports showing each of the wagering combinations that became winners as a result of the scratched contestants, in addition to the normal winning combination.

(D) Method 4, Scratched contestant loses:

(i) The scratched contestant is deemed to be a loser, for purposes of the Position (x) Pool only.

(ii) Other correctly selected finishers in a wager shall continue to count toward winning, as usual.

(8) Cancelled Contests

(a) If any of the Position (x) contests are cancelled or declared “no contest” prior to the first Position (x) contest being declared official, the entire Position (x) Pool shall be refunded on Position (x) wagers for those contests.

(b) If all remaining Position (x) contests are cancelled or declared “no contest” after the first Position (x) contest is declared official, the entire net Position (x) Pool, but not the Position (x) carryover, shall be distributed as a single price pool to wagers selecting the winning combination in the first Position (x) contest. However, if there are no wagers selecting the winning combination in the first Position (x) contest, the entire Position (x) Pool shall be refunded on Position (x) wagers for those contests.

(c) If any of the remaining Position (x) contests are cancelled or declared “no contest” after the first Position (x) contest is declared official, the net Position (x) pool shall be distributed in accordance with rules governing distribution of the minor share(s) where there is no winner of the major share. If there is more than one minor share, the entire net Position (x) pool, but not the Position (x) carryover, shall be divided amongst the minor share(s), in accordance with the Apportionment section (subsection 3) of these rules, in proportion to the designated percentages, or by some other method approved by the Commission.

(d) If any of the remaining Position (x) contests are cancelled or declared “no contest” after the first Position (x) contest is declared official, and the net Position (x) pool has been designated for distribution in accordance with the Mandatory Distribution section (subsection 10) of these rules, the rules governing mandatory distribution shall apply.

(9) Carryover Cap. The Position (x) carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Position (x) carryover equals or exceeds the designated cap, the Position (x) carryover will be frozen until it is won or distributed under other provisions of these Position (x) rules. After the Position (x) carryover is frozen, the part of the net pool that ordinarily would be added to the Position (x) carryover shall be distributed to those whose selection finished in the highest level of the minor share(s) of the Position (x) Pool for that performance.

(10) Mandatory Distribution

(a) A written request for permission to distribute the Position (x) carryover on a specific performance may be submitted to the Commission. The request shall contain justification for the mandatory distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. The licensee must notify the Commission at least 10 days prior to implementation. If the Position (x) Pool cannot be distributed during a designated performance, the mandatory distribution shall resume on the next approved mandatory distribution performance.

(b) If the Position (x) carryover is designated for distribution on a specified date and performance, and if there are no wagers qualifying for the major share, then the following precedence shall be followed in determining winning wagers for the net Position (x) Pool and the carryover pool:

(A) If the method chosen in subsection 3 is method 7, 8, 9, or 10, then:

(B) The major share and the Position (x) carryover shall be distributed as a single price pool to those who selected all (x) finishers, in exact posi-

tion, in the most individual Position (x) contests, based upon the official order of finish. Designated minor shares may still be awarded.

(C) If the method chosen in subsection 3 is 1, 2, 3, 4, 5, or 6, then:

(D) The major share and the Position (x) carryover shall be distributed as a single price pool to those who correctly selected the most finishers, in their exact positions, in the Position (x) contests, based upon the official order of finish. Designated minor shares may still be awarded.

(E) If there are no wagers that qualified for distribution of the major share, then all Position (x) tickets shall become winners and share 100% of that performance’s net Position (x) Pool and the Position (x) carryover pool as a single price pool.

(c) The Position (x) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(A) Upon written approval from the Commission (as provided in subsection 10a) of the Position (x) rules.

(B) Upon written approval from the Commission when there is a change in the carryover cap or when the Position (x) wager is discontinued.

(C) On the closing performance of the meet.

(d) If, for any reason, the Position (x) carryover must be held over to the corresponding Position (x) Pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Position (x) carryover plus accrued interest shall then be added to the net Position (x) Pool of the following meet on a date and performance so designated by the Commission.

(11) Coupled entries and mutuel fields

(a) Coupled entries and mutuel fields may be permitted in Position (x) contests with the written approval of the Commission.

(b) Contestants coupled in wagering as a coupled entry or mutuel field shall be considered part of a single betting interest for the purpose of price calculations and distribution of Position (x) Pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestants in that coupled entry or mutuel field shall remain valid betting interests and no refunds will be granted. If all contestants within a coupled entry or mutuel field are scratched, then the Scratches section (subsection 6) of these rules shall apply.

(c) For the purpose of Position (x) price calculations only, coupled entries and mutuel fields shall be calculated as a single finishing contestant, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule shall apply to all circumstances, including situations involving a dead heat. For example, if the actual order of finish in a contest is 1/2/1A/3/4, then the finishers used for that contest of the Position (x) would be 1/2/3/4.

(12) With the written approval of the Commission, the licensee may contribute to the

Position (x) carryover, or to the major or minor share(s) of the Position (x) Pool, a sum of money up to the amount of any designated cap.

Stat. Auth.: ORS 462.270(3), 462.147(2)

Stats. Implemented: ORS 462.279(3), 462.147, 462.072, 462.073

Hist.: RC 1-2017, f. & cert. ef. 1-23-17

## Oregon State Lottery Chapter 177

**Rule Caption:** Clarifies that the award of contracts for major procurements requires Commission approval; housekeeping edits

**Adm. Order No.:** LOTT 1-2017

**Filed with Sec. of State:** 1-27-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 177-036-0030

**Rules Repealed:** 177-036-0030(T)

**Subject:** The Oregon Lottery amended the above referenced administrative rule to clarify that it is the award of Lottery contracts for major procurements that requires Lottery Commission approval as provided in ORS 461.440. Other amendments included housekeeping changes.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

**177-036-0030**

**Procurement Authority**

(1) General: The Director is authorized to initiate procurements and enter into all Contracts and Contract amendments for Goods and Services that have been approved by the Lottery Commission in the Lottery’s annual financial plan (as it may be amended) or are otherwise pre-approved in

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concept at a Lottery Commission meeting, on behalf of the Lottery Commission except as follows:

(a) Price in Excess of \$75,000: The Award of any unbudgeted procurements that will result in a Contract with a Contract Price in excess of \$75,000 over the term of the Contract and Unbudgeted Contracts with a Contract Price in excess of \$75,000 over the term of the Contract requires the approval of the Lottery Commission. For purposes of section (1) of this rule, "Unbudgeted" means expenditures that have not been previously approved by the Commission in the Lottery's current financial plan or at a Commission meeting.

(b) Amendments in Excess of \$75,000: The Award of the first Unbudgeted Contract amendment that increases the Contract Price to more than \$75,000 and all subsequent Unbudgeted Contract amendments that increase the Contract Price by more than \$75,000 since the last Unbudgeted Contract Amendment approved by the Commission, requires the approval of the Lottery Commission.

(c) Major Procurements: The Award of all Contracts for Major Procurements requires the approval of the Lottery Commission.

(2) Commission Approved Awards: Notwithstanding the provisions of section (1) of this rule, the Commission having once approved the Award of a Contract or Contract amendment authorizes the Director to negotiate the terms of and execute the Contract or Contract amendment, and make all disbursements and payments as provided in the Contract or Contract amendment, without further action by the Commission.

(3) Emergency Procurements: Notwithstanding the provisions of section (1) of this rule, the Director is authorized to enter into a Contract awarded as an Emergency procurement as set forth in OAR 177-036-0040(6).

(4) Rule or Statutory Authorization: If a Contract action is authorized by statute or rule, the Director is authorized to execute the Contract or any Contract amendment, and make all disbursements and payments as required by the terms of the Contract or Contract amendment.

(5) Price Reduction: The Director is authorized, without further action by the Commission, to execute any Contract amendment that results in a reduction of the price paid by the Lottery per item, unit, or other measure of the Goods or Services provided under the Contract, and may exercise any option under a Contract previously approved by the Commission, where the option terms of the approved Contract establish a specific price for the Goods or Services to be acquired under the option.

(6) Delegation by Director: Pursuant to ORS 461.180(7), the Director may delegate, in writing, to any of the employees of the Lottery the exercise or discharge of any of the powers, duties, or functions of the Director in these Division 36 rules.

(7) Legal Sufficiency Review: When Attorney General legal sufficiency review and approval is required under ORS 291.047, the Lottery must seek legal sufficiency review and approval of Contracts pursuant to ORS 291.047 and review of procurement documents pursuant to OAR 137-045-0035.

Stat. Auth.: OR Const., Art. XV, §4(4) & ORS 461  
Stats. Implemented: ORS 461.400, 461.410, 461.420, 461.430 & 461.440  
Hist.: LOTT 12-2005(Temp), f. & cert. ef. 11-3-05 thru 4-30-06; LOTT 16-2005, f. 12-21-05, cert. ef. 12-31-05; LOTT 12-2016(Temp), f. & cert. ef. 11-8-16 thru 5-6-17; LOTT 1-2017, f. 1-27-17, cert. ef. 2-1-17

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## Oregon Tourism Commission Chapter 976

**Rule Caption:** Amend Wine Country License Plate rule to closely align with Regional Cooperative Tourism Program Regions

**Adm. Order No.:** ORTC 1-2017

**Filed with Sec. of State:** 2-13-2017

**Certified to be Effective:** 2-13-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 976-002-0040

**Subject:** The amended rule would modify the wine producing regions as identified by the Wine Country License plate administrative rules to better align with the state's seven Regional Cooperative Tourism Program regions.

**Rules Coordinator:** Sarah Watson—(503) 967-1568

### 976-002-0040

#### Designation of Regions

The major wine producing regions of the state are:

(1) Region 1, also known as The Mid-Willamette Valley region, consisting of Marion, Polk and Yamhill Counties;

(2) Region 2, also known as the South-Willamette Valley region, consisting of Lane, Linn, Benton, and Clackamas Counties;

(3) Region 3, also known as the Southern region, consisting of Douglas, Josephine, Jackson, Klamath and Lake Counties;

(4) Region 4, also known as the Eastern region, consisting of Sherman, Gilliam, Morrow, Umatilla, Union, Wallowa, Wheeler, Grant, Harney, Baker and Malheur Counties;

(5) Region 5, also known as the Greater Portland region, consisting of Columbia, Multnomah and Washington Counties;

(6) Region 6, also known as the Central region, consisting of Jefferson, Deschutes and Crook Counties;

(7) Region 7, also known as the Hood/Gorge region, consisting of Hood River and Wasco Counties; and

(8) Region 8, also known as the Coast region, consisting of Clatsop, Tillamook, Lincoln, Coos and Curry Counties.

Stat. Auth.: ORS 284.111(6), 805.274(3)

Stats. Implemented: ORS 805.274

Hist.: ORTC 1-2015, f. 2-17-15, cert. ef. 3-1-15; ORTC 1-2017, f. & cert. ef. 2-13-17

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## Oregon Youth Authority Chapter 416

**Rule Caption:** Proposed are housekeeping changes to employee titles. OYA no longer has a Treatment Services director.

**Adm. Order No.:** OYA 1-2017

**Filed with Sec. of State:** 1-31-2017

**Certified to be Effective:** 1-31-17

**Notice Publication Date:** 1-1-2017

**Rules Amended:** 416-070-0010, 416-070-0020, 416-070-0040, 416-070-0050, 416-070-0060

**Subject:** OYA no longer has a Treatment Services director. The amended rules reflect current OYA employee titles, and add an option for a designee.

**Rules Coordinator:** Winifred Skinner—(503) 373-7570

### 416-070-0010

#### Definitions

(1) Development Services Assistant Director: A person who leads and directs OYA treatment services statewide and reports to the OYA director.

(2) Clinical Supervision: Oversight by a qualified person of mental health services and supports provided according to this rule, including ongoing evaluation and improvement of the effectiveness of those services and supports.

(3) Diagnosis: A diagnosis consistent with the most current Diagnostic and Statistical Manual of Mental Disorders (DSM).

(4) Mental Health Assessment: The written assessment by a QMHP of an offender's mental status and emotional, cognitive, family, developmental, behavioral, social, recreational, physical, nutritional, school or vocational, substance abuse, cultural and legal functioning, concluding with a completed DSM five-axes diagnosis, clinical formulation, prognosis for treatment, treatment recommendations and plan.

(5) Mental Status Examination: An overall standardized assessment of an offender's mental functioning and cognitive abilities.

(6) OYA: Oregon Youth Authority.

(7) Qualified Mental Health Professional (QMHP): A person who provides mental health treatment services to offenders in OYA facilities.

(8) Treatment Services Supervisor: A person who provides clinical supervision of the mental health treatment services and supports provided by a QMHP at an OYA facility.

Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022

Stat. Implemented: ORS 420A.022

Hist.: OYA 1-2011(Temp), f. & cert. ef. 6-14-11 thru 12-1-11; OYA 4-2011, f. 9-7-11, cert. ef. 9-9-11; OYA 1-2015, f. & cert. ef. 2-19-15; OYA 1-2017, f. & cert. ef. 1-31-17

### 416-070-0020

#### Credentialing and Certification Process

(1) The Development Services Assistant Director or designee is responsible for credentialing employees hired as OYA Treatment Services Supervisors and QMHPs.

(2) Treatment Services Supervisors and QMHPs must meet the requirements established in OAR 416-070-0030 as a Treatment Services Supervisor or QMHP.

(3) The Development Services Assistant Director or designee is responsible for reviewing education, experience and competencies to determine if the individual can be certified as meeting the professional standards of a Treatment Services Supervisor or QMHP as set forth in these rules.

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(4) A copy of transcripts, academic degrees, licenses, certifications, and verification forms used to record the credentialing and certification information must be retained in the Treatment Services Supervisor's or QMHP's personnel file.

(5) OYA must provide to each person certified as a QMHP or a Treatment Services Supervisor, a position description describing the duties that the person is certified to provide.

Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022  
Stat. Implemented: ORS 420A.022  
Hist.: OYA 1-2011(Temp), f. & cert. ef. 6-14-11 thru 12-1-11; OYA 4-2011, f. 9-7-11, cert. ef. 9-9-11; OYA 1-2015, f. & cert. ef. 2-19-15; OYA 1-2017, f. & cert. ef. 1-31-17

## 416-070-0040

### Clinical Supervision of QMHP Employees

(1) A QMHP must deliver services under the direct supervision of:

(a) A Treatment Services Supervisor; or

(b) A person designated by the Development Services Assistant Director to provide clinical supervision.

(2) The Treatment Services Supervisor or person designated by the Development Services Assistant Director to provide clinical supervision must operate within the scope of his or her practice or licensure, and demonstrate the competency to oversee and evaluate the mental health treatment services and supports provided by a QMHP.

(3) Clinical supervision must be provided at least monthly for each QMHP.

(4) The effectiveness of a QMHP's mental health services will be evaluated by overseeing the QMHP's service documentation, case planning, ethical practice, and assessment skills.

Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022  
Stat. Implemented: ORS 420A.022  
Hist.: OYA 1-2011(Temp), f. & cert. ef. 6-14-11 thru 12-1-11; OYA 4-2011, f. 9-7-11, cert. ef. 9-9-11; OYA 1-2015, f. & cert. ef. 2-19-15; OYA 1-2017, f. & cert. ef. 1-31-17

## 416-070-0050

### QMHP Recertification

(1) A QMHP certification issued under these rules is subject to renewal every two years for unlicensed practitioners, and no longer than every two years for licensed practitioners.

(a) A QMHP certification of an unlicensed practitioner will expire on September 30. The issuance date of the certified person's first certification will determine if the certification expires on an odd or even year. Certifications issued in odd-numbered years expire in the next odd-numbered year, and certifications issued in even-numbered years expire in the next even-numbered year.

(b) A QMHP certification of a licensed practitioner will expire when the practitioner's license expires.

(c) A person seeking renewal of a certification must submit the following to the Development Services Assistant Director or designee:

(A) A copy of the person's current annual performance appraisal reflecting performance in mental health services; and

(B) A copy of the person's current license, if the person is a licensed practitioner; or

(C) If the person is not a licensed practitioner, documentation of the following:

(i) At least 24 hours of clinical supervision per year, prorated based on the person's date of hire and budgeted position status; and

(ii) At least five hours of training pertinent to the mental health services in an OYA facility which may include OYA training, supervisor-approved completed readings, verified workshop attendance, or class participation in a graduate program focusing on mental health treatment of mental health disorders.

(2) If the person's previous certification has expired, the person must apply for recertification by submitting the documents listed in subsection (c) of this rule to the Development Services Assistant Director or designee. The person may not provide mental health services until the person is recertified.

Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022  
Stat. Implemented: ORS 420A.022  
Hist.: OYA 1-2011(Temp), f. & cert. ef. 6-14-11 thru 12-1-11; OYA 4-2011, f. 9-7-11, cert. ef. 9-9-11; OYA 1-2015, f. & cert. ef. 2-19-15; OYA 1-2017, f. & cert. ef. 1-31-17

## 416-070-0060

### Variations

(1) The Development Services Assistant Director may grant a variance to the criteria used to determine the certification status of a QMHP or Treatment Services Supervisor if the Development Services Assistant Director documents the reason for the variance and the proposed timeline for the variance.

(2) Signed documentation from the Development Services Assistant Director indicating support of the variance must be retained in the subject QMHP or Treatment Services Supervisor employee's personnel file.

Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022  
Stat. Implemented: ORS 420A.022  
Hist.: OYA 1-2011(Temp), f. & cert. ef. 6-14-11 thru 12-1-11; OYA 4-2011, f. 9-7-11, cert. ef. 9-9-11; OYA 1-2015, f. & cert. ef. 2-19-15; OYA 1-2017, f. & cert. ef. 1-31-17

## Parks and Recreation Department Chapter 736

**Rule Caption:** Amend Scenic Waterway Rules Adding the Chetco and Molalla Rivers

**Adm. Order No.:** PRD 1-2017

**Filed with Sec. of State:** 2-2-2017

**Certified to be Effective:** 2-2-17

**Notice Publication Date:** 9-1-2016

**Rules Adopted:** 736-040-0100, 736-040-0110

**Subject:** These revisions to Division 40, Scenic Waterway Rules, add management rules for the Chetco and Molalla scenic waterways. The rivers were designated as Scenic Waterways by Governor Brown in 2016, and these rules will govern the management of the newly designated sections.

**Rules Coordinator:** Claudia Ciobanu—(503) 872-5295

## 736-040-0100

### Chetco River Scenic Waterway

(1) Accessible Natural River Area:

(a) That segment of the Chetco River from the Steel Bridge to Eagle Creek is classified as an Accessible Natural River Area.

(b) The department shall administer this Accessible Natural River Area consistent with the provisions of OAR 736-040-0035 and 736-040-0040(1)(e)(B). In addition, all improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) In order to preserve the river and related adjacent lands in an essentially primitive condition, no new improvements that are visible from the river other than those erected or made in connection with a compatible existing use will be allowed to proceed. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(d) Any new improvement allowed to proceed should be primitive in character and include screening by topography so it is not visible from the river.

(e) New roads may be allowed to proceed only when not visible from the river. Screening may be provided by topography, vegetation, or both.

(f) Major extensions, realignments, or upgrades to existing roads that are visible from the river shall be totally screened from view. Screening may be provided by topography, vegetation, or both.

(2) Scenic River Area:

(a) That segment of the Chetco River from Eagle Creek to the South Fork Confluence is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(3) Recreational River Area:



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(a) That segment of the Chetco River from the South Fork Confluence to the southern boundary of Alfred A. Loeb State Park is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Curry County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(e) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(f) New roads and similar forms of development shall be set back from the river consistent with Curry County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 – 390.925

Hist.: PRD 1-2017, f. & cert. ef. 2-2-17

## 736-040-0110

### Molalla River Scenic Waterway

(1) Scenic River Area:

(a) That segment of the Molalla River from the Confluence with the Table Rock Fork to Pine Creek is classified as a Scenic River Area.

(b) The department shall administer this Scenic River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(b)(B). In addition, all new improvement shall be consistent with applicable Federal and State law, and Clackamas County land use and development regulations.

(c) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(d) Natural evergreen vegetation shall be maintained between the improvements and the river. If proposed improvements are visible from the river the department may allow the project to proceed if vegetation is established by the applicant that will substantially screen the project in a reasonable time (for example, 4–5 years). The condition of "substantial vegetative screening" shall consist of an ample density and mixture of native vegetation to totally obscure or allow only a highly filtered view of the proposed structures or improvements as seen from the waters. Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New roads may be allowed to proceed only when screened from view from the river by topography, vegetation, or both.

(2) Recreational River Area:

(a) That segment of the Molalla River from the Pine Creek Confluence to Trout Creek is classified as a Recreational River Area.

(b) The department shall administer this Recreational River Area as provided in OAR 736-040-0035 and 736-040-0040(1)(c)(B). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

(c) Natural evergreen vegetation shall be maintained between improvements and the river unless removal does not impact the view as seen from the river.

(d) Improvements necessary for public outdoor recreation, as provided by public agencies, and resource protection or enhancement may be visible from the river but shall be designed to blend with the natural character of the landscape as much as possible.

(e) New improvements shall be finished in colors and tones that blend with the natural character of the landscape. For the purposes of this rule, landscape includes indigenous vegetation, soils and rock material.

(f) New improvements (except as provided under OAR 736-040-0030(5)) shall be partially screened with existing vegetation, topography, or both. If inadequate topography or vegetative screening exists on a site, the improvement may be allowed to proceed if vegetation (preferably native) is established by the applicant to provide partial screening of the proposed improvement as seen from the waters within a reasonable time (4-5 years). The condition of "partial screening" shall consist of an ample density and mixture of native vegetation to partially obscure (at least 50 percent) the viewed improvement, or allow a partially filtered view (at least 50 percent filtering) of the proposed improvement.

(g) New roads, mines and similar forms of development shall be set back from the river consistent with Clackamas County zoning and land development requirements and be partially screened from view from the river by topography or by existing or newly established native vegetation.

(3) River Community Area:

(a) That segment of the Molalla River from the Confluence with Trout Creek to the Glen Avon Bridge is classified as a River Community Area.

(b) Lands located north of the Glen Avon Bridge, and north of Dickey Prairie Road west of the Glen Avon Bridge, do not affect the view from the waters within the scenic waterway and are not regulated as related adjacent land under this division.

(c) The department shall administer this River Community Area as provided in OAR 736-040-0035 and 736-040-0040(1)(f). In addition, all new improvements shall be consistent with applicable Federal and State laws, and Clackamas County land use and development regulations.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.805 – 390.925

Hist.: PRD 1-2017, f. & cert. ef. 2-2-17

## Public Utility Commission Chapter 860

**Rule Caption:** In the Matter of Revisions to Division 036 - Water Rules.

**Adm. Order No.:** PUC 1-2017

**Filed with Sec. of State:** 1-24-2017

**Certified to be Effective:** 1-24-17

**Notice Publication Date:** 11-1-2016

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**Rules Repealed:** 860-036-0001, 860-036-0005, 860-036-0010, 860-036-0015, 860-036-0020, 860-036-0025, 860-036-0030, 860-036-0035, 860-036-0040, 860-036-0045, 860-036-0050, 860-036-0055, 860-036-0060, 860-036-0065, 860-036-0070, 860-036-0075, 860-036-0080, 860-036-0085, 860-036-0095, 860-036-0097, 860-036-0105, 860-036-0110, 860-036-0120, 860-036-0125, 860-036-0130, 860-036-0135, 860-036-0140, 860-036-0205, 860-036-0210, 860-036-0215, 860-036-0220, 860-036-0225, 860-036-0230, 860-036-0235, 860-036-0240, 860-036-0245, 860-036-0250, 860-036-0301, 860-036-0305, 860-036-0310, 860-036-0315, 860-036-0320, 860-036-0325, 860-036-0335, 860-036-0340, 860-036-0345, 860-036-0350, 860-036-0360, 860-036-0365, 860-036-0370, 860-036-0380,

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860-036-0405, 860-036-0410, 860-036-0412, 860-036-0415, 860-036-0420, 860-036-0425, 860-036-0505, 860-036-0605, 860-036-0610, 860-036-0615, 860-036-0616, 860-036-0620, 860-036-0630, 860-036-0635, 860-036-0640, 860-036-0645, 860-036-0705, 860-036-0708, 860-036-0710, 860-036-0715, 860-036-0716, 860-036-0720, 860-036-0725, 860-036-0730, 860-036-0735, 860-036-0737, 860-036-0738, 860-036-0739, 860-036-0740, 860-036-0745, 860-036-0750, 860-036-0755, 860-036-0756, 860-036-0757, 860-036-0760, 860-036-0765, 860-036-0805, 860-036-0810, 860-036-0815, 860-036-0816, 860-036-0820, 860-036-0900, 860-036-0905, 860-036-0910, 860-036-0915, 860-036-0920, 860-036-0925, 860-036-0930, 860-036-0115

**Subject:** This rulemaking repeals OAR 860-036-0001 through 860-036-0930 and replaces those rules with new, similar rules to govern all aspects of water utility regulation. The new rules, while similar to the repealed rules, are revised, clarified and reorganized to make them easier to understand and follow. OAR 860-036-1910 increases the threshold amount for water service that a small water utility may charge before potentially being subject to rate regulation by the Commission.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-036-1000

### Scope and Applicability of Rules

(1) The rules contained in Division 036 are applicable to water utilities providing water service in the State of Oregon.

(2) All water utilities must comply with applicable Commission rules, regulations, statutes, and orders, including those related to the filing of applications and petitions.

(3) Upon request or its own motion, the Commission may waive any of the Division 036 rules for good cause shown. A request for waiver must be made in writing and filed with the Commission's Filing Center.

(4) The rules contained in Division 036 do not restrict the authority of the Commission to require repairs or service improvements incorporating standards other than those set forth in this division when, after investigation, the Commission determines they are necessary.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 756.075, 756.515, 757.020, 757.035, 757.310-757.330

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1010

### General Definitions

As used in Division 036:

(1) "Applicant" means a person who does not meet the definition of a customer, who applies for service with a water utility.

(2) "Commercial service" means water service provided by the water utility that the customer uses in the promotion of a business or business product that is a source of revenue or income to the customer or others using the premises.

(3) "Customer" means a person who is currently receiving water service and is entitled to certain rights as a customer under these rules. A residential customer retains customer status for 20 calendar days following voluntary disconnection of service and must be treated as a customer if he or she reappplies for service within that 20 calendar day period.

(4) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(5) "Informal complaint" means a complaint, registered with the Consumer Services Section, which is not the subject of a formal complaint.

(6) "Rate-regulated water utility" means a water utility that is subject to regulation of its rates and service under ORS 757.061.

(7) "Residential service" means water service provided for domestic or irrigation purposes in a residential area and is not considered a commercial service.

(8) "Served" for purpose of delivery of any required notice or document, unless otherwise specifically noted, means: delivered in person, by personal contact over the telephone, or in writing delivered to the party's last known address. If delivered by US Mail, the notice is considered served two calendar days after the date postmarked, the date of postage metering, or deposit in the US Mail, excluding Sundays and postal holidays.

(9) "Service-regulated water utility" means a water utility that is subject to regulation of its service under ORS 757.061.

(10) "Statement of rates" means a list of water service rate schedules and charges, including the terms and conditions for each service, for water utilities that are not rate regulated.

(11) "Tariff" means a rate-regulated water utility's published rates and charges, terms and conditions for each type of service, and rules and regulations.

(12) "Water system" means all assets, equipment, and infrastructure necessary in the provision of water service to customers.

(13) "Water utility" means a water system that is subject to Commission regulation as provided under ORS 757.005 and ORS 757.061. "Water utility" may include an association that provides water to its members if the association also serves the public or becomes regulated under ORS 757.063 and OAR 860-036-1930.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.061

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1050

### Annual Fees Payable to the Commission by a Water Utility

(1) Subject to the provisions of this rule, each calendar year all water utilities under some form of Commission regulation must:

(a) Pay an annual revenue fee to the Commission as authorized in ORS 756.310; and

(b) Provide all information required in the Commission's approved annual fee statement form available on the Commission's website at [www.puc.state.or.us/Pages/water/index.aspx](http://www.puc.state.or.us/Pages/water/index.aspx).

(2) A fee payment may be made by cash, money order, bank draft, sight draft, cashier's check, certified check, or personal check. A payment made by check will be conditionally accepted until the check is cleared by the bank on which it is drawn.

(3) In addition to the annual fee payable under section (1) of this rule, the Commission may impose the additional fees and penalties as authorized by ORS 756.350 and OAR 860-001-0050.

(4) For any year in which a water utility's statement form was due, the Commission may audit the utility as the Commission deems necessary and practicable. The audit must begin no later than three years after the statement form's due date. If the Commission determines that the utility has underreported its subject revenues, the Commission may assess an additional annual fee, along with a penalty for failure to pay under ORS 756.350. If the Commission determines that the utility has overpaid its annual fee, the Commission may, at its discretion, recompense the utility with a refund or a credit against annual charges subsequently due.

Stat. Auth.: ORS 183, 756

Stats. Implemented: ORS 756.310, 756.320, 756.350

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1060

### Estimated Annual Fees Payable to the Commission by a Water Utility

(1) For any year in which a water utility fails to file a completed annual statement form as required under OAR 860-036-1050(1), the Commission may determine a proposed annual fee based upon any information available to the Commission. The Commission will provide written notice of the proposed annual fee to the water utility. The notice must:

(a) Include a penalty for failure to pay as required by ORS 756.350;

(b) Include a late statement fee in accordance with OAR 860-001-0050;

(c) Be made no later than three years after the statement form's due date; and

(d) Include a statement that the water utility may request a hearing on the proposed annual fee within 30 calendar days of the notice.

(2) If the water utility has not filed a petition by the end of the 30-calendar day period, the proposed annual fee is due and payable.

Stat. Auth.: ORS 183, 192, 756, 757

Stats. Implemented: ORS 756.040, 756.310, 756.320, 756.350

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1100

### Information for Applicants and Customers

(1) When service is initiated and not less than once a year thereafter, a water utility must provide its residential customers with a copy of the Customer Rights and Responsibilities available on the Commission's website at <http://www.puc.state.or.us/consumer/Customer%20Rights%20and%20Responsibilities.pdf>, or a Commission-approved version prepared by the utility. A copy of the Customer Rights and Responsibilities summary must be posted in a conspicuous place in the water utility's business office. Upon request, the Commission will provide a translation of the Commission's Customer Rights and Responsibilities summary in Spanish, Vietnamese, Cambodian, Laotian, or Russian.

(2) All required notices and filings must include the water utility's legal name, name of the water system, mailing address, telephone number, emergency telephone number, and email address or website.

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(3) Upon request by an applicant or a customer, a water utility must provide:

- (a) A copy of its approved tariffs or statement of rates;
- (b) A copy of the utility's rules and regulations applicable to the type of service being provided; and
- (c) The option to receive electronic copies of all written notices to be issued on the customer's account under these rules.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1110

### Water Utility Emergency and Nonemergency Response Requirements

(1) Each water utility must maintain a business location and a telephone number at which it may be contacted directly during its regular business hours. A water utility must respond to nonemergency inquiries, complaints, and service problems within one business day.

(2) A water utility must provide a means by which it may be contacted at any hour regarding a water failure or emergency. A water utility must respond to the caller within one hour of the time of the call or message and promptly take appropriate action to resolve the failure or emergency. If extenuating circumstances exist that prevent the water utility from responding to the caller within one hour, the Commission may require the water utility to justify the delay.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1120

### Designation of Third Party to Receive Copies of Bills and Notices

A water utility must offer applicants and customers the option to designate a third party to receive copies of bills, notices, or both. When a water utility receives such designation, it must send duplicate copies of bills or notices required under these rules to the customer's representative.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1150

### Dispute Resolution

(1) When a dispute occurs between an applicant or a customer and a water utility regarding any charge or service, the water utility must:

- (a) Thoroughly investigate the matter;
- (b) Promptly report the results of its investigation to the complainant;
- (c) Inform the complainant of the right to have a water utility supervisor review any dispute;
- (d) Prepare a written record of the dispute including the name and address of the complainant involved, the date the complaint was received, the issues in dispute, a summary of the water utility's efforts to resolve the dispute, and the disposition of the matter; and
- (e) Retain records of the dispute for at least 36 months after the investigation is closed.

(2) If the water utility and the complainant cannot resolve the dispute, the water utility must inform the complainant of the right to contact the Consumer Services Section and request assistance in resolving the dispute. The water utility must provide the complainant information about how to contact the Consumer Services Section.

(3) The Consumer Services Section will investigate any dispute upon request to determine whether it can be resolved as an informal complaint.

(4) If the Consumer Services Section cannot resolve the dispute, the complainant may file a formal written complaint with the Commission under ORS 756.500. The formal complaint must be submitted on an approved form available from the Consumer Services Section.

(a) The complaint must be filed electronically with the Filing Center at PUC.FilingCenter@state.or.us.

(b) If the complainant does not have access to electronic mail,

(A) The complaint may be mailed, faxed, or delivered to the Filing Center at the address set out in OAR 860-001-0140; and

(B) The complaint must include a request for waiver of electronic service and filing requirements. This request is included on the form available from the Consumer Services Section.

(c) The Commission will serve the complaint on the water utility. The Commission may electronically serve the water utility with the complaint if the electronic mail address is verified prior to service of the complaint and the delivery receipt is maintained in the official file.

(d) The water utility must answer the complaint within 15 calendar days of service of the complaint by the Commission. The water utility must serve a copy of its answer on the complainant.

(A) If the water utility files a motion to dismiss, the complainant may file a response within 15 calendar days of the motion. If the complainant responds, the complainant must file the response with the Filing Center and send a copy to the utility. The Commission may make a decision on the formal complaint based on the information in the complaint, the utility's response and motion to dismiss, and the complainant's response to the utility's motion; or

(B) The Commission may set a procedural schedule for the complaint proceedings, including, but not limited to, scheduling dates for receiving additional information from the parties, telephone conferences, or a hearing. A hearing may be held on less than 10 calendar days' notice when good cause is shown.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.500-558  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1160

### Continued or Restored Service Pending Informal or Formal Dispute

(1) A complainant with an informal or formal complaint is entitled to continued or restored service if:

(a) Disconnection of service is or was based on grounds other than tampering with water utility property, stealing, diverting, or engaging in unauthorized use of water;

(b) A bona fide dispute exists in which the facts asserted entitle the complainant to service;

(c) The complainant diligently pursues dispute resolution under the Commission's rules; and

(d) The complainant pays all undisputed amounts for water service pending resolution of the dispute.

(2) In determining whether the conditions in section (1) of this rule are met for a complainant with an informal complaint, the water utility must consult with the Consumer Services Section.

(3) A complainant with a formal complaint may request a hearing to determine entitlement to continued or restored service. Unless extraordinary circumstances exist, the Commission will conduct the hearing by telephone within three business days. Notice of the hearing will be provided to the complainant and the water utility at least 12 hours before the date and time of the hearing.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.500  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1200

### Applications for Water Utility Service

(1) Any person wanting water service must submit an application to the water utility. A separate application is required for each property to be served.

(2) A water utility may require an applicant to provide the following information when applying for service:

(a) The applicant's name, service address, and billing address;

(b) The contact information where the applicant can be reached;

(c) The type of water service requested and its intended use; and

(d) The name to be used to identify the account, if different than the applicant's actual name.

(3) If the account is for residential service, the water utility may also request the applicant to provide the following information:

(a) The names and birth dates of all persons responsible for payment on the account; and

(b) For each person responsible for payment on the account, two forms of government-issued photo identification, or one government-issued photo identification and one of the following:

(A) A valid social security number;

(B) A current photo identification from a school or employer and the name, address, and telephone number of a person who can verify the applicant's identity, such as a teacher, employer, or caseworker; or

(C) Other information deemed sufficient by the water utility to establish an applicant's identification.

(4) Once an applicant has submitted all information required by the water utility under these rules, a water utility must either accept or refuse an application within two business days of its receipt.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

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## 860-036-1210

### Establishing Credit for Residential Service

(1) Except as provided by section (3) of this rule, a water utility may require an applicant to establish satisfactory credit for new residential service by showing one of the following:

(a) The applicant received 12 months of continuous water service during the preceding 24 months, and the water utility can verify that the applicant voluntarily disconnected service and timely paid for all services rendered; or

(b) The applicant provides proof of a regular source of income.

(2) If an applicant is unable to establish satisfactory credit, a water utility may require a deposit under OAR 860-036-1220(2) or allow a written surety agreement under OAR 860-036-1230.

(3) An applicant who has customer status under OAR 860-036-1010(3) is not required to establish credit for new residential service.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1220

### Deposits for Residential Service

(1) Under conditions set forth below, a water utility may require an applicant or customer to pay a deposit as a guarantee of payment for services provided. Amounts held by a water utility may not exceed one-sixth of the actual or estimated annual billing for the premises.

(2) A water utility may require an applicant to pay, prior to service being provided, a deposit at the time of filing an application if:

(a) The applicant is unable to establish credit under OAR 860-036-1210;

(b) The applicant was previously disconnected by the water utility for tampering with water utility facilities, theft of service, or unauthorized use of water under OAR 860-036-1590; or

(c) The applicant was a prior customer of the water utility during the last 24 months and either:

(A) Was disconnected for nonpayment; or

(B) Failed to pay the account final bill by the due date.

(3) After service is initiated, the water utility may require a customer to pay a deposit, to be paid in full within seven calendar days, if:

(a) The customer provided false information to establish credit; or

(b) The customer tampered with water utility facilities or engaged in theft of service or unauthorized use of water under OAR 860-036-1590.

(4) A customer's failure to pay a deposit imposed under section (3) of this rule within seven calendar days is grounds for disconnection under OAR 860-036-1500.

(5) The water utility may adjust the deposit amount when a customer moves to a new location within the water utility's service area, and the anticipated bill at the new residence will be at least 20 percent greater than the basis of the existing deposit.

(6) When the customer pays the deposit in full, the water utility must provide the customer with a written document showing the date, the service address, the amount of deposit, the customer's payment made in full, the interest rate to be applied to the deposit, and an explanation of the conditions under which the deposit will be refunded.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1230

### Surety Agreements

(1) A water utility must inform any residential applicant or customer who is required to pay a deposit of the opportunity to provide a written surety agreement in lieu of paying the deposit. A surety agreement obligates another qualifying residential customer of the same water utility to pay an amount up to the required deposit if the secured account is later disconnected and a balance remains owing following the due date for the closing charges. To qualify as a surety, the other residential customer must have had 12 months of continuous service with the water utility without a late payment.

(2) If the deposit is required of an applicant under OAR 860-036-1220(2), the water utility may require the signed surety agreement prior to service being provided.

(3) If the deposit is required of a customer under OAR 860-036-1220(3), the water utility may require a signed surety agreement within seven calendar days. A customer's failure to timely provide a surety agreement is grounds for disconnection under OAR 860-036-1500.

(4) If the secured account is disconnected and a balance remains following the due date for closing charges, the water utility may bill the sure-

ty for amounts up to the surety agreement amount. The water utility may apply any payment received from the surety first to the amount due under the surety agreement. The water utility may disconnect the surety's service for non-payment of the surety agreement amount after providing notice to the surety under OAR 860-036-1510.

(5) The surety may terminate the surety agreement after 12 months upon seven calendar days' advance written notice to the water utility.

(6) A water utility may terminate a surety agreement at any time upon seven calendar days' notice to both the surety and the secured customer if the surety no longer meets the qualifications under section (1) of this rule.

(7) In the event a surety agreement is terminated under section (5) or (6) of this rule, the water utility will provide notice of the termination of the surety agreement to the customer. The water utility may require the customer, within seven calendar days, to pay the required deposit amount, enter into a deposit payment arrangement, or obtain a written surety agreement from another qualifying customer.

(8) The surety agreement automatically terminates when:

(a) The secured account is closed and paid in full;

(b) The secured account is closed and the surety pays the full amount secured by the surety agreement; or

(c) The customer with the secured account establishes credit under OAR 860-036-1260(2) or pays a deposit under OAR 860-036-1220.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1240

### Deposit Payment Arrangements for Residential Service

(1) A water utility must allow a deposit for residential service to be paid in three installments unless the deposit:

(a) Is required to restore service that was disconnected for failure to pay a deposit; or

(b) Was assessed under OAR 860-036-1220(3).

(2) Under a deposit installment agreement, the water utility may require the first installment to be paid immediately and the remaining two installments to be paid 30 and 60 calendar days after the first installment payment.

(3) For each deposit installment agreement, the water utility must provide a written agreement that specifies the amount and date each installment payment is due. The agreement must also include a statement, printed in bold-face type, that water service will be disconnected if an installment payment is not paid.

(4) A customer's failure to abide by the terms of a deposit installment agreement is grounds for disconnection under OAR 860-036-1500.

(5) If a water utility adjusts the deposit amount under OAR 860-036-1220(5), the water utility must adjust the remaining payments to include the additional amounts required.

(6) When a payment is made for both water service and a deposit installment, the payment must be applied first to the deposit installment due.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1250

### Interest on Deposits for Residential and Nonresidential Service by Rate-Regulated Utilities

(1) Rate-regulated water utilities must pay interest on all customer deposits. Each year the Commission will notify all rate-regulated water utilities of the required interest rate to be applied to deposits held during January 1 through December 31 of the subsequent year.

(2) If the deposit is held beyond one year, accrued interest must be paid by a credit to the customer's account. If held less than one year, interest must be prorated.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1260

### Refund of Deposits

(1) A water utility must refund all deposits and accrued interest once credit is established, reestablished, or when service is disconnected. The water utility must issue a credit to the customer's account or mail the refund to the customer's last known address unless otherwise specified. Customer refunds must first be applied to any unpaid balance on the customer's account.

