

Chapter 257 Department of State Police

DIVISION 1

PROCEDURAL RULES

257-001-0000	Notice of Proposed Rule
257-001-0005	Model Rules of Practice and Procedures
257-001-0015	Requiring Reporting of Precursor Transactions
257-001-0020	Notices and Requests for Hearings Under ORS 806.016
257-001-0025	Rules for Impoundment Hearings Under ORS 809.716

DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

257-010-0010	Scope of System
257-010-0015	Definitions
257-010-0020	System Responsibilities
257-010-0025	Access to and Use of Criminal Offender Information
257-010-0030	Criminal Justice Research and Evaluation Projects
257-010-0035	Access by Individuals for Purpose of Review and/or Challenge
257-010-0045	Violation of Rules
257-010-0050	Rights of Appeal
257-010-0055	Firearm Instant Check System
257-010-0060	Mental Health Information Reporting to NICS

DIVISION 15

LAW ENFORCEMENT DATA SYSTEM (LEDS)

257-015-0000	Purpose of Rules
257-015-0010	Authority
257-015-0020	Law Enforcement Data System (LEDS) Advisory Committee
257-015-0030	Definitions
257-015-0040	LEDS Responsibilities
257-015-0050	User Responsibilities
257-015-0060	Information Access and Dissemination
257-015-0070	System Security and Privacy
257-015-0080	Criteria for Terminal Access to LEDS
257-015-0090	Criteria for Revocation of Terminal or Informational Access to LEDS
257-015-0100	Criteria for Computer Access to the LEDS Network

DIVISION 20

PUBLIC RECORDS

257-020-0010	Public Records Access and Fees
--------------	--------------------------------

DIVISION 25

FIELD SOBRIETY TESTS

257-025-0000	Statement of Purpose
257-025-0005	General Requirements of ORS 801.272
257-025-0010	Acts, Signs, and Symptoms of Intoxicant Impairment
257-025-0012	Approved Field Sobriety Tests
257-025-0020	Conducting Approved Field Sobriety Test
257-025-0025	Effective Date

DIVISION 30

ALCOHOL BREATH TESTING

257-030-0040	Criteria for Approval of Breath Testing Equipment
--------------	---

257-030-0050	Definitions
257-030-0060	Approved Breath Testing Equipment
257-030-0070	Approved Methods for Operating the Intoxilyzer 5000
257-030-0080	Qualifications of Breath Test Equipment Operators
257-030-0090	Training for Operators of Breath Test Equipment
257-030-0100	Certification of Accuracy of Breath Test Equipment
257-030-0105	Definitions; Severability
257-030-0110	Criteria for Approval of Breath Testing Equipment
257-030-0120	Approved Breath Testing Equipment
257-030-0130	Approved Methods for Operating the Intoxilyzer 8000
257-030-0140	Determining Agreement of Breath Samples Within a Testing Sequence
257-030-0150	Qualifications of Breath Test Equipment Operators
257-030-0160	Training for Operators of Breath Test Equipment
257-030-0170	Certification of Accuracy of Breath Test Equipment

DIVISION 35

USE OF CRIME DETECTION LABORATORIES EQUIPMENT

257-035-0005	Use of Crime Detection Laboratories Equipment
--------------	---

DIVISION 40

ELECTRONIC SIGNALING DEVICES

257-040-0005	Introductory Provision
257-040-0010	Distribution Procedures
257-040-0020	Return of a Device to a Distributor
257-040-0030	Specifications

DIVISION 45

VEHICLE TOW HEARING PROCESS

257-045-0010	Purpose and Authority
257-045-0020	Scope of Hearing
257-045-0030	Notice and Request for Hearing
257-045-0040	Hearing Process
257-045-0050	Appeals

DIVISION 50

NONPREFERENCE TOWING

257-050-0020	Policy and Purpose
257-050-0040	Authority
257-050-0050	Definitions
257-050-0060	Application for Appointment
257-050-0070	Application Requirements
257-050-0090	Inspections
257-050-0095	Letter of Appointment
257-050-0100	Issuance of Letter of Appointment
257-050-0110	Suspension, Revocation and Voluntary Relinquishment of Letter of Appointment
257-050-0115	Suspension and Revocation
257-050-0125	Reinspection/Certification
257-050-0130	Appeal
257-050-0140	Place of Business Requirement and Business Hours
257-050-0145	Felony Convictions
257-050-0150	Towing
257-050-0155	Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)
257-050-0157	Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)
257-050-0170	Hearings

Chapter 257 Department of State Police

- 257-050-0180** Judicial Review
257-050-0200 Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

DIVISION 55

EMPLOYMENT STANDARDS AND PRACTICES

- 257-055-0001** Gaming Industry Employment Prohibition

DIVISION 60

DNA PROFILING OF CONVICTED OFFENDERS

- 257-060-0005** Collection and Submission of Samples
257-060-0010 Inspection of DNA Profile Records
257-060-0015 Challenges of DNA Profile Records

DIVISION 70

SEX OFFENDER REGISTRATION;

- 257-070-0005** Statement of Purpose
257-070-0015 Definitions
257-070-0025 Victim Access to Registered Sex Offender Information
257-070-0040 Designation of Persons as Predatory Sex Offenders; Notice and Opportunity to Be Heard Regarding Designation as Predatory Sex Offender
257-070-0100 Registration Process for Registering Agencies
257-070-0110 Registration Requirements for Registerable Sex Offenders
257-070-0120 Recordkeeping
257-070-0130 Internet Notification of predatory Sex Offenders

DIVISION 80

TRIAL BOARD PROCEDURES

- 257-080-0000** Purpose of Rules
257-080-0005 Statutory Authority for Rules
257-080-0010 Definitions
257-080-0015 Grounds for Removal
257-080-0020 Investigation and Fact Finding Processes
257-080-0025 Procedure to notify member of Findings, Recommendation, and Request to convene a Review Board
257-080-0030 Initiating a Review Board
257-080-0035 Review Board — Generally
257-080-0040 Review Board Pre-meeting Matters
257-080-0045 Board Meeting
257-080-0050 The Board's Decision
257-080-0055 Office of Superintendent's consideration of Review Board Decision

DIVISION 90

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

- 257-090-0010** Confidentiality and Inadmissibility of Mediation Communications

DIVISION 1

PROCEDURAL RULES

257-001-0000 Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, the Department of State Police shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.

(2) By mailing a copy of the Notice to persons on the Department's mailing list established pursuant to ORS 183.335(6).

(3) By mailing a copy of the Notice to the following persons, organizations, or publications:

- (a) United Press International and Associated Press;
- (b) Oregon Association of Chiefs of Police;
- (c) Oregon State Sheriffs' Association;
- (d) Oregon Police Officers' Association;
- (e) Oregon District Attorneys' Association;
- (f) Oregon Circuit Judges' Association;
- (g) Oregon District Judges' Association;
- (h) Oregon Law Enforcement Council;
- (i) Oregon Newspaper Publishers' Association;
- (j) American Civil Liberties Union;
- (k) Law Enforcement Data System Advisory Board;
- (l) Board on Public Safety Standards and Training.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341(4)

Hist.: DSP 3, f. 4-22-76, ef. 4-30-76; DSP 4-1981, f. 12-14-81, ef. 12-15-81

257-001-0005

Model Rules of Practice and Procedures

Except as provided in OAR 257-001-0020, 257-001-025 and 257-045-0010 to 257-045-0050 with respect to the rules for impoundment hearings under ORS 806.016 and hearings for vehicles taken into custody and towed under 819.110 or 819.120, the Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedure Act effective January 1, 2010, are adopted as the Rules of Procedure of the Department of State Police and shall be controlling except as otherwise required by statute or rule.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Oregon State Police.]

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

Stat. Auth.: ORS 181, 181.040, 181.280, 183, 806, 806.014, 806.016 & 814, OL 2009, ch. 371 (HB 2739)

Stats. Implemented: ORS 183.341(4), OL 2009, ch. 371 (HB 2739)

Hist.: DSP 1, f. 4-19-74, ef. 5-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 4-1979, f. & ef. 12-13-79; DSP 5-1981, f. 12-14-81, ef. 12-15-81; OSP 1-1986, f. & ef. 7-28-86; OSP 2-1994(Temp), f. 6-30-94, cert. ef. 7-1-94; OSP 5-1994, f. 11-21-94, cert. ef. 11-22-94; OSP 1-1998(Temp), f. & cert. ef. 7-24-98 thru 1-1-99; Administrative correction, 8-5-99; OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

257-001-0015

Requiring Reporting of Precursor Transactions

(1) When contacted by a person that desires to purchase precursor substances, the transferer (seller/supplier) is required to complete Oregon State Police Form 310-1. The completion of this form requires the purchaser/receiver to contact the transferer in person and provide valid, state-issued photo identification. The identification may be in the form of a driver's license or state identification card. Upon completion of OSP Form 310-1, the original must be forwarded to the Oregon State Police Precursor Substance Unit. After receipt of the form, the Precursor Substance Unit will issue that transaction an authorization number and notify the transferer of that number by telephone. The transferer will note on the remaining copies the number, date, and time of receiving the authorization. The 72-hour statutory waiting period prior to delivery of the precursor substance(s) will commence at the time of receipt by the Oregon State Police Precursor Substance Unit of the transferer's notification.

(2) After the appropriate waiting period has elapsed and the receiver contacts the transferer to take possession of the precursor substance(s), the receiver will be provided a copy of OSP Form 310-1 by the Oregon State Police.

(3) The Precursor Substance Monthly Transaction Report, OSP Form 310-2, will be used only upon approval by the Oregon State Police Precursor Substance Unit. Use of this form shall apply only when a pattern or regular supply, for lawful purposes, of the precursor substances has been established. The request for its use

name, address, intended use of the precursor substances, and location(s) where the precursor substances are to be used.

(4) Any person/business in possession of precursor substances who discovers the loss, theft, or discrepancy of any amount of precursor substances must complete and submit OSP Form 310-3 to the Oregon State Police Precursor Substance Unit within three days. These forms shall be provided by the Oregon State Police upon request.

(5) OSP Forms 310-1, 310-2, and 310-3 are hereby adopted and incorporated into this rule.

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

Stat. Auth.: ORS 183

Stats. Implemented: ORS 475.945

Hist.: OSP 2-1987(Temp), f. & ef. 9-28-87; OSP 3-1987, f. 10-14-87, ef. 12-11-87

257-001-0020

Notices and Requests for Hearings Under ORS 806.016

(1) A "person entitled to lawful possession" of a vehicle means the owner as defined in ORS 801.375 or a security interest holder. A person not listed as the owner or security interest hold on the records of the Driver and Motor Vehicle Services Branch (DMV) shall have the burden of establishing right possession by clear and convincing evidence.

(2) A person entitled to lawful possession of an impounded vehicle may request a hearing to contest the validity of the impoundment. Such request must be in writing and, within 5 days from the date of the impoundment, be mailed to or received by the agency conducting the hearing. The hearing request must include the person's full name, address, driver's license number, daytime telephone number, the names of and daytime telephone numbers for any other persons (e.g. attorney, witnesses) expected to participate in the hearing, date of the impoundment, the registration number and a description of the vehicle impounded, and a brief statement describing the person's interest in the vehicle (e.g. owner, lessee) and why the person believes the impoundment was impounded. A person who will need an interpreter for the hearing or accommodation for an impairment must also give notice of that in the hearing request.

(3) Notice of the hearing date shall be sent to the person request the hearing as soon as practicable after receipt of the hearing request. The notice shall include or be accompanied by:

(a) The time and date of the hearing;

(b) Notice of the scope of the hearing, which shall be limited to the validity of the impoundment;

(c) The name of the hearing officer assigned;

(d) A copy of the documents then in the hearing officer's file;

(e) A form with instructions on the hearing procedures, and advising persons with impairments of the opportunity to use a telecommunication device line.

(f) Information that the hearing costs may be assessed against the person if the impoundment is held proper.

(4) The hearing officer, upon finding the impoundment to have been proper, may assess the costs of the hearing pursuant to ORS 806.016(4) or may waive, in whole or in part the hearing costs upon finding that the person is indigent. A person claiming indigence shall have the burden of establishing that, and the person's eligibility for food stamps shall be the primary factor to be considered by the hearing officer in determining indigence.

Stat. Auth.: ORS 181, 181.040, 181.280, 183, 809.720, 809.716 & 814

Stats. Implemented: ORS 809.716

Hist.: OSP 2-1994(Temp), f. 6-30-94, cert. ef. 7-1-94; OSP 5-1994, f. 11-21-94, cert. ef. 11-22-94; OSP 1-1998(Temp), f. & cert. ef. 7-24-98 thru 1-1-99; Administrative correction 8-5-99; OSP 4-2000(Temp), f. & cert. ef. 10-9-00 thru 4-6-01; Administrative correction 6-20-01; OSP 4-2002(Temp), f. & cert. ef. 10-25-02 thru 4-22-03; Administrative correction 11-10-03

257-001-0025

Rules for Impoundment Hearings Under ORS 809.716

Hearings to determine the validity of the impoundment of vehicles under ORS 806.014 shall be subject to the following procedural rules.

(1) The following of the Attorney General's Model Rules of Procedure adopted under OAR 257-001-0005, and no other, shall apply:

(a) OAR 137-003-0001 Contested Case Notice;

(b) OAR 137-003-0002 Rights of Parties in Contested Cases;

(c) OAR 137-003-0003 Late Filing;

(d) OAR 137-003-0040 Conducting Contested Case Hearing;

(e) OAR 137-003-0045 Telephone Hearings

(f) OAR 137-003-0050 Evidentiary Rules;

(g) OAR 137-003-0055 Ex Parte Communications;

(h) OAR 137-003-0075 Final Orders by Default;

(i) OAR 137-003-0080 Reconsideration and Rehearing-Contested Cases;

(j) OAR 137-003-0090 Stay Request;

(k) OAR 137-003-0091 Intervention in Stay Proceeding;

(l) OAR 137-003-0092 Stay Proceeding and Order.

(2) With reference to model OAR 137-003-0045, all hearings will be conducted by telephone unless the person requesting the hearing:

(a) Includes in the hearing request a request for an in-person hearing;

(b) Provides adequate justification for holding the hearing in-person (EXAMPLE: hearing impairment or other physical disability making telephone hearings impractical); and

(c) Agrees to waive the statutory time limit for the hearing.

(3) Discovery shall be limited to the documents contained in the hearings officer's file. Such documents shall be sent to the person requesting the hearing at the time the notice of the scheduled hearing is sent, or as soon thereafter as possible.

(4) The Department shall enter into an interagency agreement with another state agency which has an established hearings unit, to ensure that hearings under ORS 806.016 are conducted as fairly and efficiently as practicable. Exceptions to hearings' officers proposed orders under ORS 806.016 may be submitted to the Director of the Patrol Division of the Oregon State Police who shall have all authority to issue a final order. Written argument submitted with the exceptions will be considered; no opportunity for oral argument will be allowed.

Stat. Auth.: ORS 181, 181.040, 181.280, 183, 809.720, 809.716 & 814

Stats. Implemented: ORS 809.716

Hist.: OSP 2-1994(Temp), f. 6-30-94, cert. ef. 7-1-94; OSP 5-1994, f. 11-21-94, cert. ef. 11-22-94; OSP 1-1998(Temp), f. & cert. ef. 7-24-98 thru 1-1-99; Administrative correction 8-9-99; OSP 4-2000(Temp), f. & cert. ef. 10-9-00 thru 4-6-01; Administrative correction 6-20-01; OSP 4-2002(Temp), f. & cert. ef. 10-25-02 thru 4-22-03; Administrative correction 11-10-03

DIVISION 10

OREGON CRIMINAL OFFENDER INFORMATION SYSTEM

257-010-0010

Scope of System

(1) Rules adopted herein relate solely to the Oregon Criminal Offender Information System and the Identification Services Section as maintained by the Oregon State Police. The rules do not affect in any way other agencies' original records of arrest, arrest logs, or reports of crimes available for inspection under terms of the **Oregon Public Records Law** (ORS 192.410 to 192.500).