(2) For purposes of this rule, credit is considered established or reestablished one year after the deposit is paid in full if:

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- (a) The account is current;
  - (b) Not more than two 7-calendar day disconnection notices were issued to the customer during the previous 12 months; and
  - (c) The customer was not disconnected for nonpayment during the previous 12 months.
- (3) Deposits plus accrued interest may be refunded or credited, in whole or in part, to the customer's account at any time earlier than prescribed in this rule, provided the water utility's procedures are nondiscriminatory.
- (4) The water utility must honor valid claims for payment of refunds if received within one year of the date service is disconnected. Funds held beyond one year after the date service is disconnected will be disposed of in accordance with ORS 98.316.
- (5) Accrued interest must be paid in accordance with OAR 860-036-1250. A water utility must keep a detailed record of each deposit received until the deposit is credited or refunded.
- Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 98.316, 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1270

### Refusal of Water Utility Service

- (1) A water utility must refuse to provide service if:
- (a) The applicant's facilities do not comply with the codes, rules, or regulations of the appropriate governing authorities or the best practices governing safe and adequate water service, or with the reasonable rules and regulations of the water utility;
  - (b) The water utility does not have adequate facilities, resources, or capacity to provide the requested service without impairing service to other customers; or
  - (c) The water utility is prohibited by law from providing the service.
- (2) If a water utility refuses to provide service under section (1) of this rule, the water utility must provide the applicant with written notice of the refusal within seven calendar days of the request for service. The notice must:
- (a) Provide the information required by OAR 860-036-1100(2);
  - (b) Explain the specific reasons for refusing water service;
  - (c) Inform the applicant of the right to request details upon which the water utility's decision was based; and
  - (d) Inform the applicant of the right to dispute the refusal by contacting the Consumer Services Section at the contact information provided in OAR 860-001-0020(2).
- (3) Except as provided in section (4) of this rule, a water utility may refuse to provide service if:
- (a) The applicant has amounts owing under a tariff or statement of rates; or
  - (b) The applicant for residential service has a roommate with amounts owing under a tariff or statement of rates, and the applicant lived with the roommate at the time the amounts owing were incurred.
- (4) If the applicant for residential service was a former residential customer with amounts owing and was involuntarily disconnected for nonpayment and applies for service within 20 calendar days of the disconnection, the water utility must provide service upon receipt of one-half of the amount owed with the remainder due within 30 calendar days.
- (a) If the former customer fails to pay the remaining amounts within 30 calendar days, the utility may disconnect service after issuing a 7-calendar day disconnection notice in accordance with OAR 860-036-1510(4).
  - (b) If service is disconnected, the utility may refuse to restore service until it receives full payment of all amounts owing, including reconnection charges allowed under OAR 860-036-1580.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.035, 757.225  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1300

### Water Service Connection

- (1) A water service connection is defined as the facilities used to connect a water utility's distribution network to the point of connection at the customer's service line. The water utility owns and maintains the water service connection.
- (2) A customer's service line is defined as the facilities used to convey water from the point of connection to the customer's point of usage. The customer owns and maintains the customer service line.
- (3) If authorized by its tariff or statement of rates, a water utility may recover a reasonable, cost-based service connection charge to offset the expense listed in section (1) of this rule.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1310

### Main Line Extensions

- (1) A main line extension is defined as the extension of a water utility's main line necessary to provide service to a customer when the property does not currently have main line frontage.
- (2) A water utility may charge a reasonable non-discriminatory main line extension charge if the charge and policy are stated in the water utility's tariff or statement of rates.
- (3) A water utility must have a main line extension policy that:
- (a) Lists all applicable charges;
  - (b) Describes the advance and refund provisions, including a description of the mechanisms for collecting and rebating the amount charged equitably among the customers who paid for the cost of the line; and
  - (c) Provides the time period during which the advance and rebate provisions apply.
- (4) Upon request, the water utility must provide a written breakdown of its main line extension costs and the allocation of those costs to the customer.
- Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1320

### Temporary Service

- A water utility may provide temporary service to a customer and charge all costs of installing and removing the temporary service, in excess of any salvage realized, if the costs are stated in the water utility's tariff or statement of rates.
- Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1330

### Restrictions on Entering a Customer Residence

- A water utility employee or representative may not enter the residence of a customer without proper authorization except during an emergency endangering life or property.
- Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1350

### Use of Water Meters

- (1) The water utility must provide and install at its expense any water meter used to calculate a customer's bill, unless the water utility's tariff or statement of rates allows the recovery of the cost, including installation, from the customer. A rental charge may not be assessed for a meter used to calculate a customer's bill.
- (2) All meters must be tested before installation or within 30 calendar days thereafter. Meters must be accurate to no more than two percent fast or slow under normal operating conditions. The water utility must prepare a test record and retain the current and immediately prior test records for all meters tested. The test record must include:
- (a) Meter identification number and location;
  - (b) The reason for the test;
  - (c) The testing method;
  - (d) The beginning and ending meter readings;
  - (e) The test results and conclusion; and
  - (f) All data taken at the time of the test.
- (3) Upon request by a customer, a water utility must provide information about how to read the water meter.
- (4) Meters registering in excess of the two percent standard must be repaired or replaced within 30 calendar days after discovery. Pending repair or replacement of the meter, the water utility must adjust the customer's bill to compensate for any identified inaccuracy in accordance with OAR 860-036-1440.

- (5) All meters must be in good working condition, adequate in size and design, and display the units of service measured.
- (6) A water utility may assess the customer the actual cost incurred for any meter relocation that is requested by the customer for the customer's convenience.
- Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.250  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1360

### Customer Requested Meter Tests

- (1) A customer may ask the water utility to test the water meter once every 12 months at no cost. The water utility must test the water meter

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within seven calendar days of the request, unless the customer fails to provide the water utility reasonable access to the meter.

(2) A customer or a designated representative has the right to be present at any on-site meter test. The test must be conducted at a mutually acceptable time.

(3) Within seven calendar days of performing the requested meter test, the water utility must provide a meter test report to the customer. A sample report form is available at [www.puc.state.or.us/Pages/water/forms\\_notices/water\\_notices.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/water_notices.aspx). The report must include:

(a) The information required by OAR 860-036-1100(2);

(b) The name of the customer requesting the test and the service address where the meter was tested;

(c) The date the meter test was requested and the date the meter test was performed;

(d) The name of the person performing the test;

(e) The meter identification number and location;

(f) The beginning and ending meter readings; and

(g) The actual test results and conclusion.

(4) If a customer requests more than one meter test within any 12-month period and the test results indicate that the meter is registering within the two percent performance standard, the customer may be assessed a reasonable charge for the test if the charge is included in a water utility's tariff or statement of rates. If the meter registers outside the two percent performance standard, the water utility may not charge the customer for the meter test.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1370

### Meter Readings

(1) A water utility must read meters that are used to calculate a customer's bill on monthly intervals and as near as possible on the same corresponding day of each month unless otherwise indicated in its tariff or statement of rates. A water utility may use estimated readings for billing purposes under OAR 860-036-1400(3), but must actually read a meter at least once every four months.

(2) Upon customer request, a water utility manually reading meters must leave the meter reading information at the customer's premises at the time of the meter reading. The information must contain the date and time of the meter reading and the meter reading data.

(3) A customer must provide the water utility with regular access to the meter on the customer's property. Failure to permit reasonable access is grounds for disconnection under OAR 860-036-1500.

(4) When access to a meter is difficult due to the meter's location or other circumstances, the water utility may seek the customer's cooperation in obtaining meter readings.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.250

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1400

### Customer Billings

(1) A water utility must provide its customers with timely billings every month or as indicated in its tariffs or statement of rates.

(2) A water utility must prepare bills, including opening and closing bills, from actual meter readings, unless conditions prevent an actual meter reading.

(3) If billings are based on estimated readings, the water utility must clearly identify the estimated meter reads and the estimated consumption on the bill. The water utility must verify the actual meter reading at least once every four months and adjust the customer's bill as needed.

(4) Customer bills must include the information required by OAR 860-036-1100(2). A sample bill form is available at [www.puc.state.or.us/Pages/water/forms\\_notices/water\\_notices.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/water_notices.aspx).

(5) The water utility must provide information in the bill sufficient for the customer to understand and compute the charges being assessed, including:

(a) Separate line items for past due balance, payments and credits, new charges, late fees, and total account balance;

(b) The date new charges are due (at least 15 calendar days from the date the bill was served);

(c) Calculation of new charges including base or flat rate, usage billing tiers and rates, beginning and ending meter readings, the dates the meter was read, rate schedule, billing period, and number of days in the billing period; and

(d) The date any late payment charge was applied and an explanation of the terms of the late payment charge; i.e., "A late charge of (insert charge) may be applied to all past due balances carried forward to the next billing cycle."

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1410

### Application of Partial Payments

Absent written instructions from the customer, and consistent with OAR 860-036-1240(6), the water utility must apply payments in the following order:

(1) Past due regulated tariff or statement of rates services;

(2) Currently due regulated tariff or statement of rates services; and

(3) Non-regulated services.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1420

### Time-Payment Plans for Residential Water Service

(1) A water utility must offer time-payment plans to allow a customer to pay past-due amounts over a period of time, unless the amounts owing relate to theft of service, tampering, unauthorized use of water, or failure to abide by the terms of a time-payment plan. The customer must make the initial payment within one business day of agreeing to the time-payment plan.

(2) A water utility must offer time-payment plans to:

(a) A current residential customer with past-due amounts; and

(b) A residential customer whose service was voluntarily disconnected and who reappplies for service within 20 calendar days of disconnection.

(3) A water utility must offer the customer the option to choose between a levelized-pay arrearage plan and an equal-pay arrearage plan:

(a) A customer who selects a levelized-pay arrearage plan must make an initial payment equal to one-twelfth of the sum of the average annual bill and past-due balance. The customer will make a like payment each month for the next 11 months. The water utility must review the levelized-pay arrearage plan within four to six months of the agreement and modify payments if there is a change in rates or significant variations in the amount of water consumed by the customer.

(b) A customer who selects an equal-pay arrearage plan must make an initial payment equal to one-twelfth the account amount and a like payment for each of the next 11 months, plus pay monthly amounts billed for current usage.

(4) The water utility and customer may agree to an alternate time-payment plan provided the utility informs the customer of the options in section (3) of this rule.

(5) Upon request, a water utility must provide a written explanation of the terms of an agreed-upon time-payment plan.

(6) If the customer changes residence within the water utility's service area during a time-payment plan, the terms of the time-payment plan continue.

(7) A customer's failure to abide by the terms of a time-payment plan agreement is grounds for disconnection after providing notice as required by OAR 860-036-1510(4)(b).

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1430

### Late-Payment Charge

(1) A water utility may include a late payment charge in its tariffs or statement of rates that:

(a) May be applied to residential accounts with a past-due balance at the time the water utility prepares the subsequent bill for the next billing cycle;

(b) May be applied to all other accounts with a past-due balance if payment is not received by the bill due date; but

(c) May not be applied to a residential account with a current time-payment plan.

(2) For rate-regulated water utilities, the Commission determines the late-payment rate based on a survey of prevailing market rates for late-payment rates of commercial enterprises. The Commission will advise all rate-regulated water utilities of any change in the rate used to determine late-payment charges on past-due customer accounts.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

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## 860-036-1440

### Adjustment of Utility Bills

(1) If a water utility determines that it incorrectly billed a current or former customer for tariffed services, the water utility may take corrective action depending upon the time the billing error occurred and the date the water utility discovered the error.

(2) If the utility billed and collected more than the amounts stated on its tariff for services, the water utility must refund or credit amounts incorrectly collected during the 12-month period ending on the date on which the water utility issued the last incorrect bill. However, if the incorrect billing occurred more than three years before the incorrect billing is discovered, no refund or credit is required. For example, if the water utility discovers in July 2016 that it over collected amounts from January 2013 to January 2015, the utility must refund or credit amounts over collected for the period from January 2014 to January 2015. However, if that billing error occurred from January 2013 to January 2014, the water utility is only required to refund or credit amounts over collected from July 2013 to January 2014.

(3) If the utility billed and collected less than the amounts stated on its tariff for services, the utility may issue a bill to collect amounts owing for the 12-month period ending on the date on the water utility issued the last incorrect bill. However, the utility may not bill for services provided more than two years before the date the utility discovered the billing error. For example, if a utility discovers in July 2015 that it under collected amounts from July 2012 to July 2014, it may bill the customer or former customer for amounts owed for the period from July 2013 to July 2014. However, if the water utility discovered that billing error in January 2016, it may only collect amounts incorrectly billed during the period from January 2014 to July 2014.

(4) Notwithstanding section (3) of this rule, if the utility's under collection for tariffed services was the result of fraud, tampering, diversion, theft, misinformation, false identification, or other unlawful conduct on the part of the customer or former customer of the water utility, the water utility may collect full payment for any amount owed without limitation.

(5) When a water utility issues a bill to collect under collected amounts, a current or former customer of a water utility may enter into a time-payment agreement as provided in OAR 860-036-1420. If the customer is already on a time-payment plan, the utility must offer to renegotiate the payment plan to include the billing error. If the customer and utility cannot agree upon payment terms, the Commission will establish terms and conditions to govern the customers' obligation. This section does not apply if the corrected billing is the result of the conditions listed in section (4) of this rule.

(6) When a water utility requires payment for amounts previously under collected, the utility must provide a written notice that explains:

- (a) The circumstance and time period of the billing error;
- (b) The corrected bill amount and the amount of the necessary adjustment;
- (c) The Commission's consumer complaint process; and
- (d) The right for a current or former customer to enter into a time-payment agreement with the utility.

(7) A billing adjustment is not required if a water meter registers less than a two percent error under conditions of normal operation.

(8) The water utility may waive rebilling or issuing a refund check when the costs make such action uneconomical.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.077,  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1450

### Transfer Billings

(1) Except as provided in section (3) of this rule, if a water utility determines that a customer owes an amount from a closed account the customer previously held with the water utility, the water utility may transfer the closed account balance to the customer's current account. The water utility must give the customer a separate, written notice of the transfer, including the amount owing, the time period when the balance was incurred, and the service address where the balance owing was incurred.

(2) If the customer has a balance owing on an existing time-payment plan, the customer may enter into a new time-payment plan under OAR 860-036-1420 incorporating all amounts owing.

(3) A water utility may not transfer a balance owing on a non-residential account to a residential account.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.225  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1500

### Grounds for Involuntary Disconnection

(1) A water utility may disconnect water service when:

(a) A customer fails to pay charges due for services rendered under a water utility tariff or statement of rates;

(b) A customer fails to pay a deposit, fails to timely provide a surety under OAR 860-036-1230 or comply with its terms, or fails to comply with the terms of a deposit installment agreement under OAR 860-036-1240.

(c) A customer fails to comply by the terms of a payment agreement under OAR 860-036-1240(3) or 860-036-1420;

(d) A customer provides false identification to establish or to continue service;

(e) A customer has facilities that do not comply with the applicable codes, rules, regulations, or the best practices governing safe and adequate water service, including compliance with the water utility's Cross Connection Control Program;

(f) A customer fails to provide reasonable access to the meter or premises;

(g) A customer tampers with water utility facilities or engages in theft of service or unauthorized use of water;

(h) A customer fails to comply with water restriction requirements under OAR 860-036-1670; or

(i) The Commission approves the disconnection of service.

(2) Nothing in this rule prevents a water utility from temporarily interrupting service to protect the health and safety of its customers or to maintain the integrity of its system.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.035, 757.225  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1510

### Required Notices for Involuntary Disconnection

(1) Except as provided in sections (4) and (5) of this rule, the water utility must provide the customer with two written notices in advance of disconnection: a 15-calendar day disconnection notice and a 7-calendar day disconnection notice.

(2) The 15-calendar day and 7-calendar day disconnection notices under this rule must be printed in bold face type and use plain, simple language. The notices must:

(a) Provide the information required by OAR 860-036-1100(2);

(b) State that the customer's water service is subject to disconnection on or after a specific date;

(c) Provide the grounds for the proposed disconnection;

(d) State what action the customer must take to avoid disconnection; and

(e) State that the customer may dispute the disconnection by contacting the Consumer Services Section at the contact information provided in OAR 860-001-0020(2).

(3) If the disconnection notice is for nonpayment, the notice must also:

(a) State the amount the customer must pay to avoid disconnection;

(b) Provide information about the customer's eligibility for a time-payment agreement provided in OAR 860-036-1420 for residential customers, unless the customer is being disconnected for failing to comply with an existing time-payment agreement or has engaged in theft of service, tampering with utility property, diverting water, or unauthorized use of water; and

(c) State that once service is disconnected, the water utility will reconnect service only after the customer reapplies for service and pays all applicable charges.

(4) Only one written 7-calendar day disconnection notice is required if the customer:

(a) Fails to timely pay a deposit under OAR 860-036-1220(3) or secure a surety agreement under OAR 860-036-1230, or to abide by a deposit installment agreement under OAR 860-036-1240;

(b) Fails to abide by terms of a payment arrangement under OAR 860-036-1270(4) or 860-036-1420; or

(c) Engaged in theft of service, tampering with utility property, diverting water, or unauthorized use of water under OAR 860-036-1590.

(5) A water utility may disconnect a customer without issuing either a 15-calendar day or 7 calendar day disconnection notice if the customer has been informed of but fails to comply with a water use restriction imposed under OAR 860-036-1670.

(6) All disconnection notices under this rule must comply with OAR 860-036-1550 relating to the disconnection of service to tenants, and OAR 860-036-1120 relating to the designated representatives.

Stat. Auth.: ORS 183, 756, 757

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Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1520

### Delivery of Notices for Involuntary Disconnection

(1) The 7-calendar day and 15-calendar day advance written notices of disconnection must be hand-delivered in person to the customer or adult at the premises, or sent by the US Mail to the customer's billing address and designated representative. Mailed notices are considered served two calendar days after deposited in the US Mail, excluding Sundays and postal holidays.

(2) In addition to the notice required by section (1) of this rule, the water utility must provide an electronic notice to customers who requested to receive notices electronically.

(3) The water utility may not send disconnection notices for non-payment before the date payment is due.

(4) The water utility must keep a record of how disconnection notices were served to the customer.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1530

### Water Utility Requirements on the Day of Involuntary Disconnection

(1) Within 48 hours prior to disconnecting service, the water utility must make a good-faith effort to contact the customer or an adult at the residence and provide notice of the proposed disconnection.

(2) The notice may be provided in person or by telephone. The water utility must keep records to document how and when contact was made or attempted.

(3) When personal contact has been made under section (1) of this rule, and the circumstances are such that a reasonable person would conclude that the customer or the adult at the residence does not understand the possible consequences of disconnection, the water utility must:

(a) Immediately notify the Consumer Services Section; and

(b) Delay the proposed disconnection date for an additional seven calendar days.

(4) If the water utility is unable to make personal contact under section (1) of this rule, the water utility must leave a notice in a conspicuous place informing the customer that service has been disconnected.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.061, 757.225  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1540

### Disconnection of Service on Weekends and Holidays

A water utility may not disconnect service for non-payment on a non-business day, or the day immediately preceding a non-business day, of either the utility or the Commission.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1550

### Disconnection of Water Service to Tenants

(1) If a water utility's records show that a residential billing address is different from the service address, the water utility must mail a duplicate notice to the service address, unless the utility has verified that the service address is occupied by the customer.

(2) If a water utility's records show that the service location is a master-metered, multi-dwelling service address, the water utility must provide a duplicate of the 7-calendar day disconnection notice to each unit at the service address. The disconnection notice must be addressed to "Tenant." The envelope must bear a bold notice stating, "IMPORTANT NOTICE REGARDING DISCONNECTION OF WATER UTILITY SERVICE." Tenant notices may not include the dollar amount owing.

(3) The water utility must notify the Consumer Services Section at least seven calendar days before disconnecting service to a master-metered, multi-dwelling premise.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1560

### Voluntary Disconnection

A customer requesting disconnection of service must provide the water utility with at least seven calendar days' advance notice.

(1) The customer is responsible for all service provided for seven calendar days following the request for disconnection or until service is disconnected, whichever comes first; or

(2) If the customer identified a specific date for disconnection in excess of seven calendar days, the customer is responsible for service rendered up to and including the requested date of disconnection.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1570

### Reconnection of Residential Water Service

(1) The water utility must reconnect service as soon as reasonably possible within the normal course of business after the applicant has:

(a) Paid all applicable charges;

(b) Applied for service;

(c) Requested reconnection; and

(d) Satisfied all requirements for service.

(2) The water utility must provide a means by which an applicant or customer may contact the water utility during normal business hours to request a service reconnection. Normal business hours are defined as 8:00 a.m. to 5:00 p.m., Monday through Friday, regardless of the water utility's business hours.

(3) The water utility must offer reconnections during normal business hours and after hours. The water utility must specify reconnection times and associated charges and post the information in the water utility's office.

(4) The water utility may charge for reconnections during normal business hours and after hours if the charges are stated in its tariffs or statement of rates.

Stat. Auth.: ORS Ch. 183, 756  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1580

### Disconnection, Reconnection, and Field Visit Charges

If authorized by the water utility's tariffs or statement of rates, a water utility may assess and require payment of one or both of the following as applicable prior to reconnecting service:

(1) A reasonable disconnection and reconnection charge if the water service was involuntarily disconnected, or

(2) A reasonable field visit charge if the water utility visits a service address intending to disconnect or reconnect service, but due to customer action, the utility is unable to disconnect or reconnect service.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.225  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1590

### Tampering with Water Utility Facilities, Theft, or Unauthorized Use of Water

(1) Customers are prohibited from tampering with the water utility's property and facilities or stealing, diverting, or engaging in unauthorized use of water.

(2) If a water utility discovers that a customer has tampered with water utility property or facilities, or has engaged in theft or unauthorized use of water, the water utility must notify the customer of the violations and may take one or more of the following actions:

(a) Repair or restore the facilities and charge the customer the costs incurred;

(b) Adjust the customer's prior billing for loss of revenue under the applicable tariffs or schedule of rates;

(c) Initiate action to disconnect service. As provided by OAR 860-036-1510, the water utility need only provide a written 7-calendar day disconnection notice prior to service disconnection;

(d) Require a new application for service that accurately reflects the customer's proposed water use; and

(e) Assess a deposit for restored or continued service.

(3) In addition to actions taken by the water utility, the Commission may assess civil penalties under ORS 757.994 against customers who violate section (1) of this rule.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.994  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1600

### Adequacy of Water Service

(1) A water utility must maintain its facilities according to industry rules, regulations, and standards and in such condition to provide safe, ade-



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quate, and continuous service to its customers. This includes, but is not limited to:

- (a) Maintaining a current knowledge of the condition and adequacy of its facilities;
- (b) Regularly inspecting and testing equipment and plant;
- (c) Regularly exercising valves and hydrants;
- (d) Maintaining regular system flushings;
- (e) Making timely repairs;
- (f) Replacing parts and equipment as necessary;
- (g) Making necessary improvements to the water system;
- (h) Reasonably restoring areas disturbed by construction, repairs, or improvements; and

(i) Preparing work and maintenance records, and retaining those records consistent with the Commission's Guide for the Preservation of Records for Public Water Utilities available at <http://www.puc.state.or.us/Pages/General-Information-for-Water-Utilities.aspx>.

(2) A water utility is prohibited from intentionally diminishing the quality of service below the level that can reasonably be provided by its facilities.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020, 757.250  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1610

### Quality of Water Supply for Domestic Purposes

A water utility must provide a domestic water supply that is free from bodily injurious physical elements and disease-producing bacteria and reasonably free from elements that cause physical damage to customer property, including but not limited to pipes, valves, appliances, and personal property.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1620

### Water Utility Responsibilities Regarding Service Complaints

(1) The water utility must prepare and retain a log of all service complaints consistent with the Commission's Guide for the Preservation of Records for Public Water Utilities available at <http://www.puc.state.or.us/Pages/General-Information-for-Water-Utilities.aspx>.

(2) When the water utility receives a complaint regarding a service problem, the water utility must immediately inform all customers materially affected. The information must include:

- (a) The source or suspected source of the service problem;
- (b) The expected date, time, and duration of the repair or action by the water utility; and
- (c) Any effects the repairs or water utility action may have on the customer's service.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1630

### Unscheduled Interruptions of Service

(1) A water utility may perform an unscheduled interruption of service as necessary to protect the health and safety of its customers or to maintain the integrity of its system.

(2) If an unscheduled interruption of service is required, the water utility must:

- (a) Make a reasonable effort to notify the customers affected and the Consumer Services Section in advance of the interruption;
- (b) Report the unscheduled interruption to the Consumer Services Section at the contact information provided in OAR 860-001-0020(2), and
- (b) Restore service as soon as it is reasonably possible after resolving the issue, unless other arrangements are agreed to by the affected customers.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1640

### Scheduled Interruptions of Service

(1) A water utility may schedule water service interruptions for maintenance and repairs. A water utility must schedule service interruptions to reasonably minimize customer inconvenience.

(2) A water utility must provide advance written notice to all customers affected by any scheduled service interruption. In addition, the notice must be posted in the utility's office and on its website, if available. The notice must include:

- (a) The information required by OAR 860-036-1100(2);
  - (b) The date, time, and estimated duration of the scheduled interruption;
  - (c) The purpose of the interruption;
  - (d) A statement cautioning customers to avoid using water during service interruptions to prevent debris in the customers' service lines; and
  - (e) The contact information for the Consumer Services Section provided in OAR 860 001-0020(2).
- (3) Notices of scheduled interruptions of service must be served by:
- (a) A door hanger or personal delivery to an adult at the affected premises at least five calendar days in advance of the service interruption; or
  - (b) US Mail at least ten calendar days prior to the service interruption.

(4) In addition to the notice requirements in section (3), the water utility must provide an electronic notice to customers who requested to receive notices electronically.

(5) A water utility must keep a record of all scheduled service interruptions. The record must include the time, duration, and cause of the planned service interruption. The record must be retained consistent with the Commission's Guide for the Preservation of Records for Public Water Utilities available at <http://www.puc.state.or.us/Pages/General-Information-for-Water-Utilities.aspx>.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.125  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1650

### Adequate Water Pressure Required

(1) A water utility must maintain adequate water pressure. In general, water pressure measuring between 45 and 80 pounds per square inch in the water mains is adequate for the purpose of this rule. However, adequate pressure may vary depending on each individual water system.

(2) A water utility may temporarily reduce or increase water pressure for fire flows, noticed repairs and maintenance, scheduled or emergency flushings, and unscheduled or emergency repairs and outages.

(3) Each water utility must maintain permanent pressure recording gauges at various locations to measure the system's water pressure. A water utility must have a portable gauge to measure water pressure in any part of the system. The water utility must maintain all pressure gauges in good operating condition, test periodically for accuracy, and recalibrate or replace when necessary.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040 757.020, 757.250  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1660

### Customer Requested Pressure Test

(1) A customer may request the water utility to perform a water pressure test. The first test in a 12-month period is free of charge and must be completed within seven calendar days. If the customer requests an additional pressure test within the 12-month period at the same premises, the water utility may assess the customer a reasonable charge, unless the pressure is not adequate.

(2) A customer or a designated representative has the right to be present at the pressure test. The test must be conducted at a mutually acceptable time.

(3) The pressure must be measured at a point adjacent to the meter on the customer service line or other reasonable point most likely to reflect the actual service pressure.

(4) The water utility must provide a written report to the customer within seven calendar days of the pressure test. The report must include:

- (a) The information required by OAR 860-036-1100(2);
- (b) The customer's name and service address where the pressure was tested;
- (c) The date the pressure test was requested and the date the pressure test was performed;
- (d) The name of the company or employee performing the test;
- (e) The place where the pressure was measured;
- (f) The actual pressure reading; and
- (g) The conclusion based on the test result.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020, 757.250  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1670

### Water Use Restrictions

(1) In times of water shortages, a water utility may restrict water usage after providing written notice to its customers and the Consumer

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Services Section. In addition, the notice must be posted in the water utility's office and on its website, if available. The notification must state the reason and nature of the restrictions, the date restrictions will become effective, the estimated date the restrictions end, and that failure to comply with the restrictions is grounds for disconnection.

(2) The Commission may investigate the water utility's water restriction plan and change it as the Commission deems necessary.

(3) During times of water shortage, the water utility must equitably apportion its available water supply among its customers with regard to public health and safety.

(4) If a customer fails to comply with the water restrictions after receiving written notification, the water utility must provide a separate written warning letter to the customer including:

(a) The date;

(b) The information required by OAR 860-036-1100(2);

(c) The customer's name, account number, mailing address, service address if different;

(d) The water use restrictions and statement of how the customer is violating those restrictions;

(e) A statement that the customer's water service is subject to disconnection on or after a specific date;

(f) A warning to the customer that failure to immediately comply with the restrictions may result in disconnection of service; and

(g) A statement that the customer may dispute disconnection by contacting the Consumer Services Section. The notice must include the Consumer Services Section's contact information provided in OAR 860-001-0020(2);

(5) If a customer fails to comply with the water restrictions after receiving written notification and the warning letter under section (4) of this rule, the water utility must consult with the Consumer Services Section, at the contact information provided in OAR 860-001-0020(2), to determine if disconnection is appropriate.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1680

### Cross Connection Control

(1) All customers must comply with the water utility's Cross Connection Control Program to protect the water system from contamination. A customer's failure to comply is grounds for disconnection under OAR 860-036-1500.

(2) The water utility's cross connection protection rules will be included, as necessary, in the water utility's tariffs or statement of rates.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1690

### Maps and Records

(1) A water utility must prepare current maps and records of the entire plant showing size, location, character, and date of installation of major plant items, including but not limited to pumps, reservoirs, main lines, distribution lines, and valves. The water utility must retain the maps and records consistent with the Commission's Guide for the Preservation of Records for Public Water Utilities available at <http://www.puc.state.or.us/Pages/General-Information-for-Water-Utilities.aspx>.

(2) Upon Commission request, a water utility must file the water system maps in a format satisfactory to the Commission.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1700

### Appointment of Regent to Operate and Manage a Water System

If the Commission determines that a water utility's ownership or management results in inadequate service, threatens the health or safety of the customers, or threatens the financial viability of the water utility, then the Commission may appoint a regent to operate and manage the water utility.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1710

### Expenditure of Charges Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the charges collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this

rule if the Commission determines that repairs to the water system are necessary for the health and safety of the customers or the water utility.

(2) The Commission will seek recovery of charges used under this rule from the water utility providing service. Interest will not accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the charges are expended.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.068, 757.310  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1720

### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 per day for each violation of Commission statute, rule, or order as provided in ORS 757.994.

(2) The Commission must give notice of proposed civil penalty by registered or certified mail to the water utility. The notice must provide:

(a) A concise statement of the alleged violations, including cites to applicable statutes, rules, or orders;

(b) The amount of proposed civil penalty; and

(c) Notice that the water utility may request a hearing to challenge the proposed penalty. The request for hearing must be in writing and be received by the Commission within 20 calendar days of the date the notice was served. The request must comply with the requirements set forth in OAR 860-001-0140 and 860-001-0170.

(3) If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear at the scheduled hearing, the Commission may issue a final order by default imposing the proposed penalty.

Stat. Auth.: ORS 757.994  
Stats. Implemented: ORS 183.745, 756.040, 757.068  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1800

### Service Territory Allocation Definitions

For purposes of service territory allocation OAR 860-036-1800 through 860 036-1850:

(1) "Allocated territory" means an approved area with boundaries set out by Commission order granting an exclusive service territory.

(2) "Community water supply system" has the meaning provided by ORS 758.300.

(3) "Water utility" has the meaning provided in ORS 758.300.

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300-758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1810

### Allocation of Service Territory

(1) Any water utility may apply for an order designating the territory it serves adequately and exclusively as its exclusive service territory. The application must include:

(a) The information required by OAR 860-036-1100(2);

(b) The water utility's business organization, i.e., corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name and address of each corporate officer, director, partner, and all other persons owning an interest in the water utility;

(d) A statement showing the financial and technical ability of the water utility to provide service to the territory;

(e) A detailed map of the water utility's existing lines and facilities;

(f) A detailed map of the water utility's current service territory. The water utility must identify the source of the map, which may include a GIS map, city or county map, tax lot map, or plat map;

(g) A written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or lease;

(i) A schedule showing the number of customers currently served by class and meter size. If the service area is not built out, indicate the number of proposed customers expected to be served when the current service territory is fully occupied;

(j) The name and address of the nearest municipalities, the county, any known planning councils or governmental authorities having concern with the application, and all known water utilities and community water

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supply systems in the general area of the service territory the water utility is seeking; and

(k) A copy of the customer notice of application required under section (2) of this rule and a complete customer mailing list.

(2) Within 15 calendar days of the filing date of the application for exclusive service territory, a water utility must provide written notice to each customer affected by the application. The notice must include:

- (a) The information required by OAR 860-036-1100(2)
- (b) The purpose of the notice;
- (c) An accurate and detailed written description of the territory applied for;
- (d) The date the filing was submitted to the Commission;
- (e) A statement that customers may file a protest with the Commission; and
- (f) The contact information for the Consumer Services Section provided in OAR 860 001-0020(2).

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300-758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1820

### Filing an Application to Expand Exclusive Service Territory

(1) A water utility may apply to expand its designated service territory to serve an area not currently being provided water service by filing an application under ORS 758.302(2). The application must include:

(a) The information required in OAR 860-036-1810(1)(a) through (k):

(b) A statement describing the need and reasons for water service in the proposed expanded service territory;

(c) The approximate date the water utility plans to begin providing service to the proposed expanded service territory;

(d) The proposed rates and charges to customers in the expanded service territory. Include customer growth projections that support the proposed water service rates and charges;

(e) A study showing the projected cost to provide service to the proposed expanded service territory. Identify the amount per each operating expense account at full build out;

(f) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until it reaches 100 percent of the design capacity of the system;

(g) Evidence of existing or proposed capacities of the system and facilities to adequately serve the proposed expanded territory. Provide estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phase;

(h) A written description of the type of water treatment necessary, if required;

(i) A schedule showing the projected cost of the capital improvements necessary to serve the proposed service territory by plant accounts and the expected date the plant is projected to go into service. If the system is to be built in phases, show information for each phase individually;

(j) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement will not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(k) Financial statements demonstrating applicant's financial capability;

(l) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service; and

(m) A statement describing any impact the expansion of service territory may have on existing customers.

(2) Within 15 calendar days of the filing date of the application, a water utility must provide written notice to existing customers that contains the information required by OAR 860-036-1810(2) as modified to reflect the request to expand service territory.

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300-758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1830

### Reduction of Approved Service Territory Boundaries

(1) A water utility may apply to decrease its designated service territory. The application must demonstrate that the water utility is not providing adequate service to its customers or does not have the capacity to serve the designated exclusive service territory.

(2) Within 15 calendar days of the filing date of the application, a water utility must provide written notice to each customer that contains the information required by OAR 860-036-1810(2) as modified to reflect the request to decrease service territory.

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300 - 758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1840

### Transfer of Approved Service Territory

(1) The rights acquired by an approved service territory may be transferred only with the approval of the Commission. The application must include:

(a) The application requirements as provided in OAR 860-036-1810;

(b) Evidence demonstrating that the transfer of the service territory is in the public interest.

(2) Within 15 calendar days of the filing date of the application, a water utility must provide written notice to each customer affected by the application that contains the information required by OAR 860-036-1810(2) as modified to reflect the request to transfer designated service territory.

(3) Designated service territory will not be altered solely as the result of a change in ownership or form of ownership.

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300 - 758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1850

### Exclusive Obligation to Serve

(1) A water utility has an obligation to serve all applicants for service within its designated territory and may only refuse service as provided in OAR 860-036-1270.

(2) A water utility or community water supply system may not provide water utility service within an approved exclusive service territory of another water utility without the express approval of the Commission.

Stat. Auth.: ORS 183, 756, 757, 758  
Stats. Implemented: ORS 758.300 - 758.320  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1900

### Regulation of Water Utilities

(1) Except as provided in section (2) and (3) of this rule, a water utility serving less than 500 customers is not subject to Commission regulation and need not pay an annual revenue fee.

(2) A water utility serving less than 500 customers is subject to service regulation if:

(a) The Commission determines that the water utility has provided discriminatory service; or

(b) The water utility charges an average annual residential rate that exceeds \$24 per month.

(3) A water utility serving less than 500 customers is subject to rate and service regulation if:

(a) The water utility also provides wastewater services within the boundaries of a city;

(b) The water utility requests that it be subject to rate and service regulation as provided in OAR 860-036-1940; or

(c) The water utility proposes to charge a monthly rate that exceeds the threshold level set forth in OAR 860-036-1910 and at least 20 percent of the customers petition the Commission requesting the water utility be subject to rate and service regulation.

(4) A water utility serving 500 or more customers is subject to rate and service regulation. When a water utility's customer count exceeds 500 customers, the Commission will issue an order establishing the water utility's regulatory status as a rate-regulated water utility.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 757.061, 757.063  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1910

### Threshold Levels for Rate Regulation of Water Utilities Serving less than 500 Customers

A water utility serving less than 500 customers must notify its customers of the right to petition for rate regulation if it proposes to charge residential or commercial customers more than the following amounts in order to obtain water service:

(1) For unmetered customers with a pipe diameter of one inch or less, an annual average monthly charge of \$42 per customer;

(2) For metered customers with a meter diameter of one inch or less, an annual average monthly charge of \$45 per customer;

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(3) For unmetered customers with a pipe diameter larger than one inch, an annual average monthly charge of \$119 per customer; and

(4) For metered customers with a meter diameter larger than one inch, an annual average monthly charge of \$128 per customer.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 757.061  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1920

### Notice Requirements and Customers Right to Petition for Rate Regulation

(1) If a water utility that serves less than 500 customers and is not rate regulated seeks to increase its rates to a level that exceeds a threshold established in OAR 860-036-1910, the water utility must:

(a) Provide a separate written notice to all customers of the proposed increase that complies with the notice requirements under section (2) of this rule;

(b) Post the notice in its office and website, if available; and

(c) On the same day that notice is provided to the customers, mail or deliver a copy of the customer notice to the Consumer Services Section and attach a current customer list that includes the customer name, account number, mailing address, and service addresses if different.

(2) The customer notice must:

(a) State in bold letters at the top of the notice, "NOTICE OF PROPOSED WATER RATE INCREASE AND CUSTOMERS RIGHT TO PETITION FOR RATE REGULATION;"

(b) State the date of the notice;

(c) Provide the information required by OAR 860-036-1100(2);

(d) State the reasons the water utility is requesting the proposed change;

(e) Show a comparison of the current rates and the proposed rates for each affected customer classes;

(f) State the date when the proposed rates are intended to become effective. The effective date must be at least 60 calendar days from the date of the notice or the date the Consumer Services Section receives its copy of the notice, whichever is later;

(g) State that customers may request a complete customer list from the water utility to be provided within 10 business days; and

(h) Include the following statement:

"NOTICE FROM THE PUBLIC UTILITY COMMISSION OF OREGON  
Customers have the opportunity to file a petition to have the water utility's rates regulated by the Commission. The water utility is proposing rates in excess of the threshold levels set by the Commission. If the Commission receives valid petitions from at least 20 percent of the customers, the Commission will assert jurisdiction over your water utility. Rate regulation requires that all rates and rate changes be approved by the Commission. If the Commission does not receive the sufficient number of valid customer petitions, the water utility's proposed rates will take effect on the date indicated." "Petition forms are available on the Commission's website at <http://www.puc.state.or.us/Pages/Information-for-Customers.aspx>. The petitions must be completed and signed by the customer and must be received by the Commission within 45 days of this notice. Copies of petitions or petitions without an original signature will not be accepted." "Completed petitions must be mailed to the Consumer Services Section, PO Box 1088, Salem, Oregon 97308-1088 or delivered to 201 High Street SE, Suite 100, Salem, Oregon 97301. Petitions may not be filed electronically. Petitions may not be withdrawn or rescinded. Customers with questions may contact the Consumer Services Section at 1-800-522-2404."

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1930

### Petition for Rate Regulation of Association by Members

(1) For purposes of this rule, "association" means an association of individual members that owns, operates, provides, manages, or controls a water system that provides water service to only its members.

(2) Current members of any association providing water service exclusively to its membership may petition the Commission at any time requesting the association be rate regulated.

(a) Petition forms are available on the Commission's website at [www.oregon.gov/puc](http://www.oregon.gov/puc). Petition forms must be complete and signed by the customer;

(b) Original petitions must be mailed to the Consumer Services Section, PO Box 1088, Salem, Oregon 97308-1088 or personally delivered to 201 High Street SE, Suite 100, Salem, Oregon, 97301.

(c) Copies of petitions or petitions without an original signature will not be accepted. Petitions may not be filed electronically; and filed petitions may not be withdrawn or rescinded.

(2) If the Commission receives petitions from 20 percent of the association's members and determines that regulation is in the public interest, it will issue an order establishing the association's regulatory status as a rate-regulated water utility.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.063  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1940

### Water Utility Requesting Rate Regulation and Notice Requirements

(1) A water utility serving fewer than 500 customers may request to be rate regulated by the Commission. The water utility must electronically file a letter of application specifically stating that it is requesting rate regulation and the reasons for the request.

(2) The same day it files the application, the water utility must provide a separate written notice to its customers and the Consumer Services Section. The notice must be posted in the utility's office and on its website, if available. The notice must provide:

(a) The date;

(b) The information required by OAR 860-036-1100(2);

(c) A statement that the water utility is seeking to be rate regulated by the Public Utility Commission of Oregon;

(d) The reasons the water utility is seeking rate regulation; and

(e) A statement that customers with questions regarding the filing may contact the Consumer Services Section at the contact information provided in OAR 860-001-0020(2).

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.061  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-1950

### Removal of Rate Regulation

(1) When a rate-regulated water utility is reorganized through the sale, merger, or transfer of the water system or the transfer of all the water utility's customers to a non-jurisdictional entity, the rate-regulated water utility no longer meets the definition of a public utility under ORS 757.005. Non-jurisdictional entities include municipal entities, quasi-municipal entities, or a non-rate regulated association that serves only its members.

(2) If the regulated water utility is reorganized into an association, association members retain their right to petition the Commission for rate regulation at any time under ORS 757.063 and OAR 860-036-1930.

(3) A private buyer of a rate-regulated water utility serving fewer than 500 customers may petition the Commission to have rate regulation, but not service regulation, removed upon the close of the buyer's purchase of the water utility if:

(a) The rate-regulated water utility is currently operating under a Commission-appointed regent; or

(b) A court has ordered the sale of the rate-regulated water system as part of the resolution of a complaint filed in court by the Oregon Health Authority Drinking Water Section.

(4) If the Commission grants removal of rate regulation per section (3) of this rule, customers retain their right to petition for rate regulation under ORS 757.061 and ORS 757.063.

Stat. Auth.: ORS Ch. 183, 756, 757  
Stats. Implemented: ORS 757.061, 757.063  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2000

### Tariff Filings

(1) All rate-regulated water utilities must file all proposed rate schedules, charges, special contracts, and the water utility's rules and regulations relating to the provision of water service.

(2) A filing may request approval of individual revised tariffs, supplemental tariffs, special contract tariffs, or a general rate revision.

(3) The filing must be attached to an electronic mail message and electronically filed with the Commission's Filing Center at [puc.filingcenter@state.or.us](mailto:puc.filingcenter@state.or.us).

(4) The water utility must keep a copy of the filing at its main office where customers can request a copy.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.205  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2010

### Tariff Content and Advice Letter

(1) Tariffs must be written using Commission-provided tariff forms and must be accompanied by an Advice Letter. Forms required under this rule are available at the Commission's water web page at [http://www.puc.state.or.us/Pages/water/forms\\_notices/applications.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/applications.aspx).