(2) Oregon Criminal Offender Information files contain information, contributed by Criminal Justice Agencies, on a person's record of arrests, the nature and disposition of criminal charges, sentencing, confinement, and release, plus identifying data only relating to fingerprints of applicants submitted under Oregon Law. The fingerprints, photographs, records and reports compiled under ORS 137.225, 166.291, 166.412, 181.010, 181.511, 181.521, 181.540, 181.555, 181.880 and 806.060 are confidential and exempt from public inspection except as provided in 181.540. These files shall not contain information about the political, religious, or social views, associations, or activities of any individual, group, association, corporation, business, or partnership unless such information directly relates to an investigation of past

or threatened criminal acts or activities and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal acts or activities.

(3) The Oregon CCH System is a computerization of essentially the same criminal offender, regulatory and applicant information, and is maintained by the OSP under provisions of Oregon Law. Computerization of the files is designed to provide faster access to criminal offender information for Oregon Criminal Justice and Designated Agencies.

(4) The Oregon Firearm Instant Check System is a computerization of firearm and firearm purchaser information, and is maintained by the OSP under provisions of Oregon Law. The record of the information obtained by the OSP during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550 & 192.440

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 3-1992, f. & cert. ef. 9-16-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02

257-010-0015

Definitions

As used in these rules:

(1) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement (confinement shall not include the retention by the Oregon State Police of records of transfer of inmates between penal institutions or other correctional facilities), and release, and includes the OSP Computerized Criminal History System.

(2) "Agency Agreement" means a written agreement between OSP and a Criminal Justice or Designated Agency as defined by ORS 181.010 authorized to receive criminal offender information, or between OSP and any state, federal, Native American tribe or private agency specifically granted authority by statute to receive Oregon criminal offender information, specifying the terms and conditions of accessing and receiving Oregon CCH Information.

(3) "Computerized Criminal History (CCH) System" means the administration and maintenance of on-line computer files of significant criminal offender information.

(4) "OSP" means the Oregon State Police and includes the Identification Services Section (ISS) and the Law Enforcement Data System (LEDS).

(5) "Oregon CCH System" means the Oregon Computerized Criminal History System.

(6) "Federal Criminal Offender Information System" means the national computerized criminal history system maintained and operated by the Federal Bureau of Investigation (FBI) which includes the Interstate Identification Index.

(7) "Criminal Justice Agency" means:

(a) The Governor;

(b) Courts of Criminal Jurisdiction;

(c) The Attorney General;

(d) District Attorneys, City Attorneys with criminal prosecutive functions and public defender organizations established under ORS Chapter 151;

(e) Law Enforcement Agencies;

(f) The Department of Corrections;

(g) The State Board of Parole and Post-Prison Supervision;

(h) The Board on Public Safety Standards and Training; and

(i) Any other state or local agency with law enforcement authority designated by order of the Governor.

(8) "Designated Agency" means any state, county or municipal government agency where Oregon criminal offender information is required to implement a federal or state statute, executive order or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such

conduct or for agency employment purposes, or licensing purposes, or other demonstrated and legitimate needs when designated by order of the Governor.

(9) "Regional Information Sharing System (RISS)" means an interjurisdictional intelligence system, in whatever form, designed pursuant to 42 USC § 3796(h) and 23 CFR Part 23 to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and activities that occur across law enforcement and state jurisdictional boundaries.

(10) "State Control Terminal" means the agency within each state which is responsible for the state's computer link with the National Crime Information Center and National Law Enforcement Telecommunications System, Inc., and which is responsible for ensuring that NCIC and NLETS system security and operational policies and procedures are carried out within the state.

(11) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this and other states, and law enforcement agencies of the federal government.

(12) "Administration of Criminal Justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. Criminal justice employment investigations are included, as is the licensing of or issuing of a permit for a weapon or explosive when required to be performed by a Criminal Justice Agency, pursuant to a federal, state or local law.

(13) "Firearm Instant Check System" means information received from Oregon Gun Dealers as defined in 18 U.S.C. § 921, concerning the selling, leasing or otherwise transferring a firearm and compiled by the Oregon State Police under authority of ORS 166.412 for purposes of determining if the person purchasing the firearm is disqualified from purchasing a firearm under Oregon or Federal Law and if the firearm being purchased is stolen.

(14) "Authorized agency" means the Department of State Police or other governmental agency designated by the state to report, receive or disseminate criminal offender information.

(15) "Qualified entity" means a business or organization that:

(a) Provides care or placement services, or licenses or certifies others to provide care or placement services, for children, elderly persons or dependent persons;

(b) Is not governed by a state regulatory or licensing agency; and

(c) Has been determined by an authorized agency to meet the criteria established by the authorized agency by rule under subsection (9) ORS 181.533.

(16) "Subject individual" means a person who is employed or seeks to be employed by a qualified entity or who is providing services or seeks to provide services to a qualified entity on a contractual or voluntary basis.

(17) "Organization" means a qualified entity that:

(a) Is exempt from taxation under section 501(c) of the Internal Revenue Code, as amended and in effect on January 1, 2002; and

(b) Provides mentoring programs or tutoring programs.

(18) "Tutoring program" means a program that provides a committed, sustained, one-to-one relationship between a volunteer and a youth, dependent person or elderly person. A sustained relationship typically lasts nine months or longer.

(19) "Youth" means a person who has not attained 18 years of age.

(20) "Dependent person" means a person who, because of physical or mental disability, or medical disability due to alcohol or drug dependence, needs mentoring or tutoring programs.

(21) "Elderly person" means a person 65 years of age or older.

Stat. Auth.: ORS 181.537, 181.538, 181.555, 181.556, 181.560(4), 183.310 - 183.550, 192.44 & 194.164

Stats. Implemented: ORS 181.538 & 181.556

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; DSP 3-1981, f. 10-30-81, ef. 11-1-81; OSP 3-1988, f. 8-22-88, cert. ef. 9-1-88; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 4-1993, f. & cert. ef. 12-20-03; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. & cert. ef. 3-22-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10; Administrative correction 1-25-11; OSP 1-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0020

System Responsibilities

(1) Maintenance and Dissemination of Criminal Offender Information. The Oregon State Police has statutory and administrative responsibility for the maintenance and dissemination of criminal offender information in Oregon.

(2) Accuracy and Completeness of Information. Information entered into Criminal Offender Information files is based on written documents submitted to the OSP by Criminal Justice Agencies reporting their record of official action, which documents contain fingerprint or other verification as to the identity of the individual to whom the information refers:

(a) OSP is responsible for the accuracy and completeness of information entered into the Oregon Criminal Offender Information System and any information subsequently transmitted for inclusion in the FBI Interstate Identification Index;

(b) This responsibility extends only to information contained in the documents as submitted to OSP.

(3) Removal of Information. OSP is responsible for removal of information from the Oregon and Federal Criminal Offender Information Systems when required by law or court order. In the event the OSP discovers there has been an erroneous entry in criminal offender information records maintained by OSP or the FBI, OSP shall correct or purge the inaccurate information.

(4) Entry of Information. Only terminals located at the OSP, Identification Services Section or others designated by the Superintendent of the OSP are allowed to enter, update, or modify records in the Oregon CCH File. Entry of information by other forms of electronic communications, as in the case of integration of computer systems, must be approved by the Superintendent of the OSP.

(5) Information to Qualified Criminal Justice and Designated Agencies. OSP is responsible for providing Criminal Offender Information to qualified Criminal Justice and Designated Agencies. Such information will be furnished, after proper inquiry, in either computerized or document form.

(6) Information to Regional Information Sharing Systems. OSP is responsible for providing Criminal Offender Information in computerized form to Regional Information Sharing Systems. Such information will be furnished, after proper inquiry, only if it exists in computerized form.

(7) Development of Operational Procedures. OSP is responsible for development of operational procedures to be followed by Criminal Justice and Designated Agencies permitted access to Oregon Criminal Offender Information and FBI Interstate Identification Index files.

(8) All Criminal Offender information distributed by the OSP shall contain a notice in writing in substantially the following language: Because additions or deletions may be made at any time, a new CCH record should be requested when needed for subsequent use.

(9) All agencies shall insofar as is feasible, taking into consideration the then existing capability of the OSP to respond, request and obtain a current criminal offender information record when that record is to be disseminated outside that agency.

(10) NCIC and NLETS Control Terminal Responsibility. OSP is the "state control terminal" for the NCIC and NLETS computer interface to Oregon and is responsible for assuring that all policies and rules for computer access to Oregon and Federal Criminal Offender Information Systems are adhered to by Oregon user agencies and Regional Information Sharing Systems.

(11) System Development and Operation. OSP is responsible for providing the computer hardware and software capabilities necessary to insure secure access, efficient processing and integrity of the information stored in the Oregon Criminal Offender Information

System and for interfacing to the Federal Criminal Offender Information System.

(12) Physical Security of Computer Installation. OSP is responsible for development and implementation of policies and procedures to safeguard the criminal offender information at the central computer site from accidental or malicious damage or unauthorized access or use.

(13) Audit and Inspection of the User Agencies. OSP is responsible for periodically auditing and inspecting each computer terminal location accessing Oregon and Federal Criminal Offender Information to insure compliance with state and federal law, published rules, policies, and procedures.

(14) CCH computer terminal transaction records will be maintained at and by OSP and will be made available, upon written request, to participating Criminal Justice Agencies.

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10; Administrative correction 1-25-11; OSP 1-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0025

Access to and Use of Criminal Offender Information

(1) Access to OSP criminal offender information by any means shall be limited to:

(a) Criminal Justice Agencies, where the information is to be used for the administration of criminal justice, Criminal Justice Agency employment, or the information is required to implement a federal or state statute, local ordinance, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct, or other demonstrated and legitimate needs;

(b) Designated Agencies upon Executive Order of the Governor, where the information is required to implement a federal or state statute, Executive Order, or administrative rule that expressly refers to criminal conduct and contains requirements or exclusions expressly based on such conduct or for agency employment purposes, or licensing purposes, or other demonstrated and legitimate needs:

(A) When a Designated Agency requests criminal offender information about an individual from OSP under ORS 181.555(1) for agency employment, licensing or other permissible purposes, the agency shall provide documentation that the individual:

(i) Gave prior written consent for the agency to make a criminal offender record check through the OSP; or

(ii) Has received written notice from the agency that a criminal offender record check may be made through the OSP. Notice shall be provided prior to the time the request is made and shall include: Notice of the manner in which the individual may be informed of the procedures adopted under ORS 181.555(3) for challenging inaccurate criminal offender information; and notice of the manner in which the individual may become informed of rights, if any, under Title VII of the Civil Rights Act of 1964; and notice that discrimination by an employer on the basis of arrest records alone may violate federal civil rights law and that the individual may obtain further information by contacting the Bureau of Labor and Industries.

(B) When an authorized agency or organization requests, in written form, criminal offender information about an individual from OSP under ORS 181.555(1), that agency will be charged a fee of \$4 for each individual checked (fee does not apply when check is made by agency using their LEDS terminal).

(c) Qualified entities upon successful determination as being a qualified entity by the OSP Identification Services Section. Qualified entities may request from OSP Identification Services Section a criminal records check for purposes of evaluating the fitness of a subject individual as an employee, contractor or volunteer. The OSP Identification Services Section may access state and federal criminal records only through use of the subject individual's fingerprints.

(A) Before the OSP Identification Services Section conducts a criminal records check based on the subject individual's fingerprints:

(i) The OSP Identification Services Section shall determine whether the entity requesting the criminal records check is a qualified entity as defined in 257-010-0015(15) and has executed a user agreement making that determination;

(ii) The qualified entity must establish criteria to be used by the OSP Identification Services Section in reviewing the criminal offender information for a final record check determination;

(iii) The qualified entity must provide the criteria established under paragraph (ii) of this subsection to the OSP Identification Services Section; and

(iv) The qualified entity must have informed the subject individual that the qualified entity might request a fingerprint-based criminal records check and that the subject individual may obtain a copy of the record check report from, or challenge the accuracy or completeness of the record check report through, the OSP Identification Services Section or the Federal Bureau of Investigation.

(B) Upon receipt of a subject individual's criminal offender information, the OSP Identification Services Section shall make a final record check determination by comparing the criminal offender information with the criteria provided to the OSP Identification Services Section by the qualified entity under subsection (A)(ii) of this section. In making the final record check determination, the OSP Identification Services Section may only consider information that the Department of State Police may disclose under ORS 181.560. The OSP Identification Services Section may only consider records of any conviction, or of any arrest less than one year old on which there has been no acquittal or dismissal.

(C) The OSP Identification Services Section shall only respond to a qualified entity's inquiry concerning a subject individual in the following manner and shall not provide specific criminal offender information:

(i) Yes. (No disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(ii) No. (One or more disqualifying criteria established by the qualified entity and ORS 181.560 was found.)

(d) Regional Information Sharing Systems, where the information is to be used to identify, target, and remove criminal conspiracies and activities and terrorist conspiracies and activities that occur across law enforcement and state jurisdictional boundaries. Access to Oregon Criminal Offender Information by Regional Information Sharing Systems is limited to only Oregon Criminal Offender Information that exists in computerized format;

(e) A person or agency not defined as a Criminal Justice, Designated Agency, or Qualified Entity has access only through the OSP Identification Services Section pursuant to ORS 181.555 and 181.560. The request must be submitted in writing and may be hand carried or mailed to the OSP Identification Services Section. A fee of \$10 will be charged for each check. A fee of \$5 will be charged for each request for copy certification by a notary public in addition to any other applicable fee. Checks are to be made payable to the Oregon State Police. Inquiries are to be addressed to Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. Inquiries may also be made through the OSP webpage at www.osp.state.or.us, when a customer account is established for billing purposes.

(A) The requesting party must furnish OSP with sufficient information to assist identifying and notifying the individual of interest. If the information is sought for employment purposes the requester must state on the written request that the individual has been so advised and the manner in which the individual was so advised;

(B) These individuals will be advised by letter the name of the requestor, and that they are allowed to review their criminal history for inaccurate or incomplete information. They will also be advised that they may become informed of certain rights under Title VII of the Civil Rights Act of 1964 by contacting the Bureau of Labor and Industries;

(C) If a challenge is received prior to the end of the statutory 14 day waiting period, response to the requester will be held in abeyance until the challenge is resolved;

(D) OSP will respond to all requests and furnish Oregon conviction information and any arrest information less than one year old on which there has been no acquittal or dismissal. If the compiled information does not meet the above criteria or there is no record of the subject, OSP will reply to the requester that there is no criminal record.

(2) Access to Oregon CCH information by means of computer terminals shall be limited to Criminal Justice Agencies, Designated Agencies, and Regional Information Sharing Systems using their respective identification number (ORI) as authorized by OSP in an "Agency Agreement." Access to FBI criminal offender information by a Regional Information Sharing System is authorized, pursuant to an OSP "Agency Agreement," only upon a showing that the system is authorized under Title 28, United States Code, Section 534 and Title 28, Code of Federal Regulations, Part B & C, to receive such FBI criminal offender information.

(3) Oregon criminal offender information may be shared between authorized Criminal Justice and Designated Agencies, and between Regional Information Sharing Systems and their respective participating law enforcement agencies. All other secondary dissemination of criminal offender information is prohibited unless expressly permitted by Oregon Revised Statute. Dissemination of Oregon criminal offender information by the Department of Human Services or the Employment Department to public or private agencies authorized by ORS 181.537(1)(d) shall be limited to persons with a demonstrated and legitimate need to know the information. Such need must be demonstrated to the satisfaction of the Department of Human Services or the Employment Department responsible for the dissemination of the information. Title 28, United States Code, Section 534 and Title 28, Code of Federal Regulations, Section 20.33(b), prohibits dissemination of FBI criminal offender information to public or private agencies by Criminal Justice or Designated Agencies. Inquiries for nonofficial purposes or the checking of records for unauthorized persons or agencies is prohibited. A person wishing to review their criminal history record maintained by the FBI should write to: Federal Bureau of Investigation, CJIS Division, Attn: SCU, Module D2, 1000 Custer Hollow Road, Clarksburg, West Virginia, 26306. The FBI will inform the person how to obtain a copy of their record and, if necessary, how to challenge the accuracy or completeness of that record.