(a) The initial complete schedule of tariffs is designated as PUC Oregon No. 1 in the upper left hand corner. Each successive complete replacement of the tariff schedules thereafter is designated with the next number in consecutive numerical order, i.e., PUC Oregon No. 2, etc.;

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(b) Each tariff sheet must state the effective date on the bottom of the sheet. The effective date must be at least 30 days from the date the water utility electronically files the proposed tariffs, unless the water utility requests the changes go into effect with less than the required 30 day notice. To make this request, the tariff must be accompanied by a Less Than Statutory Notice (LSN) form; and

(c) Any supplemental information, not otherwise provided within the tariff sheet, must be designated by the previous sheet number plus a letter, for example, Original Sheet No. 3A, Original Sheet No. 3B, etc.

(2) An Advice Letter must include:

(a) The information required by OAR 860-036-1100(2);

(b) A statement plainly indicating the purpose of the filing;

(c) A statement indicating the revenue change the water utility is requesting and any other provisional requested changes;

(d) A statement indicating the number of customers affected by the proposed changes and the estimated effect upon rates, if any;

(e) The reasons the water utility is requesting the proposed changes; and

(f) The signature of a water utility officer or representative;

(g) If the tariff filing proposes to increase rates, the water utility must also provide the following for each rate schedule being increased:

(A) The total number of customers in each customer class affected;

(B) A comparison showing current rates and the proposed rates for each customer class affected;

(C) A comparison showing the total annual revenue derived under the current rates and the total annual revenue to be derived under the proposed rates for each customer class affected;

(D) The average monthly water use for each customer class affected; and

(E) A comparison showing the average monthly bill under the current rates and the proposed rates.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.205

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2020

### Filing a General Rate Revision

(1) A general rate revision is a filing by a water utility that affects all or most of the water utility's rate schedules, but does not include changes in automatic adjustment clauses under ORS 757.201(1) or similar changes in one rate schedule, such as for an amortization, that affect other rate schedules.

(2) To file a general rate revision, a rate-regulated water utility must submit a rate case application, including tariffs, and an Advice Letter, as required by OAR 860-036-2010.

(3) On the same day notice is provided to its customers, the water utility must mail or deliver a copy of the notice to the Consumer Services Section at the address provided in OAR 860-001-0020(2).

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.205

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2030

### Customer Notice Requirements for a General Rate Revision

(1) After electronically filing a general rate revision, the water utility must provide a separate written notice of the filing to all customers within 15 calendar days of the date the general rate revision was filed. In addition, the notice must be posted in the water utility's office and on its website, if available, and provided to the Consumer Services Section.

(2) The notice to the customers must be provided as either a separate written notice inserted in the water utility's regular billing or a written notice delivered to each customer.

(3) The customer notice must include:

(a) The information required by OAR 860-036-1100(2);

(b) The following statement: "This notice is to inform customers that (insert name of water utility) filed a general rate revision with the Public Utility Commission. This notice provides general information regarding the utility's proposed changes and the effect it will have on customers' bills if approved by the Commission. Customers may request to receive notice of the time and place of any hearing on the matter by contacting the Public Utility Commission of Oregon, Administrative Hearings Division, at 503-378-6678. The calculations and statements contained in the water utility's filing and this notice are not binding on the Commission."

(c) The amount of the change in annual revenue the water utility is seeking;

(d) The total amount of annual revenue the water utility is requesting;

(e) A comparison of the current and the proposed average monthly bills for each customer class expressed in dollars;

(f) The reasons the water utility is requesting the proposed change;

(g) A statement that copies of the water utility's application, testimony, and exhibits are available at the water utility's main office; and

(h) The contact information of the water utility's representative that customers may contact to receive additional information or a copy of the filing. Contact information includes name, address, telephone number, and email address if available.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2100

### Form and Filing of Financial Transaction Applications

(1) All applications submitted to the Commission must be filed electronically with the Commission's Filing Center. To file an application, attach the application and all required documents to an electronic mail message addressed to the Commission's Filing Center at [puc.filingcenter@state.or.us](mailto:puc.filingcenter@state.or.us). Procedural rules regarding filing and service of documents are found in OAR Chapter 860, Division 001.

(2) Applications must be filled out completely.

(3) Any required financial statements must include the most current data available. The Income Statement must be for the most recent 12-month period.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 756.105

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2110

### Application to Terminate, Abandon, or Dispose of a Water System

(1) All water utilities must obtain Commission approval to terminate, abandon, or dispose of a water system. The water utility must file an application using the form available at [http://www.puc.state.or.us/Pages/water/forms\\_notices/applications.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/applications.aspx).

(2) Within seven calendar days from the date the application, the water utility must provide customers and the Consumer Services Section with a separate, written notice. In addition, the notice must be posted in the utility's office and on its website, if available. The notice must:

(a) Include the information required by OAR 860-036-1100(2);

(b) State what action the water utility is requesting in bold letters at the top of the notice;

(c) State the reason for the termination, abandonment, or disposal;

(d) State the proposed effective date;

(e) Describe the customers' alternative water service options and average estimated customer cost for each option; and

(f) Provide the Consumer Services Section's contact information provided in OAR 860-001-0020(2).

(3) The notice must be delivered in person to the customer or an adult at the premises or sent by the US Mail to the customer's billing address and designated representative.

(a) If notice is served by personal delivery to the premises, the water utility must attempt personal contact with the customer or an adult resident at the premises. If personal contact cannot be made, the water utility must leave the notice in a conspicuous place at the premises and mail a copy of the notice to the customer's last known mailing address and the customer's designated representative; or

(b) If notice is served upon the customers by US Mail, the notice must be mailed to the customer's last known address. The notice is considered served as defined in OAR 860-036-1010.

(4) If the water utility's records show that the billing address is different from the service address or that the premises is a master-metered multi-unit dwelling, the notice may be addressed to "Tenant." The envelope must bear bold language stating, "IMPORTANT NOTICE REGARDING WATER UTILITY SERVICE."

Stat. Auth.: ORS Ch. 183, 756

Stats. Implemented: ORS 756.040

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2120

### Application to Dispose of or Acquire Property

(1) Water utilities must obtain Commission approval to sell, lease, assign, or otherwise dispose of the whole of the property of such necessary or useful in performance of its duties, or any part thereof with a value in excess of \$10,000.

(2) Rate-regulated water utilities must obtain Commission approval to directly or indirectly purchase or acquire of any stocks, bonds, or utility property of any other public utility valued in excess of \$10,000.

# ADMINISTRATIVE RULES

(3) A water utility or the other party to these transactions must request authorization using the application form available at [http://www.puc.state.or.us/Pages/water/forms\\_notices/applications.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/applications.aspx).

(4) No less than 60 calendar days prior to the closing date of the transaction, the water utility must provide a separate written notice to customers with a copy to the Consumer Services Section. In addition, the notice must be posted in the utility's office and on its website, if available. The notice must include:

- (a) The information required by OAR 860-036-1100(2);
- (b) The purpose of notice;
- (c) The proposed closing date of the transaction;
- (d) The proposed effective date of sale (minimum of 60-calendar days);
- (e) The name, address, and telephone number of the potential buyer;
- (f) The reasons for sale;
- (g) How the sale will affect customers; and
- (h) The statement, "The property transaction being proposed by the water utility is under review by the Public Utility Commission of Oregon. For more information about the filing or to follow the regulatory process of the Commission's review check the Commission's website at [www.puc.state.or.us](http://www.puc.state.or.us) or contact the Consumer Services Section at 503-378-6600; 1-800-522-2404; or TTY 711."

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.480, 757

## 860-036-2130

### Acquisition Adjustment

(1) When seeking to acquire all or part of a water utility, the applicant may request that some or all of the difference between the net book value and the purchase price be included in the purchasing utility's rate base.

(2) The Commission will consider the merits of the utility's application based on the benefit to the customers being acquired and the public interest on a case-by-case basis.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125, 757.135  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2140

### Filing for Approval of a Special Contract

A rate-regulated water utility may file a special contract tariff to establish a rate, service, or practice that is not covered by or permitted in the water utility's general tariffs, schedules, or rules. A special contract tariff must include:

- (1) The date;
- (2) The information required by OAR 860-036-1100(2);
- (3) A copy of the special contract;
- (4) A statement summarizing the basis of the terms of the contract and an explanation of the deviation from the tariffs on file;
- (5) An explanation of all cost computations involved;
- (6) A statement indicating the basis for use of a special contract rather than a filed tariff for the specific service involved; and
- (7) Documentation necessary to show that the terms are fair, just, and reasonable to the remaining customers.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.020  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2150

### Application for Authority to Issue Stocks, Bonds, Notes, or Other Securities

An application by a rate-regulated water utility to issue securities under ORS 757.405 to 757.435 inclusive, 757.445, and 757.450, must comply with rules set forth in OAR 860-027-0030 governing energy and telecommunication utilities.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.105, 757.405 - 757.450, 757.495  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2160

### Application for Authority to Guarantee Indebtedness

An application by a rate-regulated water utility to assume any obligation or liability as guarantor, endorser, surety or otherwise must comply with rules set forth in OAR 860 027-0035 governing energy and telecommunication utilities.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.440  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2170

### Use of Deferred Accounting

An application by a rate-regulated water utility to defer amounts under ORS 757.259 must comply with rules set forth in OAR 860-027-0300 governing energy and telecommunication utilities.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.105, 757.259  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2200

### Affiliated Interest Definitions

As used in rules OAR 860-036-2200 through OAR 860-036-2230:

(1) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a water utility;

(2) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a water utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the water utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single water utility;

(3) "Asset" means any tangible or intangible property of a water utility or other right, entitlement, business opportunity, or other thing of value to which a water utility holds claim that is recorded or should be recorded as a capital expenditure in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies;

(4) "Cost" means fully distributed cost, including the water utility's authorized rate of return and all overheads;

(5) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(6) "Market rate" means the lowest price that is available from non-affiliated suppliers for comparable services or supplies;

(7) "Net book value" means original cost less accumulated depreciation;

(8) "Nonregulated activity" means an activity that is not a regulated activity of the water utility;

(9) "Regulated activity" means a Commission regulated activity that is provided by a water utility directly or indirectly relating to the general operations of the water utility such as production, transmission, delivery, or provision of water;

(10) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(11) "Supplies" means any tangible or intangible property of a water utility or other thing of value that a water utility holds claim that is recorded or should be recorded as an operating expense in the water utility's financial statements. All water utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.015  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2210

### Applications to Receive or Provide Goods or Services with an Affiliated Interest

(1) A rate-regulated water utility must seek Commission approval to contract to provide or receive services, directly or indirectly, with an affiliated interest using the form available at: [http://www.puc.state.or.us/Pages/water/forms\\_notices/applications.aspx](http://www.puc.state.or.us/Pages/water/forms_notices/applications.aspx).

(2) An application must be filed no later than 90-calendar days after the execution of the contract giving rise to the application. The contract is deemed to be executed on the date the parties sign a written contract or on the date the parties begin to transact business under the contract, whichever date is earlier.

(3) A water utility's failure to submit this required information does not limit the Commission's authority to recognize or impute revenues to the water utility pursuant to such contract in any rate valuation, hearing, or proceeding.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.015, 757.495  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

# ADMINISTRATIVE RULES

## 860-036-2220

### Application for Waiver of Requirements under OAR 860-036-2210

The Commission will not waive the requirements of OAR 860-036-2210 for any rate-regulated water utility transactions exceeding 0.1 percent of the previous calendar year's Oregon utility operating revenues unless the transaction can be demonstrated in advance to be fair and reasonable and not contrary to the public interest.

Stat. Auth.: ORS 183, 756  
Stats. Implemented: ORS 756.040, 757.015, 757.495  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2230

### Allocation of Costs

(1) For purposes of this rule, regulated and nonregulated activities of a water utility must be accounted for using the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(2) When a water utility is conducting an affiliate interest transaction, as defined in this rule, the water utility must use the following cost allocation methods:

(a) When an asset is transferred to a water utility from an affiliate, the transfer must be recorded in the water utility's accounts at the lower of net book value or fair market value;

(b) When an asset is transferred from a water utility to an affiliate, the transfer must be recorded in the water utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer must be recorded in the water utility's accounts at the higher of net book value or fair market value;

(c) When an asset is transferred from a water utility to an affiliate at a fair market value that is greater than net book value, the difference is considered a gain to the water utility. The water utility must record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding;

(d) When services or supplies are sold by a water utility to an affiliate, sales must be recorded in the water utility's accounts at rates per the tariff, if an applicable tariff is on file with the Commission. Rates per the tariff must be established whenever possible. If services or supplies are not sold per a tariff, sales must be recorded in the water utility's accounts at the water utility's cost or the market rate, whichever is higher;

(e) When services or supplies are sold to a water utility by an affiliate, sales must be recorded in the water utility's accounts at the affiliate's cost or the market rate, whichever is lower. The affiliate's cost must be calculated using the water utility's most recently authorized rate of return; and

(f) Income taxes must be calculated for the water utility on a stand-alone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the water utility must record income tax expense as if it were determined for the water utility separately for all time periods.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.490, 757.495  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2300

### Relating to City Charges, Taxes, and Other Exactions

(1) A rate-regulated water utility may recover the aggregate amount of all business or occupation taxes, licenses, franchise or operating permit charges, or other similar exactions imposed by any city in Oregon for engaging in business or for use and occupancy of city streets and public ways.

(2) The water utility may recover these amounts up to 3.5 percent of the water utility's gross revenue as operating expenses from all water utility customers. The utility may collect any remaining amounts in excess of 3.5 percent of its gross revenues on a pro rata basis to customers within the applicable city if separately stated on the regular billings to the customers. "Gross revenues" means revenues received from water utility operations within the city less related net uncollectibles, but do not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale by one utility to another when the water utility purchasing the service is not the ultimate customer.

(3) To calculate the amounts to be recovered under this rule, the water utility may not include:

(a) Permit or similar charges for street opening, installations, construction, and the like if the charges are reasonably related to the city's costs for inspection, supervision, and regulation in exercising its police powers; or

(b) The value of any water utility service or use of facilities provided on or before November 6, 1967, to a city without charge. These services may be continued within the same category or type of use.

(4) This rule does not affect franchises granted by a city on or before November 6, 1967. Payments made or value of service rendered by a water utility must be collected from all customers.

(a) When a franchise agreement existing on November 6, 1967, specifies a different compensation percentage than set forth in section (2), the compensation continues to be treated by the affected water utility as an operating expense during the balance of the term of such franchise.

(b) If a city unilaterally imposes or increases any tax, charge, or other exaction specified in section (2) of this rule during the unexpired term of a franchise existing on November 6, 1967, for use and occupancy of streets and public ways, the water utility must charge the additional amounts on a pro rata basis to local users.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2310

### Relating to Local Government Charges, Taxes, and Other Assessments

(1) A rate-regulated water utility must collect from customers located within a county or portion thereof, the following amounts imposed by a county in Oregon, other than a city-county:

(a) Any license, franchise, or operating permit fee applicable to the county or portion thereof; and

(b) Any new or increased taxes imposed on and after December 16, 1971, including new or increased taxes imposed retroactively after that date, applicable to the county or portion thereof.

(2) "Taxes," as used in this rule, means sales, use, net income, gross receipts, payroll, business or occupation taxes, levies, charges, or charges other than ad valorem taxes.

(3) The amount collected from water utility customer under this rule must be separately stated and identified in all customer billings.

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2350

### Annual Report of Results of Operations

(1) By May 1 of each year, all rate-regulated water utilities must submit a financial Annual Report of Results of Operations for the preceding calendar year using the current form approved by the Commission. The annual report form is available at <http://www.puc.state.or.us/Pages/Information-for-Water-Utility-Companies.aspx>.

(2) The report must be filed electronically with the Commission's Filing Center at [puc.filingcenter@state.or.us](mailto:puc.filingcenter@state.or.us).

Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 756.105, 757.120, 757.125, 757.135  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2360

### Annual Affiliated Interest Report

(1) By June 1 of each year, all rate-regulated water utilities having an affiliated interest transaction occurring during the period from January 1 through December 31 of the immediately preceding year must file an Affiliated Interest Report using the form available at <http://www.puc.state.or.us/Pages/Information-for-Water-Utility-Companies.aspx>.

(2) As used in this rule, "affiliated interest transactions" means transactions between affiliated interests as defined by ORS 757.015.

(3) The report must be filed electronically with the Commission's Filing Center at [puc.filingcenter@state.or.us](mailto:puc.filingcenter@state.or.us).

Stat. Auth.: ORS Ch. 183, 756, 757  
Stats. Implemented: ORS 756.105  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2370

### Uniform System of Accounts

All rate-regulated water utilities must conform to the Commission's Uniform System of Accounts for water utilities for ratemaking purposes. The Commission's Uniform System of Accounts is a modified version of the National Association of Regulatory Utility Commissioners' published Uniform System of Accounts for Class A, B, and C Water Utilities, 1996.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 183, 756, 757  
Stats. Implemented: ORS 756.040, 757.105, 757.120, 757.125, 757.135  
Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

# ADMINISTRATIVE RULES

## 860-036-2380

### Accounting for Contributions in Aid of Construction (CIAC)

- (1) This rule applies to rate-regulated water utilities.
- (2) CIAC is any money, services or property received by a water utility to fund capital investments at no cost to the company and with no obligation to repay.
- (3) Each water utility must provide an accounting of CIAC upon Commission request. CIAC accounting must include contributions in any form including contributed utility plant. CIAC record keeping must identify the contributed plant, original date of installation, and original cost.
- (4) Each water utility must keep a record as described in section (3) of this rule and record CIAC on a separate plant and depreciation schedule.
- (5) The water utility will record plant assets at market value and an amount of CIAC equal to that value which will be an increase in equity of the utility. The net effect of these balance sheet accounts will be zero, and both sides must be considered in the ratemaking process.
- (6) CIAC related assets will be depreciated in the same method as purchased assets, and an amount equal to the depreciation expense will be taken as amortization of CIAC. Both the depreciation expense (debit) and the amortization expense (credit) will be coded to the depreciation expense on the income statement. This will result in an expense that nets to zero and has no effect on ratemaking.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.120, 757.125, 757.135

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2390

### Accounting for Construction Work in Progress (CWIP)

- (1) This rule applies to rate-regulated water utilities.
- (2) CWIP is an accounting treatment for capital improvement projects under construction, but not yet placed in service. The treatment allows rate-regulated water utilities to place recoverable capital improvements costs into plant. The Commission may approve the cost of a specific capital improvement project into rates if:
  - (a) The capital improvement project is under construction;
  - (b) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;
  - (c) The water utility demonstrates that it is in the public interest to provide funding for the capital improvement through rates; and
  - (d) The costs are approved by the Commission.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.120, 757.355

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2400

### Annual Budget Reports

- (1) This rule applies to rate-regulated water utilities.
- (2) Each water utility operating within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file with the Commission on or before the first day of November of each year, a copy of its proposed Budget of Expenditures, on forms provided by the Commission.
- (3) Each water utility operating within Oregon and having gross operating revenues of \$50,000 or more per annum is required to file annually on or before December 31, on forms provided by the Commission, information on new construction, extensions, and additions to the property of the water utility.

Stat. Auth.: ORS Ch. 183, 756, 757

Stats. Implemented: ORS 756.040, 756.105, 757.105

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

## 860-036-2410

### Preservation and Destruction of Records

All rate-regulated water utilities must conform to the Commission's Preservation of Records for Water Utilities available at <http://www.puc.state.or.us/Pages/General-Information-for-Water-Utilities.aspx>.

Stat. Auth.: ORS 183, 756, 757

Stats. Implemented: ORS 756.040, 757.125

Hist.: PUC 1-2017, f. & cert. ef. 1-24-17

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**Rule Caption:** Revisions to OAR 860-032-0060 Regarding Annual Reports from Telecommunications Providers.

**Adm. Order No.:** PUC 2-2017

**Filed with Sec. of State:** 2-7-2017

**Certified to be Effective:** 2-7-17

**Notice Publication Date:** 12-1-2016

**Rules Amended:** 860-032-0060

**Subject:** The rule amendments clarify and make housekeeping changes regarding annual reports from telecommunications providers.

**Rules Coordinator:** Diane Davis—(503) 378-4372

## 860-032-0060

### Reporting Requirements for Telecommunications Providers

The purpose of this rule is to provide the Commission with accurate information in order to carry out the Legislative policy of ORS 759.015.

(1) The books and records of all telecommunications providers shall be open to the Commission and subject to audit to the extent needed to verify required reports.

(2) Annual report — form and filing date:

(a) Competitive providers — On forms provided by the Commission, each competitive provider, including shared service providers, shall submit an annual report on or before April 1, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(b) Telecommunications utilities — Telecommunications utilities shall submit annual reports as required by OARs 860-027-0070 or 860-034-0395.

(c) Cooperatives — Cooperatives shall submit annual reports as required by OAR 860-034-0750. Each cooperative that does not file an annual report pursuant to OAR 860-034-0750 shall submit an annual report on or before April 1, on forms provided by the Commission, containing data required by section (3) of this rule related to its operations for the preceding calendar year.

(3) Annual report — contents:

(a) Exact legal business name, street address, and mailing address; and

(A) Name, address, telephone number, electronic mail address, and title of the person who is the regulatory contact for the Commission and its staff; and

(B) Name, address, telephone number, electronic mail address, and title of the person who prepared the annual report, if different than the regulatory contact;

(b) Other names used in Oregon, including Assumed Business Names, "Doing Business As" names, and "Also Known As" names;

(c) Former names used in Oregon during the past three calendar years;

(d) Interests, as defined by OAR 860-032-0001(1), which are affiliated with the telecommunications provider and which are authorized to provide service, or are actually providing service, in Oregon;

(e) Areas in Oregon served;

(f) Types of telecommunications services provided;

(g) How the services are provided, whether by resale, the telecommunications provider's own facilities, use of building blocks (unbundled network elements), or a combination of the above; and

(h) As applicable: number of customers, number of lines, originating intrastate and interstate (toll) minutes, percent of intrastate toll minutes, percent of interstate toll minutes, and revenue from Oregon operations.

(4) If the Commission receives a public records request for information submitted pursuant to subsection (3)(h) of this rule, the Commission shall assert that, subject to the limitations of the Public Records Law, the materials are trade secrets and, therefore, exempt from disclosure. The material shall be marked "EXEMPT FROM PUBLIC DISCLOSURE AS TRADE SECRETS." Subject to the applicable requirements of the Public Records Law or ORS 759.060, access to this material shall be limited to Commissioners, their Counsel, and Commission staff. The materials shall be segregated and maintained in a locked file.

Stat. Auth.: ORS 183, 192, 756 & 759

Stats. Implemented: ORS 756.040, 756.105, 759.020 & 759.060

Hist.: PUC 17-1988, f. & cert. ef. 11-15-88 (Order No. 88-1306); PUC 12-1997, f. & cert. ef. 10-30-97; PUC 10-1998, f. & cert. ef. 4-28-98; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 4-2000, f. & cert. ef. 2-9-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 15-2001, f. & cert. ef. 6-21-01; PUC 26-2001, f. & cert. ef. 11-5-01; PUC 2-2017, f. & cert. ef. 2-7-17

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## State Board of Tax Practitioners Chapter 800

**Rule Caption:** Clarifies rules and provides opportunity for Enrolled Agents to obtain licensure as a Tax Preparer.

**Adm. Order No.:** BTP 1-2017

**Filed with Sec. of State:** 1-27-2017

**Certified to be Effective:** 1-27-17

**Notice Publication Date:** 9-1-2016



# ADMINISTRATIVE RULES

**Rules Amended:** 800-010-0015, 800-010-0035, 800-010-0040, 800-010-0050, 800-015-0010, 800-015-0020, 800-020-0015, 800-020-0020, 800-020-0022, 800-025-0060

**Subject:** 800-010-0015: Clarifications

800-010-0035: Clarifications

800-010-0040: Clarifications

800-010-0050: Clarifications

800-015-0010: Clarifications

800-015-0020: Clarifications

800-020-0015: Clarifications; provides opportunity for Enrolled Agents to obtain a Tax Preparer's license if they don't have at least 360 hours of tax preparation experience.

800-020-0020: Clarifications

800-020-0022: Clarifications

800-025-0060: Typo correction

**Rules Coordinator:** Howard Moyes—(503) 378-4733

## 800-010-0015

### Definitions

As used in these rules, unless the context requires otherwise:

(1) "Board" means the State Board of Tax Practitioners.

(2) "Branch Office" means an office or other place of business where clients would normally or usually contact a licensee.

(3) "Client" means a person for whom a licensee performs or agrees to perform professional services for valuable consideration and the services are related directly or indirectly to the client's personal income taxes.

(4) "Confidential Information" means information furnished to a licensee for, or in connection with, the preparation of an income tax return.

(5) "Designated Consultant" means a Licensed Tax Consultant who is the responsible individual at each tax preparation business and whose responsibilities include the supervision of the preparation of all personal income tax returns for another and for valuable consideration.

(6) "Licensee" means a Licensed Tax Consultant, Licensed Tax Preparer, or any person, corporation, firm or partnership falling within the scope of ORS 673.605 to 673.735.

(7) "Resident Consultant" means the Licensed Tax Consultant who is physically present to conduct and carryout his/her duties in the principal or branch office.

(8) "Tax Consultant or Tax Preparer Practice" and a licensee's "professional practice" means any service performed or supervised by the licensee for a client, including any advice or recommendation made by the licensee to the client, when it is related directly or indirectly to the client's personal income tax return, whether or not the licensee also prepares the client's personal income tax returns.

(9) "Tax Preparation Business" means a sole proprietorship, partnership, corporation or other entity that offers personal income tax preparation services to the public, for valuable consideration, whether operated under an individual's own name or under an assumed business or corporate name, and including tax preparation businesses operated on a full- or part-time basis.

(10) "Valuable Consideration", as used in ORS 673.615 and OAR chapter 800, means a benefit that accrues to a person as a result of preparing, advising, or assisting in the preparation of personal income tax returns for others, or offering to perform such services. Valuable consideration need not be translatable into dollars and cents.

Stat. Auth.: ORS 670.310(1) & 673.730(10)

Stats. Implemented: ORS 673.605 - 673.990

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 6-1986, f. & ef. 12-31-86; TSE 3-1987, f. & ef. 10-2-87; TSE 1-1990, f. & cert. ef. 1-25-90; TSE 4-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-010-0035

### Contingent Fees

A licensee shall not render or offer to render income tax preparation services under an arrangement whereby no fee will be charged unless a specific finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services.

Stat. Auth.: ORS 673.605 - 674.740

Stats. Implemented: ORS Ch 673

Hist.: TSE 6, f. & ef. 1-5-76; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-010-0040

### Identification

(1) A licensee shall include the name of the tax preparation business through which the personal income tax returns were prepared, the tax preparation business's permanent address, and the signature of the licensee who substantially prepared the return(s) (licensee's name) on all federal and state personal income tax returns or electronic filing documents prepared by the licensee. This should be in addition to all other data required by the Internal Revenue Service, Department of Revenue, and State Board of Tax Practitioners. Office copies are exempt from this requirement.

(2) The state personal income tax return shall include the signature of the licensee who substantially prepared the return(s) and the Board issued license number of the licensee who substantially prepared the return(s).

(3) In addition to the original returns filed on behalf of a client, at least one (1) copy of the complete set of the tax returns, including all accompanying forms, schedules (specifically depreciation schedules) and statements shall be supplied to the client. A licensee is not required to provide a free copy of the tax returns to a client more than once. However, in the case of a joint tax return, each spouse is entitled, upon request, to a free copy of the tax return.

Stat. Auth.: ORS 673.310(1), 673.730(7) & 673.730(10)

Stats. Implemented: ORS 673.730(7), 673.605 - 673.990

Hist.: TSE 6, f. & ef. 1-5-76; TSE 12, f. & ef. 9-20-77; TSE 1-1978, f. & ef. 2-3-78; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1995, f. & cert. ef. 5-5-95; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-010-0050

### Advertising and Solicitation

(1) As used in this rule, "advertise" and "advertising" means any form of printed, broadcast, or electronic material that makes known professional income tax services. This includes, but is not limited to, business cards and stationery, and all web and e-commerce advertising of an individual or tax preparation business.

(2) No licensee or tax preparation business shall advertise or solicit clients in a false, fraudulent, deceptive or misleading manner.

(3) All advertising must include either the name of a firm that has complied with ORS 673.643 or the name of the firm's Designated Licensed Tax Consultant.

(a) Only a person holding a valid Tax Consultant's License may use the designation "L.T.C.", "LTC" or the titles "Licensed Tax Consultant" or "Tax Consultant."

(b) Only a person holding a valid Tax Preparer's License may use the designation "L.T.P.", "LTP" or the title "Licensed Tax Preparer".

(4) All advertising must be reviewed and approved in advance by the designated Licensed Tax Consultant. The designated Licensed Tax Consultant and the registered tax preparation business shall each be responsible for the business's compliance with the provisions of this rule.

(5) No licensee shall advertise to give a discount unless:

(a) The discount is based upon a basic fee schedule posted in public view in the licensee's place of business; and

(b) The fees on the posted basic fee schedule are the usual and customary charges of the tax preparation business; and

(c) The basic fee schedule must include the minimum fees charged for at least the following forms and schedules: 1040, 1040A, 1040EZ, Sch. A, Sch. B, Sch. EIC, Form 2441, Sch. 8812, Oregon 40, 40N and 40P.

(6) All business advertising must include the Board issued business registration number of the firm written as: "Board of Tax Practitioners#" and/or "OBTP#" or the license number of the firm's Designated Licensed Tax Consultant written as: "Licensed Tax Consultant#" and/or "LTC#".

(7) All individual advertising must include licensee's Board issued LTC or LTP license number written as: "Licensed Tax Consultant#" and/or "LTC#" or "Licensed Tax Preparer#" and/or "LTP#".

Stat. Auth.: 673.730(7) & 673.730(10)

Stats. Implemented: ORS 673.730(7), 673.605 - 673.990

Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1981(Temp), f. 2-18-81, ef. 2-19-81; TSE 3-1981, f. 7-22-81, ef. 7-23-81; TSE 4-1981, f. & ef. 8-13-81; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1986, f. & ef. 7-14-86; TSE 2-1990, f. & cert. ef. 1-25-90; TSE 2-1992, f. & cert. ef. 5-15-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-015-0010

### Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall attest on the renewal to

# ADMINISTRATIVE RULES

have completed at least 30 hours of acceptable continuing education since the last renewal date.

(2) Each licensee shall attest on the renewal to, and shall provide sufficient detail (list) of, having completed, within the 30 hour continuing education requirement, a minimum of two (2) hours of acceptable continuing education in professional conduct and ethics since the last renewal date. The two hours of acceptable continuing education in professional conduct and ethics may be satisfied through any professional conduct and ethics program that meets the general continuing education requirements described in section (3) of this rule.

(3) Continuing education programs in professional conduct and ethics required by subsection (2) of this rule are eligible for continuing education credit if the program is offered by a sponsor approved by the Board and includes information pertaining to at least one or more of the following topics:

(a) Review of Oregon Revised Statutes and Oregon Administrative Rules pertaining to the preparation of individual income tax returns;

(b) Review of examples of issues or situations that require an understanding of Federal or State statutes, rules, and case law relevant to all licensees;

(c) Review of guidelines adopted by the Internal Revenue Office of Professional Responsibility and policies outlined in the Internal Revenue Treasury Department Circular 230;

(d) Review of the code of professional conduct adopted by the Board and set forth in OAR chapter 800, division 010;

(e) Review of recent case law pertaining to ethics and professional responsibilities for the licensed tax consultant and tax preparer profession.

(4) Each licensee shall report compliance with the continuing education requirements on the license renewal document. Licensees shall be subject to the provisions of OAR 800-015-0015 pertaining to the periodic audit of continuing education.

(5) Proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required continuing education is available for audit or investigation by the Board, licensees shall maintain certificates for at least four (4) years following each continuing education cycle and renewal for the tax practitioner license.

(6) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

(7) The Board may verify continuing education information submitted by licensees.

(8) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next. However, hours earned during the month of renewal not claimed on the current renewal may be submitted with the following year's renewal.

(9) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor or instructor.

(10) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and ten (10) hours for each quarter hour credit. For all live courses including interactive webinars, webcasts, IRS phone forums, and seminars, one (1) 50-minute education hour of continuing education credit will be granted for each hour of classroom attendance.

(11) Continuing education credits are accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two (2) hours for each hour of teaching, which includes preparation time. No more than 1/2 total required continuing education credit can be in teaching.

(12) Correspondence and online study courses are accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) Course outlines, workbooks, and exams must be submitted to the Board for approval of course content and credit hours claimed prior to offering the material to the public unless already approved by the California Tax Education Council (CTEC), or the Internal Revenue Service (IRS), or the National Association of State Boards of Accountancy (NASBA).

(13) "In-Company" instruction may be accepted if the course or seminar is presented to ten (10) or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(14) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 calendar days, to make up the rejected hours.

(15) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing education by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.645 & 673.655

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-015-0020

### Continuing Education Program Requirements

(1) Acceptable continuing education is that which contributes directly to the expertise of the individual in the preparation of income tax returns, and is presented by a sponsor who meets the requirements of all Rules. It is the obligation of each licensee to select a course of study which will contribute to his/her competence in the preparation of income tax returns.

(2) The following general subject matters are acceptable to the extent they contribute directly to the expertise of advising, assisting, or preparing income tax returns:

- (a) Taxation;
- (b) Practitioner Ethics;
- (c) Accounting and payroll theory;
- (d) Estate, tax, or investment planning;
- (e) Computer technology;
- (f) Tax representation: exam, collections, or appeals;
- (g) Others, if the licensee can demonstrate a direct relationship to the preparation of a client's income tax returns.

(3) Programs primarily directed towards the licensee's personal benefit, rather than that of his/her clients, and programs relating primarily to general business management, are unacceptable. Some examples of unacceptable subjects are:

- (a) Memory improvement;
- (b) Buying or selling a tax practice;
- (c) Setting fee schedules;
- (d) Character development;
- (e) Behavior modification;
- (f) Business management;
- (g) Labor law;
- (h) Economic forecasts;
- (i) Learning to operate office equipment.

(4) Programs must be at least one (1) 50-minute education hour with credit given in whole hours only.

(5) Programs must be conducted by a qualified instructor whose background, training, education, or experience make it appropriate for the person to lead a discussion on the subject matter of the particular program.

Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.645, 673.655, 673.605 – 673.900

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1989, f. & cert. ef. 10-27-89; TSE 8-1992, f. & cert. ef. 12-22-92; TSE 2-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-020-0015

### Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board. The application must include the examination fee and the proctor site fee, if applicable. The application must be signed by the applicant.

(2) The application and examination fee shall be filed with the Board no later than one (1) month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) or a photocopy of an official transcript issued by an accredited college or university shall be submitted to the Board by the stu-

# ADMINISTRATIVE RULES

dent with the initial application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. Applicants shall furnish the Board a brief outline of courses completed and/or taught, together with a transcript or proof of instruction from the educational institution if the course(s) they completed and/or taught have not received prior approval from the Board. If the Board determines the course(s) completed and/or taught are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer, employers or other evidence on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(5) An applicant for the state portion of the tax consultant examination who is an Enrolled Agent and is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, may:

(a) Upon successfully completing the state portion of the tax consultant exam, and having completed not less than a cumulative total of 360 hours of relevant work experience gained during the course of at least two (2) of the last five (5) calendar years, as documented on a form prescribed and furnished by the Board, apply for licensure as a Licensed Tax Consultant; or

(b) Upon successfully completing the state portion of the tax consultant exam, apply for licensure as a Licensed Tax Preparer. Upon completion and documentation of not less than a cumulative total of 360 hours of relevant work experience gained during the course of at least two (2) of the last five (5) calendar years, the individual may apply for licensure as a Licensed Tax Consultant.

(6) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer, employers or other evidence that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours gained during the course of at least two (2) of the last five (5) calendar years.

(A) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(B) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA or AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 220 hours credited. To qualify for the one (1) to five (5) hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor knowledgeable in tax preparation.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(7) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 1100 hours of work experience earned during at least two (2) of the last five (5) years.

(8) A tax practitioner applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax practitioner for at least two (2) of the last five (5) years; and

(b) Furnish documented proof of self-employment as a tax practitioner.

(9) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in tax preparation within two (2) years prior to the date of application;

(b) The applicant has at least three (3) years' experience in tax preparation within the last 5 years;

(c) The applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self-employment regarding the work experience.

(10) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for a maximum of 375 hours of work experience at the rate of one (1) classroom hour of education for five (5) hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one (1) year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(11) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.625 - 673.640

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-020-0020

### Examinations

(1) Licensing examinations shall be scheduled as the Board deems appropriate.

(2) Tax preparer and tax consultant applicant's examination shall be written. Questions shall be so constructed as to measure the applicant's knowledge of Oregon and federal personal income tax law, theory and practice; the provisions of ORS 673.605 to 673.735 and the Code of Professional Conduct. The tax consultant examination shall require a higher standard of knowledge.

(3) A tax preparer applicant must have at least a 75 percent grade or score on the entire examination to pass.

(4) A tax consultant applicant must have at least a 75 percent grade or score on the entire examination to pass.

(5) An enrolled agent who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, must have at least a 75 percent grade or score on the Consultant's State-Only portion of the examination to pass.

(6) Pass or fail results, including scores, of the examination shall be provided to each examination candidate, electronically or in writing. Results will not be given by any other means.

(7) No review of examination questions by the applicant will be granted.

(8) An applicant who fails to pass the examination shall be eligible for a succeeding examination upon making application and payment of the examination fee.

(9) A tax preparer applicant must re-take the Basic Course if, after two (2) years from Basic Course completion date, the applicant has not yet passed the preparer examination.

(10) An applicant who passes an examination must apply for licensure within 60 days from the examination date. If application for license is not made within 60 calendar days, the applicant must retake the examination, unless there are verifiable circumstances beyond the reasonable control of the applicant, subject to the discretion of the Board.

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

Stat. Auth.: ORS 673

Stats. Implemented: ORS 673.605 - 673.740 & 673.990

Hist.: TSE 8, f. & ef. 5-19-76; TSE 10(Temp), f. & ef. 11-29-76 thru 3-28-77; TSE 11, f. & ef. 4-6-77; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1980, f. & ef. 5-30-80; TSE 1-1981(Temp), f. 1-2-81, ef. 1-5-81; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1983, f. & ef. 3-10-83; TSE 1-1984(Temp), f. & ef. 12-20-84; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1985(Temp), f. & ef. 6-11-85; TSE 2-1986, f. & ef. 7-14-86; TSE 4-1987, f. & ef. 10-2-87; TSE 1-1989, f. & cert. ef. 6-8-89; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 2-2004, f. 8-12-04 cert. ef. 8-31-04; BTP 2-2005, f. 7-28-05, cert. ef. 8-1-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 2-2011, f. 2-7-11, cert. ef. 7-1-11; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-020-0022

### Examination Conduct; Disqualification

(1) Examination Conduct: Examinations shall be conducted in a designated area with restricted access. Approval notification of an applicant's

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eligibility to take the examination must be issued by the Board office prior to scheduling an appointment for examination. Authorization must be provided by the Board office or proctoring site before bringing any materials, electronic equipment, or devices into the examination area. Applicants shall be required to provide valid US state or federal government issued photographic identification before being allowed to take the examination.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Taking or attempting to take any unauthorized items, notes, materials, or devices into the examination area;

(b) Giving or attempting to give assistance to others in answering questions during the examination;

(c) Receiving or attempting to receive assistance during the examination, including assistance from other individuals, notes, books, or devices to answer questions;

(d) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(e) Failing to follow directions relative to the conduct of the examination;

(f) Exhibiting behavior which impedes the normal progress of the examination; and

(g) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. Any candidate who has been disqualified during an exam will need to request in writing approval from the Board to retake the exam. The candidate will be required to reapply by submitting a new exam application, additional examination fees, and a letter requesting approval to retake the exam including an explanation of their actions which resulted in disqualification from the exam. If approved the examination will be scheduled at a date, time, and place determined by the Board.

Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.625 - 673.640

Hist.: BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

## 800-025-0060

### Consultant in Residence

(1) A Licensed Tax Consultant shall be in residence at each principal and branch office. "Tax consultant in residence" means that a Licensed Tax Consultant is physically present to conduct and carry out his/her duties in the principal or branch office for at least 50 percent of the time an office is open to the public for tax preparation, assistance, and advice during each week from January 1 to the federal filing deadline without extension and during each month for the remainder of the year for year round offices in accordance with OAR 800-025-0050.

(2) The Board may waive the Licensed Tax Consultant in residence requirement of subsection (1) upon written application, which details how the management and supervision of principal and branch offices will effectively be accomplished.

(3) In granting or denying a written application for waiver, the Board shall evaluate each case on an individual basis, considering the following factors:

(a) Distance between offices supervised by a Licensed Tax Consultant.

(b) Past compliance of waiver applicants with ORS 673.605 to 673.735 and rules of the Board.

(c) Whether the policies and procedures described in the application will result in effective management and supervision of Licensed Tax Preparers in the absence of a Resident Consultant.

(d) Sickness or death of a Licensed Tax Consultant; and

(e) Any other unusual or unforeseen circumstances making such waiver necessary.

(4) Applicants shall apply annually for waiver of the resident consultant rule. The application shall provide all of the information described in guidelines established by the Board for applying for waivers. Except in emergency circumstances resulting in undue hardship, waiver applications will not be accepted after January 31 for branch offices intended to operate at any time during the period January 1 to the federal filing deadline without extension of the same calendar year. Approved waivers shall expire on the expiration date of the associated tax business registration or a date established by the Board.

(5) All applications must be acted upon by the Board. Disapproval of an application by the Board may be appealed.

(6) The supervising Licensed Tax Consultant of an office for which a waiver has been approved shall meet in person with Licensed Tax Preparers in the office at least twice weekly to review the work of each Licensed Tax Preparer and respond to questions.

(7) A tax preparation business shall notify the Board in writing within 15 business days of any change in status of its Resident Consultant.

(8) A Resident Consultant shall notify the Board in writing within 15 business days of any change in their status as Resident Consultant.

Stat. Auth.: ORS 670.310(1) & 670.730(10)

Stats. Implemented: ORS 673.643 & 673.605 - 673.990

Hist.: TSE 1-1985, f. & cert. ef. 1-15-85; TSE 5-1986, f. & cert. ef. 10-6-86; TSE 6-1987, f. & cert. ef. 2-87; TSE 3-1988, f. & cert. ef. 8-26-88; TSE 5-1995, f. & cert. ef. 5-5-95; TSE 2-1996, f. & cert. ef. 12-30-96; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15; BTP 1-2017, f. & cert. ef. 1-27-17

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## Teacher Standards and Practices Commission Chapter 584

**Rule Caption:** Adopts, and amends rules related to educator licensure, professional practices and approval of preparation programs.