(4) Criminal offender information may be furnished to authorized Criminal Justice, Designated Agency, and Regional Information Sharing System employees and no person who has been convicted of a crime which could have resulted in a sentence to a federal or state penitentiary will be allowed to operate a computer terminal accessing CCH information or have access to Criminal offender information. All authorized agency or system employees as described above must be fingerprinted and the fingerprint card submitted to OSP. The fingerprint cards will be searched against the state and federal criminal record files. The "Reason Fingerprinted" may be for criminal justice employment such as "Police Officer," "Corrections Officer" or "Access to CCH." These fingerprint cards will be retained by OSP and entered into the CCH File. Exceptions to this rule may be made in extraordinary circumstances upon written application to the Superintendent of the Oregon State Police setting forth such circumstances. The Superintendent of OSP will maintain a central file where such exception authorization shall be filed.

(5) Screening of Criminal Justice, Designated Agency, and Regional Information Sharing System employees who have access to CCH or criminal offender information records is the responsibility of the employing agency or system.

(6) Any Criminal Justice, Designated Agency, or Regional Information Sharing System that obtains Oregon or FBI criminal offender information, either directly through that agency's or system's computer terminal, through the computer terminal of another agency or system, or directly from OSP, must have executed a

written “Agency Agreement” with the OSP prior to such access. Any public or private agency receiving Oregon criminal offender information from the Department of Human Services or the Employment Department pursuant to ORS 181.537(1)(c) or (d) must have executed a written “Agency Agreement” with the Department of Human Services or the Employment Department prior to receiving the information. Dissemination of Oregon criminal offender information received under authority of ORS 181.537(1)(d) by a public or private agency is strictly prohibited.

(7) Security of computer terminals. Any computer terminal with CCH accessing capability must be physically secure and placed in a location not available to unauthorized persons. Computer terminals must be so placed that unauthorized persons may not observe the content of messages transmitted or received on such computer terminal.

(8) Security of criminal offender information records. Any Criminal Justice, Designated Agency, Regional Information Sharing System, or private entity obtaining or receiving criminal offender information shall maintain those records in secure files, available only to authorized agency employees, until they are destroyed by burning, shredding or secure and confidential recycling and shall treat those records in such a manner that the record does not become public information in any later proceeding, except through court order or as otherwise provided by law.

(9) Radio Transmission. Any radio transmission of criminal offender information records shall be limited to essential details only, with information identifying individuals and offenses concealed insofar as possible. Plain text transmission of an entire (summary or full CCH) record is prohibited.

(10) Fee for relief from the bar of purchasing/possessing a firearm. When a person barred from possessing a firearm under ORS 166.250(1)(c)(A), (B), (D) or (E) or barred from purchasing a firearm under ORS 166.470 and is granted relief from the bar by a court under ORS 166.274, a fee of \$12 will be charged to enter and maintain this information in the CCH File as authorized under ORS 166.274(4)(c).

(11) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is retained in the CCH File. A fee of \$27 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is entered and maintained in the CCH File.

(12) Fee for conducting applicant and regulatory fingerprint based criminal record background check when fingerprint card is not retained in the CCH File. A fee of \$28 will be charged to conduct a fingerprint based criminal record background check when the fingerprint card and related information is returned to the contributor or destroyed by the ISS. This fee will be waived as provided in ORS 181.556(1) & (2).

(13) Fee for conducting applicant and regulatory fingerprint based criminal record background check for qualified entity based on criteria established by the qualified entity. A fee of \$52 will be charged to conduct a fingerprint based criminal record background check and fitness determination. The fingerprint card and results of the fitness determination will be returned to the contributor. This fee will be waived as provided in ORS 181.556(1) & (2).

(14) Agencies authorized by Oregon Revised Statute or federal law to submit fingerprint record checks to the FBI, Identification Division via OSP, are responsible to pay the prevailing user fee charged by the FBI for those fingerprint record checks in addition to the OSP user fee, except as otherwise provided by state or federal law.

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

Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; DSP 3-1981, f. 10-30-81, ef. 11-1-81; DSP 1-1982, f. 3-12-82, ef. 3-15-82; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05; OSP 3-2005, f. & cert. ef. 9-12-05; OSP 4-2010(Temp),

f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10; Administrative correction 1-25-11; OSP 1-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0030

Criminal Justice Research and Evaluation Projects

Criminal offender information will be made available to qualified persons for research and evaluation related to criminal justice activity, or in exigent circumstances for temporary access, upon written application to the Superintendent of the Oregon State Police but authorization to utilize such information will be conditioned upon:

(1) The execution of nondisclosure agreements by all participants in the program.

(2) When such qualified persons acknowledge a fundamental commitment to respect individual privacy interests with the identification of subjects of such information divorced as fully as possible from the data received, and agree to comply with any additional requirements and conditions found necessary to assure the protection of personal privacy and system security interests.

(3) When a specific agreement is executed between such qualified persons and the OSP, the agreement stating the scope of the project, the permissible dissemination of information for any purpose other than that for which it was obtained.

(4) Where temporary access is authorized by the Superintendent of the OSP, he shall report the reasons for such temporary grant to the Governor. No temporary grant of access shall be valid for more than 30 days.

(5) OSP will retain the right to monitor and audit any approved criminal justice research and evaluation project and to terminate access to CCH or criminal offender information if a violation of this rule is detected.

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164

Stats. Implemented: ORS 166.291, 166.412 & 181.880

Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; DSP 1-1981, f. & ef. 5-1-81; OSP 4-1993, f. & cert. ef. 12-20-93

257-010-0035

Access by Individuals for Purpose of Review and/or Challenge

(1) All individuals desiring to review information concerning them maintained in the OSP Criminal Offender Information System or Firearm Instant Check System, or who believes that the information as maintained is inaccurate, incomplete, or maintained in violation of any state or federal statute or act, shall be entitled to review such information and obtain a copy thereof for the purpose of review, challenge or correction.

(2) Verification of such individual's identity may only be effected through submission, in writing, of name, date of birth, and a set of rolled ink fingerprints to the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303. The request for review may be made at the Oregon State Police, Identification Services Section, 3772 Portland Road N.E., Salem, OR 97303, or through mail or postal service. The OSP may prescribe reasonable hours and places of inspection. If the request is made by mail or postal service, after positive identification by the OSP of the fingerprints submitted, copy of the record, along with the fingerprints submitted for that purpose, will be returned to the individual making the request to the address provided in the request.

(3) All data included in the Criminal Offender Information System is obtained from contributing Criminal Justice and Designated Agencies. All data included in the Firearm Instant Check System is obtained from contributing Oregon Gun Dealers as defined in 18 U.S.C. § 921. If after review of the information concerning them as maintained in such record, the individual believes that it is incomplete or incorrect in any respect and wishes changes, corrections, or updating of the alleged deficiency, they must make application directly to the contributor of the questioned information, requesting the appropriate agency or Gun Dealer to correct it in accordance with its respective administrative rules and procedures. Upon receipt of an official communication directly from the agency or Gun Dealer which contributed the original information, the OSP will make any changes necessary in accordance with the information supplied by the agency or Gun Dealer.

(4) Any individual whose record is not removed, modified, or corrected as they may request, following refusal by the agency originally contributing such information, may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to contested cases and judicial review. After conclusion of such procedure or review, any information found to be inaccurate, incomplete, or improperly maintained, shall be removed from the individual's record and the originating agency so notified with copy of the record as corrected being furnished to the challenging individual.

(5) Any Criminal Justice or Designated Agency receiving a record after such notice of contested case has been filed and prior to final determination, shall be notified by the OSP that the record is being challenged.

(6) All individuals desiring to obtain a police clearance or documentation of no record maintained in the OSP Criminal Offender Information System for purposes other than review, challenge or correction specified in (1) will be charged a fee of \$33 for each request. Verification of the requesting individual's identity shall only be effected through submission and positive identification of the person's fingerprints.