**Adm. Order No.:** TSPC 1-2017

**Filed with Sec. of State:** 2-1-2017

**Certified to be Effective:** 2-1-17

**Notice Publication Date:** 12-1-2016

**Rules Adopted:** 584-010-0004, 584-010-0125, 584-420-0015, 584-420-0016, 584-225-0065

**Rules Amended:** 584-200-0005, 584-200-0030, 584-210-0040, 584-210-0050, 584-210-0060, 584-210-0070, 584-210-0100, 584-225-0050, 584-420-0020, 584-420-0310, 584-420-0345, 584-420-0360, 584-420-0365, 584-420-0415, 584-420-0420, 584-420-0425, 584-420-0440, 584-420-0460, 584-420-0490, 584-420-0630

**Rules Ren. & Amend:** 584-020-0060 to 584-050-0125

**Subject:** 584-010-0004 adopts provisions to provide guidance to programs for state approval process during transition to national accreditation requirements.

584-010-0125 adopts a method to allow programs to create innovative and collaborative programs on an experimental basis.

584-420-0015 adopts reading instruction program standards in accordance with new statutory requirement.

584-420-0016 adopts dyslexia instruction program standards in accordance with new statutory requirement.

584-225-0060 adopts provisions for Dual Language Specialization.

584-200-0005 is amended to permit applicants who previously held middle level endorsement to add foundational endorsements with only a test.

584-200-0030 is amended to define a month as 30 days for purposes of late fees and adds provision to allow 30 days to reopen an application after issuing license if new information is received.

584-210-0040 is amended to clarify the applicant must hold an Initial, Initial I, Initial II, reciprocal, preliminary teaching license or equivalent out-of-state license to count teaching experience and permits .5 to .99 teaching experience for six years to meet experience requirement for the Professional.

584-210-0050 is amended to create more flexible provisions related to teaching experience and evaluations.

584-210-0060 is amended to allow applicants who have previously held restricted licenses to apply for this license.

584-210-0070 is amended to remove provisions that allows out-of-state people to be issued the legacy.

584-210-0100 is amended to clarify that an applicant may hold an emergency, charter school and restricted substitute license prior to qualifying restricted teaching license.

584-225-0050 is amended to clarify all applicants must meet language proficiency requirements for Bilingual Specialization.

584-420-0020, 584-420-0310, 584-420-0360, 584-420-0365, 584-420-0415, 584-420-0420, 584-420-0425 are amended to clarify cross-reference to teacher performance assessment requirements.

# ADMINISTRATIVE RULES

584-420-0345 is amended to implement cross-references to new dyslexia and reading instruction standards (584-420-0015 and 584-420-0016) and to clarify cross-reference to teacher performance assessment rule.

584-420-0440 is amended to implement cross-references to new dyslexia and reading instruction standards (584-420-0015 and 584-420-0016) and to clarify cross-reference to teacher performance assessment rule.

584-420-0460 is amended to implement cross-references to new dyslexia and reading instruction standards (584-420-0015 and 584-420-0016) and to clarify cross-reference to teacher performance assessment rule and removes highly qualified provisions, as this federal law has been repealed.

584-420-0490 is amended to implement cross-reference to teacher performance assessment requirements and to provide language proficiency standard for Russian and Japanese programs.

584-420-0630 is amended to include language proficiency standard.

584-020-0060 is amended to clarify process for termination of informal reproval process and renumbers to 584-050-0125 so it will be with other professional practices rules.

**Rules Coordinator:** Tamara Dykeman—(503) 378-3586

## 584-010-0004

### Transition to National Accreditation

(1) The Oregon Legislative Assembly has delegated to the Teacher Standards and Practices Commission the authority to establish standards for approval of educator preparation programs through Oregon Revised Statutes 342.147 and 342.165.

(2) The Oregon Legislative Assembly has required all educator preparation programs to be nationally accredited by July 1, 2022, pursuant to Sections 2 through 6, chapter 756, Oregon Laws 2015 (Enrolled SB 78).

(3) Purpose of the rule: In order to facilitate the implementation of the national accreditation requirement, the agency is establishing transition provisions for the state approval process. The purpose of the transition provisions is to provide guidance and flexibility to educator preparation programs in the state approval process as they pursue new or renewing national accreditation.

**NOTE:** This transition rule does not apply to educator preparation programs that have completed a site visit prior to July 1, 2016, for a pending national accreditation or state approval process.

State Approval of Unit

(4) Effective July 1, 2016, the Commission is establishing the Council for the Accreditation of Educator Preparation (CAEP) 2013 Accreditation Standards as the Oregon standards for state approval of units.

(5) In accordance with subsection (4) of this rule, the unit will not be required to meet the following standards for the state approval process:

- (a) 584-017-1008 Conceptual Framework;
- (b) 584-017-1015 Knowledge Skills and Professional Dispositions;
- (c) 584-017-1022 Assessment System and Unit Evaluation;
- (d) 584-017-1028 Selection, Recruitment, Admission and Retention of Candidates;

(e) 584-017-1038 Field Experience and Clinical Practice;

(f) 584-017-1052 Faculty Qualifications, Performances and Development; and

(g) 584-017-1055 Unit Governance and Resources. Program Review

(6) Single Subject Endorsements: The unit may aggregate all single-subject endorsement areas into one program review report, unless the endorsement requires completion of a Commission-adopted program as provided in Chapter 584, Division 220. The Commission will provide state recognition of the aggregated single-subject programs in accordance with state standards for educator preparation (INTASC).

(7) Program Review Templates: The unit may submit a program review report in any of the following forms:

- (a) TSPC Program Review Template;
- (b) Specialized Professional Association (SPA) template;
- (c) Modified Specialized Professional Association (SPA) template; or
- (d) Any other template that meets the needs of the unit and provides the required information for TSPC program review.

State-Specific Standards

(8) State-Specific Standards (State Addendum Report): The units must submit a state addendum report for review of state-specific standards.

(a) The report must include evidence of meeting following state standards:

- (A) Request for Waiver of Rules (OAR 584-017-1010);
- (B) Waivers of Academic Requirements and Appeals on Academic Decisions (OAR 584-017-1012);
- (C) Knowledge of School Law for Licensed Educators (OAR 584-017-1020);

(D) Diversity and Inclusion (OAR 584-017-1050);

(E) Verification of Program Completion for All Licensure Programs (OAR 584-017-1035);

(F) Field or Clinical Experiences (OAR 584-017-1042);

(G) Student Teaching (OAR 584-017-1045);

(H) Internship Agreements (OAR 584-017-1048);

(I) Reading Instruction: Program Standards (584-420-0015);

(J) Dyslexia Instruction: Program Standards (584-420-0016); and

(K) English Language Learners: Program Standards (584-420-0010).

(b) The state addendum report may be submitted in conjunction with the program review process or with the state approval of unit process.

(c) The state addendum report may be submitted in the form and manner that best meets the needs of the unit, especially in regard to its national accreditation process.

(9) Applicability: Unless otherwise stated, all requirements and procedures set forth in this rule become effective July 1, 2016. This rule supersedes any provisions contained in OAR Chapter 584, Division 10 and 17 relating to the continuing state approval process and any conflicting rule requirements will be resolved accordingly.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455- 342.495 & 342.553

Hist.: TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-010-0125

### Experimental Programs

(1) Purpose of Experimental Programs: The purpose of experimental licensure, endorsement or specialization programs is to allow educator preparation programs to develop innovative and creative programs that respond to community, social and education needs. Furthermore, it is to encourage collaboration among educator preparation programs and to foster partnerships between programs and other education entities, including school districts, education service districts, private schools and non-profit organizations.

(2) Term of Experimental Programs: The Commission may provide state recognition of an experimental licensure, endorsement or specialization program for a maximum of two years. The state recognition of an experimental program may not exceed two years under any circumstances.

(3) Requirements for Experimental Programs: The proposal for state recognition of an experimental program must include:

(a) Rationale for the experimental program, including:

(A) Specific variations to Commission-adopted program requirements the unit(s) is seeking;

(B) Description of the innovative and creative program structure and how it will serve community, social and education needs; and

(C) Description of any partnerships or collaborations involved with the experimental program.

(b) Descriptions of proposed education experiences and settings;

(c) Arrangements for practica experiences;

(d) Evidence of institutional capacity to support the program; and

(e) Systematic efforts for evaluation of program completers.

(4) Requirements for Licensure: Candidates completing an experimental program must meet all Oregon licensure requirements.

(5) Annual Reports: The unit(s) must include data and information regarding any approved experimental programs within their annual report(s) to the Commission.

(6) Full State Recognition: The unit(s) must receive full state recognition of licensure, endorsement or specialization program as provided in OAR Chapter 584, Division 10 no later than two years following the date of the initial state recognition of the experimental program by the Commission.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-050-0125

### Letters of Informal Reproval

(1) Pursuant to ORS 342.183, the Commission may agree not to pursue disciplinary action against a licensed, registered or certified educator by the Commission and issue a letter of informal reproval if:

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(1) Following an investigation, the Commission determines that the educator has engaged in misconduct based on standards adopted by the Commission by rule; and

(b) The educator agrees to the terms of the letter of informal reproof, including a monitoring period.

(2) The Commission may take disciplinary action if the educator fails to comply with the terms of the informal reproof as provided in subsection (5) of this rule.

(3) Pursuant to ORS 342.183, the Commission shall:

(a) Establish the terms of a monitoring period for the educator to whom the letter is issued; and

(b) Notify the employer, if any, of the educator to whom the letter is issued, including any terms of the letter that the employer may need to know to assist the educator in complying with the terms of the letter.

(4) A letter of reproof:

(a) Is confidential; and

(b) May not be posted on an interstate clearinghouse related to educator license sanctions except if disciplinary action is taken as provided in subsection (5) of this rule.

(5) If an educator fails to comply with the terms of a letter of informal reproof, the Commission may take disciplinary action against the educator based on one or both of the following:

(a) The conduct underlying the letter of informal reproof; or

(b) The failure to comply with the terms of the letter of informal reproof.

(6) If the Executive Director of the Commission determines that an educator failed to meet the terms of a letter of informal reproof, the Executive Director is authorized to open an investigation into the alleged failure and shall submit the investigation report to the Commission with a recommendation regarding potential sanctions to make a final determination pursuant to ORS 342.176.

(7) If the Executive Director of the Commission determines that an educator has met the terms of a letter of informal reproof and has successfully completed the monitoring period, the Executive Director is authorized to terminate the monitoring period and issue a letter dismissing the Informal Letter of Reproof and Monitoring Period.

(a) All dismissal letters terminating an Informal Letter of Reproof and monitoring period shall be reported to the Commission at the meeting following the date of the Dismissal Order.

(b) The investigation file, record of Informal Letter of Reproof and the dismissal letter are confidential and not subject to public disclosure.

(8) The Executive Director shall notify the educator by letter of the dismissal of the informal reproof as provided in subsection (7) of this rule.

(9) The Executive Director shall notify the employer, if any, of the educator who was previously notified under subsection (3)(b) of this rule of the dismissal of the informal reproof as provided in subsection (7) of this rule.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.175 - 342.190

Hist.: TSPC 1-2015, f. & cert. ef. 2-10-15; TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; Renumbered from 584-020-0060, TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-200-0005

### Transition to New Licensure System

(1) Effective January 1, 2016: All OAR Chapter 584 rule titles, numbers and provisions adopted on or after January 1, 2016 will supersede all OAR Chapter 584 rule numbers, titles and provisions adopted prior to this date. Any conflicting rule requirements within OAR Chapter 584 will be resolved according to the OAR Chapter 584 rule provisions effective on or after January 1, 2016.

(2) Endorsements:

(a) Effective July 1, 2015, the endorsements as provided in OAR 584-220-0010 will be placed on first-issue licenses and renewals.

(b) Effective July 1, 2015, all teaching licenses will be issued endorsement in accordance with Division 220, Endorsements on Teaching Licenses and subsection (2)(c) of this rule.

(c) Multiple Subjects — Middle Level Endorsements: Effective July 1, 2015, the Multiple Subjects — Middle Level endorsement is abolished. The Multiple Subjects — Middle Level endorsement will not be added to or retained with an applicant's Initial, Initial I, Initial II, Continuing, Professional Teaching Licenses or any future licenses the applicant holds. Current holders of the Multiple Subjects — Middle Level endorsement will be subject to the following transition provisions:

(A) If the applicant has been assigned and taught multiple subjects (self-contained) for four full years or more in a public, charter or private school setting as evidenced by Professional Educational Experience Report

(PEER) forms, the Elementary-Multiple Subjects endorsement may be added to the license. If the applicant has not taught four full years or more in an assignment that requires a multiple subjects (self-contained) endorsement, the Elementary-Multiple Subjects endorsement may not be added to the license. If necessary, the applicant and an Oregon school district may apply for an Emergency Teaching License pursuant to OAR 584-210-0130 or a License for Conditional Assignment (LCA) pursuant to OAR 584-210-0160 while the applicant is in the process of qualifying for an Elementary — Multiple Subjects or another valid endorsement.

(B) If the applicant has been assigned and taught Foundational Mathematics, Foundational Language Arts, Foundational Social Studies or Foundational Science for four full years or more in a public, charter or private school setting, as evidenced by Professional Educational Experience Report (PEER) forms, the appropriate foundational single subject may be added to the license. If the applicant has not taught four full years in an assignment that requires a foundational subject matter endorsement, the foundational subject matter endorsement may not be added to or retained on the license. If necessary, the applicant and a district may apply for an Emergency Teaching License pursuant to OAR 584-210-0130 or a License for Conditional Assignment (LCA) pursuant to 584-210-0160 while the applicant is in the process of qualifying for a valid subject-matter endorsement. The applicant may add the Foundational Mathematics, Foundational Language Arts, Foundational Social Studies or Foundational Science endorsement by receiving a passing score of the appropriate Commission-approved subject mastery test. The applicant is not required to complete the pedagogy requirements for adding an endorsement to a Preliminary Teaching License as provided in Chapter 584, Division 220.

(3) Grade-Level Authorizations:

(a) Effective July 1, 2015, grade-level authorizations for Initial, Initial I, Initial II, Continuing, Professional Teaching and Distinguished Teacher Leader licenses are abolished and regardless of the printed grade authorizations held on the license, all licenses in this subsection are authorized prekindergarten through grade 12 within the scope of the NCES course codes associated with the endorsements held on the license.

(b) Effective January 1, 2016, grade-level authorizations for Basic and Standard teaching licenses are abolished and regardless of the printed grade authorizations held on the license, all licenses are authorized prekindergarten through grade 12 within the scope of the NCES course codes associated with the endorsements held on the license.

(c) Effective July 1, 2015, licensees will no longer be advised that they must add a grade-level authorization program in order to expand the grade levels on their license.

(d) Licensees advised they were required to complete a grade-level authorization program will not be held for failure to complete that requirement.

(e) The Commission will make every effort to identify these licensees to alert them to the new grade-level authorization requirements.

(4) Initial I Teaching Licenses:

(a) All applicants issued an Initial I Teaching License between July 1, 2015 and December 31, 2015 will be issued a renewal of their license in accordance with the Preliminary Teaching License adopted on January 1, 2016.

(b) Effective January 1 2016, the Initial I Teaching License will be administratively renamed to the Preliminary Teaching License.

(5) Initial I and Initial II Teaching Licenses Based on a MAT or Post-Baccalaureate Preparation Program issued prior to July 1, 2015: General Provisions: Effective July 1 2015, the completion of the advanced coursework of six (6) semester or nine (9) quarter graduate hours required to advance to the Initial II Teaching License satisfies the advanced professional education program requirements for the Professional Teaching License.

(6) Initial I Teaching Licenses Based on a Bachelor's Degree issued prior to July 1, 2015: General Provisions: Effective July 1, 2015, for Initial I Teaching Licenses based on a Bachelor's degree, the requirements to complete the master's degree or equivalent post-Initial I Teaching License are modified as follows:

(a) Admission to and completion of a master's degree or higher in education or in the arts and sciences from a regionally accredited institution, or the foreign equivalent of such degree approved by the Commission will satisfy the advanced professional education program requirements of the Professional Teaching License;

(b) Completion of thirty (30) semester hours or forty-five (45) quarter hours of graduate coursework will be considered "equivalent" to completion of a master's degree;

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(c) Effective July 1, 2015, the requirement that “equivalent” graduate coursework must include equal amounts of pedagogy; content; and electives (ten (10) semester or fifteen (15) quarter graduate hours each) has been eliminated; and

(d) Applicants who do not wish to complete these requirements may qualify for promotion to the Professional Teaching License upon completion of the advanced program requirements as provided in OAR 584-0210-0040.

(7) Initial I Teaching Licenses Based on a MAT or Post-Baccalaureate Preparation Program Issued Between July 1, 2012 through June 30, 2015: First Renewal:

(a) Upon the first renewal of the Initial I Teaching License, applicants will be issued a new set of instructions for qualifying for the Professional Teaching License.

(b) Qualified applicants will be issued an Initial I Teaching license which will be administratively renamed to a Preliminary Teaching License after January 1, 2016.

(c) To qualify for first renewal of the Initial I Teaching License, an applicant subject to this subsection must:

(A) Meet the previously advised renewal requirements to show progress of 3 semester or 4.5 quarter hours (at least 90 professional development units); or

(B) Meet the new Preliminary Teaching License renewal requirements as provided in OAR 584-210-0030.

(d) If the applicant does not meet renewal requirements for either previously advised or new Preliminary Teaching License renewal options, the applicant may not renew the license. The applicant may apply to reinstate the Preliminary Teaching License upon completion of the renewal requirements in effect at the time of application for reinstatement. (See, OAR 584-210-0030 and 584-210-0190.)

(e) Failure to complete renewal requirements is not considered an eligible emergency for purposes of the Emergency Teaching License.

(8) Initial I Teaching Licenses Based on a Bachelor’s Degree Issued Between July 1, 2012 through June 30, 2015: First Renewal:

(a) Upon the first renewal of the Initial I Teaching License, applicants will be issued a new set of instructions for the requirements to qualify for the Professional Teaching License.

(b) Qualified applicants will be issued an Initial I Teaching license which will be administratively renamed to a Preliminary Teaching License after January 1, 2016.

(c) To qualify for first renewal of the Initial I Teaching License, an applicant subject to this subsection must:

(A) Meet the previously advised renewal requirements of 3 semester or 4.5 quarter hours (at least 90 professional development units); or

(B) Meet the new Preliminary Teaching License renewal requirements as provided in OAR 584-210-0030.

(d) If the applicant does not meet renewal requirements for either the previously advised renewal option or the new Preliminary Teaching License renewal option, the applicant may not renew the license. The applicant may apply to reinstate the Preliminary Teaching License upon completion of the renewal requirements in effect at the time of application for reinstatement.

(e) Generally, failure to complete renewal requirements is not considered an eligible emergency for purposes of the Emergency Teaching License.

(9) Initial I Teaching Licenses Based on a Bachelor’s Degree First Issued Between July 1, 2009 through June 30 2012: Second Renewal:

(a) Upon second and final renewal of the Initial I Teaching License, applicants will be issued a new set of instructions for the requirements that must be completed in order to obtain the Professional Teaching License.

(b) Qualified applicants will be issued an Initial I Teaching license which will be administratively renamed to a Preliminary Teaching License after January 1, 2016.

(c) To qualify for second renewal of the Initial I Teaching License, an applicant subject to this subsection must:

(A) Meet the previously advised renewal requirements to show progress of 3 semester or 4.5 quarter hours (at least 90 professional development units); or

(B) Meet the new Preliminary Teaching License renewal requirements as provided in OAR 584-210-0030.

(d) If the applicant does not meet renewal requirements for either the previously advised renewal option or the new Preliminary Teaching License renewal option, the applicant may not renew the license. The applicant may apply to reinstate the Preliminary Teaching License upon com-

pletion of the renewal requirements in effect at the time of application for reinstatement.

(e) Generally, failure to complete renewal requirements is not considered an eligible emergency for purposes of the Emergency Teaching License.

(f) If an applicant is eligible for the Professional Teaching License as provided in OAR 584-210-0040, the applicant will be issued the Professional Teaching License.

(10) Initial I Teaching Licenses Based on a MAT or Post-Baccalaureate Preparation Program Issued Between July 1, 2009 through June 30, 2012:

(a) Qualified applicants who have completed the advanced professional education program requirements and the professional experience requirement as previously advised by the Commission will be issued the Professional Teaching License.

(b) To qualify for the Professional Teaching License, applicants subject to this subsection must:

(A) Meet previously advised advanced coursework requirement of six (6) semester or nine (9) quarter graduate hours; or

(B) Meet the new requirements for the Professional Teaching License as provided in OAR 584-210-0040. Under this option, the applicant may use any qualifying coursework earned during the first two terms of her or his Initial I Teaching License to satisfy the new advanced professional education program requirements.

(c) If an applicant is unable to meet requirements for the Professional Teaching License as provided in subsection (10)(b) of this rule, the applicant will be issued a renewal of the Preliminary Teaching License.

(d) To qualify for the Professional Teaching License, all applicants must also meet the professional experience requirements provided in OAR 584-210-0040, Professional Teaching License.

(11) Initial I Teaching Licenses Based on a Bachelor’s Degree First Issued Between July 1, 2006 through June 30, 2009: No Further Renewals:

(a) Qualified applicants who have completed the advanced coursework requirements as previously advised by the Commission and the professional experience requirement will be issued the Professional Teaching License;

(b) To qualify for the Professional Teaching License, applicants subject to this subsection must:

(A) Meet previously advised advanced master’s degree or equivalent coursework requirements for the Initial II Teaching License as modified by subsection (5) and (6) of this rule; or

(B) Meet the new requirements for the Professional Teaching License as provided in OAR 584-210-0040. Under this option, the applicant may use any qualifying coursework earned during the first two terms of her or his Initial I Teaching License to satisfy the new advanced professional education program requirements.

(c) If an applicant is unable to meet requirements for the Professional Teaching License provided in subsection (10)(b) of this rule, the applicant will be issued a renewal of the Preliminary Teaching License.

(d) To qualify for the Professional Teaching License, all applicants must also meet the professional experience requirements provided in OAR 584-210-0040, Professional Teaching License.

(12) Initial II Teaching Licenses Effective July 1, 2015:

(a) Effective July 1, 2015, the Initial II Teaching License will no longer be issued.

(b) Qualified applicants who were issued the Initial II Teaching License prior July 1, 2015 are considered to have satisfied all advanced professional education program requirements provided in OAR 584-210-0040, Professional Teaching License;

(c) Qualified applicants who have completed the teaching experience requirements provided in OAR 584-210-0040 will be issued the Professional Teaching License;

(d) Qualified applicants who do not have sufficient teaching experience to meet the requirements for OAR 584-210-0040, Professional Teaching License, will be issued a continuously renewable Preliminary Teaching License as provided in OAR 584-210-0030, Preliminary Teaching License.

(e) On January 1, 2016, the Initial I Teaching License will be administratively renamed to the Preliminary Teaching License.

(13) Continuing Teaching Licenses:

(a) Effective March 1, 2014, the Continuing Teaching License is no longer issued.

(b) Qualified Continuing Teaching License holders will be issued a Professional Teaching License with instructions on how to qualify and apply for the Teacher Leader License;

# ADMINISTRATIVE RULES

## (14) Basic Teaching Licenses:

(a) Effective January 1, 2016, the Basic Teaching License will no longer be issued.

(b) Qualified applicants who were issued the Basic Teaching License prior to December 31, 2015 are considered to have satisfied all advanced professional education program requirements provided in OAR 584-210-0040, Professional Teaching License;

(c) Qualified applicants who have completed the teaching experience requirements provided in OAR 584-210-0040 will be issued the Professional Teaching License;

(d) Qualified applicants who do not have sufficient teaching experience to meet the requirements for OAR 584-210-0040, Professional Teaching License, will be issued the Legacy Teaching License unless the applicant requests to have the Preliminary Teaching License.

## (15) Standard Teaching License Renewals:

(a) Effective January 1, 2016, the Standard Teaching License will no longer be issued.

(b) Qualified Standard Teaching License holders will be issued a Professional Teaching License.

## (16) First Time Out of State Applicants:

(a) Effective January 1, 2016, the Initial Teaching License will no longer be issued.

(b) Qualified new out of state applicants will be issued a Reciprocal Teaching License as provided in OAR 584-210-0060.

## (17) Five Year Teaching Licenses (Pre-1965 licenses) Renewals:

(a) Effective January 1, 2016, the pre-1965 Five Year Teaching Licenses will no longer be issued.

(b) Qualified Five Year Teaching License holders will be issued the Professional Teaching License.

(18) Teaching Licenses with Communication Disorder endorsements (speech language pathology):

(a) Effective January 1, 2016, all speech pathology related endorsements are retitled to Special Education: Communication Disorders.

(b) Until June 30, 2016, qualified applicants may be issued new non-provisional teaching licenses with special education: communications disorder endorsements.

(c) Effective July 1, 2016, new special education: communication disorder endorsements (speech language pathology) will no longer be issued.

(d) Effective July 1, 2016, licensed educators issued a non-provisional special education: communication disorder endorsements or other similar speech language pathology endorsements prior to June 30, 2016 are grandfathered into the licensure system and will be able to keep their special education: communication disorder endorsement. Grandfathered qualified applicants will be able to renew and reinstate teaching licenses with the special education: communication disorder endorsement. Applicants may not reinstate a restricted teaching license with a communication disorder or other similar speech pathology endorsement.

## (19) Endorsements transitioning to Specializations:

(a) Early Childhood: All licenses issued prior to January 1, 2016 with an early childhood authorization or endorsement will be issued an early childhood specialization upon renewal of the license.

(b) ESOL/Bilingual: All licenses issued prior to January 1, 2016 with an ESOL/Bilingual endorsement will be issued an ESOL endorsement with a bilingual specialization upon renewal of the license.

(20) ESEA Alternative Route Teaching License Transition: Effective January 1, 2016, the ESEA Alternative Route Teaching License is no longer issued. Qualified applicants issued an ESEA license prior to January 1, 2016 must transition to full licensure at the end of their current three-year license term.

(21) Administrative and Personnel Service License Title Name Changes: Effective January 1, 2016, administrative and personnel service educator licenses titles will be renamed as follows:

(a) Basic Administrator is retitled to Legacy Preliminary Administrator;

(b) Standard Administrator is retitled to Professional Administrator;

(c) Initial Administrator is retitled to Preliminary Administrator;

(d) Continuing Administrator is retitled to Professional Administrator;

(e) Distinguished Administrator is retitled to Distinguished Administrator;

(f) Transitional Administrator is retitled to Reciprocal Administrator;

(g) Transitional Superintendent is retitled to Reciprocal Superintendent;

(h) Restricted Administrator is retitled to Restricted Administrator;

(i) Exceptional Administrator is retitled to Exceptional Administrator;

(j) Emergency Administrator is retitled to Emergency Administrator;

(k) Basic Personnel Service with a Basic or Standard Counselor endorsement is retitled to Legacy School Counselor;

(l) Basic Personnel Service with a Basic or Standard School Psychologist endorsement is retitled to Legacy School Psychologist;

(m) Standard Personnel Service with a Standard Counselor endorsement is retitled to Professional School Counselor;

(n) Standard Personnel Service with a Standard School Psychologist endorsement is retitled to Professional School Psychologist;

(o) Standard School Counselor is retitled to Professional School Counselor;

(p) Initial I School Counselor is retitled to Preliminary School Counselor;

(q) Initial II School Counselor is retitled to Preliminary School Counselor;

(r) Continuing School Counselor is retitled to Professional School Counselor;

(s) Transitional School Counselor is retitled to Reciprocal School Counselor;

(t) Restricted School Counselor is retitled to Restricted School Counselor;

(u) Emergency School Counselor is retitled to Emergency School Counselor;

(v) Basic School Psychologist is retitled to Preliminary School Psychologist;

(w) Standard School Psychologist is retitled to Professional School Psychologist;

(x) Initial School Psychologist is retitled to Preliminary School Psychologist;

(y) Continuing School Psychologist is retitled to Professional School Psychologist;

(z) Transitional School Psychologist is retitled to Reciprocal School Psychologist;

(aa) Limited Student Services is retitled to Limited Student Services;

(bb) Initial School Social Worker is retitled to Preliminary School Social Worker;

(cc) Continuing School Social Worker is retitled to Professional School Social Worker;

(dd) Transitional School Social Worker is retitled to Reciprocal School Social Worker;

(ee) Restricted School Social Worker is retitled to Restricted School Social Worker; and

(ff) Emergency School Social Worker is retitled to Emergency School Social Worker.

Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-200-0030

### Application Processing Requirements and Procedures

(1) All applicants must create an online user account and use the online system for applications for licenses, endorsements, renewals, specializations, and reinstatements.

(2) All applicants must pay for fees through the online system. Check and cash payments are not permitted.

(3) Requirement for Complete Application: The Commission will only process complete applications for new licenses, endorsements, renewals, specializations and reinstatements. An application is incomplete if the applicant has not submitted a correct and complete application, all required fee payments, and all supporting documentation required to evaluate the application.

(4) Evaluation of Application: Licenses, registrations and certificates are issued based on the evidence in the applicant account at the time of evaluation. If an applicant submits additional acceptable evidence within 30 days of the date of issuance of a license, registration or certificate, the Director of Licensure, or designee, may re-evaluate the issuance without a new application and fee.

**EXAMPLE:** An applicant is issued a Preliminary Teaching License. The applicant submits new acceptable documentation of experience within 30 days of the issuance of the Preliminary Teaching License. The Director of Licensure, or designee, may re-evaluate the applicant for the Professional Teaching License based on the new evidence without requiring a new application and fee.

**EXAMPLE:** An applicant is moving from a Reciprocal Teaching License to a Preliminary Teaching License. The applicant is issued a Preliminary Teaching License with endorsements based on documentation of content knowledge available in the applicant account. The applicant submits additional test scores within 30 days of issuance of the Preliminary Teaching License. The Director of Licensure, or designee, may re-evaluate the applicant for new endorsements based on the new test scores without requiring a new application and fee.



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(5) Expiration of License: A license, certificate or registration expires one day after the expiration date on the license, certificate or registration unless the license, registration or certificate is eligible for the grace period.

(a) The grace period is active for 120 days after the expiration date of a license, registration and certificate.

(b) To activate the 120 day grace period, an applicant must submit a correct and complete application and all required fees prior to the expiration date.

(A) If it is determined that the application was not correct or complete after the grace period is activated, the applicant has the remainder of the 120 grace period to correct the incomplete application.

(B) If the application is not corrected by the expiration of the 120 day grace period, the applicant must submit a new application for reinstatement of the license, registration or certificate and pay reinstatement fees. The applicant will forfeit the previous application fees and any late fees paid on the prior application.

(c) If an applicant submits a correct and complete application and all required fees after the expiration date, the license, registration or certificate will be processed according to the following provisions:

(A) Day 1 to 30: If an applicant submits a correct and complete application from one to 30 days after expiration date the applicant pays \$40 late fees plus all other required fees. The applicant will receive a grace period from the date of application until 120 days after the expiration date;

(B) Day 31 to 60: If an applicant submits a correct and complete application from 31 to 60 days after expiration date, the applicant pays \$80 late fees plus all other required fees. The applicant will receive a grace period from the date of application until 120 days after the expiration date;

(C) Day 61 to 90: If an applicant submits a correct and complete application from 61 to 90 days after expiration date, the applicant pays \$120 late fees plus all other required fees. The applicant will receive a grace period from the date of application until 120 days after the expiration date;

(D) Day 91 to 120: If an applicant submits a correct and complete application from 91 to 120 days after expiration date, the applicant pays \$160 late fees plus all other required fees. The applicant will receive a grace period from the date of application until 120 days after the expiration date;

(E) Day 121 or more: Applicant pays for new application for reinstatement, reinstatement fees and all other required fees.

(F) If an applicant submits a correct a complete application prior to the expiration of the 120 day grace period, the renewal period of the license, registration or certificate will start one day after the original expiration date.

(d) The following licenses are not eligible for 120 grace period due to renewal restrictions:

- (A) Emergency licenses; (Not eligible for renewal);
- (B) Restricted licenses; (Eligible for reissue only);
- (C) International Visiting Teacher License; (Eligible for reissue only);
- (D) Restricted Substitute Teaching License if issued for one-year

term;

- (E) License for Conditional Assignment. (Eligible for reauthorization only).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-210-0040

### Professional Teaching License

(1) Purpose of the License: The Professional Teaching License is a license that qualifies its holder to teach in prekindergarten through grade 12 Oregon public school districts, education service districts, and charter school assignments. The Professional Teaching License signifies that the educator is an experienced teacher who has successfully demonstrated an advanced level of educator knowledge, skills and dispositions.

(2) Term of License: The Professional Teaching License is valid for five years and is renewable as provided in subsection (8) of this rule. The date of the first expiration of the license is five years from the date of issue plus time until the applicant's birthday.

(3) Assignment and Endorsement Authorization: The Professional Teaching License qualifies the teacher to accept:

(a) Any instructional assignment from prekindergarten through grade 12 within the scope of the subject-matter endorsement(s) on the Professional Teaching License. The scope of the endorsement shall be determined by the National Center for Educational Statistics (NCES) course codes associated with the endorsement as provided by the TSPC Licensure Guide; and

(b) Any substitute teaching assignment.

(4) Pursuant to ORS 342.138, the Commission has approved the following advanced professional education programs to develop advanced level competencies required for promotion to the Professional Teaching License:

(a) Advanced Professional Development Program: The purpose of the Advanced Professional Development Program is to provide the individual teacher with the specific professional development needed to advance to a professional teacher level. The program is developed by the applicant in conjunction with the employing district and includes professional development specifically tailored to the performance goals of the novice teacher in accordance with ORS 342.815 to 342.856. To qualify as an Advanced Professional Development Program, the program must consist of:

(A) A teacher who holds the Preliminary Teaching License and is employed in accordance with ORS 342.815 to 342.856; and

(B) A requirement to complete 150 advanced professional development units while holding a Preliminary Teaching License. To qualify as advanced professional development, the units must:

(i) Be completed in conjunction with the performance goals of the teacher established in accordance with ORS 342.815 to 342.856;

(ii) Be verified as advanced professional development by the employing district or charter school; and

(iii) Meet all other requirements provided in OAR 584-255-0010, Professional Development Requirements.

(b) Advanced Degree Programs: Admission to and completion of an educational specialist, master's or doctoral degree program that is reasonably related to improving the teaching skills of the educator. The program must be regionally accredited or foreign equivalent.

(c) Endorsement Program: Admission to and completion of a Commission-approved subject-matter endorsement program;

(d) Specialization Program: Admission to and completion of a Commission-approved Oregon specialization program;

(e) Advanced Licensure: Admission to and completion of a Commission-approved advanced licensure program;

(f) National Board Certification: National Board of Professional Teaching Standards certification;

(g) Out-of-State Professional Certification: A professional certificate issued by the State of Washington or other equivalent out-of-state professional teaching licenses approved by the Commission; and

(h) Other acceptable advanced coursework or assessment approved by the Executive Director or the Director of Licensure as provided in OAR 584-200-0100, Waiver of Licensure Requirements by the Commission.

(5) All evidence of advanced professional education programs must be equal to at least 150 professional development units as calculated in OAR 584-255-0010(3) and must have been obtained by the applicant after the date of issuance of their first non-provisional teaching license in Oregon or another National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction.

(6) Professional Teaching Experience Requirements: To qualify for the Professional Teaching License, an educator must obtain:

(a) Full-time Experience: Four full of years teaching experience in a 1.0 assignment; or

(b) Part-time Experience: Six full years of teaching experience in at least a .50 to .99 assignment.

**NOTE:** Teaching experience of .49 or less is not eligible to meet any teaching experience requirement for the Professional Teaching License. Teaching experience from two or more academic years may not be combined to meet the teaching requirements.

**EXAMPLE:** An applicant may not combine two full years of .25 teaching assignment to equal one year of .5 teaching assignment for the part-time teaching requirement.

**EXAMPLE:** An applicant may not combine one year of a .75 assignment and one year of a .25 assignment to equal one year of full-time teaching experience.

(c) One full year of teaching experience is equal to 135 days of contracted classroom teaching within an academic year (July 1 to June 30).

(d) The years of teaching experience do not have to be earned consecutively.

(e) Substitute experience is not considered qualifying teaching experience under this subsection unless the educator is assigned to a single substitute assignment in accordance with subsection (6) (c) of this rule.

(f) The applicant must obtain the teaching experience while holding an Initial, Initial I, Initial II, Reciprocal, Preliminary or equivalent non-provisional license from a National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction.

(g) The teaching experience must include direct instruction of students as provided in ORS 342.120 and must occur in one, or a combination of, the following employment settings:

(A) Public prekindergarten through grade 12 classroom;

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(B) Private, regionally-accredited, prekindergarten through grade 12 classroom; or

(C) Alternative education, post-secondary or other similar teaching settings closely-related to prekindergarten through grade 12 classroom instruction as approved by the Director of Licensure.

(7) To be eligible to apply for a Professional Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Meet or complete all requirements of the Preliminary, Initial I, Initial II, Basic, Continuing, Standard, or an equivalent teaching license issued previously by the Commission or issued by another National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction;

(c) Complete an advanced professional education program as provided in subsections (4) and (5) of this rule;

(d) Complete the teaching experience requirements as provided in subsection (6) of this rule;

(e) Complete a background clearance that includes:

(A) Furnishing fingerprints (if necessary);

(B) Providing satisfactory responses to character questions in the form and manner prescribed by the Commission; and

(f) Submit a complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(8) To be eligible to apply for renewal of the Professional Teaching License, the applicant must:

(a) Complete continuing professional development requirements as provided in OAR 584-255-0010 Professional Development Requirements and

(b) Submit a complete and correct renewal application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 12-2015, f. 11-13-15, cert. ef. 1-1-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-210-0050

### Teacher Leader License

(1) Purpose of the License: The Teacher Leader License is issued to professional teachers who have demonstrated exceptional leadership in the school environment, education profession and the larger community while consistently advancing student growth and achievement. The Teacher Leader License designates that the licensee is qualified to hold the title of Teacher Leader and to provide educational leadership that may include, but is not limited to: mentoring, curriculum development support, teacher preparation support and other leadership activities consistent with the Teacher Leader Standards adopted by the Commission.

(2) Teacher Leader Pilot Project: Effective July 1, 2015 the Commission commenced a two year pilot for implementation of this rule. The pilot is intended to gather sufficient information to ensure that future issuance of the license is based on an evaluation of evidence submitted and verified to be in alignment with the Teacher Leaders standards adopted by the Commission and statutory provisions adopted by the Oregon State Legislature. This rule is effective until June 30, 2017. Prior to this date, the Commission will adopt a revised Teacher Leader License rule based on the results of the pilot project.

(3) Term of Licensure: The Teacher Leader License is valid for five years and is renewable as provided in subsection (10) of this rule. The date of the first expiration of the license is five years from the date of issue plus time until the applicant's birthday.

(4) Assignment and Endorsement Authorization: The Teacher Leader License qualifies the teacher to accept:

(a) Any instructional assignment from preprimary through grade 12 within the scope of the subject-matter endorsements held on the Professional Teaching License;

(b) Any substitute teaching assignments; and

(c) Teacher leader activities, as agreed upon with any employing school district, as provided in subsection (1) of this rule.

(5) Evidence of Effectiveness: To be eligible to qualify for a Teacher Leader License, an applicant must be deemed to be effective or highly effective as provided in ORS 342.856 and the following provisions:

(a) The applicant must provide evidence of two evaluations with an "effective" or "highly effective" level. The evaluations must be completed:

(A) Within the five years immediately preceding the application for the Teacher Leader license; and

(B) While the applicant held an Initial II, Continuing, Standard or Professional Teaching License.

(b) The applicant must verify that they have not received an evaluation with lower than an "effective" level within the five years immediately preceding the application for the Teacher Leader license.

(c) The terms "effective" and "highly effective" include the top two differentiated levels established as provided in the Oregon Department of Education's "Oregon Matrix Model for Educator Evaluation." Other acceptable evaluation terms may include, but are not limited to: proficient, exemplary, accomplished, or distinguished.

(d) If an applicant is employed by a private school, the applicant must verify that their school evaluates educators in accordance with the requirements of ORS 342.856. The applicant must provide documentation that the employing private school formally adopted the equivalent evaluation method in a meeting of the governing body.

(6) Evidence of Current Professional Leadership Practices: To be eligible to qualify for a Teacher Leader License, an applicant must submit evidence of current professional leadership practices as provided in ORS 342.856.

(a) To submit an advanced portfolio of "current professional leadership practices" the evidence must:

(A) Align with the standards for the Teacher Leader License as provided in OAR 584-420-0040;

(B) Have occurred within the five years immediately prior to the application for the Teacher Leader License; and

(C) Meet the following criteria:

(i) The applicant must demonstrate through submitted documentation that they have fully met at least twelve (12) elements of the existing thirty-seven (37) elements under any of the seven (7) domains within the standards for the Teacher Leader License;

(ii) The evidence for each element submitted must be verified as valid by at least two professional colleagues, which may include coworkers, supervisors, or other professional peers; and

(iii) The evidence for each element submitted must be unique and separate. For example, an applicant may not reuse evidence from one element to support meeting another element.

(b) To submit National Board for Professional Teacher Standards Certification to demonstrate "current professional leadership practices" the evidence must:

(A) Show the national board certification occurred in the five years immediately prior to the application; and

(B) Demonstrate how board certification and subsequent professional practice by the teacher meets at least twelve (12) elements of the existing thirty-seven (37) elements under any of the seven (7) domains within the standards for the Teacher Leader License.

(c) To submit admission to and completion of a Commission-approved teacher leader program to demonstrate "current professional leadership practices" evidence, the applicant must provide documentation that:

(A) The program was completed in the five years immediately prior to the application; and

(B) The completion of the Commission-approved teacher leader preparation program and subsequent professional practice by the teacher meets at least twelve (12) elements of the existing thirty-seven (37) elements under any of the seven (7) domains within the standards for the Teacher Leader License.