(7) All individuals desiring to obtain a set of their inked fingerprints for purposes other than review, challenge or correction specified in section (1) of this rule will be charged a fee of \$20 for each fingerprint card provided, except as provided in ORS 181.556(1) & (2).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 166.291, 166.412, 181.537, 181.555, 181.560(4), 183.310 - 183.550, 192.440 & 194.164
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 1-1991, f. 5-17-91, cert. ef. 7-1-91; OSP 1-1992, f. 3-17-92, cert. ef. 3-18-92; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-1994, f. & cert. ef. 8-2-94; OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2005(Temp), f. & cert. ef. 3-1-05 thru 8-27-05; OSP 3-2005, f. & cert. ef. 9-12-05

257-010-0045

Violation of Rules

(1) Willful violation of Oregon Revised Statute, Executive Order or published rules relating to the Oregon Criminal Offender Information System by any authorized agency, Regional Information Sharing System, or employee may result in immediate termination of such agency's authorization to receive such information from the Oregon and/or Federal Criminal Offender Information Systems.

(2) Reinstatement will be effected only upon demonstration by the agency or system that the cause of such violation has been corrected. Final determination as to the reinstatement of any agency or system so terminated will be the responsibility of the OSP.

Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10; Administrative correction 1-25-11; OSP 1-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0050

Rights of Appeal

A Criminal Justice, Designated Agency, Regional Information Sharing System, or employee desiring to appeal any action, order, or administrative ruling by the OSP may proceed under the provisions of Rules 30.00 to 30.80 of the Attorney General's Model Rules of Practice and Procedures under the Administrative Procedure Act relating to contested cases and judicial review.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 181.555, 181.560(4), 183.310 - 183.550 & 192.440
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: DSP 2, f. 6-14-74, ef. 7-11-74; DSP 4, f. 4-22-76, ef. 4-30-76; OSP 1-1990, f. & cert. ef. 6-4-90; OSP 4-1993, f. & cert. ef. 12-20-93; OSP 4-2010(Temp), f. 6-29-10, cert. ef. 7-1-10 thru 12-28-10; Administrative correction 1-25-11; OSP 1-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0055

Firearm Instant Check System

(1) The Oregon Firearm Instant Check System is a computerization of firearm and firearm purchaser information, and is maintained by the OSP under provisions of Oregon Law. The purpose of the Firearm Instant Check System is to receive information from Oregon Gun Dealers and private citizens at gun shows or voluntarily from the public and determine if the person purchasing the firearm is disqualified under Oregon (ORS 166.470) and Federal Law from completing the purchase of a firearm and if the firearm being transferred is stolen.

(2) The OSP may retain a record of the information obtained during a request for a criminal records check for no more than five years.

(3) The record of the information obtained by the OSP during a request for a criminal records check by a gun dealer is exempt from disclosure under public records law.

(4) Identification required of the purchaser shall include one piece of current identification bearing a photograph and date of birth of the purchaser that is issued under the authority of the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(5) If the identification presented by the purchaser under (4) of this rule does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser and corroborates the name on the first piece of identification. Examples of a second piece of identification that will be accepted are: current vehicle registration, current rent receipt and current utility bill.

(6) The OSP may require that the gun dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the OSP, Identification Services Section. The OSP shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(7) The OSP may adopt a fee schedule for criminal history record checks and collect a fee for each criminal history record check requested. The fee schedule shall be calculated to recover the cost of performing criminal history record checks, but may not exceed \$10 per record check.

(8) The OSP may respond to a telephone request from any person requesting that the OSP determine if the firearm is stolen.

(9) The Department of State Police shall develop a state form to be completed by a person seeking to obtain a firearm at a gun show from a transferor other than a gun dealer. The department shall consider including in the form all of the requirements for disclosure of information that are required by federal law for over-the-counter firearms transactions.

(10) The department shall make the form available to the public at no cost.

Stat. Auth.: ORS 166.291, 166.412, 192.440 & 194.164
Stats. Implemented: ORS 166.291, 166.412 & 181.880
Hist.: OSP 3-1996, f. 5-24-96, cert. ef. 7-1-96; OSP 1-2002, f. & cert. ef. 3-8-02; OSP 1-2010(Temp), f. 5-17-10 cert. ef. 5-28-10 thru 11-23-10; Administrative correction 12-28-10; OSP 2-2011, f. 2-3-11, cert. ef. 2-28-11

257-010-0060

Mental Health Information Reporting to NICS

(1) Definitions. As used in this administrative rule:

(a) "Designated Agencies" means the Oregon Department of Human Services (DHS), the Oregon Health Authority (OHA), the Psychiatric Review Board (PSRB), and the Oregon Judicial Department (OJD).

(b) "Minimum Information" means only those data elements or identifying information that is minimally or nominally necessary to accurately identify a person listed under ORS 181.740(1) and who is prohibited under either 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm,

ORS 166.250 (1)(c)(D) or (E) from possessing a firearm, or ORS 166.470 (1)(e) or (f) from receiving a firearm. "Minimum information" includes at least the person's name, date of birth, gender and ORI number of the designated agency or originating court that originally created the underlying record or file of the person. "Minimum information" does not include any medical, psychiatric or psychological information, case histories or files of a person, or any record or file of a designated agency or originating court.

(c) "NICS" means the National Instant Criminal Background Check System mandated by the Brady Handgun Violence Prevention Act of 1993 (Pub. L. 103-159, 107 Stat. 1536).

(d) "ORI" means the Law Enforcement Data System (LEDS) and FBI National Crime Information Center (NCIC) originating agency identifier code.

(e) "Originating court" means the Oregon county circuit court that transmits a mental health record to OSP as required under either ORS 426.160 or 427.293.

(f) "Prohibited Persons File" (PPF) means a data table created by OSP that contains minimum information, as reported to OSP by the designated agencies or originating courts responsible for maintaining Oregon mental health records, for individuals that are prohibited under either 18 U.S.C. §922(d)(4) and (g)(4) from purchasing, possessing, transporting or receiving a firearm, ORS 166.250 (1)(c)(D) or (E) from possessing a firearm, or ORS 166.470 (1)(e) or (f) from receiving a firearm. This file will be maintained by OSP in LEDS. The agencies contributing to the file will be responsible for ensuring the data is accurate. Information in this file is confidential and not to be accessed for any purpose other than:

(A) Maintaining the minimum information in the PPF;

(B) Reporting minimum information to NICS as required by federal and state law; or

(C) Conducting instant firearm criminal history checks as defined under ORS 166.432.

(2) Transmission of Existing Minimum Information to OSP and NICS.

(a) As soon as a designated agency is capable of electronically transmitting existing minimum information to OSP, the designated agency shall provide OSP with all current and former client minimum information as required under ORS 181.740.

(b) Each designated agency shall provide all of its current and former client information to OSP in one single electronic file. The single electronic file shall contain all minimum information data elements in an electronic format that is capable of being individually searched and copied.

(c) Notwithstanding subsection (2)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP.

(d) Given the current limitations of the Oregon Judicial Department's information systems, OJD shall continue working with OSP and designated agencies to accomplish reconciliation of its records to those records of the other designated agencies. OJD shall continue its efforts to upgrade its information systems in order for OJD to provide minimum information to OSP as required under ORS 181.740. Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall provide all of its current and former minimum information to OSP in one single electronic file, as provided in section (2)(b) of this rule.

(e) Upon receipt of any designated agency's minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS.

(3) Transmission of Subsequent Minimum Information to OSP and NICS.

(a) Upon providing OSP with minimum information as provided under subsection 2 of this rule, designated agencies shall thereafter provide subsequent client information to OSP in electronic format, in a format approved by OSP. Designated agencies and originating courts shall electronically transmit subsequent minimum information to OSP as soon as such client minimum information

becomes available for transmission and inclusion into the PPF. Designated agencies shall not delay in transmitting minimum information to OSP and shall transmit minimum information to OSP immediately upon such information becoming available to the designated agency.

(b) Designated agencies shall provide minimum information data elements to OSP in an electronic format that is capable of being individually searched and copied.

(c) Upon OJD having the capability of providing minimum information to OSP from its information systems, OJD shall thereafter provide subsequent minimum information to OSP, including information from originating courts, as provided in section (3)(a) of this rule.

(d) Upon receipt of any designated agency's minimum information, OSP may search, use, copy, and maintain that minimum information. OSP shall enter the minimum information into the PPF and electronically transmit it from the PPF to NICS on a daily basis through a secure electronic message via the Law Enforcement Message Switch (LEMS).

(e) Notwithstanding subsection (3)(b) of this rule, designated agencies may provide minimum information to OSP in a non-electronic format, on a client-by-client basis and only as approved by OSP. In the event that OSP accepts minimum information from a designated agency in a non-electronic format, OSP shall electronically enter the minimum information for that particular person into the PPF, and return the non-electronically formatted minimum information to the designated agency.

(4) PPF and Minimum Information Maintenance. OSP shall request a report from NICS every 3 months that details Oregon's mental health prohibited person record data located in NICS for comparison with the data in the PPF. OSP shall send data discrepancies to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution. Designated agencies shall include any changes or amendments to previously submitted minimum information in their subsequent electronic transmissions of minimum information to OSP.

(5) Challenges to Minimum Information. All minimum information and data elements maintained by OSP in the PPF is the minimum information and data elements directly submitted to OSP by designated agencies. Any and all challenges to minimum information data elements submitted to OSP by a designated agency and that are contained or maintained by OSP in the PPF and transmitted to NICS will be re-directed to the submitting designated agency for resolution. Based on ORI number, designated agencies may further re-direct challenges to the court of original jurisdiction for resolution.

(6) Relief Maintenance.

(a) When the PSRB grants relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250 (1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470 (1)(e) or (f), the PSRB shall send the minimum information of the person for whom relief is granted electronically to OSP. Upon receipt of the minimum information from the PSRB, OSP shall update the PPF and transmit the minimum information and notification of relief to NICS on the same day OSP receives the minimum information from the PSRB.

(b) When a person files a petition for judicial review with an appellate court following a final order of the PSRB that denies relief, and the appellate court subsequently grants the person relief from the prohibitions under 18 U.S.C. §922(d)(4) and (g)(4) for the purchase, possession, transportation or receipt of a firearm, or grants additional or alternative relief from either the prohibition on possessing a firearm under ORS 166.250 (1)(c)(D) or (E), or the prohibition on receiving a firearm under ORS 166.470 (1)(e) or (f), OJD shall send the minimum information of the person for whom relief is granted electronically to OSP as provided in subsection 3(b) of this rule. Upon receipt of the minimum information from OJD, OSP shall update the PPF and transmit the minimum infor-

mation and notification of relief to NICS on the same day OSP receives the minimum information from OJD.

(c) In addition to the requirements set forth in 6 (a), whenever the PSRB or an appellate court grants relief under the following circumstances, the person granted relief shall provide a certified copy of either the PSRB written final order or appellate judgment and the person's fingerprint card to OSP for the purposes of updating the petitioner's Computerized Criminal History:

(A) The person granted relief was found responsible except for insanity for an act under ORS 419C.411;

(B) The person granted relief was found guilty except for insanity of a crime under ORS 161.295 to 161.370 and the person has an existing criminal history; or

(C) The person granted relief was found by a court to lack fitness to proceed under ORS 161.370 and the person has an existing criminal history.

Stat. Auth.: ORS 181.740, 426.130, 426.160, 427.290, 427.293, 161.370, 161.295–161.370, 419C.411, 161.327, 161.336–161.351, & 419C.529–419C.544 & 192.440

Stats. Implemented: ORS 181.740, OL 2009 Ch 826

Hist.: OSP 5-2011(Temp), f. 12-13-11, cert. ef. 12-15-11 thru 6-12-12; OSP 2-2012, f. & cert. ef. 5-22-12

DIVISION 15

LAW ENFORCEMENT DATA SYSTEM (LEDS)

257-015-0000

Purpose of Rules

Rules adopted herein prescribe the policies and procedures for operation and use of the Oregon Law Enforcement Data System (LEDS).

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95

257-015-0010

Authority

(1) The Law Enforcement Data System (LEDS) was established by act of the 1969 Oregon Legislature (ORS 181.710) which authorized the state Executive Department to develop and operate a police information network. In 1973, the term "Police Information Network" was amended to read "Law Enforcement Data System." Senate Bill 1044 in the 1993 legislative session transferred LEDS to the Department of Oregon State Police (ORS 181.730).

(2) The Law Enforcement Data System is a program organized within the Intergovernmental Services Bureau of the Department of Oregon State Police. It provides a criminal justice telecommunications and information system for the State of Oregon, and is the control point for access to similar programs operated by other states and the Federal Government.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95

257-015-0020

Law Enforcement Data System (LEDS) Advisory Committee

(1) The LEDS Advisory Committee advises the Superintendent of State Police on general policy concerning the philosophy, concept, and operational principles of the LEDS program. In its deliberations the Committee places particular emphasis on the following areas:

(a) Continued responsiveness of the LEDS program to the state's criminal justice information needs;

(b) System security; and

(c) Rules, regulations and procedures to maintain the integrity of LEDS information.

(2) The LEDS Advisory Committee is composed of members appointed by the Governor representing the following areas:

(a) The Judicial Department;

(b) The Oregon Juvenile Department Directors' Association;

(c) The Oregon Peace Officers' Association;

(d) The Associated Public Safety Communications Officers, Inc.;

(e) The Oregon Association of Chiefs of Police;

(f) The Oregon State Sheriffs' Association;

(g) The Oregon District Attorneys' Association;

(h) Attorney General;

(i) The Oregon State Police;

(j) The Department of Transportation, Driver and Motor Vehicle Services Branch (DMV);

(k) The Department of Corrections;

(l) The Oregon Youth Authority; and

(m) Such other members as the Governor considers appropriate for purposes of the committee.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

257-015-0030

Definitions

(1) "LEDS" means the Department of State Police, Law Enforcement Data System.

(2) "NCIC" means the Federal Bureau of Investigation, National Crime Information Center.

(3) "NLETS" means the National Law Enforcement Telecommunications System, Incorporated.

(4) "Associated Systems" means any automated or manual information system which is accessible via LEDS.

(5) "Criminal Justice Agency" means the following as defined by the National Crime Information Center:

(a) Courts;

(b) A government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "Criminal Justice Purpose" means: The administration of criminal justice, as defined in section (7) of this rule.

(7) The "Administration of Criminal Justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, post trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information. Criminal justice employment investigations are included, as is the licensing of or issuing of a permit for a weapon or explosive when required to be performed by a criminal justice agency, pursuant to a federal, state or local law. (This category includes firearms dealers and purchasers, carriers of concealed weapons, explosives dealers and users and lethal weapons dealers and users). State and Federal Inspector General offices are included. Defense of accused persons, whether by private counsel, public defender or other court appointed counsel is not included in the definition of the administration of criminal justice.

(8) "Investigative Files" means computerized records stored in LEDS, NCIC or other state criminal justice information systems, as follows: outstanding arrest warrants and other wanted persons; missing persons; unidentified persons; restraining orders; lost or stolen identification; Psychiatric Security Review Board Orders; persons who have threatened a Secret Service protected person; Persons under the supervision of a Court or a Corrections agency; gang members; armed career criminals; Sex offender registrants; concealed handgun license records; stolen, repossessed, impounded vehicles; stolen vehicle license plates, vehicle parts, vehicle identification plates and title certificates; vehicles used in the commission of a felony; stolen and pawned firearms; stolen securities; stolen boats and associated equipment; other stolen and pawned property; other files of a similar nature which may be established to assist in law enforcement investigations or to enhance other criminal justice purposes.

(9) "NCIC State Control Terminal Agency" means the agency in each state which is responsible for the state's computer link with the National Crime Information Center and which is responsible

for ensuring that NCIC system security and operational policies and procedures are carried out within the state.

(10) "NLETS State Control Terminal Agency" means the agency in each state which is responsible for the state's computer link with the National Law Enforcement Telecommunications System, Inc., and which is responsible for ensuring that NLETS' system security and operational policies and procedures are carried out within the state.

(11) "Management Control Agreement" means a written agreement between a criminal justice agency and a non-criminal justice agency which provides services (dispatching, record keeping, computer services, etc.) to the criminal justice agency. The agreement gives the criminal justice agency management control over the operations of the non-criminal justice agency as they relate to access to the Law Enforcement Data System network.