(7) To be eligible to apply for a Teacher Leader License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen (18) years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a valid Professional, Initial II or Standard teaching License;

(c) Have been employed as a licensed educator for five full academic school years within the five years preceding application;

(d) Meet the "evidence of effectiveness" requirements as provided in subsection (5) of this rule;

(e) Meet the "evidence of current professional leadership practices" requirements as provided in subsection (6) of this rule;

(f) Submit the adopted the Rubric for Teacher Leader Evaluation for review by the Commission. The applicant must indicate the exact evidence they are using to satisfy each of their selected elements. There must be a clear indication on the evidence which of the elements the evidence is being submitted to support;

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- (g) Complete a background clearance that includes:
  - (A) Furnishing fingerprints (if necessary);
  - (B) Providing satisfactory responses to character questions in the form and manner prescribed by the Commission; and
- (h) Submit a complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.
- (8) All applications for the Teacher Leader License must be received in the TSPC office no later than one calendar month prior to the Commission meeting at which the applicant wishes to have their application evaluated.
- (9) All current teaching licenses held prior the application for the Teacher Leader License will expire on the date the Teacher Leader License is issued regardless of the expiration date on the license.
- (10) Renewal Requirements: To be eligible to apply for renewal of the Teacher Leader License, an applicant must:
  - (a) Provide documentation of ongoing teacher leader activities, including but not limited to, mentoring, curriculum development support, teacher preparation support and other educational leadership activities;
  - (b) Complete professional development units as provided in OAR 584-255-0010 Professional Development Requirements; and
  - (c) Submit a complete and correct renewal application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.
- (11) If an applicant does not meet the renewal requirements of subsection (10) of this rule or decides not to renew the Teacher Leader License, the applicant may apply for or will be issued a Professional Teaching License as provided in OAR 584-210-0040.
- (12) Sunset Clause: This rule is effective until July 1, 2017.  
Stat. Auth.: ORS 342  
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553  
Hist.: TSPC 12-2015, f. 11-13-15, cert. ef. 1-1-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 3-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-210-0060

### Reciprocal Teaching License

- (1) Purpose of the License: The Reciprocal Teaching License is a license that qualifies its holder to teach prekindergarten through grade 12 Oregon public school district, education service districts, and charter school assignments. The Reciprocal Teaching License is issued to teachers who have completed an educator preparation program and hold an active and valid non-provisional initial or advanced teaching license in another National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction. The purpose of the Reciprocal Teaching License is to allow an out-of-state or out-of-country licensed teacher to transition into the Oregon licensure system based on the credentials they earned in the other jurisdiction.
- (2) Out of State or out-of-country License Reciprocity: An out of state or out-of-country teaching license alone does not authorize a teacher to teach or work as a teacher in Oregon public schools. The out-of-state or out-of-country license is used only as a basis for qualifying for the Reciprocal Teaching License. The out-of-state or out-of-country licensed applicant must apply for and receive the Reciprocal Teaching License or another non-provisional teaching license for which the applicant qualifies prior to employment in any Oregon public school, charter school or education service district.  
**NOTE:** The out of country licensed applicant may also be eligible to apply for the International Visiting Teacher License.
- (3) Out-of-State License Holders: An applicant must hold a valid and active out-of-state license from a NASDTEC jurisdiction prior to qualifying for an Oregon non-provisional teaching license. If an applicant only holds an expired out-of-state teaching license, the applicant must first reinstate their teaching license from a NASDTEC jurisdiction prior to qualifying for the Reciprocal Teaching License or any other non-provisional Oregon Teaching License.
- (4) Out-of-state teacher preparation program completers: If an applicant completes a teacher preparation program in another state, the applicant must first obtain a valid and active non-provisional teaching license in that state or another NASDTEC jurisdiction in order to qualify for the Oregon Reciprocal Teaching License.  
**NOTE:** This provision does not apply to Oregon non-provisional teaching license holders who complete out-of-state endorsement, administrator, or personnel service programs.
- (5) Fully-qualified Out-of-State License Holders: If an applicant with a valid and active non-provisional out-of-state license fully qualifies for a Preliminary, Professional, Teacher Leader, Substitute or Legacy Teaching License, the applicant may bypass the Reciprocal Teaching License and apply immediately for the other license. In order to qualify for a non-pro-

- visional Oregon teaching license upon first application, the applicant must meet all of the requirements in subsections (10) and (11) of this rule.
- (6) Out-of-country applicants: Applicants prepared or licensed outside the United States may be eligible to qualify for the Reciprocal Teaching License or another teaching license upon evaluation of:
  - (a) Official transcripts from the professional the education preparation program from the other country;
  - (b) Official educator credential or license from the other country.
  - (c) The evaluation of foreign documentation must be completed as provided in OAR 584-200-0090, Preparation in Another Country.
- (7) Endorsements: Out-of-state or out-of-country endorsements will be added to the Reciprocal Teaching License, or other non-provisional licenses, as provided:
  - (a) Out-of-state applicants holding a valid and active non-provisional license issued by a NASDTEC jurisdiction will be granted endorsements on their new Oregon license based on the endorsement(s) on their valid and active out-of-state license if a similar Commission-adopted endorsement exists.,
  - (b) Out-of-country license holders will be granted endorsements based on their out-of-country license if a similar Commission-adopted endorsement exists. The endorsements on the out-of-state license may be evaluated as provided in OAR 584-200-0090, Preparation in Another Country.
  - (c) Endorsements not recognized by the Commission will not be added to the license.
  - (d) To maintain the endorsements when moving from the Reciprocal to the Preliminary or Professional teaching license, the applicant must provide acceptable evidence of content knowledge and pedagogy skills as provided in OAR 584-220-0015.
  - (8) Term of Licensure: The Reciprocal Teaching License is valid for one year and expires one year from the date of issue. It is not renewable. Prior to the expiration of the Reciprocal Teaching License, an applicant must meet the subsequent licensure requirements in subsection (11) of this rule.
  - (9) Assignment and Endorsement Authorization: The Reciprocal Teaching License qualifies the teacher to accept:
    - (a) Any instructional assignment from prekindergarten through grade 12 within the scope of the subject-matter endorsement(s) on the Reciprocal Teaching License. The scope of endorsements will be determined by the National Center for Educational Statistics (NCES) course codes associated with the endorsements as provided by the TSPC Licensure Guide; and
    - (b) Any substitute teaching assignments.
  - (10) To be eligible to apply for a Reciprocal Teaching License, an out-of-state or out-of-country applicant must:
    - (a) Have never held an Oregon non-provisional educator license, or completed an Oregon educator preparation program;  
**NOTE:** The applicant may have held an Oregon provisional license or registration, including the Restricted Teaching License; Limited Teaching License; American Indian Language; Teaching Associate License; Substitute Teaching License; Restricted Substitute Teaching License; International Visiting Teaching License; and Charter school registration.
    - (b) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;
    - (c) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.
      - (A) The applicant must submit official transcripts to verify the completion of a bachelor's degree.
      - (B) An education specialist degree, a master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure. The applicant must submit official transcripts to verify the completion of the advanced degree.
      - (d) Have completed a teacher preparation program from another National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction or a foreign program evaluated as satisfactory by the Commission.
        - (A) The applicant must submit official transcripts to verify the completion of the teacher preparation program.
        - (B) Completion of alternative route teaching programs resulting in licensure through school districts or other alternative routes are subject to the Executive Director's or Licensure Director's approval;
        - (e) Meet one of the following:
          - (A) Hold a valid and active non-provisional teaching license from another NASDTEC jurisdiction valid for unrestricted full time teaching assignments;

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(B) Have held a teaching license valid in another country. The Commission will determine if the applicant's official transcripts and teaching credentials from the other country meet Oregon requirements as provided in OAR 584-200-0090, Preparation in Another Country.

(f) Complete a background clearance that includes:

(A) Furnishing fingerprints (if necessary);

(B) Providing satisfactory responses to character questions in the form and manner prescribed by the Commission; and

(g) Submit a complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(11) Subsequent Licensure Requirements: Prior to the expiration of the Reciprocal Teaching License, an applicant must apply for and meet the requirements for a Preliminary, Professional, Teacher Leader or Legacy Teaching License in accordance with the following provisions:

(a) The applicant must qualify for a Commission-adopted endorsement by receiving a passing score as currently specified by the Commission on one or more of subject matter tests unless the applicant qualifies for reciprocity or waiver of subject matter tests as provided in OAR 584-220-0015; and

(b) The applicant must obtain a passing score on a Commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics.

(c) An Emergency Teaching License will not be issued if the holder of the Reciprocal Teaching License fails to meet the requirements of the Preliminary, Professional, or Legacy Teaching License or any Oregon non-provisional teaching license by the end of the one year term.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 12-2015, f. 11-13-15, cert. ef. 1-1-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-210-0070

### Legacy Teaching License

(1) Purpose of the License: The Legacy Teaching License is a license that qualifies its holder to teach in prekindergarten through grade 12 Oregon public school districts, education service districts, and charter school assignments. The Legacy Teaching License is issued to veteran teachers in order to recognize their long-term employment and experience in the public schools without obliging them to meet the advanced competence requirements of the Professional Teaching License.

(2) Assignment and Endorsement Authorization: The Legacy Teaching License qualifies the teacher to accept:

(a) Any instructional assignment prekindergarten through grade 12 within the scope of the subject-matter endorsement(s) on the Legacy Teaching License. The scope of the endorsement shall be determined by the National Center for Educational Statistics (NCES) course codes associated with the endorsement as provided by the TSPC Licensure Guide; and

(b) Any substitute teaching assignments.

(3) Term of Licensure: The Legacy Teaching License is valid for three years and is continuously renewable as provided in subsection (5) of this rule. For applicants who qualify for the license from out of state, the date of the first expiration of the license is three years from the date of issue plus time until the applicant's birthday.

(4) To be eligible to apply for a Legacy Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a Basic teaching license issued prior to January 1, 1999 or a Substitute Teaching License based upon a Basic or Standard Teaching License issued prior to January 1, 1999;

(c) Complete a background clearance that includes:

(A) Furnishing fingerprints (if necessary);

(B) Providing satisfactory responses to character questions in the form and manner prescribed by the Commission; and

(d) Submit a complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(5) Renewal Requirements: To be eligible to apply for renewal of the Legacy Teaching License, the applicant must:

(a) Complete professional development requirements as provided in OAR 584-255-0010 Professional Development Requirements; and

(b) Submit a complete and correct renewal application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 12-2015, f. 11-13-15, cert. ef. 1-1-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-210-0100

### Restricted Teaching License

(1) Purpose of the License: The Restricted Teaching License qualifies its holder to teach in a prekindergarten through grade 12 Oregon public school district, education service districts, and charter school assignments. The Restricted Teaching License is issued to qualified individuals who have at least a bachelor's degree and have substantial preparation in the subject matter endorsements on the license, but have not completed a teacher preparation program. The recipient of the license is required to qualify for the Preliminary Teaching License within three years of the issuance of the Restricted Teaching License. The purpose of the Restricted Teaching License is to provide a school district with a licensed educator, on a restricted basis, if the school district demonstrates extenuating circumstances that merit the issuance of the restricted license in order to protect the district's programs or students.

(2) District Sponsorship: The Restricted Teaching License requires district sponsorship. The sponsoring district must submit a statement:

(a) Describing the extenuating circumstances preventing the district from hiring a teacher holding an unrestricted teaching license appropriate for the assignment and how the issuance of the restricted license will protect the district's programs or students;

(b) Explaining how the qualifications of the applicant will resolve the extenuating circumstances;

(c) Assuring the Commission that the district will obtain the license for the educator prior to assignment within the district;

(d) Describing the district's plan to provide a mentor for the teacher. The plan must specifically identify the mentor; and

(e) Describing the plan for how the teacher will make progress toward qualifying for non-provisional state licensure within the first term of the Restricted Teaching License.

(3) Renewal of District Sponsorship: Upon application for a reissue of the Restricted Teaching License, the sponsoring district must provide a new statement confirming that:

(A) The extenuating circumstances necessitating the Restricted Teaching License still exists;

(B) The applicant is still qualified and needed to remedy the situation;

(C) The plan for mentoring remains in place. The statement must update the name of the mentor, if appropriate; and

(D) The teacher is on track to meet the qualifications for the Preliminary Teaching License by the end of the final term (after second reissue) of the Restricted Teaching License.

(4) Terms of Licensure: The Restricted Teaching License is valid for one year and can be reissued up to two times for a total of three years (plus time to June 30 if needed) on the license.

(a) The license will expire on June 30 of the academic year following issuance of the license.

(b) Upon expiration of the final term (after second reissue) of the Restricted Teaching License, the educator must qualify for the Preliminary Teaching License.

(c) The Restricted Teaching License is not eligible for the 120 grace period.

(5) Assignment and Endorsement Authorization: The Restricted Teaching License qualifies the teacher to accept within the sponsoring district:

(a) Any instructional assignment from prekindergarten through grade 12 within the scope of the subject-matter endorsement(s) on the Restricted Teaching License; The scope of the endorsement shall be determined by the National Center for Educational Statistics (NCES) course codes associated with the endorsement as provided by the TSPC Licensure Guide; and

(b) Substitute teaching assignments within the subject-matter endorsement areas authorized by the license.

(6) To be eligible to apply for a Restricted Teaching License, the applicant must:

(a) Provide a statement from the sponsoring district in accordance with subsection (2) of this rule;

(b) Have never held a Restricted Teaching License or NCLB/ESEA Teaching License;

NOTE: The applicant may have previously held an emergency, limited, or restricted substitute license, as well as a charter school registration.

(c) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

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(d) Hold a bachelor's degree or higher from a regionally accredited institution or approved foreign equivalent. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure;

(e) Obtain a passing score on a Commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(f) Provide evidence of substantial preparation in the subject-matter area in which licensure is requested by submitting official sealed transcripts, and any other evidence required by the Commission, as proof of substantial completion of academic preparation or substantial work experience in the area in which the co-applicant educator is seeking licensure;

(g) Complete a background clearance that includes:

(A) Furnishing fingerprints (if necessary);

(B) Providing satisfactory responses to character questions in the form and manner prescribed by the Commission; and

(h) Submit a complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(7) Applicants who have failed to complete an Oregon program teacher preparation program are not eligible for the Restricted Teaching License under any circumstance.

(8) First Reissue: To be eligible to apply for the first reissue of a Restricted Teaching License, an applicant must submit:

(a) A statement from the sponsoring district in accordance with subsection (3) of this rule;

(b) Evidence of admission and enrollment, or pending enrollment, into a Commission-approved educator preparation program for licensure in the area in which the applicant is teaching;

(c) A complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(9) Second Reissue: To be eligible to apply for the second reissue of a Restricted Teaching License, an applicant must submit:

(a) A statement from the sponsoring district in accordance with subsection (3) of this rule; and

(b) Evidence the educator has completed more than 50 percent of a Commission-approved educator preparation program to qualify for the Preliminary Teaching License requirements. The completion of more than 50 percent of the program must be verified by the educator preparation program in which the educator is enrolled; and

(d) A complete and correct application in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

(10) Reissue Restrictions: The reissue of the Restricted Teaching License is subject to the following provisions:

(a) A Restricted Teaching License will expire on June 30 of the academic year in which the license was granted regardless of the term for licensure. Extending the license beyond the June 30 expiration date is at the discretion of the Executive Director after considering all extenuating circumstances.

(b) Reissue under these conditions is not subject to the 120-day grace period and must be submitted sufficiently in advance of the license expiration date to ensure continuity of licensure. Failure to submit a timely application is grounds for denial of a reissue pursuant to this subsection and may be grounds for discipline under OAR 584-020-0040 if the educator continues to teach without a valid license.

(c) The Executive Director may deny the application for reissue of the license upon failure to demonstrate progress in the licensure program needed for the Preliminary Teaching License.

(11) Upon expiration of the final term (after second reissue) of the Restricted Teaching License, recipients of this license must meet all the requirements of the Preliminary Teaching License.

(a) The educator may apply for the Preliminary Teaching License prior to the expiration of the final term of the Restricted Teaching License.

(b) If the educator does not meet the qualifications for the Preliminary Teaching License prior to the expiration of the final term of the Restricted Teaching License, the educator may apply for an Emergency Teaching License as provided in subsection (12) of this rule.

(12) Emergency Teaching License: When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Preliminary Teaching License within the required time, an extension for up to one year may be issued upon joint request from an educator and the sponsoring district.

(a) The Emergency Teaching License will be issued for the shortest amount of time needed to address the extenuating circumstances.

(b) The applicant must meet all the requirements for an Emergency Teaching License set forth in OAR 584-210-0130 and provide an explanation of the circumstances which make the request necessary. The sponsoring district must ensure the applicant will meet all requirements for the Preliminary Teaching License upon expiration of the Emergency Teaching License issued pursuant to this subsection.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 12-2015, f. 11-13-15, cert. ef. 1-1-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-225-0050

### Bilingual Specialization

(1) Purpose: A Bilingual specialization indicates that an educator has met the Commission-approved language proficiency standard as provided in the TSPC Program Review and Standards Handbook. The Bilingual specialization does not authorize the holder to teach the language associated with the specialization. An educator must have the appropriate endorsement to teach a language. For example, a teacher must hold a teaching license with a World Language: Spanish endorsement to teach Spanish.

(2) A specialization is an optional indication of specialized expertise or preparation in an area the Commission recognizes as "added value" on a license. A specialization indicates the educator has demonstrated exceptional knowledge, skills and related abilities in that area. A specialization must meet standards set by the Commission. A specialization is not required to teach in the specialization area indicated on the license.

(3) Eligibility Requirements: To be eligible to add a Bilingual specialization to an Oregon educator license, an applicant must:

(a) Submit official certification of a passing score on the Commission-approved language proficiency exam as provided in the TSPC Program Review and Standards Handbook;

(b) Submit a complete and correct application to obtain the specialization in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

NOTE: The Commission will return the original certification to the applicant upon request when applying for the license or specialization.

NOTE: Adding the specialization at the time of renewal will not require an additional cost to the licensure renewal process.

(4) A Bilingual specialization may not be added to the following licenses:

(a) CTE Restricted Substitute License

(b) Charter School Registry (teacher and administrator);

(c) Emergency teacher, administrator, school counselor, or school nurse;

(d) Restricted substitute, teacher, administrator, or school counselor;

(e) Reciprocal teaching, administrator, superintendent, school counselor, school psychologist, or school social worker; and

(f) Teacher Associate;

(5) The Bilingual Specialization will be indicated as follows on the license: Bilingual Specialization: (Proficient Language), for example: Bilingual Specialization: Spanish.

(6) Once the specialization is indicated on a license, it may only be removed at the educator's request.

(7) All licensees issued an ESOL/Bilingual endorsement prior to January 1, 2016 will be provided with a Bilingual specialization upon renewal of their teaching license.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.430, 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-225-0065

### Dual Language Specialization

(1) Purpose: A Dual Language specialization indicates that an educator has obtained additional and specialized preparation to teach prekindergarten through grade 12 students in dual language learning environments.

(2) A specialization is an optional indication of specialized expertise or preparation in an area the Commission recognizes as "added value" on a license. A specialization indicates the educator has demonstrated exceptional knowledge, skills and related abilities in that area. A specialization must meet standards set by the Commission. A specialization is not required to teach in the specialization area indicated on the license.

(3) Eligibility Requirements: To be eligible to add a Dual Language specialization to a Preliminary, Professional, Teacher Leader or Legacy Teaching License, an applicant must:

(a) Be admitted to and complete a Commission-approved Dual Language specialization program in accordance with 584-420-0630.

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(b) At least fifty percent (50%) of the Dual Language program coursework must have been completed within five years prior to the date of application for the specialization;

(c) Submit official certification of a passing score on the Commission-approved language proficiency exam as provided in the TSPC Program Review and Standards Handbook; and

(d) Submit a complete and correct application to obtain the specialization in the form and manner required by the Commission, including payment of all required fees as provided in OAR 584-200-0050.

**NOTE:** Adding the specialization at the time of renewal will not require an additional cost to the licensure renewal process.

(4) A Dual Language specialization may not be added to a provisional license.

(5) The specialization will appear on a license as follows:  
Specialization: Dual Language.

(6) Once the specialization is indicated on a license, it may only be removed at the educator's request.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0015

### Reading Instruction: Program Standards

(1) Purpose of the Standards: ORS 342.147 requires educator preparation programs to provide training to candidates that enables public school students to meet or exceed third-grade reading standards and become proficient readers by the end of the third grade.

**NOTE:** This rule is established pursuant to Section 1, Chapter 427, Oregon Laws 2015 (Enrolled HB 3069).

(2) Scope of standards: The reading instruction standards apply to all Oregon educator preparation programs preparing candidates for:

(a) Elementary-Multiple Subjects (includes early childhood education);

(b) Reading Intervention; and

(c) Special Education: Generalist.

(3) Oregon educator preparation programs as provided in subsection

(2) must provide the necessary program components that will enable candidates to:

(a) Provide classroom instruction that aligns with the adopted standards of Oregon State Board of Education for early childhood, first, second and third grade literacy and reading standards; and

(b) Implement evidence-based reading instructional strategies to enable public school students to become proficient readers by the end of third grade.

(4) Oregon educator preparation programs must demonstrate compliance with the reading instruction standards as provided in this rule by June 30, 2017. If a program is unable to meet the reading instruction standards by this date, it must submit:

(a) A plan for meeting the reading instruction standards, submitted to the Commission no later than June 30, 2018;

(b) A progress report on the plan for meeting the reading instruction standards, submitted to the Commission no later than January 15, 2019.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 4-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0016

### Dyslexia Instruction: Program Standards

(1) Purpose of the Standards: ORS 342.147 requires the Commission to establish standards for approval of an educator preparation program (EPP) that require early childhood education, elementary education, special education or reading programs to provide instruction on dyslexia and that the instruction be consistent with the knowledge and practice standards of an international organization on dyslexia.

**NOTE:** This rule is established pursuant to Section 8, Chapter 245, Oregon Laws 2015 (Enrolled HB 2412).

(2) Scope of standards: The dyslexia instruction standards apply to Oregon EPPs preparing candidates for:

(a) Elementary-Multiple Subjects (includes early childhood education);

(b) Reading Intervention; and

(c) Special Education: Generalist.

(3) Oregon EPPs, as provided in subsection (2), must provide the necessary program components that will enable candidates to meet the standards related to dyslexia instruction, as provided in subsection (5).

(4) Oregon education preparation programs must demonstrate compliance with the dyslexia standards by submitting a plan to the Commission no later than December 31, 2016. The plan must describe the revisions to

program components that are necessary to meet the dyslexia instruction standards for the Elementary-Multiple Subjects, Reading Intervention or Special Education: Generalist.

(5) STANDARDS FOR DYSLEXIA INSTRUCTION: Candidates must demonstrate the ability to:

(a) Identify the characteristics that may predict or are associated with dyslexia;

(b) Understand how to provide evidence-based reading instruction to all students, including students who demonstrate characteristics that may predict or are associated with dyslexia;

(c) Administer, interpret and apply screening and progress monitoring assessments for students who demonstrate characteristics that may predict or are associated with dyslexia; and

(d) Apply dyslexia assessment and instruction knowledge to pedagogy practice.

(6) The standards for dyslexia instruction provided in subsection (5) apply to all students the candidate is being prepared to teach, including English Language Learner (ELL) students.

(7) Program alignment with the dyslexia instruction standards provided in subsection (5) must be consistent with the knowledge and practice standards of an international organization on dyslexia.

(8) The Commission must determine if Elementary-Multiple Subjects, Reading Intervention, or Special Education: Generalist endorsement programs meet the standards for dyslexia instruction no later than June 30, 2018.

(a) If any proposed revisions to the endorsement program constitute a major modification, as provided in OAR 584-010-0045, the EPP will be required to request approval of the modification, as provided therein.

(b) The Commission may suspend state recognition of an Elementary-Multiple Subjects, Reading Intervention or Special Education: Generalist endorsement program prior to June 30, 2018, if an EPP is unable to demonstrate compliance with the dyslexia instruction provisions, as provided in this rule.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 4-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; TSPC 5-2016(Temp), f. & cert. ef. 11-9-16 thru 2-27-17; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0020

### Preliminary Teaching License: Program Standards

(1) Candidates who are prepared for the Preliminary Teaching License will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of pre-kindergarten to grade 12 students within the endorsement areas on the license.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for a Preliminary Teaching License only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete a teacher performance as provided in OAR 584-017-1100;

(c) Field experiences that include supervised teaching or internships; and

(d) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Preliminary Teaching License program.

(3) Standard 1: The Learner and Learning:

(a) Learner Development: The teacher understands how children learn and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. [InTASC Standard #1]

(b) Learning Differences: The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. [InTASC Standard #2]

(c) Learning Environments: The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation. [InTASC Standard #3]

(4) Standard 2: Content

(a) Content Knowledge: The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and cre-

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ates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. [InTASC Standard #4]

(b) Application of Content: The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. [InTASC Standard #5]

(5) Standard 3: Instructional Practice

(a) Assessment: The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. [InTASC Standard #6]

(b) Planning for Instruction: The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills and pedagogy, as well as learners and the community context. [InTASC Standard #7]

(c) Instructional Strategies: The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways. [InTASC Standard #8]

(6) Standard 4: Professional Responsibility

(a) Professional Learning and Ethical Practice: The teacher engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. [InTASC Standard #9]

(b) Leadership and Collaboration: The teacher demonstrates leadership by taking responsibility for student learning and by collaborating with learners, families, colleagues, other school professionals, and community members to ensure learner growth and development, learning, and well-being. [InTASC Standard #10]

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0310

### Art: Program Standards

(1) Candidates who are prepared for the Art endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in art learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for an Art endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved test for Art;

(c) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(d) Field experiences that include supervised teaching or internships in Art classrooms; and

(e) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Art endorsement program.

(3) Standard 1: Content of the Visual Arts: Candidates must demonstrate proficiency in:

(a) Process of artmaking involving traditional and contemporary studio approaches;

(b) One or more studio areas;

(c) History of art, knowledge of the context in which works of art have been created, and fostering respect for all forms of art; and

(d) Providing exposure to a diverse set of traditional and contemporary artists.

(4) Standard 2: Theory and Practice in Art Education: Candidates must demonstrate proficiency in:

(a) Historical developments and prevailing theories of art education;

(b) Philosophical and social foundations underlying the inclusion of art in general education;

(c) Artistic, cognitive, emotional, moral, physical, and social development of children, adolescents and young adults;

(d) Theories of curriculum and instruction that make it possible for candidates to reflect on and refine their practice of art education;

(e) Developing curricula in a variety of instructional formats;

(f) Current teaching methods, materials and resources appropriate for various educational settings, populations, and levels of art education;

(g) Creating classroom environments in which effective art instruction can take place;

(h) Developing of interdisciplinary curricula;

(i) Assessment methods appropriate to the evaluation of student work, their own teaching, and the art program; and

(j) Self-evaluation and professional development.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.143, 342.153, 342.165 & 342.223-342.232

Hist.: TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0345

### Elementary Education — Multiple Subjects: Program Standards

(1) Candidates who are prepared for the Elementary Education — Multiple Subjects endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in elementary education learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for an Elementary Education — Multiple Subjects endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) Content that will enable candidates to meet reading instruction requirements as provided in OAR 584-420-0015;

(c) Content that will enable candidates to meet dyslexia instruction requirements as provided in OAR 584-420-0016;

(d) A requirement for candidates to complete the Commission-approved test for Elementary-Multiple Subjects;

(e) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100;

(f) Field experiences that include supervised teaching or internships in elementary education classrooms; and integration of principles of cultural competency and equitable practice in each competency standard through the entire Elementary Education — Multiple Subjects Endorsement program.

(3) DEVELOPMENT, LEARNING, AND MOTIVATION. Standard 1: Development, Learning, and Motivation — Candidates know, understand, and use the major concepts, principles, theories, and research related to development of children and young adolescents to construct learning opportunities that support individual students' development, acquisition of knowledge, and motivation.

(4) CURRICULUM. Standard 2: Reading, Writing, and Oral Language — Candidates demonstrate a high level of competence in use of English language arts and they know, understand, and use concepts from reading, language and child development, to teach reading, writing, speaking, viewing, listening, and thinking skills and to help students successfully apply their developing skills to many different situations, materials, and ideas.

(5) Standard 3: Science — Candidates know, understand, and use fundamental concepts of physical, life, and earth/space sciences. Candidates can design and implement age-appropriate inquiry lessons to teach science, to build student understanding for personal and social applications, and to convey the nature of science.

(6) Standard 4: Mathematics — Candidates know, understand, and use the major concepts and procedures that define number and operations, algebra, geometry, measurement, and data analysis and probability. In doing so they consistently engage problem solving, reasoning and proof, communication, connections, and representation.

(7) Standard 5: Social studies — Candidates know, understand, and use the major concepts and modes of inquiry from the social studies — the integrated study of history, geography, the social sciences, and other related areas — to promote elementary students' abilities to make informed decisions as citizens of a culturally diverse democratic society and interdependent world.

(8) Standard 6: The arts — Candidates know, understand, and use — as appropriate to their own understanding and skills — the content, functions, and achievements of the performing arts (dance, music, theater) and the visual arts as primary media for communication, inquiry, and engagement among elementary students.

(9) Standard 7: Health education — Candidates know, understand, and use the major concepts in the subject matter of health education to cre-

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ate opportunities for student development and practice of skills that contribute to good health.

(10) Standard 8: Physical education — Candidates know, understand, and use — as appropriate to their own understanding and skills—human movement and physical activity as central elements to foster active, healthy life styles and enhanced quality of life for elementary students.

(11) INSTRUCTION. Standard 9: Integrating and applying knowledge for instruction — Candidates plan and implement instruction based on knowledge of students, learning theory, connections across the curriculum, curricular goals, and community.

(12) Standard 10: Adaptation to diverse students — Candidates understand how elementary students differ in their development and approaches to learning, and create instructional opportunities that are adapted to diverse students.

(13) Standard 11: Development of critical thinking and problem solving — Candidates understand and use a variety of teaching strategies that encourage elementary students' development of critical thinking and problem solving.

(14) Standard 12: Active engagement in learning — Candidates use their knowledge and understanding of individual and group motivation and behavior among students at the K–6 level to foster active engagement in learning, self-motivation, and positive social interaction and to create supportive learning environments.

(15) Standard 13: Communication to foster collaboration — Candidates use their knowledge and understanding of effective verbal, non-verbal, and media communication techniques to foster active inquiry, collaboration, and supportive interaction in the elementary classroom.

(16) ASSESSMENT. Standard 14: Assessment for instruction — Candidates know, understand, and use formal and informal assessment strategies to plan, evaluate and strengthen instruction that will promote continuous intellectual, social, emotional, and physical development of each elementary student.

(17) PROFESSIONALISM. Standard 15: Professional growth, reflection, and evaluation — Candidates are aware of and reflect on their practice in light of research on teaching, professional ethics, and resources available for professional learning; they continually evaluate the effects of their professional decisions and actions on students, families and other professionals in the learning community and actively seek out opportunities to grow professionally.

(18) Standard 16: Collaboration with families, colleagues, and community agencies — Candidates know the importance of establishing and maintaining a positive collaborative relationship with families, school colleagues, and agencies in the larger community to promote the intellectual, social, emotional, physical growth and well-being of children.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 4-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0360

### English for Speakers of Other Languages (ESOL): Program Standards

(1) Candidates who are prepared for the ESOL endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in ESOL learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for an ESOL endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved test for ESOL;

(c) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100 and

(d) Field experiences that include supervised teaching or internships in ESOL classrooms; and

(e) Integration of principles of cultural competency and equitable practice in each competency standard through the entire ESOL endorsement program.

(3) Standard 1: Language: Candidates demonstrate the ability to know, understand, and use the major concepts, theories, and research related to the nature and acquisition of language to construct learning environments that support English Speakers of Other Languages (ESOL) and bilin-

gual students' language and literacy development and content area achievement.

(4) Standard 2: Culture: Candidates demonstrate the ability to know, understand, and use the major concepts, principles, theories, and research related to the nature and role of culture and cultural groups to construct learning environments that support ESOL and bilingual students' cultural identities, language and literacy development, and content area achievement.

(5) Standard 3: Planning, Implementing, and Managing Instruction: Candidates demonstrate the ability to know, understand, and use standards-based practices and strategies related to planning, implementing, and managing ESOL and content instruction, including classroom organization, teaching strategies for developing and integrating language skills, and choosing and adapting classroom resources.

(6) Standard 4: Assessment: Candidates understand issues of assessment and use standards-based assessment measures with ESOL and bilingual students.

(7) Standard 5: Candidates demonstrate knowledge of the history of ESL teaching. Candidates demonstrate the ability to keep current with new instructional techniques, research results, advances in the ESL field, and public policy issues. Candidates demonstrate the ability to use such information to reflect upon and improve their instructional practices. Candidates demonstrate the ability to provide support and advocate for ESOL and bilingual students and their families and work collaboratively to improve the learning environment.

(8) Standard 6: Candidates demonstrate the ability to use information technology to enhance learning and to enhance personal and professional productivity.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0365

### Drama: Program Standards

(1) Candidates who are prepared for the Drama endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in drama education learning environments.

(2) The Commission may provide approval to a program that prepares candidates for a Drama endorsement only if it includes:

(a) At least twenty-four quarter hours designed to develop competence in Drama education that includes:

(A) Acting;

(B) Directing; and

(C) Technical theater.

(b) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(c) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Drama endorsement program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0415

### Library Media: Program Standards

(1) Candidates who are prepared for the Library Media endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in Library Media learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for a Library Media endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved test for Library Media;

(c) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(d) Field experiences that include supervised teaching or internships in Library Media classrooms; and



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(e) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Library Media endorsement program.

(3) Standard 1: Candidates demonstrate the ability to encourage reading and lifelong learning by stimulating interests and fostering competencies in the effective use of ideas and information.

(4) Standard 2: Candidates demonstrate the ability to promote efficient and ethical information-seeking behavior as part of the school library program and its services.

(5) Standard 3: Candidates demonstrate the ability to create a positive educational environment which promotes reading, literacy, and use of appropriate technology for diverse learners.

(6) Standard 4: Candidates demonstrate the ability to work with classroom teachers to co-plan, co-teach, and co-assess information skills.

(7) Standard 5: Candidates demonstrate the ability to support the learning of all students and other members of the learning community, including those with diverse learning styles, abilities and needs.

(8) Standard 6: Candidates demonstrate the ability to develop professional collaboration and leadership.

(9) Standard 7: Candidates demonstrate the ability to articulate the relationship of the library media program with current educational trends and important issues.

(10) Standard 8: Candidates demonstrate the ability to administer the library media program in order to support the mission of the school, and according to the principles of best practice in library science and program administration.

(11) Standard 9: Candidates demonstrate the ability to adhere to the principles of the school library profession which include selecting, organizing, managing, and developing procedures and policies for print and electronic information resources.

(12) Standard 10: Candidates demonstrate the ability to assess and manage financial, physical, and human resources.

(13) Standard 11: Candidates demonstrate the ability to use instructional technology.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0420

### Music: Program Standards

(1) Candidates who are prepared for the Music endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in music learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for a Music endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved test for Music;

(c) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(d) Field experiences that include supervised teaching or internships in Music classrooms; and

(e) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Music endorsement program.

(3) Standard 1: Technical Skills: Candidates must demonstrate proficiency in:

(a) At least one major performance area at a level appropriate for the particular music concentration;

(b) Understanding the repertory in their major performance area and the ability to perform from a cross-section of that repertory;

(c) The ability to read at sight with fluency demonstrating both general musicianship and, in the major performance area, a level of skill relevant to professional standards appropriate for the particular music concentration;

(d) Knowledge and skills sufficient to work as a leader and in collaboration on matters of musical interpretation. Rehearsal and conducting skills are required as appropriate to the particular music concentration;

(e) Keyboard competency; and

(f) Participating in ensemble experiences. Ensembles should be varied both in size and nature.

(4) Standard 2: Musicianship Skills and Analysis. Candidate must demonstrate proficiency in:

(a) Understanding the common elements and organizational patterns of music and their interaction, the ability to employ this understanding in aural, verbal, and visual analyses, and the ability to take aural dictation.

(b) Musical forms, processes, and structures to use this knowledge and skill in compositional, performance, analytical, scholarly, and pedagogical applications according to the requisites of their specializations.

(c) Placing music in historical, cultural, and stylistic contexts.

(5) Standard 3: Composition/Improvisation: Candidates must demonstrate proficiency in the ability to create original or derivative music.

(6) Standard 4: History and Repertory: Candidates must acquire basic knowledge of music history and repertories through the present time, including study and experience of musical language and achievement in addition to that of the primary culture encompassing the area of specialization

(7) Standard 5: Synthesis. Students must be able to work on musical problems by combining, as appropriate to the issue, their capabilities in performance; aural, verbal, and visual analysis; composition/improvisation; and history and repertory.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.143, 342.153, 342.165 & 342.223-342.232

Hist.: TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0425

### Physical Education: Program Standards

(1) Candidates who are prepared for the Physical Education Endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in physical education learning environments.

(2) The Commission may provide approval to an educator preparation program or course of study that prepares candidates for a Physical Education Endorsement only if it includes:

(a) Content that will enable candidates to meet the competency standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved test for Physical Education;

(c) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(d) Field experiences that include supervised teaching or internships in Physical Education classroom settings; and

(e) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Physical Education Endorsement program.

(3) Standard 1: Candidates demonstrate an understanding of physical education content, disciplinary concepts, and tools of inquiry related to the development of a physically educated person.

(4) Standard 2: Candidates demonstrate an understanding of how individuals learn and develop, and can provide opportunities that support their physical, cognitive, social and emotional development.

(5) Standard 3: Candidates demonstrate the ability to use differentiated instruction for diverse learners by demonstrating an understanding of how individuals differ in their approaches to learning and create appropriate instruction opportunities adapted to individual differences.

(6) Standard 4: Candidates demonstrate the ability to understand individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning and self-motivation.

(7) Standard 5: Candidates demonstrate the ability to use effective verbal, nonverbal and media communication techniques to foster inquiry, collaboration and engagement in physical activity settings

(8) Standard 6: Candidates demonstrate the ability to use a variety of developmentally appropriate instructional strategies to develop physically educated individuals.

(9) Standard 7: Candidates demonstrate the ability to use formal and informal assessment strategies to foster physical, cognitive, social and emotional development of learners in physical activity.

(10) Standard 8: Candidates demonstrate the ability to reflect and evaluate the effects of her or his actions on others.

(11) Standard 9: Candidates demonstrate the ability to use information technology to enhance learning and to enhance personal and professional productivity.

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(12) Standard 10 Candidates demonstrate the ability to foster relationships with colleagues, parents and guardians and community agencies to support learners' growth and well-being.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0440

### Reading Interventionist: Program Standards

(1) Candidates who are prepared for the Reading Intervention endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in a reading intervention learning environment.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for a Reading Intervention endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) Content that will enable candidates to meet reading instruction requirements as provided in OAR 584-420-0015;

(c) Content that will enable candidates to meet dyslexia instruction requirements as provided in OAR 584-420-0016;

(d) A requirement for candidates to complete the Commission-approved test for Reading Interventions;

(e) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100;

(f) Field experiences that include supervised teaching or internships in reading intervention learning environments; and

(g) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Reading Intervention endorsement program.

(3) Standard 1: Candidates demonstrate the knowledge and skills related to foundational reading knowledge and dispositions.

(4) Standard 2: Candidates demonstrate the knowledge and skills related to instructional reading strategies and curriculum materials.

(5) Standard 3: Candidates demonstrate the knowledge and skills related to reading assessment, diagnosis and evaluation.

(6) Standard 4: Candidates demonstrate the ability and understand the importance of creating a literate environment.

(7) Standard 5: Candidates understand the importance on participation in professional development related to reading instructional skills.

(8) Standard 6: Candidates demonstrate the ability to provide leadership, guidance and supervision of paraprofessionals.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 4-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0460

### Special Education: Program Standards

(1) Candidates who are prepared for special education: generalist endorsements will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in the special education population.

(2) The Commission may provide approval to an educator preparation program or course of study that prepares candidates for a special education: generalist endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) Content that will enable candidates to meet reading instruction requirements as provided in OAR 584-420-0015;

(c) Content that will enable candidates to meet dyslexia instruction requirements as provided in OAR 584-420-0016, a requirement for candidates to complete the Commission-approved subject-matter test for special education;

(e) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100;

(f) Field experiences that include supervised teaching or internships in classroom environments with students who are “individuals with exceptionalities” across the full range of disabilities.

(g) Integration of principles of cultural competency, cultural responsive pedagogy and equitable practices are imbedded in each competency standard through the entire special education: generalist endorsement program.

(3) Standard 1: Candidates demonstrate the ability to understand how exceptionalities may interact with development and learning and use this knowledge to provide meaningful and challenging learning experiences for individuals with exceptionalities.

(4) Standard 2: Candidates demonstrate the ability to create safe, inclusive, culturally responsive learning environments so that individuals with exceptionalities become active and effective learners and develop emotional well-being, positive social interactions, and self-determination.

(5) Standard 3: Candidates demonstrate the ability to use knowledge of general and specialized curricula to individualize learning for individuals with exceptionalities.

(6) Standard 4: Candidates demonstrate the ability to use multiple methods of assessment and data sources in making educational decisions.

(7) Standard 5: Candidates demonstrate the ability to select, adapt, and use a repertoire of evidence-based instructional strategies to advance learning of individuals with exceptionalities.

(8) Standard 6: Candidates demonstrate the ability to use foundational knowledge of the field and their professional, ethical principles and practice standards to inform their special education practice, to engage in life-long learning, and to advance the profession.

(9) Standard 7: Candidates demonstrate the ability to collaborate with families, other educators, related service providers, individuals with exceptionalities, and personnel from community agencies in culturally responsive ways to address the needs of individuals with exceptionalities across a range of learning experiences.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 4-2016(Temp), f. 8-31-16, cert. ef. 9-1-16 thru 2-27-17; TSPC 1-2017, f. & cert. ef. 2-1-17

## 584-420-0490

### World Language: Program Standards

(1) Candidates who are prepared for the World Language endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in World Language learning environments.

(2) The Commission may provide approval to an educator preparation program that prepares candidates for a World Language endorsement only if it includes:

(a) Content that will enable candidates to meet the standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) A requirement for candidates to complete the Commission-approved subject-matter test for World Languages;

(c) A requirement for candidates for a Russian or Japanese endorsement to receive a passing score on the Commission-approved language proficiency exam as provided in the TSPC Program Review and Standards Handbook;

(d) A requirement for candidates to complete a teacher performance assessment as provided in OAR 584-017-1100; and

(e) Field experiences that include supervised teaching or internships in World Language classroom through one of the followings;

(A) Field experiences prior to student teaching that include experiences in world language classrooms;

(B) Field experiences, including student teaching, that are supervised by a qualified world language educator who is knowledgeable about current instructional approaches and issues in the field of world language education; and

(C) Opportunities for candidates to participate in a structured study abroad program or intensive immersion experience in a target language community.

(f) Integration of principles of cultural competency and equitable practice in each competency standard through the entire World Language endorsement program.

(3) Standard 1: Candidates must demonstrate knowledge and skills related to technology-enhanced instruction and the use of technology in their own teaching.

(4) Standard 2: Candidates must demonstrate knowledge and skills related to language, linguistics and comparison.

(5) Standard 3: Candidates must demonstrate knowledge and skills related to cultures, literatures, and cross-disciplinary concepts.

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(6) Standard 4: Candidates must demonstrate knowledge and skills related to language acquisition theories and instructional practices.

(7) Standard 5: Candidates must demonstrate knowledge and skills related to integration of standards into curriculum and instruction.

(8) Standard 6: Candidates must demonstrate knowledge and skills related to assessment of languages and cultures.

(9) Standard 7: Candidates must demonstrate knowledge and skills related to professionalism, cultural competency, and community advocacy.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

### 584-420-0630

#### Dual Language Specialization: Program Standards

(1) Candidates who are prepared for the Dual Language specialization will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in dual language learning environments.

(2) The Commission may provide approval to a Dual Language Specialization program only if it includes:

(a) Content that will enable candidates to meet the competency standards set forth in this rule and the TSPC Program Review and Standards Handbook;

(b) Field experiences that include supervised teaching or internships in classrooms with dual language learners;

(c) A requirement for candidates to receive a passing score on the Commission-approved language proficiency exam as provided in the TSPC Program Review and Standards Handbook.

(d) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Dual Language Specialization program.

(3) Standard 1: Language: The dual language teacher knows, understands, and applies theories of first and second language acquisition to their practice and communicates in two languages at a highly proficiency level.

(4) Standard 2: Culture: The dual language teacher knows, understands, and uses major concepts, principles, theories, and research related to the role of culture, cultural groups, and identity to construct a supportive learning environment for all dual language students. The dual language teacher:

(5) Standard 3: Planning, Implementing, and Managing Instruction: The dual language teacher knows, understands, and uses evidence-based practices and strategies related to planning, implementing, and managing instruction in dual language classrooms.

(6) Standard 4: Assessment: The dual language teacher should understand the complexity of assessment to inform instruction for students' learning in multiple languages. Dual language teachers know how to assess language skills, literacy and content in both languages of instruction.

(7) Standard 5: Professionalism: The dual language teacher knows and understands current and emerging trends in educational research. The dual language teacher acts as a resource and advocate for multilingualism and collaborates with students, their families, the school community and educational professionals in order to meet the needs of multilingual students. The dual language teacher:

(8) Standard 6: Community and Family Engagement: The dual language teacher knows, understands and uses principles, theories, research and applications related to the role of family and community engagement to construct a supportive and inclusive learning environment for all students.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 1-2016, f. & cert. ef. 2-10-16; TSPC 1-2017, f. & cert. ef. 2-1-17

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125-246-0200	1-1-2017	Amend	2-1-2017	141-075-0040	1-12-2017	Repeal	2-1-2017
125-246-0210	1-1-2017	Amend	2-1-2017	141-075-0045	1-12-2017	Repeal	2-1-2017
125-246-0220	1-1-2017	Amend	2-1-2017	141-075-0050	1-12-2017	Repeal	2-1-2017
125-246-0350	1-1-2017	Amend	2-1-2017	141-075-0055	1-12-2017	Repeal	2-1-2017
125-246-0360	1-1-2017	Amend	2-1-2017	141-075-0060	1-12-2017	Repeal	2-1-2017
125-246-0555	1-1-2017	Amend	2-1-2017	141-075-0080	1-12-2017	Repeal	2-1-2017
125-246-0570	1-1-2017	Amend	2-1-2017	141-075-0110	1-12-2017	Repeal	2-1-2017
125-247-0110	1-1-2017	Amend	2-1-2017	141-075-0130	1-12-2017	Repeal	2-1-2017
125-247-0185	1-1-2017	Amend	2-1-2017	141-075-0140	1-12-2017	Repeal	2-1-2017
125-247-0275	1-1-2017	Amend	2-1-2017	141-075-0145	1-12-2017	Repeal	2-1-2017
125-247-0287	1-1-2017	Amend	2-1-2017	141-075-0150	1-12-2017	Repeal	2-1-2017
125-247-0288	1-1-2017	Amend	2-1-2017	141-075-0155	1-12-2017	Repeal	2-1-2017
125-247-0305	1-1-2017	Amend	2-1-2017	141-075-0160	1-12-2017	Repeal	2-1-2017
125-247-0550	1-1-2017	Amend	2-1-2017	141-075-0165	1-12-2017	Repeal	2-1-2017
125-247-0691	1-1-2017	Amend	2-1-2017	141-075-0170	1-12-2017	Repeal	2-1-2017
137-105-0001	11-17-2016	Amend	1-1-2017	141-075-0175	1-12-2017	Repeal	2-1-2017
137-105-0010	11-17-2016	Amend	1-1-2017	141-075-0180	1-12-2017	Repeal	2-1-2017
137-105-0020	11-17-2016	Amend	1-1-2017	141-075-0190	1-12-2017	Repeal	2-1-2017
137-105-0025	11-17-2016	Adopt	1-1-2017	141-075-0195	1-12-2017	Repeal	2-1-2017
137-105-0030	11-17-2016	Amend	1-1-2017	141-075-0200	1-12-2017	Repeal	2-1-2017
137-106-0001	11-17-2016	Adopt	1-1-2017	141-075-0205	1-12-2017	Repeal	2-1-2017
137-106-0010	11-17-2016	Adopt	1-1-2017	141-075-0210	1-12-2017	Repeal	2-1-2017
137-106-0030	11-17-2016	Adopt	1-1-2017	141-075-0215	1-12-2017	Repeal	2-1-2017
137-106-0040	11-17-2016	Adopt	1-1-2017	141-075-0220	1-12-2017	Repeal	2-1-2017
141-067-0130	1-12-2017	Amend	2-1-2017	141-075-0225	1-12-2017	Repeal	2-1-2017
141-067-0150	1-12-2017	Amend	2-1-2017	141-075-0230	1-12-2017	Repeal	2-1-2017
141-067-0155	1-12-2017	Amend	2-1-2017	141-075-0235	1-12-2017	Repeal	2-1-2017
141-067-0170	1-12-2017	Amend	2-1-2017	141-075-0240	1-12-2017	Repeal	2-1-2017
141-067-0180	1-12-2017	Amend	2-1-2017	141-075-0245	1-12-2017	Repeal	2-1-2017
141-067-0195	1-12-2017	Amend	2-1-2017	141-075-0250	1-12-2017	Repeal	2-1-2017
141-067-0200	1-12-2017	Repeal	2-1-2017	141-075-0255	1-12-2017	Repeal	2-1-2017

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141-075-0270	1-12-2017	Repeal	2-1-2017	150-314-0150	1-1-2017	Amend	2-1-2017
141-075-0275	1-12-2017	Repeal	2-1-2017	150-314-0485	1-1-2017	Amend	2-1-2017
141-075-0280	1-12-2017	Repeal	2-1-2017	150-315-0070	1-1-2017	Amend	2-1-2017
141-075-0285	1-12-2017	Repeal	2-1-2017	150-315-0080	1-1-2017	Repeal	2-1-2017
141-075-0290	1-12-2017	Repeal	2-1-2017	150-315-0082	1-1-2017	Repeal	2-1-2017
141-075-0295	1-12-2017	Repeal	2-1-2017	150-315-0084	1-1-2017	Repeal	2-1-2017
141-075-0300	1-12-2017	Repeal	2-1-2017	150-315-0120	1-1-2017	Repeal	2-1-2017
141-075-0305	1-12-2017	Repeal	2-1-2017	150-315-0121	1-1-2017	Adopt	2-1-2017
141-075-0310	1-12-2017	Repeal	2-1-2017	150-315-0125	1-1-2017	Adopt	2-1-2017
141-075-0315	1-12-2017	Repeal	2-1-2017	150-315-0190	1-1-2017	Repeal	2-1-2017
141-075-0320	1-12-2017	Repeal	2-1-2017	150-316-0075	1-1-2017	Repeal	2-1-2017
141-075-0325	1-12-2017	Repeal	2-1-2017	150-316-0086	1-1-2017	Amend	2-1-2017
141-075-0330	1-12-2017	Repeal	2-1-2017	150-316-0100	1-1-2017	Repeal	2-1-2017
141-075-0335	1-12-2017	Repeal	2-1-2017	150-316-0210	1-1-2017	Repeal	2-1-2017
141-075-0400	1-12-2017	Repeal	2-1-2017	150-316-0215	1-1-2017	Repeal	2-1-2017
141-075-0405	1-12-2017	Repeal	2-1-2017	150-316-0359	1-1-2017	Amend	2-1-2017
141-075-0460	1-12-2017	Repeal	2-1-2017	150-316-0435	1-1-2017	Amend	2-1-2017
141-075-0465	1-12-2017	Repeal	2-1-2017	150-316-0517	1-1-2017	Repeal	2-1-2017
141-075-0470	1-12-2017	Repeal	2-1-2017	150-320-0010	1-1-2017	Repeal	2-1-2017
141-075-0475	1-12-2017	Repeal	2-1-2017	150-320-0040	1-1-2017	Amend	2-1-2017
141-075-0480	1-12-2017	Repeal	2-1-2017	150-321-0340	1-1-2017	Amend	2-1-2017
141-075-0520	1-12-2017	Repeal	2-1-2017	150-321-0810	1-1-2017	Amend	2-1-2017
141-075-0525	1-12-2017	Repeal	2-1-2017	150-323-0130	1-1-2017	Amend	2-1-2017
141-075-0530	1-12-2017	Repeal	2-1-2017	150-323-0150	1-1-2017	Amend	2-1-2017
141-075-0535	1-12-2017	Repeal	2-1-2017	150-418-0010	1-1-2017	Adopt	2-1-2017
141-075-0540	1-12-2017	Repeal	2-1-2017	162-050-0030	1-5-2017	Adopt	2-1-2017
141-075-0545	1-12-2017	Repeal	2-1-2017	166-150-0005	1-13-2017	Amend	2-1-2017
141-075-0550	1-12-2017	Repeal	2-1-2017	166-150-0110	1-13-2017	Amend	2-1-2017
141-075-0555	1-12-2017	Repeal	2-1-2017	166-400-0010	1-13-2017	Amend	2-1-2017
141-075-0560	1-12-2017	Repeal	2-1-2017	166-400-0015	1-13-2017	Amend	2-1-2017
141-075-0565	1-12-2017	Repeal	2-1-2017	166-400-0020	1-13-2017	Amend	2-1-2017
141-075-0570	1-12-2017	Repeal	2-1-2017	166-400-0025	1-13-2017	Amend	2-1-2017
141-075-0575	1-12-2017	Repeal	2-1-2017	166-400-0030	1-13-2017	Amend	2-1-2017
141-125-0100	1-12-2017	Amend	2-1-2017	166-400-0035	1-13-2017	Amend	2-1-2017
141-125-0110	1-12-2017	Amend	2-1-2017	166-400-0040	1-13-2017	Amend	2-1-2017
141-125-0120	1-12-2017	Amend	2-1-2017	166-400-0045	1-13-2017	Amend	2-1-2017
141-125-0140	1-12-2017	Amend	2-1-2017	166-400-0050	1-13-2017	Amend	2-1-2017
141-125-0160	1-12-2017	Amend	2-1-2017	166-400-0055	1-13-2017	Amend	2-1-2017
141-125-0170	1-12-2017	Amend	2-1-2017	166-400-0060	1-13-2017	Amend	2-1-2017
150-090-0020	1-1-2017	Adopt	2-1-2017	166-400-0065	1-13-2017	Amend	2-1-2017
150-118-0150	1-1-2017	Amend	2-1-2017	177-036-0030	2-1-2017	Amend	3-1-2017
150-294-0430	1-1-2017	Amend	2-1-2017	177-036-0030(T)	2-1-2017	Repeal	3-1-2017
150-294-0840	1-1-2017	Amend	2-1-2017	199-001-0010	11-17-2016	Amend	1-1-2017
150-305-0068	1-1-2017	Amend	2-1-2017	199-005-0080	11-17-2016	Adopt	1-1-2017
150-305-0130	1-1-2017	Amend	2-1-2017	199-040-0027	11-17-2016	Adopt	1-1-2017
150-305-0140	1-1-2017	Amend	2-1-2017	213-003-0001	1-1-2017	Amend	2-1-2017
150-305-0142	1-1-2017	Amend	2-1-2017	213-004-0001	1-1-2017	Amend	2-1-2017
150-305-0202	1-1-2017	Amend	2-1-2017	213-017-0004	1-1-2017	Amend	2-1-2017
150-305-0360 T	12-21-2016	Amend(T)	2-1-2017	213-017-0005	1-1-2017	Amend	2-1-2017
150-307-0470	1-1-2017	Repeal	2-1-2017	213-017-0006	1-1-2017	Amend	2-1-2017
150-307-0510	1-1-2017	Amend	2-1-2017	213-017-0008	1-1-2017	Amend	2-1-2017
150-311-0120	1-1-2017	Repeal	2-1-2017	213-017-0011	1-1-2017	Amend	2-1-2017
150-311-0130	1-1-2017	Repeal	2-1-2017	213-018-0075	1-1-2017	Amend	2-1-2017
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213-019-0011	1-1-2017	Amend	2-1-2017	309-008-1400	11-30-2016	Adopt	1-1-2017
213-019-0012	1-1-2017	Amend	2-1-2017	309-008-1500	11-30-2016	Adopt	1-1-2017
213-019-0015	1-1-2017	Amend	2-1-2017	309-008-1600	11-30-2016	Adopt	1-1-2017
213-071-0010	12-29-2016	Adopt	2-1-2017	309-011-0024	12-27-2016	Amend	2-1-2017
213-071-0015	12-29-2016	Adopt	2-1-2017	309-011-0026	12-27-2016	Amend	2-1-2017
213-071-0020	12-29-2016	Adopt	2-1-2017	309-011-0028	12-27-2016	Amend	2-1-2017
230-020-0330	12-1-2016	Amend	1-1-2017	309-011-0031	12-27-2016	Adopt	2-1-2017
250-020-0091	12-5-2016	Amend(T)	1-1-2017	309-011-0032	12-27-2016	Amend	2-1-2017
250-020-0091(T)	12-5-2016	Suspend	1-1-2017	309-011-0034	12-27-2016	Amend	2-1-2017
255-060-0011	1-3-2017	Amend(T)	2-1-2017	309-011-0036	12-27-2016	Amend	2-1-2017
255-060-0016	1-3-2017	Amend(T)	2-1-2017	309-012-0130	12-1-2016	Repeal	1-1-2017
255-085-0010	1-3-2017	Amend(T)	2-1-2017	309-012-0140	12-1-2016	Repeal	1-1-2017
255-085-0020	1-3-2017	Amend(T)	2-1-2017	309-012-0150	12-1-2016	Repeal	1-1-2017
257-050-0050	11-18-2016	Amend(T)	1-1-2017	309-012-0160	12-1-2016	Repeal	1-1-2017
257-050-0145	11-18-2016	Amend(T)	1-1-2017	309-012-0170	12-1-2016	Repeal	1-1-2017
257-095-0000	12-14-2016	Adopt(T)	1-1-2017	309-012-0180	12-1-2016	Repeal	1-1-2017
257-095-0010	12-14-2016	Adopt(T)	1-1-2017	309-012-0190	12-1-2016	Repeal	1-1-2017
257-095-0030	12-14-2016	Adopt(T)	1-1-2017	309-012-0200	12-1-2016	Repeal	1-1-2017
257-095-0040	12-14-2016	Adopt(T)	1-1-2017	309-012-0210	12-1-2016	Repeal	1-1-2017
257-095-0050	12-14-2016	Adopt(T)	1-1-2017	309-012-0220	12-1-2016	Repeal	1-1-2017
257-095-0060	12-14-2016	Adopt(T)	1-1-2017	309-012-0230	12-1-2016	Repeal	1-1-2017
257-095-0070	12-14-2016	Adopt(T)	1-1-2017	309-014-0000	12-1-2016	Amend	1-1-2017
257-095-0080	12-14-2016	Adopt(T)	1-1-2017	309-014-0005	12-1-2016	Amend	1-1-2017
257-095-0090	12-14-2016	Adopt(T)	1-1-2017	309-014-0010	12-1-2016	Amend	1-1-2017
257-095-0100	12-14-2016	Adopt(T)	1-1-2017	309-014-0015	12-1-2016	Amend	1-1-2017
259-008-0025	12-22-2016	Amend	2-1-2017	309-014-0020	12-1-2016	Amend	1-1-2017
259-008-0045	1-1-2017	Amend	2-1-2017	309-014-0021	12-1-2016	Adopt	1-1-2017
259-008-0060	1-1-2017	Amend	2-1-2017	309-014-0022	12-1-2016	Adopt	1-1-2017
259-009-0062	12-22-2016	Amend	2-1-2017	309-014-0023	12-1-2016	Adopt	1-1-2017
291-079-0030	11-30-2016	Repeal	1-1-2017	309-014-0025	12-1-2016	Amend	1-1-2017
291-079-0040	11-30-2016	Repeal	1-1-2017	309-014-0030	12-1-2016	Amend	1-1-2017
291-210-0010	2-15-2017	Amend(T)	3-1-2017	309-014-0035	12-1-2016	Amend	1-1-2017
291-210-0020	2-15-2017	Amend(T)	3-1-2017	309-014-0036	12-1-2016	Adopt	1-1-2017
291-210-0030	2-15-2017	Amend(T)	3-1-2017	309-014-0037	12-1-2016	Amend	1-1-2017
291-210-0040	2-15-2017	Adopt(T)	3-1-2017	309-014-0040	12-1-2016	Amend	1-1-2017
291-210-0050	2-15-2017	Adopt(T)	3-1-2017	309-018-0100	11-28-2016	Amend	1-1-2017
309-008-0100	11-30-2016	Adopt	1-1-2017	309-018-0105	11-28-2016	Amend	1-1-2017
309-008-0200	11-30-2016	Adopt	1-1-2017	309-018-0107	11-28-2016	Adopt	1-1-2017
309-008-0250	11-30-2016	Adopt	1-1-2017	309-018-0160	11-28-2016	Amend	1-1-2017
309-008-0300	11-30-2016	Adopt	1-1-2017	309-018-0210	11-28-2016	Amend	1-1-2017
309-008-0400	11-30-2016	Adopt	1-1-2017	309-018-0215	11-28-2016	Amend	1-1-2017
309-008-0500	11-30-2016	Adopt	1-1-2017	309-019-0100	11-30-2016	Amend	1-1-2017
309-008-0600	11-30-2016	Adopt	1-1-2017	309-019-0105	11-30-2016	Amend	1-1-2017
309-008-0700	11-30-2016	Adopt	1-1-2017	309-019-0105	12-28-2016	Amend(T)	2-1-2017
309-008-0800	11-30-2016	Adopt	1-1-2017	309-019-0110	11-30-2016	Amend	1-1-2017
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309-008-0900	11-30-2016	Adopt	1-1-2017	309-019-0115	12-28-2016	Amend(T)	2-1-2017
309-008-0900	1-1-2017	Amend(T)	2-1-2017	309-019-0120	12-28-2016	Amend(T)	2-1-2017
309-008-0905	1-1-2017	Adopt(T)	2-1-2017	309-019-0125	11-30-2016	Amend	1-1-2017
309-008-1000	11-30-2016	Adopt	1-1-2017	309-019-0125	12-28-2016	Amend(T)	2-1-2017
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309-008-1100	1-1-2017	Amend(T)	2-1-2017	309-019-0130	12-28-2016	Amend(T)	2-1-2017
309-008-1200	11-30-2016	Adopt	1-1-2017	309-019-0135	11-30-2016	Amend	1-1-2017
309-008-1200	1-1-2017	Amend(T)	2-1-2017	309-019-0135	12-28-2016	Amend(T)	2-1-2017
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309-019-0145	12-28-2016	Amend(T)	2-1-2017	309-022-0125	12-29-2016	Amend(T)	2-1-2017
309-019-0150	12-28-2016	Amend(T)	2-1-2017	309-022-0130	12-29-2016	Amend(T)	2-1-2017
309-019-0150	1-18-2017	Amend(T)	3-1-2017	309-022-0135	12-1-2016	Amend	1-1-2017
309-019-0151	12-28-2016	Adopt(T)	2-1-2017	309-022-0140	12-29-2016	Amend(T)	2-1-2017
309-019-0151	1-18-2017	Amend(T)	3-1-2017	309-022-0155	12-29-2016	Amend(T)	2-1-2017
309-019-0152	12-28-2016	Adopt(T)	2-1-2017	309-022-0160	12-29-2016	Amend(T)	2-1-2017
309-019-0155	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-1-2016	Amend	1-1-2017
309-019-0160	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-29-2016	Amend(T)	2-1-2017
309-019-0165	12-28-2016	Amend(T)	2-1-2017	309-022-0180	12-29-2016	Amend(T)	2-1-2017
309-019-0175	11-30-2016	Amend	1-1-2017	309-022-0192	12-29-2016	Adopt(T)	2-1-2017
309-019-0175	12-28-2016	Amend(T)	2-1-2017	309-022-0195	12-29-2016	Amend(T)	2-1-2017
309-019-0180	12-28-2016	Amend(T)	2-1-2017	309-022-0200	12-29-2016	Amend(T)	2-1-2017
309-019-0185	12-28-2016	Amend(T)	2-1-2017	309-022-0205	12-1-2016	Amend	1-1-2017
309-019-0195	11-30-2016	Amend	1-1-2017	309-022-0205	12-29-2016	Amend(T)	2-1-2017
309-019-0210	11-30-2016	Amend	1-1-2017	309-022-0210	12-29-2016	Amend(T)	2-1-2017
309-019-0215	11-30-2016	Amend	1-1-2017	309-022-0215	12-29-2016	Amend(T)	2-1-2017
309-019-0215	12-28-2016	Amend(T)	2-1-2017	309-022-0220	12-29-2016	Amend(T)	2-1-2017
309-019-0220	11-30-2016	Amend	1-1-2017	309-022-0225	12-29-2016	Amend(T)	2-1-2017
309-019-0225	11-30-2016	Adopt	1-1-2017	309-022-0230	12-29-2016	Amend(T)	2-1-2017
309-019-0225	12-28-2016	Amend(T)	2-1-2017	309-023-0100	12-29-2016	Adopt	2-1-2017
309-019-0225	1-18-2017	Amend(T)	3-1-2017	309-023-0110	12-29-2016	Adopt	2-1-2017
309-019-0226	12-28-2016	Adopt(T)	2-1-2017	309-023-0120	12-29-2016	Adopt	2-1-2017
309-019-0226	1-18-2017	Amend(T)	3-1-2017	309-023-0130	12-29-2016	Adopt	2-1-2017
309-019-0230	11-30-2016	Adopt	1-1-2017	309-023-0140	12-29-2016	Adopt	2-1-2017
309-019-0230	12-28-2016	Amend(T)	2-1-2017	309-023-0150	12-29-2016	Adopt	2-1-2017
309-019-0235	11-30-2016	Adopt	1-1-2017	309-023-0160	12-29-2016	Adopt	2-1-2017
309-019-0235	1-18-2017	Amend(T)	3-1-2017	309-023-0170	12-29-2016	Adopt	2-1-2017
309-019-0240	11-30-2016	Adopt	1-1-2017	309-023-0180	12-29-2016	Adopt	2-1-2017
309-019-0240	12-28-2016	Amend(T)	2-1-2017	309-027-0010	12-5-2016	Adopt	1-1-2017
309-019-0241	12-28-2016	Adopt(T)	2-1-2017	309-027-0020	12-5-2016	Adopt	1-1-2017
309-019-0242	12-28-2016	Adopt(T)	2-1-2017	309-027-0030	12-5-2016	Adopt	1-1-2017
309-019-0242	1-18-2017	Amend(T)	3-1-2017	309-027-0040	12-5-2016	Adopt	1-1-2017
309-019-0245	11-30-2016	Adopt	1-1-2017	309-027-0050	12-5-2016	Adopt	1-1-2017
309-019-0245	12-28-2016	Amend(T)	2-1-2017	309-027-0060	12-5-2016	Adopt	1-1-2017
309-019-0248	11-30-2016	Adopt	1-1-2017	309-032-0850	12-1-2016	Amend	1-1-2017
309-019-0248	1-18-2017	Amend(T)	3-1-2017	309-032-0860	12-1-2016	Amend	1-1-2017
309-019-0250	11-30-2016	Adopt	1-1-2017	309-032-0870	12-1-2016	Amend	1-1-2017
309-019-0250	1-18-2017	Amend(T)	3-1-2017	309-032-0890	12-1-2016	Amend	1-1-2017
309-019-0255	11-30-2016	Adopt	1-1-2017	309-033-0210	12-29-2016	Amend	2-1-2017
309-019-0270	12-28-2016	Adopt(T)	2-1-2017	309-033-0410	12-29-2016	Amend	2-1-2017
309-019-0270	1-18-2017	Amend(T)	3-1-2017	309-033-0432	12-29-2016	Amend	2-1-2017
309-019-0275	12-28-2016	Adopt(T)	2-1-2017	309-033-0510	12-29-2016	Amend	2-1-2017
309-019-0275	1-18-2017	Amend(T)	3-1-2017	309-033-0530	12-29-2016	Amend	2-1-2017
309-019-0280	12-28-2016	Adopt(T)	2-1-2017	309-033-0610	12-29-2016	Amend	2-1-2017
309-019-0280	1-18-2017	Amend(T)	3-1-2017	309-033-0710	12-29-2016	Amend	2-1-2017
309-019-0285	12-28-2016	Adopt(T)	2-1-2017	309-033-0720	12-29-2016	Amend	2-1-2017
309-019-0285	1-18-2017	Amend(T)	3-1-2017	309-033-0740	12-29-2016	Amend	2-1-2017
309-019-0290	12-28-2016	Adopt(T)	2-1-2017	309-033-0910	12-29-2016	Amend	2-1-2017
309-019-0290	1-18-2017	Amend(T)	3-1-2017	309-033-0970	12-29-2016	Amend	2-1-2017
309-019-0295	12-28-2016	Adopt(T)	2-1-2017	309-039-0500	11-30-2016	Amend	1-1-2017
309-019-0295	1-18-2017	Amend(T)	3-1-2017	309-039-0510	11-30-2016	Amend	1-1-2017
309-022-0100	12-1-2016	Amend	1-1-2017	309-039-0530	11-30-2016	Amend	1-1-2017
309-022-0105	12-1-2016	Amend	1-1-2017	309-039-0580	11-30-2016	Amend	1-1-2017
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330-063-0020	12-21-2016	Amend	2-1-2017	331-915-0045	1-6-2017	Repeal	2-1-2017
330-063-0025	12-21-2016	Amend	2-1-2017	331-915-0050	1-6-2017	Amend	2-1-2017
330-070-0010	1-1-2017	Amend	2-1-2017	331-915-0055	1-6-2017	Amend	2-1-2017
330-070-0013	1-1-2017	Amend	2-1-2017	331-915-0060	1-6-2017	Amend	2-1-2017
330-070-0014	1-1-2017	Amend	2-1-2017	331-915-0065	1-6-2017	Amend	2-1-2017
330-070-0022	1-1-2017	Amend	2-1-2017	331-915-0070	1-6-2017	Amend	2-1-2017
330-070-0024	1-1-2017	Amend	2-1-2017	331-915-0075	1-6-2017	Amend	2-1-2017
330-070-0025	1-1-2017	Amend	2-1-2017	331-915-0080	1-6-2017	Amend	2-1-2017
330-070-0026	1-1-2017	Amend	2-1-2017	331-915-0085	1-6-2017	Amend	2-1-2017
330-070-0027	1-1-2017	Amend	2-1-2017	333-004-0000	1-10-2017	Amend	2-1-2017
330-070-0029	1-1-2017	Amend	2-1-2017	333-004-0010	1-10-2017	Amend	2-1-2017
330-070-0060	1-1-2017	Amend	2-1-2017	333-004-0020	1-10-2017	Amend	2-1-2017
330-070-0073	1-1-2017	Amend	2-1-2017	333-004-0030	1-10-2017	Amend	2-1-2017
330-092-0015	12-21-2016	Amend	2-1-2017	333-004-0040	1-10-2017	Amend	2-1-2017
330-110-0042	1-25-2017	Amend(T)	3-1-2017	333-004-0050	1-10-2017	Amend	2-1-2017
330-160-0015	12-21-2016	Amend	2-1-2017	333-004-0060	1-10-2017	Amend	2-1-2017
330-160-0030	12-21-2016	Amend	2-1-2017	333-004-0070	1-10-2017	Amend	2-1-2017
330-160-0035	12-21-2016	Amend	2-1-2017	333-004-0080	1-10-2017	Amend	2-1-2017
330-160-0080	12-21-2016	Adopt	2-1-2017	333-004-0110	1-10-2017	Amend	2-1-2017
330-160-0090	12-21-2016	Adopt	2-1-2017	333-004-0120	1-10-2017	Amend	2-1-2017
330-220-0000	1-25-2017	Amend	3-1-2017	333-004-0130	1-10-2017	Amend	2-1-2017
330-220-0010	1-25-2017	Amend	3-1-2017	333-004-0140	1-10-2017	Amend	2-1-2017
330-220-0020	1-25-2017	Amend	3-1-2017	333-004-0150	1-10-2017	Amend	2-1-2017
330-220-0030	1-25-2017	Amend	3-1-2017	333-004-0160	1-10-2017	Amend	2-1-2017
330-220-0040	1-25-2017	Amend	3-1-2017	333-007-0010	11-28-2016	Amend	1-1-2017
330-220-0050	1-25-2017	Amend	3-1-2017	333-007-0010(T)	11-28-2016	Repeal	1-1-2017
330-220-0070	1-25-2017	Amend	3-1-2017	333-007-0090	11-28-2016	Amend	1-1-2017
330-220-0080	1-25-2017	Amend	3-1-2017	333-007-0090	12-2-2016	Amend(T)	1-1-2017
330-220-0090	1-25-2017	Amend	3-1-2017	333-007-0090	12-15-2016	Amend(T)	1-1-2017
330-220-0100	1-25-2017	Amend	3-1-2017	333-007-0100	11-28-2016	Amend	1-1-2017
330-220-0150	1-25-2017	Amend	3-1-2017	333-007-0100(T)	11-28-2016	Repeal	1-1-2017
331-910-0000	1-6-2017	Amend	2-1-2017	333-007-0200	11-28-2016	Amend	1-1-2017
331-910-0005	1-6-2017	Amend	2-1-2017	333-007-0210	11-28-2016	Amend	1-1-2017
331-910-0010	1-6-2017	Amend	2-1-2017	333-007-0220	11-28-2016	Amend	1-1-2017
331-910-0015	1-6-2017	Amend	2-1-2017	333-007-0300	11-28-2016	Amend	1-1-2017
331-910-0025	1-6-2017	Amend	2-1-2017	333-007-0310	12-2-2016	Amend(T)	1-1-2017
331-910-0030	1-6-2017	Amend	2-1-2017	333-007-0315	12-2-2016	Amend(T)	1-1-2017
331-910-0035	1-6-2017	Amend	2-1-2017	333-007-0320	12-2-2016	Amend(T)	1-1-2017
331-910-0040	1-6-2017	Amend	2-1-2017	333-007-0320	12-15-2016	Amend(T)	1-1-2017
331-910-0045	1-6-2017	Amend	2-1-2017	333-007-0350	12-2-2016	Amend(T)	1-1-2017
331-910-0050	1-6-2017	Amend	2-1-2017	333-007-0350	12-15-2016	Amend(T)	1-1-2017
331-910-0055	1-6-2017	Amend	2-1-2017	333-007-0360	12-2-2016	Amend(T)	1-1-2017
331-910-0060	1-6-2017	Amend	2-1-2017	333-007-0360	12-15-2016	Amend(T)	1-1-2017
331-910-0070	1-6-2017	Amend	2-1-2017	333-007-0410	12-2-2016	Amend(T)	1-1-2017
331-910-0075	1-6-2017	Amend	2-1-2017	333-007-0430	12-2-2016	Amend(T)	1-1-2017
331-910-0080	1-6-2017	Amend	2-1-2017	333-007-0440	12-2-2016	Amend(T)	1-1-2017
331-910-0085	1-6-2017	Amend	2-1-2017	333-007-0440	12-15-2016	Amend(T)	1-1-2017
331-915-0000	1-6-2017	Amend	2-1-2017	333-007-0450	12-2-2016	Amend(T)	1-1-2017
331-915-0005	1-6-2017	Amend	2-1-2017	333-007-0480	12-2-2016	Amend(T)	1-1-2017
331-915-0007	1-6-2017	Adopt	2-1-2017	333-007-0490	12-2-2016	Suspend	1-1-2017
331-915-0015	1-6-2017	Amend	2-1-2017	333-008-0010	11-28-2016	Amend	1-1-2017
331-915-0020	1-6-2017	Amend	2-1-2017	333-008-0023	11-28-2016	Amend	1-1-2017
331-915-0025	1-6-2017	Amend	2-1-2017	333-008-0040	11-28-2016	Amend	1-1-2017
331-915-0030	1-6-2017	Amend	2-1-2017	333-008-0600	11-28-2016	Amend	1-1-2017
331-915-0035	1-6-2017	Amend	2-1-2017	333-008-1020	11-28-2016	Amend	1-1-2017



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333-008-1200	11-28-2016	Amend	1-1-2017	333-046-0090	12-22-2016	Adopt	2-1-2017
333-008-1200	12-31-2016	Amend(T)	2-1-2017	333-046-0100	12-22-2016	Adopt	2-1-2017
333-008-1200(T)	11-28-2016	Repeal	1-1-2017	333-046-0110	12-22-2016	Adopt	2-1-2017
333-008-1225	11-28-2016	Repeal	1-1-2017	333-046-0120	12-22-2016	Adopt	2-1-2017
333-008-1230	11-28-2016	Amend	1-1-2017	333-046-0130	12-22-2016	Adopt	2-1-2017
333-008-1230	12-31-2016	Amend(T)	2-1-2017	333-064-0100	12-2-2016	Amend(T)	1-1-2017
333-008-1230(T)	11-28-2016	Repeal	1-1-2017	333-064-0100	12-15-2016	Amend(T)	1-1-2017
333-008-1255	11-28-2016	Adopt	1-1-2017	333-064-0110	12-2-2016	Amend(T)	1-1-2017
333-008-1500	11-28-2016	Amend	1-1-2017	333-064-0110	12-15-2016	Amend(T)	1-1-2017
333-008-1500(T)	11-28-2016	Repeal	1-1-2017	333-068-0005	1-1-2017	Repeal	1-1-2017
333-008-1505	11-28-2016	Amend	1-1-2017	333-068-0010	1-1-2017	Repeal	1-1-2017
333-008-1505(T)	11-28-2016	Repeal	1-1-2017	333-068-0015	1-1-2017	Repeal	1-1-2017
333-008-1620	11-28-2016	Amend	1-1-2017	333-068-0020	1-1-2017	Repeal	1-1-2017
333-008-1730	11-28-2016	Amend	1-1-2017	333-068-0025	1-1-2017	Repeal	1-1-2017
333-008-1740	11-28-2016	Amend	1-1-2017	333-068-0030	1-1-2017	Repeal	1-1-2017
333-008-1740(T)	11-28-2016	Repeal	1-1-2017	333-068-0035	1-1-2017	Repeal	1-1-2017
333-008-1760	11-28-2016	Amend	1-1-2017	333-068-0040	1-1-2017	Repeal	1-1-2017
333-008-1770	11-28-2016	Amend	1-1-2017	333-068-0045	1-1-2017	Repeal	1-1-2017
333-008-1820	11-28-2016	Amend	1-1-2017	333-068-0050	1-1-2017	Repeal	1-1-2017
333-008-2080	11-28-2016	Amend	1-1-2017	333-068-0055	1-1-2017	Repeal	1-1-2017
333-008-2120	11-28-2016	Amend	1-1-2017	333-068-0060	1-1-2017	Repeal	1-1-2017
333-008-2130	11-28-2016	Repeal	1-1-2017	333-068-0065	1-1-2017	Repeal	1-1-2017
333-008-2190	11-28-2016	Amend	1-1-2017	333-069-0005	1-1-2017	Repeal	1-1-2017
333-008-9900	11-28-2016	Amend	1-1-2017	333-069-0010	1-1-2017	Repeal	1-1-2017
333-008-9910	12-31-2016	Adopt(T)	2-1-2017	333-069-0015	1-1-2017	Repeal	1-1-2017
333-010-0405	12-12-2016	Amend	1-1-2017	333-069-0020	1-1-2017	Repeal	1-1-2017
333-010-0415	12-12-2016	Amend	1-1-2017	333-069-0030	1-1-2017	Repeal	1-1-2017
333-010-0435	12-12-2016	Amend	1-1-2017	333-069-0040	1-1-2017	Repeal	1-1-2017
333-016-2035	12-1-2016	Adopt	1-1-2017	333-069-0050	1-1-2017	Repeal	1-1-2017
333-016-2040	12-1-2016	Adopt	1-1-2017	333-069-0060	1-1-2017	Repeal	1-1-2017
333-016-2040	2-1-2017	Amend	3-1-2017	333-069-0070	1-1-2017	Repeal	1-1-2017
333-016-2050	12-1-2016	Adopt	1-1-2017	333-069-0080	1-1-2017	Repeal	1-1-2017
333-016-2060	12-1-2016	Adopt	1-1-2017	333-069-0085	1-1-2017	Am. & Ren.	1-1-2017
333-016-2060	2-1-2017	Amend	3-1-2017	333-069-0090	1-1-2017	Repeal	1-1-2017
333-016-2070	12-1-2016	Adopt	1-1-2017	333-069-0100	1-1-2017	Adopt	1-1-2017
333-016-2070	2-1-2017	Amend	3-1-2017	333-069-0120	1-1-2017	Adopt	1-1-2017
333-016-2080	2-1-2017	Adopt	3-1-2017	333-070-0075	1-1-2017	Repeal	1-1-2017
333-016-2090	12-1-2016	Adopt	1-1-2017	333-070-0080	1-1-2017	Repeal	1-1-2017
333-023-0805	1-10-2017	Amend	2-1-2017	333-070-0085	1-1-2017	Repeal	1-1-2017
333-023-0820	1-10-2017	Amend	2-1-2017	333-070-0090	1-1-2017	Repeal	1-1-2017
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333-028-0220	7-1-2017	Amend	2-1-2017	333-070-0100	1-1-2017	Repeal	1-1-2017
333-028-0230	7-1-2017	Amend	2-1-2017	333-070-0105	1-1-2017	Repeal	1-1-2017
333-028-0234	7-1-2017	Adopt	2-1-2017	333-070-0110	1-1-2017	Repeal	1-1-2017
333-028-0238	7-1-2017	Adopt	2-1-2017	333-070-0115	1-1-2017	Am. & Ren.	1-1-2017
333-028-0240	7-1-2017	Amend	2-1-2017	333-070-0120	1-1-2017	Am. & Ren.	1-1-2017
333-028-0250	7-1-2017	Amend	2-1-2017	333-070-0125	1-1-2017	Repeal	1-1-2017
333-028-0320	11-18-2016	Amend	1-1-2017	333-070-0130	1-1-2017	Repeal	1-1-2017
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333-102-0101	2-1-2017	Amend	3-1-2017	407-007-0250(T)	12-1-2016	Repeal	1-1-2017
333-106-0325	2-1-2017	Amend	3-1-2017	407-007-0279	12-1-2016	Amend	1-1-2017
333-125-0040	2-1-2017	Amend	3-1-2017	407-007-0279(T)	12-1-2016	Repeal	1-1-2017
333-125-0120	2-1-2017	Amend	3-1-2017	407-007-0290	12-1-2016	Amend	1-1-2017
333-510-0130	1-23-2017	Amend	3-1-2017	407-007-0290(T)	12-1-2016	Repeal	1-1-2017
333-510-0130(T)	1-23-2017	Repeal	3-1-2017	407-007-0320	12-1-2016	Amend	1-1-2017
333-535-0086	12-23-2016	Amend	2-1-2017	407-007-0320(T)	12-1-2016	Repeal	1-1-2017
339-010-0005	2-15-2017	Amend	3-1-2017	407-007-0330	12-1-2016	Amend	1-1-2017
339-010-0020	1-27-2017	Amend	3-1-2017	407-007-0330(T)	12-1-2016	Repeal	1-1-2017
340-090-0005	1-19-2017	Amend	3-1-2017	407-007-0335	1-24-2017	Amend(T)	3-1-2017
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340-090-0015	1-19-2017	Amend	3-1-2017	407-045-0810	12-1-2016	Repeal	1-1-2017
340-090-0020	1-19-2017	Amend	3-1-2017	407-045-0820	12-1-2016	Amend	1-1-2017
340-090-0030	1-19-2017	Amend	3-1-2017	407-045-0825	12-1-2016	Adopt	1-1-2017
340-090-0040	1-19-2017	Amend	3-1-2017	407-045-0830	12-1-2016	Repeal	1-1-2017
340-090-0041	1-19-2017	Adopt	3-1-2017	407-045-0850	12-1-2016	Repeal	1-1-2017
340-090-0042	1-19-2017	Adopt	3-1-2017	407-045-0860	12-1-2016	Repeal	1-1-2017
340-090-0045	1-19-2017	Repeal	3-1-2017	407-045-0870	12-1-2016	Repeal	1-1-2017
340-090-0050	1-19-2017	Amend	3-1-2017	407-045-0880	12-1-2016	Repeal	1-1-2017
340-090-0060	1-19-2017	Amend	3-1-2017	407-045-0885	12-1-2016	Adopt	1-1-2017
340-090-0068	1-19-2017	Adopt	3-1-2017	407-045-0886	12-1-2016	Adopt	1-1-2017
340-090-0070	1-19-2017	Amend	3-1-2017	407-045-0887	12-1-2016	Adopt	1-1-2017
340-090-0080	1-19-2017	Amend	3-1-2017	407-045-0890	12-1-2016	Amend	1-1-2017
340-090-0090	1-19-2017	Amend	3-1-2017	407-045-0895	12-1-2016	Adopt	1-1-2017
340-090-0100	1-19-2017	Amend	3-1-2017	407-045-0900	12-1-2016	Repeal	1-1-2017
340-090-0110	1-19-2017	Amend	3-1-2017	407-045-0910	12-1-2016	Amend	1-1-2017
340-090-0120	1-19-2017	Amend	3-1-2017	407-045-0920	12-1-2016	Repeal	1-1-2017
340-090-0130	1-19-2017	Amend	3-1-2017	407-045-0930	12-1-2016	Repeal	1-1-2017
340-090-0140	1-19-2017	Amend	3-1-2017	407-045-0940	12-1-2016	Amend	1-1-2017
340-090-0150	1-19-2017	Amend	3-1-2017	407-045-0940	1-13-2017	Amend(T)	2-1-2017
340-090-0180	1-19-2017	Amend	3-1-2017	407-045-0950	12-1-2016	Amend	1-1-2017
340-090-0190	1-19-2017	Amend	3-1-2017	407-045-0955	12-1-2016	Adopt	1-1-2017
340-090-0310	1-19-2017	Amend	3-1-2017	407-045-0960	12-1-2016	Repeal	1-1-2017
340-090-0320	1-19-2017	Amend	3-1-2017	407-045-0970	12-1-2016	Repeal	1-1-2017
340-090-0330	1-19-2017	Amend	3-1-2017	407-045-0980	12-1-2016	Repeal	1-1-2017
340-090-0340	1-19-2017	Amend	3-1-2017	409-055-0030	12-22-2016	Amend	2-1-2017
340-090-0350	1-19-2017	Amend	3-1-2017	409-055-0030(T)	12-22-2016	Repeal	2-1-2017
340-090-0360	1-19-2017	Amend	3-1-2017	409-055-0040	12-22-2016	Amend	2-1-2017
340-090-0370	1-19-2017	Amend	3-1-2017	409-055-0045	12-22-2016	Amend	2-1-2017
340-090-0380	1-19-2017	Amend	3-1-2017	409-055-0050	12-22-2016	Amend	2-1-2017
340-090-0390	1-19-2017	Amend	3-1-2017	409-060-0110	12-22-2016	Amend	2-1-2017
340-090-0400	1-19-2017	Amend	3-1-2017	409-060-0120	12-22-2016	Amend	2-1-2017
340-090-0410	1-19-2017	Amend	3-1-2017	409-060-0140	12-22-2016	Amend	2-1-2017
340-090-0420	1-19-2017	Amend	3-1-2017	409-060-0150	12-22-2016	Amend	2-1-2017
340-090-0430	1-19-2017	Amend	3-1-2017	409-110-0025	11-29-2016	Renumber	1-1-2017
340-090-0510	1-19-2017	Amend	3-1-2017	409-110-0030	11-29-2016	Renumber	1-1-2017
340-143-0005	3-1-2017	Amend	3-1-2017	409-110-0035	11-29-2016	Renumber	1-1-2017
340-143-0010	3-1-2017	Amend	3-1-2017	409-110-0040	11-29-2016	Renumber	1-1-2017
340-143-0050	3-1-2017	Amend	3-1-2017	409-110-0045	11-29-2016	Renumber	1-1-2017
340-200-0040	1-19-2017	Amend	3-1-2017	410-120-0000	1-1-2017	Amend	2-1-2017
340-220-0030	1-19-2017	Amend	3-1-2017	410-120-0000(T)	1-1-2017	Repeal	2-1-2017
340-220-0040	1-19-2017	Amend	3-1-2017	410-120-1230	1-1-2017	Amend	2-1-2017
340-220-0050	1-19-2017	Amend	3-1-2017	410-121-0030	12-1-2016	Amend	1-1-2017
407-007-0210	12-1-2016	Amend	1-1-2017	410-121-0030	1-1-2017	Amend(T)	2-1-2017

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410-121-0040	12-1-2016	Amend	1-1-2017	410-141-3145	1-13-2017	Amend	2-1-2017
410-121-0040	1-1-2017	Amend(T)	2-1-2017	410-141-3145(T)	1-1-2017	Repeal	2-1-2017
410-121-0040(T)	12-1-2016	Repeal	1-1-2017	410-141-3145(T)	1-13-2017	Repeal	2-1-2017
410-123-1220	1-1-2017	Amend(T)	2-1-2017	410-141-3160	1-1-2017	Amend(T)	2-1-2017
410-123-1260	1-1-2017	Amend(T)	2-1-2017	410-141-3260	1-1-2017	Amend	2-1-2017
410-125-0085	1-1-2017	Amend	2-1-2017	410-141-3260	1-13-2017	Amend	2-1-2017
410-125-0085(T)	1-1-2017	Repeal	2-1-2017	410-141-3260(T)	1-1-2017	Repeal	2-1-2017
410-125-0360	1-1-2017	Amend	2-1-2017	410-141-3260(T)	1-13-2017	Repeal	2-1-2017
410-125-0360(T)	1-1-2017	Repeal	2-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-129-0020	1-1-2017	Amend(T)	1-1-2017	410-141-3300	1-1-2017	Amend	2-1-2017
410-129-0040	1-1-2017	Amend(T)	1-1-2017	410-141-3300	1-13-2017	Amend	2-1-2017
410-129-0070	1-1-2017	Amend(T)	1-1-2017	410-141-3300(T)	1-1-2017	Repeal	2-1-2017
410-129-0190	1-1-2017	Suspend	1-1-2017	410-141-3300(T)	1-13-2017	Repeal	2-1-2017
410-131-0040	1-1-2017	Amend(T)	1-1-2017	410-141-3395	1-1-2017	Amend	2-1-2017
410-131-0080	1-1-2017	Amend(T)	1-1-2017	410-141-3435	12-1-2016	Amend	1-1-2017
410-131-0100	1-1-2017	Amend(T)	1-1-2017	410-165-0000	2-2-2017	Amend(T)	3-1-2017
410-131-0120	1-1-2017	Amend(T)	1-1-2017	410-165-0020	2-2-2017	Amend(T)	3-1-2017
410-138-0000	1-1-2017	Amend	2-1-2017	410-165-0060	2-2-2017	Amend(T)	3-1-2017
410-138-0000	1-13-2017	Amend(T)	2-1-2017	410-165-0080	2-2-2017	Amend(T)	3-1-2017
410-138-0000	2-10-2017	Amend(T)	3-1-2017	410-170-0110	11-29-2016	Amend	1-1-2017
410-138-0005	1-1-2017	Amend	2-1-2017	410-170-0110(T)	11-29-2016	Repeal	1-1-2017
410-138-0005	1-13-2017	Amend(T)	2-1-2017	411-004-0040	12-28-2016	Amend	2-1-2017
410-138-0005	2-10-2017	Amend(T)	3-1-2017	411-027-0170	12-28-2016	Amend	1-1-2017
410-138-0007	1-1-2017	Amend	2-1-2017	411-030-0033	12-28-2016	Amend	2-1-2017
410-138-0007	1-13-2017	Amend(T)	2-1-2017	411-030-0068	12-28-2016	Amend	2-1-2017
410-138-0007	2-10-2017	Amend(T)	3-1-2017	411-030-0070	12-28-2016	Amend	2-1-2017
410-138-0009	1-1-2017	Amend	2-1-2017	411-305-0010	1-1-2017	Am. & Ren.	2-1-2017
410-138-0009	1-13-2017	Amend(T)	2-1-2017	411-305-0020	1-1-2017	Am. & Ren.	2-1-2017
410-138-0009	2-10-2017	Amend(T)	3-1-2017	411-305-0023	1-1-2017	Am. & Ren.	2-1-2017
410-138-0020	1-1-2017	Amend	2-1-2017	411-305-0025	1-1-2017	Am. & Ren.	2-1-2017
410-138-0020	1-13-2017	Amend(T)	2-1-2017	411-305-0027	1-1-2017	Repeal	2-1-2017
410-138-0020	2-10-2017	Amend(T)	3-1-2017	411-305-0030	1-1-2017	Am. & Ren.	2-1-2017
410-138-0040	1-1-2017	Amend	2-1-2017	411-305-0050	1-1-2017	Repeal	2-1-2017
410-138-0040	1-13-2017	Amend(T)	2-1-2017	411-305-0080	1-1-2017	Am. & Ren.	2-1-2017
410-138-0040	2-10-2017	Amend(T)	3-1-2017	411-305-0090	1-1-2017	Am. & Ren.	2-1-2017
410-138-0060	1-1-2017	Amend	2-1-2017	411-305-0105	1-1-2017	Repeal	2-1-2017
410-138-0060	1-13-2017	Amend(T)	2-1-2017	411-305-0110	1-1-2017	Repeal	2-1-2017
410-138-0060	2-10-2017	Amend(T)	3-1-2017	411-305-0115	1-1-2017	Repeal	2-1-2017
410-138-0080	1-1-2017	Amend	2-1-2017	411-305-0120	1-1-2017	Am. & Ren.	2-1-2017
410-138-0080	1-13-2017	Amend(T)	2-1-2017	411-305-0140	1-1-2017	Am. & Ren.	2-1-2017
410-138-0080	2-10-2017	Amend(T)	3-1-2017	411-305-0160	1-1-2017	Repeal	2-1-2017
410-138-0390	1-1-2017	Amend	2-1-2017	411-305-0170	1-1-2017	Repeal	2-1-2017
410-138-0390	1-13-2017	Amend(T)	2-1-2017	411-305-0180	1-1-2017	Repeal	2-1-2017
410-138-0390	2-10-2017	Amend(T)	3-1-2017	411-323-0050	12-16-2016	Amend(T)	2-1-2017
410-138-0420	1-1-2017	Amend	2-1-2017	411-323-0050(T)	12-16-2016	Suspend	2-1-2017
410-138-0420	1-13-2017	Amend(T)	2-1-2017	411-360-0140	2-15-2017	Amend(T)	3-1-2017
410-138-0420	2-10-2017	Amend(T)	3-1-2017	413-010-0000	12-1-2016	Amend	1-1-2017
410-141-0520	12-1-2016	Amend	1-1-2017	413-010-0035	1-1-2017	Amend	2-1-2017
410-141-0520	1-1-2017	Amend(T)	2-1-2017	413-010-0035(T)	1-1-2017	Repeal	2-1-2017
410-141-0520(T)	12-1-2016	Repeal	1-1-2017	413-010-0500	12-1-2016	Amend	1-1-2017
410-141-3015	1-1-2017	Amend	2-1-2017	413-010-0501	12-1-2016	Repeal	1-1-2017
410-141-3015	1-13-2017	Amend	2-1-2017	413-010-0502	12-1-2016	Amend	1-1-2017
410-141-3015(T)	1-1-2017	Repeal	2-1-2017	413-010-0505	12-1-2016	Amend	1-1-2017
410-141-3015(T)	1-13-2017	Repeal	2-1-2017	413-010-0510	12-1-2016	Amend	1-1-2017
410-141-3070	1-1-2017	Amend	2-1-2017	413-010-0525	12-1-2016	Amend	1-1-2017

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413-015-0100	12-1-2016	Amend	1-1-2017	413-030-0310	1-1-2017	Repeal	2-1-2017
413-015-0100(T)	12-1-2016	Repeal	1-1-2017	413-030-0320	1-1-2017	Repeal	2-1-2017
413-015-0115	12-1-2016	Amend	1-1-2017	413-030-0445	2-7-2017	Amend(T)	3-1-2017
413-015-0115	2-7-2017	Amend(T)	3-1-2017	413-030-0460	2-7-2017	Amend(T)	3-1-2017
413-015-0125	12-1-2016	Amend	1-1-2017	413-040-0000	2-7-2017	Amend(T)	3-1-2017
413-015-0125(T)	12-1-2016	Repeal	1-1-2017	413-040-0010	2-7-2017	Amend(T)	3-1-2017
413-015-0205	12-1-2016	Amend	1-1-2017	413-040-0155	2-7-2017	Amend(T)	3-1-2017
413-015-0205	2-7-2017	Amend(T)	3-1-2017	413-040-0159	2-7-2017	Amend(T)	3-1-2017
413-015-0205(T)	12-1-2016	Repeal	1-1-2017	413-040-0310	2-7-2017	Amend(T)	3-1-2017
413-015-0212	12-1-2016	Amend	1-1-2017	413-040-0325	2-7-2017	Amend(T)	3-1-2017
413-015-0212(T)	12-1-2016	Repeal	1-1-2017	413-070-0000	2-7-2017	Amend(T)	3-1-2017
413-015-0215	2-7-2017	Amend(T)	3-1-2017	413-070-0010	2-7-2017	Amend(T)	3-1-2017
413-015-0300	12-1-2016	Amend	1-1-2017	413-070-0072	2-7-2017	Amend(T)	3-1-2017
413-015-0300(T)	12-1-2016	Repeal	1-1-2017	413-070-0100	2-7-2017	Suspend	3-1-2017
413-015-0409	12-1-2016	Amend	1-1-2017	413-070-0130	2-7-2017	Suspend	3-1-2017
413-015-0409(T)	12-1-2016	Repeal	1-1-2017	413-070-0140	2-7-2017	Suspend	3-1-2017
413-015-0415	2-7-2017	Amend(T)	3-1-2017	413-070-0150	2-7-2017	Suspend	3-1-2017
413-015-0420	12-1-2016	Amend	1-1-2017	413-070-0160	2-7-2017	Suspend	3-1-2017
413-015-0420(T)	12-1-2016	Repeal	1-1-2017	413-070-0170	2-7-2017	Suspend	3-1-2017
413-015-0432	2-7-2017	Amend(T)	3-1-2017	413-070-0180	2-7-2017	Suspend	3-1-2017
413-015-0440	12-1-2016	Amend	1-1-2017	413-070-0190	2-7-2017	Suspend	3-1-2017
413-015-0440(T)	12-1-2016	Repeal	1-1-2017	413-070-0200	2-7-2017	Suspend	3-1-2017
413-015-0445	12-1-2016	Amend	1-1-2017	413-070-0210	2-7-2017	Suspend	3-1-2017
413-015-0445(T)	12-1-2016	Repeal	1-1-2017	413-070-0220	2-7-2017	Suspend	3-1-2017
413-015-0450	12-1-2016	Amend	1-1-2017	413-070-0230	2-7-2017	Suspend	3-1-2017
413-015-0450(T)	12-1-2016	Repeal	1-1-2017	413-070-0240	2-7-2017	Suspend	3-1-2017
413-015-0455	2-7-2017	Amend(T)	3-1-2017	413-070-0250	2-7-2017	Suspend	3-1-2017
413-015-0620	12-1-2016	Adopt	1-1-2017	413-070-0260	2-7-2017	Suspend	3-1-2017
413-015-0620(T)	12-1-2016	Repeal	1-1-2017	413-070-0512	2-7-2017	Amend(T)	3-1-2017
413-015-0625	12-1-2016	Adopt	1-1-2017	413-070-0516	1-1-2017	Amend	2-1-2017
413-015-0625(T)	12-1-2016	Repeal	1-1-2017	413-070-0516	2-7-2017	Amend(T)	3-1-2017
413-015-0630	12-1-2016	Adopt	1-1-2017	413-070-0518	1-1-2017	Amend	2-1-2017
413-015-0630(T)	12-1-2016	Repeal	1-1-2017	413-070-0518	1-19-2017	Amend	3-1-2017
413-015-0640	12-1-2016	Adopt	1-1-2017	413-070-0519	2-7-2017	Amend(T)	3-1-2017
413-015-0640(T)	12-1-2016	Repeal	1-1-2017	413-070-0625	2-7-2017	Amend(T)	3-1-2017
413-015-1000	12-1-2016	Amend	1-1-2017	413-070-0670	1-1-2017	Amend	2-1-2017
413-015-1000(T)	12-1-2016	Repeal	1-1-2017	413-070-0900	1-1-2017	Amend	2-1-2017
413-015-9030	12-1-2016	Amend	1-1-2017	413-070-0900(T)	1-1-2017	Repeal	2-1-2017
413-015-9030(T)	12-1-2016	Repeal	1-1-2017	413-070-0917	1-1-2017	Amend	2-1-2017
413-015-9040	12-1-2016	Amend	1-1-2017	413-070-0917(T)	1-1-2017	Repeal	2-1-2017
413-015-9040(T)	12-1-2016	Repeal	1-1-2017	413-070-0959	1-1-2017	Amend	2-1-2017
413-017-0000	2-7-2017	Adopt(T)	3-1-2017	413-070-0959(T)	1-1-2017	Repeal	2-1-2017
413-017-0010	2-7-2017	Adopt(T)	3-1-2017	413-070-1020	1-1-2017	Amend	2-1-2017
413-017-0020	2-7-2017	Adopt(T)	3-1-2017	413-070-1050	2-7-2017	Amend(T)	3-1-2017
413-017-0030	2-7-2017	Adopt(T)	3-1-2017	413-080-0050	12-1-2016	Amend	1-1-2017
413-017-0040	2-7-2017	Adopt(T)	3-1-2017	413-080-0050	2-7-2017	Amend(T)	3-1-2017
413-020-0000	2-7-2017	Amend(T)	3-1-2017	413-080-0050(T)	12-1-2016	Repeal	1-1-2017
413-020-0010	2-7-2017	Amend(T)	3-1-2017	413-080-0051	12-1-2016	Adopt	1-1-2017
413-020-0020	2-7-2017	Amend(T)	3-1-2017	413-080-0051(T)	12-1-2016	Repeal	1-1-2017
413-020-0050	2-7-2017	Amend(T)	3-1-2017	413-080-0052	12-1-2016	Amend	1-1-2017
413-020-0075	2-7-2017	Amend(T)	3-1-2017	413-080-0052(T)	12-1-2016	Repeal	1-1-2017
413-020-0090	2-7-2017	Amend(T)	3-1-2017	413-080-0053	1-1-2017	Amend	2-1-2017
413-030-0000	2-7-2017	Amend(T)	3-1-2017	413-080-0053(T)	1-1-2017	Repeal	2-1-2017
413-030-0009	2-7-2017	Amend(T)	3-1-2017	413-080-0054	12-1-2016	Amend	1-1-2017
413-030-0210	2-7-2017	Amend(T)	3-1-2017	413-080-0054(T)	12-1-2016	Repeal	1-1-2017

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413-080-0059(T)	12-1-2016	Repeal	1-1-2017	413-120-0165	2-7-2017	Amend(T)	3-1-2017
413-080-0062	1-1-2017	Amend	2-1-2017	413-120-0175	2-7-2017	Amend(T)	3-1-2017
413-080-0062(T)	1-1-2017	Repeal	2-1-2017	413-120-0625	2-7-2017	Amend(T)	3-1-2017
413-080-0070	12-1-2016	Adopt	1-1-2017	413-120-0730	2-7-2017	Amend(T)	3-1-2017
413-080-0070(T)	12-1-2016	Repeal	1-1-2017	413-120-0750	2-7-2017	Amend(T)	3-1-2017
413-090-0000	12-1-2016	Amend	1-1-2017	413-120-0760	2-7-2017	Amend(T)	3-1-2017
413-090-0000(T)	12-1-2016	Repeal	1-1-2017	413-120-0870	2-7-2017	Amend(T)	3-1-2017
413-090-0055	12-1-2016	Amend	1-1-2017	413-120-0880	2-7-2017	Amend(T)	3-1-2017
413-090-0055(T)	12-1-2016	Repeal	1-1-2017	413-120-0925	2-7-2017	Amend(T)	3-1-2017
413-090-0065	12-1-2016	Amend	1-1-2017	413-120-0950	2-7-2017	Amend(T)	3-1-2017
413-090-0065(T)	12-1-2016	Repeal	1-1-2017	413-200-0260	2-7-2017	Amend(T)	3-1-2017
413-090-0070	12-1-2016	Amend	1-1-2017	413-200-0306	2-7-2017	Amend(T)	3-1-2017
413-090-0070(T)	12-1-2016	Repeal	1-1-2017	413-215-0000	12-1-2016	Adopt	1-1-2017
413-090-0075	12-1-2016	Amend	1-1-2017	413-215-0000	2-7-2017	Amend(T)	3-1-2017
413-090-0075(T)	12-1-2016	Repeal	1-1-2017	413-215-0000(T)	12-1-2016	Repeal	1-1-2017
413-090-0080	12-1-2016	Amend	1-1-2017	413-215-0001	12-1-2016	Amend	1-1-2017
413-090-0080(T)	12-1-2016	Repeal	1-1-2017	413-215-0001(T)	12-1-2016	Repeal	1-1-2017
413-090-0090	12-1-2016	Amend	1-1-2017	413-215-0006	12-1-2016	Repeal	1-1-2017
413-090-0090(T)	12-1-2016	Repeal	1-1-2017	413-215-0011	12-1-2016	Amend	1-1-2017
413-100-0020	2-7-2017	Amend(T)	3-1-2017	413-215-0011(T)	12-1-2016	Repeal	1-1-2017
413-100-0240	2-7-2017	Amend(T)	3-1-2017	413-215-0016	12-1-2016	Amend	1-1-2017
413-110-0000	2-7-2017	Amend(T)	3-1-2017	413-215-0016(T)	12-1-2016	Repeal	1-1-2017
413-110-0280	1-1-2017	Repeal	2-1-2017	413-215-0021	12-1-2016	Amend	1-1-2017
413-110-0282	1-1-2017	Repeal	2-1-2017	413-215-0021(T)	12-1-2016	Repeal	1-1-2017
413-110-0286	1-1-2017	Repeal	2-1-2017	413-215-0026	12-1-2016	Amend	1-1-2017
413-110-0288	1-1-2017	Repeal	2-1-2017	413-215-0026(T)	12-1-2016	Repeal	1-1-2017
413-110-0290	1-1-2017	Repeal	2-1-2017	413-215-0031	12-1-2016	Amend	1-1-2017
413-110-0291	1-1-2017	Repeal	2-1-2017	413-215-0031(T)	12-1-2016	Repeal	1-1-2017
413-110-0292	1-1-2017	Repeal	2-1-2017	413-215-0036	12-1-2016	Amend	1-1-2017
413-110-0293	1-1-2017	Repeal	2-1-2017	413-215-0036(T)	12-1-2016	Repeal	1-1-2017
413-110-0295	1-1-2017	Repeal	2-1-2017	413-215-0041	12-1-2016	Amend	1-1-2017
413-110-0297	1-1-2017	Repeal	2-1-2017	413-215-0041(T)	12-1-2016	Repeal	1-1-2017
413-110-0299	1-1-2017	Repeal	2-1-2017	413-215-0046	12-1-2016	Amend	1-1-2017
413-110-0300	2-7-2017	Amend(T)	3-1-2017	413-215-0046(T)	12-1-2016	Repeal	1-1-2017
413-115-0000	2-7-2017	Adopt(T)	3-1-2017	413-215-0051	12-1-2016	Amend	1-1-2017
413-115-0010	2-7-2017	Adopt(T)	3-1-2017	413-215-0051(T)	12-1-2016	Repeal	1-1-2017
413-115-0020	2-7-2017	Adopt(T)	3-1-2017	413-215-0056	12-1-2016	Amend	1-1-2017
413-115-0030	2-7-2017	Adopt(T)	3-1-2017	413-215-0056(T)	12-1-2016	Repeal	1-1-2017
413-115-0040	2-7-2017	Adopt(T)	3-1-2017	413-215-0061	12-1-2016	Amend	1-1-2017
413-115-0050	2-7-2017	Adopt(T)	3-1-2017	413-215-0061(T)	12-1-2016	Repeal	1-1-2017
413-115-0060	2-7-2017	Adopt(T)	3-1-2017	413-215-0066	12-1-2016	Amend	1-1-2017
413-115-0070	2-7-2017	Adopt(T)	3-1-2017	413-215-0066(T)	12-1-2016	Repeal	1-1-2017
413-115-0080	2-7-2017	Adopt(T)	3-1-2017	413-215-0071	12-1-2016	Amend	1-1-2017
413-115-0090	2-7-2017	Adopt(T)	3-1-2017	413-215-0071(T)	12-1-2016	Repeal	1-1-2017
413-115-0100	2-7-2017	Adopt(T)	3-1-2017	413-215-0076	12-1-2016	Amend	1-1-2017
413-115-0110	2-7-2017	Adopt(T)	3-1-2017	413-215-0076(T)	12-1-2016	Repeal	1-1-2017
413-115-0120	2-7-2017	Adopt(T)	3-1-2017	413-215-0081	12-1-2016	Amend	1-1-2017
413-115-0130	2-7-2017	Adopt(T)	3-1-2017	413-215-0081	2-7-2017	Amend(T)	3-1-2017
413-115-0140	2-7-2017	Adopt(T)	3-1-2017	413-215-0081(T)	12-1-2016	Repeal	1-1-2017
413-115-0150	2-7-2017	Adopt(T)	3-1-2017	413-215-0086	12-1-2016	Amend	1-1-2017
413-120-0000	2-7-2017	Amend(T)	3-1-2017	413-215-0086(T)	12-1-2016	Repeal	1-1-2017
413-120-0020	2-7-2017	Amend(T)	3-1-2017	413-215-0091	12-1-2016	Amend	1-1-2017
413-120-0021	2-7-2017	Amend(T)	3-1-2017	413-215-0091(T)	12-1-2016	Repeal	1-1-2017
413-120-0025	2-7-2017	Amend(T)	3-1-2017	413-215-0096	12-1-2016	Repeal	1-1-2017
413-120-0057	2-7-2017	Amend(T)	3-1-2017	413-215-0101	12-1-2016	Amend	1-1-2017

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413-215-0106	12-1-2016	Amend	1-1-2017	413-215-0326(T)	12-1-2016	Repeal	1-1-2017
413-215-0106(T)	12-1-2016	Repeal	1-1-2017	413-215-0331	12-1-2016	Amend	1-1-2017
413-215-0111	12-1-2016	Amend	1-1-2017	413-215-0331(T)	12-1-2016	Repeal	1-1-2017
413-215-0111(T)	12-1-2016	Repeal	1-1-2017	413-215-0336	12-1-2016	Amend	1-1-2017
413-215-0116	12-1-2016	Amend	1-1-2017	413-215-0336(T)	12-1-2016	Repeal	1-1-2017
413-215-0116(T)	12-1-2016	Repeal	1-1-2017	413-215-0341	12-1-2016	Amend	1-1-2017
413-215-0121	12-1-2016	Amend	1-1-2017	413-215-0341(T)	12-1-2016	Repeal	1-1-2017
413-215-0121(T)	12-1-2016	Repeal	1-1-2017	413-215-0346	12-1-2016	Repeal	1-1-2017
413-215-0126	12-1-2016	Amend	1-1-2017	413-215-0349	12-1-2016	Amend	1-1-2017
413-215-0126(T)	12-1-2016	Repeal	1-1-2017	413-215-0349(T)	12-1-2016	Repeal	1-1-2017
413-215-0131	12-1-2016	Amend	1-1-2017	413-215-0351	12-1-2016	Amend	1-1-2017
413-215-0131(T)	12-1-2016	Repeal	1-1-2017	413-215-0351(T)	12-1-2016	Repeal	1-1-2017
413-215-0201	12-1-2016	Amend	1-1-2017	413-215-0356	12-1-2016	Amend	1-1-2017
413-215-0201(T)	12-1-2016	Repeal	1-1-2017	413-215-0356(T)	12-1-2016	Repeal	1-1-2017
413-215-0206	12-1-2016	Repeal	1-1-2017	413-215-0361	12-1-2016	Amend	1-1-2017
413-215-0211	12-1-2016	Amend	1-1-2017	413-215-0361(T)	12-1-2016	Repeal	1-1-2017
413-215-0211(T)	12-1-2016	Repeal	1-1-2017	413-215-0366	12-1-2016	Amend	1-1-2017
413-215-0216	12-1-2016	Amend	1-1-2017	413-215-0366(T)	12-1-2016	Repeal	1-1-2017
413-215-0216(T)	12-1-2016	Repeal	1-1-2017	413-215-0371	12-1-2016	Amend	1-1-2017
413-215-0218	12-1-2016	Adopt	1-1-2017	413-215-0371(T)	12-1-2016	Repeal	1-1-2017
413-215-0221	12-1-2016	Amend	1-1-2017	413-215-0376	12-1-2016	Amend	1-1-2017
413-215-0221(T)	12-1-2016	Repeal	1-1-2017	413-215-0376(T)	12-1-2016	Repeal	1-1-2017
413-215-0226	12-1-2016	Amend	1-1-2017	413-215-0381	12-1-2016	Amend	1-1-2017
413-215-0226(T)	12-1-2016	Repeal	1-1-2017	413-215-0381(T)	12-1-2016	Repeal	1-1-2017
413-215-0231	12-1-2016	Amend	1-1-2017	413-215-0386	12-1-2016	Amend	1-1-2017
413-215-0231(T)	12-1-2016	Repeal	1-1-2017	413-215-0386(T)	12-1-2016	Repeal	1-1-2017
413-215-0236	12-1-2016	Amend	1-1-2017	413-215-0391	12-1-2016	Amend	1-1-2017
413-215-0236(T)	12-1-2016	Repeal	1-1-2017	413-215-0391(T)	12-1-2016	Repeal	1-1-2017
413-215-0241	12-1-2016	Amend	1-1-2017	413-215-0396	12-1-2016	Amend	1-1-2017
413-215-0241(T)	12-1-2016	Repeal	1-1-2017	413-215-0396(T)	12-1-2016	Repeal	1-1-2017
413-215-0246	12-1-2016	Amend	1-1-2017	413-215-0401	12-1-2016	Amend	1-1-2017
413-215-0246(T)	12-1-2016	Repeal	1-1-2017	413-215-0401(T)	12-1-2016	Repeal	1-1-2017
413-215-0251	12-1-2016	Amend	1-1-2017	413-215-0406	12-1-2016	Repeal	1-1-2017
413-215-0251(T)	12-1-2016	Repeal	1-1-2017	413-215-0411	12-1-2016	Amend	1-1-2017
413-215-0256	12-1-2016	Repeal	1-1-2017	413-215-0411(T)	12-1-2016	Repeal	1-1-2017
413-215-0261	12-1-2016	Amend	1-1-2017	413-215-0416	12-1-2016	Amend	1-1-2017
413-215-0261(T)	12-1-2016	Repeal	1-1-2017	413-215-0416(T)	12-1-2016	Repeal	1-1-2017
413-215-0266	12-1-2016	Amend	1-1-2017	413-215-0421	12-1-2016	Amend	1-1-2017
413-215-0266(T)	12-1-2016	Repeal	1-1-2017	413-215-0421(T)	12-1-2016	Repeal	1-1-2017
413-215-0271	12-1-2016	Amend	1-1-2017	413-215-0426	12-1-2016	Amend	1-1-2017
413-215-0271(T)	12-1-2016	Repeal	1-1-2017	413-215-0426	2-7-2017	Amend(T)	3-1-2017
413-215-0276	12-1-2016	Amend	1-1-2017	413-215-0426(T)	12-1-2016	Repeal	1-1-2017
413-215-0276(T)	12-1-2016	Repeal	1-1-2017	413-215-0431	12-1-2016	Amend	1-1-2017
413-215-0301	12-1-2016	Amend	1-1-2017	413-215-0431	2-7-2017	Amend(T)	3-1-2017
413-215-0301(T)	12-1-2016	Repeal	1-1-2017	413-215-0431(T)	12-1-2016	Repeal	1-1-2017
413-215-0306	12-1-2016	Repeal	1-1-2017	413-215-0436	12-1-2016	Amend	1-1-2017
413-215-0311	12-1-2016	Amend	1-1-2017	413-215-0436(T)	12-1-2016	Repeal	1-1-2017
413-215-0311(T)	12-1-2016	Repeal	1-1-2017	413-215-0441	12-1-2016	Amend	1-1-2017
413-215-0313	12-1-2016	Amend	1-1-2017	413-215-0441	2-7-2017	Amend(T)	3-1-2017
413-215-0313(T)	12-1-2016	Repeal	1-1-2017	413-215-0441(T)	12-1-2016	Repeal	1-1-2017
413-215-0316	12-1-2016	Amend	1-1-2017	413-215-0446	12-1-2016	Amend	1-1-2017
413-215-0316(T)	12-1-2016	Repeal	1-1-2017	413-215-0446(T)	12-1-2016	Repeal	1-1-2017
413-215-0318	12-1-2016	Adopt	1-1-2017	413-215-0451	12-1-2016	Amend	1-1-2017
413-215-0321	12-1-2016	Amend	1-1-2017	413-215-0451(T)	12-1-2016	Repeal	1-1-2017
413-215-0321(T)	12-1-2016	Repeal	1-1-2017	413-215-0456	12-1-2016	Amend	1-1-2017



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413-215-0811(T)	12-1-2016	Repeal	1-1-2017	413-215-0992	12-1-2016	Amend	1-1-2017
413-215-0816	12-1-2016	Amend	1-1-2017	413-215-0992(T)	12-1-2016	Repeal	1-1-2017
413-215-0816(T)	12-1-2016	Repeal	1-1-2017	413-215-0996	12-1-2016	Amend	1-1-2017
413-215-0821	12-1-2016	Amend	1-1-2017	413-215-0996(T)	12-1-2016	Repeal	1-1-2017
413-215-0821(T)	12-1-2016	Repeal	1-1-2017	413-215-1001	12-1-2016	Amend	1-1-2017
413-215-0826	12-1-2016	Amend	1-1-2017	413-215-1001(T)	12-1-2016	Repeal	1-1-2017
413-215-0826(T)	12-1-2016	Repeal	1-1-2017	413-215-1006	12-1-2016	Amend	1-1-2017
413-215-0831	12-1-2016	Amend	1-1-2017	413-215-1006(T)	12-1-2016	Repeal	1-1-2017
413-215-0831(T)	12-1-2016	Repeal	1-1-2017	413-215-1011	12-1-2016	Amend	1-1-2017
413-215-0836	12-1-2016	Amend	1-1-2017	413-215-1011(T)	12-1-2016	Repeal	1-1-2017
413-215-0836(T)	12-1-2016	Repeal	1-1-2017	413-215-1016	12-1-2016	Amend	1-1-2017
413-215-0841	12-1-2016	Amend	1-1-2017	413-215-1016(T)	12-1-2016	Repeal	1-1-2017
413-215-0841(T)	12-1-2016	Repeal	1-1-2017	413-215-1021	12-1-2016	Amend	1-1-2017
413-215-0846	12-1-2016	Amend	1-1-2017	413-215-1021(T)	12-1-2016	Repeal	1-1-2017
413-215-0846(T)	12-1-2016	Repeal	1-1-2017	413-215-1026	12-1-2016	Amend	1-1-2017
413-215-0851	12-1-2016	Amend	1-1-2017	413-215-1026(T)	12-1-2016	Repeal	1-1-2017
413-215-0851(T)	12-1-2016	Repeal	1-1-2017	413-215-1031	12-1-2016	Amend	1-1-2017
413-215-0856	12-1-2016	Amend	1-1-2017	413-215-1031(T)	12-1-2016	Repeal	1-1-2017
413-215-0856(T)	12-1-2016	Repeal	1-1-2017	414-061-0020	12-19-2016	Amend	2-1-2017
413-215-0901	12-1-2016	Amend	1-1-2017	414-061-0040	12-19-2016	Amend	2-1-2017
413-215-0901(T)	12-1-2016	Repeal	1-1-2017	414-061-0050	12-19-2016	Amend	2-1-2017
413-215-0906	12-1-2016	Repeal	1-1-2017	414-061-0080	1-26-2017	Amend(T)	3-1-2017
413-215-0911	12-1-2016	Repeal	1-1-2017	414-061-0100	12-19-2016	Amend	2-1-2017
413-215-0916	12-1-2016	Amend	1-1-2017	414-061-0110	12-19-2016	Amend	2-1-2017
413-215-0916(T)	12-1-2016	Repeal	1-1-2017	414-061-0120	12-19-2016	Amend	2-1-2017
413-215-0918	12-1-2016	Amend	1-1-2017	414-180-0005	1-31-2017	Amend	3-1-2017
413-215-0921	12-1-2016	Amend	1-1-2017	414-180-0010	1-31-2017	Amend	3-1-2017
413-215-0921(T)	12-1-2016	Repeal	1-1-2017	414-180-0015	1-31-2017	Amend	3-1-2017
413-215-0926	12-1-2016	Amend	1-1-2017	414-180-0020	1-31-2017	Amend	3-1-2017
413-215-0926(T)	12-1-2016	Repeal	1-1-2017	414-180-0025	1-31-2017	Amend	3-1-2017
413-215-0931	12-1-2016	Amend	1-1-2017	414-180-0055	1-31-2017	Amend	3-1-2017
413-215-0931(T)	12-1-2016	Repeal	1-1-2017	415-012-0000	12-14-2016	Amend	1-1-2017
413-215-0936	12-1-2016	Amend	1-1-2017	415-012-0010	12-14-2016	Amend	1-1-2017
413-215-0936(T)	12-1-2016	Repeal	1-1-2017	415-012-0010	2-2-2017	Amend(T)	3-1-2017
413-215-0941	12-1-2016	Amend	1-1-2017	415-012-0020	12-14-2016	Amend	1-1-2017
413-215-0941(T)	12-1-2016	Repeal	1-1-2017	415-012-0020	2-2-2017	Amend(T)	3-1-2017
413-215-0946	12-1-2016	Amend	1-1-2017	415-012-0030	12-14-2016	Amend	1-1-2017
413-215-0946(T)	12-1-2016	Repeal	1-1-2017	415-012-0030	2-2-2017	Amend(T)	3-1-2017
413-215-0951	12-1-2016	Amend	1-1-2017	415-012-0035	12-14-2016	Amend	1-1-2017
413-215-0951(T)	12-1-2016	Repeal	1-1-2017	415-012-0035	2-2-2017	Amend(T)	3-1-2017
413-215-0956	12-1-2016	Amend	1-1-2017	415-012-0040	12-14-2016	Amend	1-1-2017
413-215-0956(T)	12-1-2016	Repeal	1-1-2017	415-012-0050	12-14-2016	Amend	1-1-2017
413-215-0961	12-1-2016	Amend	1-1-2017	415-012-0055	12-14-2016	Amend	1-1-2017
413-215-0961(T)	12-1-2016	Repeal	1-1-2017	415-012-0060	12-14-2016	Amend	1-1-2017
413-215-0966	12-1-2016	Amend	1-1-2017	415-012-0060	2-2-2017	Amend(T)	3-1-2017
413-215-0966(T)	12-1-2016	Repeal	1-1-2017	415-012-0065	12-14-2016	Amend	1-1-2017
413-215-0971	12-1-2016	Amend	1-1-2017	415-012-0067	12-14-2016	Amend	1-1-2017
413-215-0971(T)	12-1-2016	Repeal	1-1-2017	415-012-0075	2-2-2017	Adopt(T)	3-1-2017
413-215-0976	12-1-2016	Amend	1-1-2017	415-012-0090	12-14-2016	Amend	1-1-2017
413-215-0976(T)	12-1-2016	Repeal	1-1-2017	415-020-0000	12-14-2016	Amend	1-1-2017
413-215-0981	12-1-2016	Amend	1-1-2017	415-020-0005	12-14-2016	Amend	1-1-2017
413-215-0981(T)	12-1-2016	Repeal	1-1-2017	415-020-0010	12-14-2016	Amend	1-1-2017
413-215-0986	12-1-2016	Amend	1-1-2017	415-020-0090	12-14-2016	Amend	1-1-2017
413-215-0986(T)	12-1-2016	Repeal	1-1-2017	415-055-0000	12-5-2016	Amend	1-1-2017
413-215-0991	12-1-2016	Amend	1-1-2017	415-055-0010	12-5-2016	Amend	1-1-2017



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415-060-0020	12-14-2016	Repeal	1-1-2017	436-050-0470	1-1-2017	Amend	1-1-2017
415-060-0030	12-14-2016	Repeal	1-1-2017	436-050-0480	1-1-2017	Amend	1-1-2017
415-060-0040	12-14-2016	Repeal	1-1-2017	436-060-0001	1-1-2017	Repeal	1-1-2017
415-060-0050	12-14-2016	Repeal	1-1-2017	436-060-0002	1-1-2017	Repeal	1-1-2017
416-070-0010	1-31-2017	Amend	3-1-2017	436-060-0003	1-1-2017	Amend	1-1-2017
416-070-0020	1-31-2017	Amend	3-1-2017	436-060-0005	1-1-2017	Amend	1-1-2017
416-070-0040	1-31-2017	Amend	3-1-2017	436-060-0006	1-1-2017	Repeal	1-1-2017
416-070-0050	1-31-2017	Amend	3-1-2017	436-060-0008	1-1-2017	Amend	1-1-2017
416-070-0060	1-31-2017	Amend	3-1-2017	436-060-0009	1-1-2017	Amend	1-1-2017
416-335-0090	12-8-2016	Amend	1-1-2017	436-060-0010	1-1-2017	Amend	1-1-2017
436-009-0004	1-1-2017	Amend(T)	2-1-2017	436-060-0011	1-1-2017	Adopt	1-1-2017
436-009-0010	1-1-2017	Amend(T)	2-1-2017	436-060-0015	1-1-2017	Amend	1-1-2017
436-009-0040	1-1-2017	Amend(T)	2-1-2017	436-060-0017	1-1-2017	Amend	1-1-2017
436-050-0001	1-1-2017	Repeal	1-1-2017	436-060-0018	1-1-2017	Amend	1-1-2017
436-050-0002	1-1-2017	Repeal	1-1-2017	436-060-0019	1-1-2017	Amend	1-1-2017
436-050-0003	1-1-2017	Amend	1-1-2017	436-060-0020	1-1-2017	Amend	1-1-2017
436-050-0005	1-1-2017	Amend	1-1-2017	436-060-0025	1-1-2017	Amend	1-1-2017
436-050-0006	1-1-2017	Repeal	1-1-2017	436-060-0030	1-1-2017	Amend	1-1-2017
436-050-0008	1-1-2017	Amend	1-1-2017	436-060-0035	1-1-2017	Amend	1-1-2017
436-050-0015	1-1-2017	Amend	1-1-2017	436-060-0040	1-1-2017	Amend	1-1-2017
436-050-0025	1-1-2017	Amend	1-1-2017	436-060-0045	1-1-2017	Amend	1-1-2017
436-050-0040	1-1-2017	Amend	1-1-2017	436-060-0055	1-1-2017	Amend	1-1-2017
436-050-0045	1-1-2017	Amend	1-1-2017	436-060-0060	1-1-2017	Amend	1-1-2017
436-050-0050	1-1-2017	Amend	1-1-2017	436-060-0095	1-1-2017	Amend	1-1-2017
436-050-0055	1-1-2017	Amend	1-1-2017	436-060-0105	1-1-2017	Amend	1-1-2017
436-050-0060	1-1-2017	Repeal	1-1-2017	436-060-0135	1-1-2017	Amend	1-1-2017
436-050-0110	1-1-2017	Amend	1-1-2017	436-060-0137	1-1-2017	Amend	1-1-2017
436-050-0120	1-1-2017	Amend	1-1-2017	436-060-0140	1-1-2017	Amend	1-1-2017
436-050-0150	1-1-2017	Amend	1-1-2017	436-060-0147	1-1-2017	Amend	1-1-2017
436-050-0160	1-1-2017	Amend	1-1-2017	436-060-0150	1-1-2017	Amend	1-1-2017
436-050-0165	1-1-2017	Amend	1-1-2017	436-060-0153	1-1-2017	Amend	1-1-2017
436-050-0170	1-1-2017	Amend	1-1-2017	436-060-0155	1-1-2017	Amend	1-1-2017
436-050-0175	1-1-2017	Amend	1-1-2017	436-060-0160	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	1-1-2017	436-060-0170	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	2-1-2017	436-060-0180	1-1-2017	Amend	1-1-2017
436-050-0185	1-1-2017	Amend	1-1-2017	436-060-0190	1-1-2017	Amend	1-1-2017
436-050-0190	1-1-2017	Amend	1-1-2017	436-060-0195	1-1-2017	Amend	1-1-2017
436-050-0195	1-1-2017	Amend	1-1-2017	436-060-0200	1-1-2017	Amend	1-1-2017
436-050-0200	1-1-2017	Amend	1-1-2017	436-060-0400	1-1-2017	Amend	1-1-2017
436-050-0205	1-1-2017	Amend	1-1-2017	436-060-0500	1-1-2017	Amend	1-1-2017
436-050-0210	1-1-2017	Amend	1-1-2017	436-060-0510	1-1-2017	Amend	1-1-2017
436-050-0220	1-1-2017	Amend	1-1-2017	436-105-0001	1-1-2017	Repeal	1-1-2017
436-050-0230	1-1-2017	Amend	1-1-2017	436-105-0002	1-1-2017	Repeal	1-1-2017
436-050-0260	1-1-2017	Amend	1-1-2017	436-105-0003	1-1-2017	Amend	1-1-2017
436-050-0270	1-1-2017	Amend	1-1-2017	436-105-0005	1-1-2017	Amend	1-1-2017
436-050-0280	1-1-2017	Amend	1-1-2017	436-105-0006	1-1-2017	Amend	1-1-2017
436-050-0290	1-1-2017	Amend	1-1-2017	436-105-0008	1-1-2017	Amend	1-1-2017
436-050-0300	1-1-2017	Amend	1-1-2017	436-105-0500	1-1-2017	Amend	1-1-2017
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436-050-0400	1-1-2017	Amend	1-1-2017	436-105-0511	1-1-2017	Amend	1-1-2017
436-050-0410	1-1-2017	Amend	1-1-2017	436-105-0512	1-1-2017	Amend	1-1-2017
436-050-0420	1-1-2017	Amend	1-1-2017	436-105-0520	1-1-2017	Amend	1-1-2017
436-050-0440	1-1-2017	Amend	1-1-2017	436-105-0530	1-1-2017	Amend	1-1-2017
436-050-0450	1-1-2017	Amend	1-1-2017	436-105-0540	1-1-2017	Amend	1-1-2017

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436-105-0560	1-1-2017	Amend	1-1-2017	436-120-0510	1-1-2017	Amend	1-1-2017
436-110-0001	1-1-2017	Repeal	1-1-2017	436-120-0520	1-1-2017	Amend	1-1-2017
436-110-0002	1-1-2017	Repeal	1-1-2017	436-120-0530	1-1-2017	Amend	1-1-2017
436-110-0003	1-1-2017	Amend	1-1-2017	436-120-0700	1-1-2017	Amend	1-1-2017
436-110-0005	1-1-2017	Amend	1-1-2017	436-120-0710	1-1-2017	Amend	1-1-2017
436-110-0006	1-1-2017	Amend	1-1-2017	436-120-0720	1-1-2017	Amend	1-1-2017
436-110-0007	1-1-2017	Amend	1-1-2017	436-120-0755	1-1-2017	Amend	1-1-2017
436-110-0150	1-1-2017	Amend	1-1-2017	436-120-0800	1-1-2017	Amend	1-1-2017
436-110-0240	1-1-2017	Amend	1-1-2017	436-120-0810	1-1-2017	Amend	1-1-2017
436-110-0290	1-1-2017	Amend	1-1-2017	436-120-0820	1-1-2017	Amend	1-1-2017
436-110-0310	1-1-2017	Amend	1-1-2017	436-120-0830	1-1-2017	Repeal	1-1-2017
436-110-0320	1-1-2017	Amend	1-1-2017	436-120-0840	1-1-2017	Amend	1-1-2017
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436-110-0330	1-1-2017	Amend	1-1-2017	436-120-0915	1-1-2017	Amend	1-1-2017
436-110-0335	1-1-2017	Amend	1-1-2017	437-002-0170	1-1-2018	Amend	3-1-2017
436-110-0336	1-1-2017	Amend	1-1-2017	437-004-6000	1-1-2018	Amend	3-1-2017
436-110-0337	1-1-2017	Amend	1-1-2017	437-004-6001	1-1-2018	Adopt	3-1-2017
436-110-0345	1-1-2017	Amend	1-1-2017	437-004-6401	1-1-2018	Adopt	3-1-2017
436-110-0346	1-1-2017	Amend	1-1-2017	437-004-6501	1-1-2018	Adopt	3-1-2017
436-110-0347	1-1-2017	Amend	1-1-2017	437-004-6502	1-1-2018	Adopt	3-1-2017
436-110-0350	1-1-2017	Amend	1-1-2017	437-004-6508	1-1-2018	Adopt	3-1-2017
436-110-0351	1-1-2017	Amend	1-1-2017	437-004-6509	1-1-2018	Adopt	3-1-2017
436-110-0352	1-1-2017	Amend	1-1-2017	440-007-0200	1-6-2017	Repeal	2-1-2017
436-110-0850	1-1-2017	Amend	1-1-2017	440-007-0210	1-6-2017	Repeal	2-1-2017
436-110-0900	1-1-2017	Amend	1-1-2017	440-007-0230	1-6-2017	Repeal	2-1-2017
436-120-0001	1-1-2017	Repeal	1-1-2017	440-007-0240	1-6-2017	Repeal	2-1-2017
436-120-0002	1-1-2017	Repeal	1-1-2017	440-007-0250	1-6-2017	Repeal	2-1-2017
436-120-0003	1-1-2017	Amend	1-1-2017	440-007-0260	1-6-2017	Repeal	2-1-2017
436-120-0005	1-1-2017	Amend	1-1-2017	440-007-0270	1-6-2017	Repeal	2-1-2017
436-120-0006	1-1-2017	Repeal	1-1-2017	440-007-0272	1-6-2017	Repeal	2-1-2017
436-120-0007	1-1-2017	Am. & Ren.	1-1-2017	440-007-0275	1-6-2017	Repeal	2-1-2017
436-120-0008	1-1-2017	Amend	1-1-2017	440-007-0280	1-6-2017	Repeal	2-1-2017
436-120-0012	1-1-2017	Amend	1-1-2017	440-007-0285	1-6-2017	Repeal	2-1-2017
436-120-0014	1-1-2017	Repeal	1-1-2017	440-007-0290	1-6-2017	Repeal	2-1-2017
436-120-0016	1-1-2017	Repeal	1-1-2017	440-007-0300	1-6-2017	Repeal	2-1-2017
436-120-0017	1-1-2017	Repeal	1-1-2017	441-025-0005	2-1-2017	Amend	3-1-2017
436-120-0018	1-1-2017	Repeal	1-1-2017	441-025-0010	2-1-2017	Repeal	3-1-2017
436-120-0115	1-1-2017	Amend	1-1-2017	441-025-0020	2-1-2017	Amend	3-1-2017
436-120-0125	1-1-2017	Repeal	1-1-2017	441-025-0050	2-1-2017	Amend	3-1-2017
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436-120-0145	1-1-2017	Amend	1-1-2017	441-035-0005	2-1-2017	Amend	3-1-2017
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436-120-0165	1-1-2017	Amend	1-1-2017	441-035-0040	2-1-2017	Repeal	3-1-2017
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436-120-0449	1-1-2017	Repeal	1-1-2017	441-500-0020	2-1-2017	Amend	3-1-2017
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459-005-0525	1-27-2017	Amend	3-1-2017	573-050-0025	12-6-2016	Amend	1-1-2017
459-005-0545	1-27-2017	Amend	3-1-2017	573-050-0040	12-6-2016	Amend	1-1-2017
459-017-0060	1-1-2017	Amend	1-1-2017	573-050-0045	12-6-2016	Amend	1-1-2017
459-080-0500	1-27-2017	Amend	3-1-2017	581-002-1800	2-1-2017	Adopt	3-1-2017
461-025-0310	1-1-2017	Amend	2-1-2017	581-002-1805	2-1-2017	Adopt	3-1-2017
461-110-0370	1-1-2017	Amend	2-1-2017	581-002-1810	2-1-2017	Adopt	3-1-2017
461-115-0020	1-1-2017	Amend	2-1-2017	581-020-0600	12-20-2016	Amend	2-1-2017
461-115-0020(T)	1-1-2017	Repeal	2-1-2017	581-020-0603	12-20-2016	Amend	2-1-2017
461-120-0345	1-1-2017	Amend	1-1-2017	581-020-0606	12-20-2016	Amend	2-1-2017
461-130-0305	1-1-2017	Amend	2-1-2017	581-020-0609	12-20-2016	Amend	2-1-2017
461-130-0305(T)	1-1-2017	Repeal	2-1-2017	581-020-0612	12-20-2016	Amend	2-1-2017
461-130-0310	1-1-2017	Amend	2-1-2017	581-020-0613	12-20-2016	Adopt	2-1-2017
461-130-0310(T)	1-1-2017	Repeal	2-1-2017	581-020-0615	12-20-2016	Amend	2-1-2017
461-130-0315	1-1-2017	Amend	2-1-2017	581-020-0621	12-20-2016	Adopt	2-1-2017
461-130-0315(T)	1-1-2017	Repeal	2-1-2017	581-020-0624	12-20-2016	Adopt	2-1-2017
461-130-0330	1-1-2017	Amend	2-1-2017	581-022-1920	2-1-2017	Amend(T)	3-1-2017
461-130-0330(T)	1-1-2017	Repeal	2-1-2017	581-022-2440	2-1-2017	Adopt	3-1-2017
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461-135-0520(T)	1-1-2017	Repeal	2-1-2017	584-010-0125	2-1-2017	Adopt	3-1-2017
461-135-0730	1-1-2017	Amend	1-1-2017	584-020-0060	2-1-2017	Am. & Ren.	3-1-2017
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461-135-0820	1-1-2017	Amend	1-1-2017	584-200-0030	2-1-2017	Amend	3-1-2017
461-135-0832	2-13-2017	Amend(T)	3-1-2017	584-210-0040	2-1-2017	Amend	3-1-2017
461-135-0835	2-13-2017	Amend(T)	3-1-2017	584-210-0050	2-1-2017	Amend	3-1-2017
461-140-0296	1-1-2017	Amend	1-1-2017	584-210-0060	2-1-2017	Amend	3-1-2017
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461-145-0005	1-1-2017	Amend	1-1-2017	584-225-0050	2-1-2017	Amend	3-1-2017
461-145-0035	1-1-2017	Adopt	1-1-2017	584-225-0065	2-1-2017	Adopt	3-1-2017
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461-145-0184	1-1-2017	Repeal	1-1-2017	584-420-0016	2-1-2017	Adopt	3-1-2017
461-145-0220	1-1-2017	Amend	1-1-2017	584-420-0020	2-1-2017	Amend	3-1-2017
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461-145-0540	1-1-2017	Amend	2-1-2017	584-420-0345	2-1-2017	Amend	3-1-2017
461-145-0540(T)	1-1-2017	Repeal	2-1-2017	584-420-0360	2-1-2017	Amend	3-1-2017
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461-150-0050	1-1-2017	Amend	1-1-2017	584-420-0420	2-1-2017	Amend	3-1-2017
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461-155-0250	1-1-2017	Amend	1-1-2017	584-420-0440	2-1-2017	Amend	3-1-2017
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461-165-0180	1-1-2017	Amend	2-1-2017	603-025-0400	2-10-2017	Amend(T)	3-1-2017
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635-004-0350	1-1-2017	Amend	1-1-2017	635-039-0090	1-1-2017	Amend	2-1-2017
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635-005-0240	1-1-2017	Amend	1-1-2017	635-041-0025	2-21-2017	Amend	3-1-2017
635-005-0263	1-1-2017	Adopt	1-1-2017	635-041-0030	2-21-2017	Amend	3-1-2017
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635-006-0232	1-23-2017	Amend	3-1-2017	635-044-0002	1-24-2017	Repeal	3-1-2017
635-008-0170	11-17-2016	Amend	1-1-2017	635-044-0005	1-24-2017	Repeal	3-1-2017
635-008-0175	11-17-2016	Amend	1-1-2017	635-044-0010	1-24-2017	Repeal	3-1-2017
635-011-0100	1-1-2017	Amend	2-1-2017	635-044-0015	1-24-2017	Repeal	3-1-2017
635-013-0004	1-1-2017	Amend	2-1-2017	635-044-0020	1-24-2017	Repeal	3-1-2017
635-014-0080	1-1-2017	Amend	2-1-2017	635-044-0025	1-24-2017	Repeal	3-1-2017
635-014-0090	1-1-2017	Amend	2-1-2017	635-044-0030	1-24-2017	Repeal	3-1-2017
635-014-0090	1-25-2017	Amend	3-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-016-0080	1-1-2017	Amend	2-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-016-0090	1-1-2017	Amend	2-1-2017	635-044-0040	1-24-2017	Repeal	3-1-2017
635-017-0080	1-1-2017	Amend	2-1-2017	635-044-0045	1-24-2017	Repeal	3-1-2017
635-017-0090	1-1-2017	Amend	2-1-2017	635-044-0050	1-24-2017	Repeal	3-1-2017
635-017-0090	1-25-2017	Amend	3-1-2017	635-044-0051	1-24-2017	Repeal	3-1-2017
635-017-0095	1-1-2017	Amend	2-1-2017	635-044-0060	1-24-2017	Repeal	3-1-2017
635-018-0080	1-1-2017	Amend	2-1-2017	635-044-0075	1-24-2017	Repeal	3-1-2017
635-018-0090	1-1-2017	Amend	2-1-2017	635-044-0080	1-24-2017	Repeal	3-1-2017
635-018-0090	4-15-2017	Amend(T)	3-1-2017	635-044-0120	1-24-2017	Repeal	3-1-2017
635-018-0090(T)	4-15-2017	Suspend	3-1-2017	635-044-0125	1-24-2017	Repeal	3-1-2017
635-019-0080	1-1-2017	Amend	2-1-2017	635-044-0130	1-24-2017	Repeal	3-1-2017
635-019-0090	1-1-2017	Amend	2-1-2017	635-044-0132	1-24-2017	Repeal	3-1-2017
635-021-0080	1-1-2017	Amend	2-1-2017	635-044-0400	1-24-2017	Adopt	3-1-2017
635-021-0090	1-1-2017	Amend	2-1-2017	635-044-0410	1-24-2017	Adopt	3-1-2017

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635-044-0430	1-24-2017	Adopt	3-1-2017	734-010-0340	11-28-2016	Amend	1-1-2017
635-044-0440	1-24-2017	Adopt	3-1-2017	734-010-0350	11-28-2016	Repeal	1-1-2017
635-044-0450	1-24-2017	Adopt	3-1-2017	734-010-0360	11-28-2016	Amend	1-1-2017
635-044-0460	1-24-2017	Adopt	3-1-2017	734-010-0380	11-28-2016	Amend	1-1-2017
635-044-0470	1-24-2017	Adopt	3-1-2017	734-050-0105	12-16-2016	Am. & Ren.	2-1-2017
635-044-0475	1-24-2017	Adopt	3-1-2017	734-059-0015	11-28-2016	Amend	1-1-2017
635-044-0480	1-24-2017	Adopt	3-1-2017	734-059-0200	11-28-2016	Amend	1-1-2017
635-044-0490	1-24-2017	Adopt	3-1-2017	734-060-0000	11-28-2016	Amend	1-1-2017
635-044-0500	1-24-2017	Adopt	3-1-2017	734-060-0010	11-28-2016	Repeal	1-1-2017
635-044-0510	1-24-2017	Adopt	3-1-2017	734-060-0175	11-28-2016	Amend	1-1-2017
635-044-0520	1-24-2017	Adopt	3-1-2017	734-060-0180	11-28-2016	Adopt	1-1-2017
635-044-0530	1-24-2017	Adopt	3-1-2017	734-060-0190	11-28-2016	Amend	1-1-2017
635-044-0540	1-24-2017	Adopt	3-1-2017	734-065-0010	11-28-2016	Amend	1-1-2017
635-044-0550	1-24-2017	Adopt	3-1-2017	734-065-0015	11-28-2016	Amend	1-1-2017
635-044-0560	1-24-2017	Adopt	3-1-2017	734-065-0020	11-28-2016	Amend	1-1-2017
635-044-0570	1-24-2017	Adopt	3-1-2017	734-065-0025	11-28-2016	Amend	1-1-2017
635-044-0580	1-24-2017	Adopt	3-1-2017	734-065-0035	11-28-2016	Amend	1-1-2017
635-044-0590	1-24-2017	Adopt	3-1-2017	734-065-0040	11-28-2016	Amend	1-1-2017
635-500-6705	1-25-2017	Amend	3-1-2017	734-065-0045	11-28-2016	Amend	1-1-2017
635-500-6715	12-15-2016	Amend	1-1-2017	735-001-0100	2-1-2017	Amend	3-1-2017
635-500-6715	1-25-2017	Amend	3-1-2017	735-010-0020	1-24-2017	Amend	3-1-2017
635-500-6720	12-15-2016	Amend	1-1-2017	735-024-0015	11-22-2016	Amend	1-1-2017
635-500-6720	1-25-2017	Amend	3-1-2017	735-024-0025	11-22-2016	Amend	1-1-2017
635-500-6725	12-15-2016	Amend	1-1-2017	735-040-0115	1-24-2017	Amend	3-1-2017
635-500-6725	1-25-2017	Amend	3-1-2017	736-040-0100	2-2-2017	Adopt	3-1-2017
635-500-6730	12-15-2016	Amend	1-1-2017	736-040-0110	2-2-2017	Adopt	3-1-2017
635-500-6730	1-25-2017	Amend	3-1-2017	800-010-0015	1-27-2017	Amend	3-1-2017
635-500-6735	12-15-2016	Amend	1-1-2017	800-010-0035	1-27-2017	Amend	3-1-2017
635-500-6735	1-25-2017	Amend	3-1-2017	800-010-0040	1-27-2017	Amend	3-1-2017
635-500-6740	12-15-2016	Amend	1-1-2017	800-010-0050	1-27-2017	Amend	3-1-2017
635-500-6740	1-25-2017	Amend	3-1-2017	800-015-0010	1-27-2017	Amend	3-1-2017
635-500-6745	12-15-2016	Amend	1-1-2017	800-015-0020	1-27-2017	Amend	3-1-2017
635-500-6745	1-25-2017	Amend	3-1-2017	800-020-0015	1-27-2017	Amend	3-1-2017
635-500-6750	12-15-2016	Amend	1-1-2017	800-020-0020	1-27-2017	Amend	3-1-2017
635-500-6750	1-25-2017	Amend	3-1-2017	800-020-0022	1-27-2017	Amend	3-1-2017
660-023-0030	2-10-2017	Amend	3-1-2017	800-025-0060	1-27-2017	Amend	3-1-2017
660-023-0200	2-10-2017	Amend	3-1-2017	801-001-0005	1-4-2017	Amend	2-1-2017
661-010-0000	1-1-2017	Amend	2-1-2017	801-001-0035	1-4-2017	Amend	2-1-2017
661-010-0005	1-1-2017	Amend	2-1-2017	801-005-0010	1-4-2017	Amend	2-1-2017
661-010-0015	1-1-2017	Amend	2-1-2017	801-010-0060	1-4-2017	Amend	2-1-2017
661-010-0021	1-1-2017	Amend	2-1-2017	801-010-0065	1-4-2017	Amend	2-1-2017
661-010-0025	1-1-2017	Amend	2-1-2017	801-010-0080	1-4-2017	Amend	2-1-2017
661-010-0030	1-1-2017	Amend	2-1-2017	801-010-0110	1-4-2017	Amend	2-1-2017
661-010-0035	1-1-2017	Amend	2-1-2017	801-010-0115	1-4-2017	Amend	2-1-2017
661-010-0050	1-1-2017	Amend	2-1-2017	801-010-0120	1-4-2017	Amend	2-1-2017
661-010-0068	1-1-2017	Amend	2-1-2017	801-010-0130	1-4-2017	Amend	2-1-2017
661-010-0075	1-1-2017	Amend	2-1-2017	801-010-0340	1-4-2017	Amend	2-1-2017
715-045-0001	1-1-2017	Amend	2-1-2017	801-010-0345	1-4-2017	Amend	2-1-2017
715-045-0007	1-1-2017	Amend	2-1-2017	801-020-0690	1-4-2017	Amend	2-1-2017
715-045-0033	1-1-2017	Amend	2-1-2017	801-020-0700	1-4-2017	Amend	2-1-2017
734-005-0015	12-16-2016	Amend	2-1-2017	801-030-0005	1-4-2017	Amend	2-1-2017
734-010-0285	11-28-2016	Adopt	1-1-2017	801-030-0020	1-4-2017	Amend	2-1-2017
734-010-0290	11-28-2016	Amend	1-1-2017	801-040-0020	1-4-2017	Amend	2-1-2017
734-010-0300	11-28-2016	Amend	1-1-2017	801-040-0030	1-4-2017	Amend	2-1-2017
734-010-0320	11-28-2016	Amend	1-1-2017	801-040-0050	1-4-2017	Amend	2-1-2017

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801-050-0020	1-4-2017	Amend	2-1-2017	824-030-0010	1-1-2017	Amend	1-1-2017
801-050-0040	1-4-2017	Amend	2-1-2017	824-030-0040	1-1-2017	Amend	1-1-2017
804-003-0000	2-10-2017	Amend	3-1-2017	824-035-0005	1-1-2017	Repeal	1-1-2017
804-022-0025	2-10-2017	Amend	3-1-2017	824-036-0001	1-1-2017	Adopt	1-1-2017
804-030-0011	2-10-2017	Amend	3-1-2017	824-040-0010	1-1-2017	Amend	1-1-2017
804-035-0000	2-10-2017	Adopt	3-1-2017	824-050-0010	1-1-2017	Amend	1-1-2017
804-035-0010	2-10-2017	Amend	3-1-2017	824-060-0010	1-1-2017	Amend	1-1-2017
804-035-0020	2-10-2017	Amend	3-1-2017	824-070-0005	1-1-2017	Adopt	1-1-2017
804-035-0030	2-10-2017	Amend	3-1-2017	824-070-0010	1-1-2017	Adopt	1-1-2017
804-035-0035	2-10-2017	Amend	3-1-2017	830-011-0065	1-12-2017	Amend	2-1-2017
804-035-0040	2-10-2017	Amend	3-1-2017	833-040-0041	12-12-2016	Amend(T)	1-1-2017
804-040-0000	2-10-2017	Amend	3-1-2017	834-030-0010	1-17-2017	Amend(T)	3-1-2017
804-050-0005	2-10-2017	Amend	3-1-2017	834-050-0000	1-9-2017	Amend	2-1-2017
804-050-0010	2-10-2017	Amend	3-1-2017	834-050-0010	1-9-2017	Amend	2-1-2017
804-050-0015	2-10-2017	Amend	3-1-2017	836-005-0405	1-10-2017	Adopt	2-1-2017
808-003-0700	12-19-2016	Amend	2-1-2017	836-010-0135	1-9-2017	Amend	2-1-2017
808-003-0700(T)	12-19-2016	Repeal	2-1-2017	836-010-0140	1-9-2017	Amend	2-1-2017
811-010-0005	1-6-2017	Amend	2-1-2017	836-011-0000	1-31-2017	Amend(T)	3-1-2017
811-010-0015	1-6-2017	Amend	2-1-2017	836-011-0030	12-21-2016	Adopt	2-1-2017
811-010-0025	1-6-2017	Amend	2-1-2017	836-031-0605	12-21-2016	Adopt	2-1-2017
811-010-0040	1-6-2017	Amend	2-1-2017	837-120-0501	2-1-2017	Adopt	3-1-2017
811-010-0066	1-6-2017	Amend	2-1-2017	837-120-0510	2-1-2017	Adopt	3-1-2017
811-010-0071	1-6-2017	Amend	2-1-2017	837-120-0520	2-1-2017	Adopt	3-1-2017
811-010-0084	1-6-2017	Amend	2-1-2017	837-120-0530	2-1-2017	Adopt	3-1-2017
811-010-0090	1-6-2017	Amend	2-1-2017	837-120-0540	2-1-2017	Adopt	3-1-2017
811-010-0093	1-6-2017	Amend	2-1-2017	839-025-0700	1-1-2017	Amend	2-1-2017
811-010-0095	1-6-2017	Amend	2-1-2017	845-005-0412	1-1-2017	Adopt	1-1-2017
812-003-0131	1-1-2017	Amend	2-1-2017	845-006-0500	12-1-2016	Amend	1-1-2017
812-003-0171	1-1-2017	Amend	2-1-2017	845-025-1015	12-27-2016	Amend	2-1-2017
812-003-0221	1-1-2017	Amend	2-1-2017	845-025-1030	12-27-2016	Amend	2-1-2017
813-005-0005	12-14-2016	Amend	1-1-2017	845-025-1045	12-27-2016	Amend	2-1-2017
813-005-0005(T)	12-14-2016	Repeal	1-1-2017	845-025-1060	12-27-2016	Amend	2-1-2017
813-005-0025	12-14-2016	Adopt	1-1-2017	845-025-1090	12-27-2016	Amend	2-1-2017
813-005-0025(T)	12-14-2016	Repeal	1-1-2017	845-025-1100	12-27-2016	Amend	2-1-2017
813-006-0005	12-19-2016	Amend	2-1-2017	845-025-1115	12-27-2016	Amend	2-1-2017
813-006-0005(T)	12-19-2016	Repeal	2-1-2017	845-025-1160	12-27-2016	Amend	2-1-2017
813-006-0010	12-19-2016	Amend	2-1-2017	845-025-1175	12-27-2016	Amend	2-1-2017
813-006-0010(T)	12-19-2016	Repeal	2-1-2017	845-025-1230	12-27-2016	Amend	2-1-2017
818-021-0011	3-1-2017	Amend	3-1-2017	845-025-1360	12-27-2016	Amend	2-1-2017
818-021-0025	3-1-2017	Amend	3-1-2017	845-025-1410	12-27-2016	Amend	2-1-2017
819-005-0005	1-3-2017	Adopt	2-1-2017	845-025-1410	12-27-2016	Amend	2-1-2017
819-020-0015	1-3-2017	Adopt	2-1-2017	845-025-1420	12-27-2016	Amend	2-1-2017
819-020-0020	1-3-2017	Adopt	2-1-2017	845-025-1440	12-27-2016	Amend	2-1-2017
819-020-0035	1-3-2017	Adopt	2-1-2017	845-025-1450	12-27-2016	Amend	2-1-2017
819-020-0045	1-3-2017	Adopt	2-1-2017	845-025-1470	12-27-2016	Amend	2-1-2017
819-020-0055	1-3-2017	Adopt	2-1-2017	845-025-2020	12-27-2016	Amend	2-1-2017
819-020-0065	1-3-2017	Adopt	2-1-2017	845-025-2030	12-27-2016	Amend	2-1-2017
819-020-0075	1-3-2017	Adopt	2-1-2017	845-025-2040	12-27-2016	Amend	2-1-2017
819-020-0085	1-3-2017	Adopt	2-1-2017	845-025-2060	12-27-2016	Amend	2-1-2017
819-020-0090	1-3-2017	Adopt	2-1-2017	845-025-2070	1-1-2017	Amend(T)	2-1-2017
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820-010-0520	12-29-2016	Amend	2-1-2017	845-025-2840	12-27-2016	Amend	2-1-2017
820-010-0720	12-29-2016	Amend	2-1-2017	845-025-2900	12-27-2016	Adopt	2-1-2017
820-025-0005	12-29-2016	Amend	2-1-2017	845-025-2910	12-27-2016	Adopt	2-1-2017
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845-025-3300	12-27-2016	Adopt	2-1-2017	860-032-0610	11-22-2016	Am. & Ren.	1-1-2017
845-025-3310	12-27-2016	Adopt	2-1-2017	860-032-0620	11-22-2016	Am. & Ren.	1-1-2017
845-025-3500	12-27-2016	Amend	2-1-2017	860-032-0630	11-22-2016	Am. & Ren.	1-1-2017
845-025-3510	12-27-2016	Adopt	2-1-2017	860-032-0640	11-22-2016	Renumber	1-1-2017
845-025-3600	12-27-2016	Adopt	2-1-2017	860-032-0650	11-22-2016	Renumber	1-1-2017
845-025-5000	12-27-2016	Amend	2-1-2017	860-032-0660	11-22-2016	Renumber	1-1-2017
845-025-5300	12-27-2016	Amend	2-1-2017	860-032-0670	11-22-2016	Renumber	1-1-2017
845-025-5350	12-27-2016	Amend	2-1-2017	860-033-0005	12-2-2016	Amend(T)	1-1-2017
845-025-5500	12-27-2016	Amend	2-1-2017	860-033-0030	12-2-2016	Amend(T)	1-1-2017
845-025-5540	12-27-2016	Amend	2-1-2017	860-033-0046	12-2-2016	Amend(T)	1-1-2017
845-025-5700	12-27-2016	Amend	2-1-2017	860-033-0050	12-2-2016	Amend(T)	1-1-2017
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845-025-7000	12-27-2016	Amend	2-1-2017	860-036-0005	1-24-2017	Repeal	3-1-2017
845-025-7020	12-27-2016	Amend	2-1-2017	860-036-0010	1-24-2017	Repeal	3-1-2017
845-025-7030	12-27-2016	Amend	2-1-2017	860-036-0015	1-24-2017	Repeal	3-1-2017
845-025-7060	12-27-2016	Amend	2-1-2017	860-036-0020	1-24-2017	Repeal	3-1-2017
845-025-7520	12-27-2016	Amend	2-1-2017	860-036-0025	1-24-2017	Repeal	3-1-2017
845-025-7580	12-27-2016	Amend	2-1-2017	860-036-0030	1-24-2017	Repeal	3-1-2017
845-025-7700	12-27-2016	Amend	2-1-2017	860-036-0035	1-24-2017	Repeal	3-1-2017
845-025-7750	12-27-2016	Amend	2-1-2017	860-036-0040	1-24-2017	Repeal	3-1-2017
845-025-8040	12-27-2016	Amend	2-1-2017	860-036-0045	1-24-2017	Repeal	3-1-2017
845-025-8060	12-27-2016	Amend	2-1-2017	860-036-0050	1-24-2017	Repeal	3-1-2017
845-025-8520	12-27-2016	Amend	2-1-2017	860-036-0055	1-24-2017	Repeal	3-1-2017
845-025-8560	12-27-2016	Amend	2-1-2017	860-036-0060	1-24-2017	Repeal	3-1-2017
845-025-8750	12-27-2016	Adopt	2-1-2017	860-036-0065	1-24-2017	Repeal	3-1-2017
847-003-0200	7-1-2017	Amend	2-1-2017	860-036-0070	1-24-2017	Repeal	3-1-2017
847-035-0030	1-6-2017	Amend	2-1-2017	860-036-0075	1-24-2017	Repeal	3-1-2017
847-070-0005	1-6-2017	Amend	2-1-2017	860-036-0080	1-24-2017	Repeal	3-1-2017
851-010-0000	1-1-2017	Adopt	1-1-2017	860-036-0085	1-24-2017	Repeal	3-1-2017
851-010-0005	1-1-2017	Amend	1-1-2017	860-036-0095	1-24-2017	Repeal	3-1-2017
851-010-0010	1-1-2017	Amend	1-1-2017	860-036-0097	1-24-2017	Repeal	3-1-2017
851-010-0015	1-1-2017	Amend	1-1-2017	860-036-0105	1-24-2017	Repeal	3-1-2017
851-010-0020	1-1-2017	Repeal	1-1-2017	860-036-0110	1-24-2017	Repeal	3-1-2017
851-010-0024	1-1-2017	Amend	1-1-2017	860-036-0115	1-24-2017	Repeal	3-1-2017
851-010-0035	1-1-2017	Amend	1-1-2017	860-036-0120	1-24-2017	Repeal	3-1-2017
852-005-0005	7-1-2017	Amend	3-1-2017	860-036-0125	1-24-2017	Repeal	3-1-2017
852-010-0080	2-14-2017	Amend	3-1-2017	860-036-0130	1-24-2017	Repeal	3-1-2017
852-020-0045	2-14-2017	Amend	3-1-2017	860-036-0135	1-24-2017	Repeal	3-1-2017
852-050-0001	2-14-2017	Amend	3-1-2017	860-036-0140	1-24-2017	Repeal	3-1-2017
852-050-0025	2-14-2017	Amend	3-1-2017	860-036-0205	1-24-2017	Repeal	3-1-2017
852-060-0025	2-14-2017	Amend	3-1-2017	860-036-0210	1-24-2017	Repeal	3-1-2017
852-070-0010	2-14-2017	Amend	3-1-2017	860-036-0215	1-24-2017	Repeal	3-1-2017
855-019-0120	12-14-2016	Amend	1-1-2017	860-036-0220	1-24-2017	Repeal	3-1-2017
855-019-0450	12-14-2016	Adopt	1-1-2017	860-036-0225	1-24-2017	Repeal	3-1-2017
855-019-0450(T)	12-14-2016	Repeal	1-1-2017	860-036-0230	1-24-2017	Repeal	3-1-2017
855-019-0455	12-14-2016	Adopt	1-1-2017	860-036-0235	1-24-2017	Repeal	3-1-2017
855-019-0455(T)	12-14-2016	Repeal	1-1-2017	860-036-0240	1-24-2017	Repeal	3-1-2017
855-019-0460	12-14-2016	Adopt	1-1-2017	860-036-0245	1-24-2017	Repeal	3-1-2017
855-019-0460(T)	12-14-2016	Repeal	1-1-2017	860-036-0250	1-24-2017	Repeal	3-1-2017
855-041-2340	12-14-2016	Adopt	1-1-2017	860-036-0301	1-24-2017	Repeal	3-1-2017
855-041-2340(T)	12-14-2016	Repeal	1-1-2017	860-036-0305	1-24-2017	Repeal	3-1-2017
855-080-0021	12-14-2016	Amend	1-1-2017	860-036-0310	1-24-2017	Repeal	3-1-2017
856-030-0040	11-22-2016	Amend	1-1-2017	860-036-0315	1-24-2017	Repeal	3-1-2017





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860-036-1810	1-24-2017	Adopt	3-1-2017	877-020-0009	1-23-2017	Amend	3-1-2017
860-036-1820	1-24-2017	Adopt	3-1-2017	877-020-0010	1-23-2017	Amend	3-1-2017
860-036-1830	1-24-2017	Adopt	3-1-2017	877-020-0012	1-23-2017	Amend	3-1-2017
860-036-1840	1-24-2017	Adopt	3-1-2017	918-098-1305	1-19-2017	Amend(T)	3-1-2017
860-036-1850	1-24-2017	Adopt	3-1-2017	918-098-1325	1-19-2017	Amend(T)	3-1-2017
860-036-1900	1-24-2017	Adopt	3-1-2017	918-282-0465	2-1-2017	Adopt(T)	3-1-2017
860-036-1910	1-24-2017	Adopt	3-1-2017	918-282-0470	2-1-2017	Adopt(T)	3-1-2017
860-036-1920	1-24-2017	Adopt	3-1-2017	918-282-0475	2-1-2017	Adopt(T)	3-1-2017
860-036-1930	1-24-2017	Adopt	3-1-2017	918-308-0000	1-1-2017	Amend	2-1-2017
860-036-1940	1-24-2017	Adopt	3-1-2017	918-308-0010	1-1-2017	Amend	2-1-2017
860-036-1950	1-24-2017	Adopt	3-1-2017	918-308-0160	1-1-2017	Amend	2-1-2017
860-036-2000	1-24-2017	Adopt	3-1-2017	918-500-0450	1-19-2017	Amend(T)	3-1-2017
860-036-2010	1-24-2017	Adopt	3-1-2017	918-525-0000	1-19-2017	Amend(T)	3-1-2017
860-036-2020	1-24-2017	Adopt	3-1-2017	918-525-0005	1-19-2017	Amend(T)	3-1-2017
860-036-2030	1-24-2017	Adopt	3-1-2017	918-525-0015	1-19-2017	Amend(T)	3-1-2017
860-036-2100	1-24-2017	Adopt	3-1-2017	918-525-0020	1-19-2017	Amend(T)	3-1-2017
860-036-2110	1-24-2017	Adopt	3-1-2017	918-525-0035	1-19-2017	Amend(T)	3-1-2017
860-036-2120	1-24-2017	Adopt	3-1-2017	918-525-0040	1-19-2017	Amend(T)	3-1-2017
860-036-2130	1-24-2017	Adopt	3-1-2017	918-525-0042	1-19-2017	Amend(T)	3-1-2017
860-036-2140	1-24-2017	Adopt	3-1-2017	918-525-0045	1-19-2017	Suspend	3-1-2017
860-036-2150	1-24-2017	Adopt	3-1-2017	918-525-0055	1-19-2017	Suspend	3-1-2017
860-036-2160	1-24-2017	Adopt	3-1-2017	918-525-0060	1-19-2017	Amend(T)	3-1-2017
860-036-2170	1-24-2017	Adopt	3-1-2017	918-525-0065	1-19-2017	Amend(T)	3-1-2017
860-036-2200	1-24-2017	Adopt	3-1-2017	918-525-0070	1-19-2017	Amend(T)	3-1-2017
860-036-2210	1-24-2017	Adopt	3-1-2017	918-525-0080	1-19-2017	Amend(T)	3-1-2017
860-036-2220	1-24-2017	Adopt	3-1-2017	918-525-0090	1-19-2017	Amend(T)	3-1-2017
860-036-2230	1-24-2017	Adopt	3-1-2017	918-525-0100	1-19-2017	Amend(T)	3-1-2017
860-036-2300	1-24-2017	Adopt	3-1-2017	918-525-0210	1-19-2017	Amend(T)	3-1-2017
860-036-2310	1-24-2017	Adopt	3-1-2017	918-525-0220	1-19-2017	Amend(T)	3-1-2017
860-036-2350	1-24-2017	Adopt	3-1-2017	918-525-0260	1-19-2017	Amend(T)	3-1-2017
860-036-2360	1-24-2017	Adopt	3-1-2017	918-525-0270	1-19-2017	Amend(T)	3-1-2017
860-036-2370	1-24-2017	Adopt	3-1-2017	918-525-0310	1-19-2017	Amend(T)	3-1-2017
860-036-2380	1-24-2017	Adopt	3-1-2017	918-525-0320	1-19-2017	Amend(T)	3-1-2017
860-036-2390	1-24-2017	Adopt	3-1-2017	918-525-0325	1-19-2017	Suspend	3-1-2017
860-036-2400	1-24-2017	Adopt	3-1-2017	918-525-0330	1-19-2017	Amend(T)	3-1-2017
860-036-2410	1-24-2017	Adopt	3-1-2017	918-525-0350	1-19-2017	Amend(T)	3-1-2017
860-087-0001	11-22-2016	Adopt	1-1-2017	918-525-0370	1-19-2017	Suspend	3-1-2017
860-087-0010	11-22-2016	Adopt	1-1-2017	918-525-0410	1-19-2017	Amend(T)	3-1-2017
860-087-0030	11-22-2016	Adopt	1-1-2017	918-525-0420	1-19-2017	Amend(T)	3-1-2017
860-087-0040	11-22-2016	Adopt	1-1-2017	918-525-0430	1-19-2017	Amend(T)	3-1-2017
860-100-0001	11-22-2016	Adopt	1-1-2017	918-525-0440	1-19-2017	Amend(T)	3-1-2017
860-100-0005	11-22-2016	Adopt	1-1-2017	918-525-0450	1-19-2017	Amend(T)	3-1-2017
875-010-0031	12-12-2016	Suspend	1-1-2017	918-525-0460	1-19-2017	Suspend	3-1-2017
875-010-0045	12-12-2016	Amend(T)	1-1-2017	918-525-0510	1-19-2017	Amend(T)	3-1-2017
875-010-0045	12-13-2016	Amend	1-1-2017	918-525-0520	1-19-2017	Amend(T)	3-1-2017
875-010-0045	12-14-2016	Amend(T)	1-1-2017	918-530-0005	1-19-2017	Suspend	3-1-2017
875-010-0045	1-12-2017	Amend	2-1-2017	918-530-0010	1-19-2017	Suspend	3-1-2017
875-010-0090	12-12-2016	Amend	1-1-2017	918-530-0020	1-19-2017	Suspend	3-1-2017
875-010-0090	1-12-2017	Amend	2-1-2017	918-530-0040	1-19-2017	Suspend	3-1-2017
875-015-0030	12-12-2016	Amend(T)	1-1-2017	918-530-0050	1-19-2017	Suspend	3-1-2017
875-030-0010	12-13-2016	Amend	1-1-2017	918-530-0060	1-19-2017	Suspend	3-1-2017
875-030-0010	1-12-2017	Amend	2-1-2017	918-530-0070	1-19-2017	Suspend	3-1-2017
875-030-0050	12-13-2016	Amend	1-1-2017	918-530-0080	1-19-2017	Suspend	3-1-2017
875-030-0050	1-12-2017	Amend	2-1-2017	918-530-0090	1-19-2017	Suspend	3-1-2017
877-001-0009	1-23-2017	Amend	3-1-2017	918-530-0100	1-19-2017	Suspend	3-1-2017
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918-530-0320	1-19-2017	Suspend	3-1-2017				
918-530-0340	1-19-2017	Suspend	3-1-2017				
918-550-0000	2-1-2017	Amend(T)	3-1-2017				
918-550-0010	2-1-2017	Amend(T)	3-1-2017				
918-550-0020	2-1-2017	Adopt(T)	3-1-2017				
918-550-0030	2-1-2017	Adopt(T)	3-1-2017				
918-550-0040	2-1-2017	Adopt(T)	3-1-2017				
918-550-0100	2-1-2017	Amend(T)	3-1-2017				
918-550-0120	2-1-2017	Amend(T)	3-1-2017				
918-550-0140	2-1-2017	Amend(T)	3-1-2017				
918-550-0160	2-1-2017	Suspend	3-1-2017				
918-550-0180	2-1-2017	Suspend	3-1-2017				
918-550-0200	2-1-2017	Amend(T)	3-1-2017				
918-550-0600	2-1-2017	Amend(T)	3-1-2017				
976-002-0040	2-13-2017	Amend	3-1-2017				