(12) "Management Control" means the authority to set and enforce:

(a) Priorities;

(b) Standards for the selection, supervision and termination of personnel; and

(c) Policy governing the operation of computers, circuits, and telecommunications terminals used to process, store, or transmit information to or receive information from the Law Enforcement Data System.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

257-015-0040

LEDS Responsibilities

The general responsibilities of the Law Enforcement Data System program are as follows:

(1) Develop and operate a computerized criminal justice telecommunications and information system providing message switching and record storage and retrieval capabilities.

(2) Provide a level of training adequate to enable effective use of LEDS and associated systems.

(3) Function as the NCIC Control Terminal Agency and the NLETS Control Terminal Agency for the State of Oregon.

(4) Assist and train criminal justice agencies in the development of information from LEDS and associated systems for use in criminal investigations.

(5) Develop and maintain linkages with the Driver and Motor Vehicle Services Branch (DMV), the State Marine Board, the Public Utility Commission, and other non-criminal justice agencies to make appropriate information available to Oregon criminal justice agencies to assist in the enforcement of state criminal and traffic laws and regulations.

(6) Provide staff support to the Law Enforcement Data System Advisory Committee.

(7) Develop and operate the State Uniform Crime Reporting Program to collect crime statistics information from local and state law enforcement agencies; provide information to the public, the Governor, the Legislature, contributing agencies, and others who have a responsibility for the prevention or reduction of crime.

(8) Provide monthly and annual Oregon crime statistics information to the Federal Bureau of Investigation to satisfy national uniform crime reporting program requirements.

(9) Operate a program of record validation, quality control, and audits to ensure that records entered into LEDS and NCIC files by user agencies are kept accurate and complete and that compliance with state and national standards is maintained.

(10) Provide assistance and information access to non-criminal justice user agencies for statutory licensing, employment and regulatory purposes and for other purposes authorized by law.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

257-015-0050

User Responsibilities

(1) "User Agreement" — Any agency using a terminal to access the Law Enforcement Data System, whether directly or

through another agency, is responsible for adhering to all applicable LEDS rules and policies and must sign an agreement with LEDS to that effect.

(2) "Record Validation" — Any agency that enters information into LEDS or NCIC files is responsible for the accuracy, timeliness and completeness of that information. LEDS will send a record validation review list, regularly, to each agency. Validation is accomplished by reviewing the original entry and current supporting documents. Recent reconsultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files, or other appropriate source or individual also is required with respect to the Wanted Person, Missing Person, and Vehicle Files. In the event the agency is unsuccessful in its attempts to contact the victim, complainant, etc., the entering authority must make a determination based on the best information and knowledge available whether or not to retain the original entry in the file. Validation procedures must be formalized and copies of these procedures must be on file for review during a LEDS or NCIC audit. When the agency has completed the validation they must return a signed certification of their validity within an appropriate time as established by LEDS.

(3) "Minimum Training" — Each agency employee who operates a terminal to access the LEDS network must complete a LEDS System Training Guide at a level consistent with the employee's duties. Pursuant to procedures outlined in the LEDS Operating Manual, the agency LEDS Representative must issue a Training Guide to such employees within ten (10) calendar days of the person beginning to access LEDS via a terminal. The Training Guide must be completed within 60 calendar days from the date of issue. Each employee who operates a terminal to access LEDS must be re-certified by the agency every two years per schedules and procedures as prescribed by LEDS.

(4) "Hit Confirmation" — When another agency receives a positive record response (Hit) from LEDS or NCIC and requests confirmation of the status of the record (warrant, stolen vehicle, etc.), the agency responsible for entry of the record must respond within 10 minutes for urgent hit confirmation requests or within one (1) hour for routine hit confirmation requests, with an answer indicating the status of the record or indicating when the record status will be confirmed.

(5) "Agency LEDS Representatives" — The agency administrator of each agency with terminal access to LEDS must designate an agency LEDS Representative who shall be the primary contact for all matters relating to use of LEDS by the agency. The agency LEDS Representative must complete the **LEDS System Training Guide** before a training guide will be issued to other agency employees. The agency LEDS Representative must complete a **LEDS System Training Guide** at the highest level required by any person in the agency before a training guide will be issued to other agency personnel. Every LEDS Representative must satisfactorily complete no less than the **Inquiry Level Training Guide**.

(6) "Background Checks of Terminal Operators Required" — Policies for access to the FBI-NCIC system require background screening of all terminal operators with access to the NCIC system. For efficiency and consistency, the key elements of the NCIC background screening policies are also adopted for all LEDS access, as follows:

(a) Appropriate Background investigations, including a check of LEDS and NCIC fugitive warrant files, the Oregon computerized criminal history (CCH) system, and the FBI Interstate Identification Index (III), must be conducted on all terminal operators with LEDS access. To assure positive identification, submission of a completed applicant fingerprint card to the FBI Identification Division through the Oregon State Police Identification Services Section is also required;

(b) If the applicant is found to be a fugitive or to be the subject of a current prosecution, access will be denied. If the applicant has been convicted of a crime which could have resulted in a sentence to a Federal or State penitentiary, access will be denied;

(c) Exceptions to denials based upon prior criminal convictions may be made in extraordinary circumstances upon application by the user agency to the Superintendent of State Police setting forth

the circumstances. The Superintendent or his/her designee will maintain a central file where such exception authorizations shall be filed.

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

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95

257-015-0060

Information Access and Dissemination

Information is made available to LEDS users from various sources and agencies, including LEDS and other state information system files, motor vehicle departments, NCIC, Oregon State Police Identification Services Section, etc. Each user must observe any restrictions placed on the use or dissemination of information by its source. It is LEDS' responsibility to advise user agencies of any restrictions which apply to any information accessed via the Law Enforcement Data System.

(1) Investigative Files: Information from investigative files maintained by LEDS, NCIC, or other agencies is for criminal justice use only and is not to be disseminated to any person for other than an official criminal justice purpose. Inquiries from the public regarding the status of an investigative file should be referred to the agency holding the case.

(2) Oregon Computerized Criminal History Records (CCH):

(a) Oregon criminal history records are available via LEDS, from the Oregon State Police Computerized Criminal History Files, to agencies which are authorized by the Oregon State Police.

(b) All agencies accessing the Oregon CCH files must have a signed agreement with the Oregon State Police and must adhere to Oregon Administrative Rules (OAR) 257-010-0025 through 257-010-0050 adopted by the Department of State Police.

(3) Federal Bureau of Investigation — Interstate Identification Index (FBI-III): The Federal Bureau of Investigation maintains the Interstate Criminal Identification Index which is available through LEDS. Access to this information is restricted to criminal justice agencies, as defined in OAR 257-015-0015(5), in the discharge of their official responsibilities, or to non-criminal justice agencies which provide services to criminal justice agencies, and which have signed a management control agreement with a criminal justice agency.

(4) Oregon Motor Vehicle and Driver Records:

(a) Oregon motor vehicle registration and driving records are the responsibility of the Oregon Department of Transportation, Driver and Motor Vehicle Services Branch (DMV). Government agencies in Oregon have access to these records via LEDS for authorized criminal justice purposes and for licensing, employment and regulatory purposes specifically authorized by State Law and approved in writing by DMV. Communication, dissemination, or use of this information for other than authorized purposes is prohibited.

(b) Authorized purposes do not include inquiries for the collection of taxes and parking violation fees or fines;

(c) Authorized purposes are specifically defined as follows:

(A) Enforcement of state traffic and criminal laws, and regulations;

(B) Identification of vehicles which have been towed or impounded by police;

(C) Screening of prospective or present agency employees who will have access to LEDS equipment or information;

(D) Identification of vehicles or individuals associated with criminal investigations;

(E) Review of driving and registration records for prosecution and sentencing functions;

(F) Processing of school bus driver applications by the State Department of Education;

(G) Access to vehicle registration information by fire and rescue agencies in emergency situations where waiting for the availability of a law enforcement officer would compound the emergency;

(H) The identification of vehicles or individuals associated with the Weighmaster enforcement function;

(I) Inquiries for licensing, employment and regulatory purposes authorized by State law and approved in writing by DMV.

(d) Inquiries for any purpose other than those specified in paragraphs (4)(c)(A)–(4)(c)(I) of this section must be directed to the department of Transportation, Driver and Motor Vehicle Services Branch (DMV) by telephone or by mail, together with the proper fee or account number. Violations of these policies may result in the suspension or termination of motor vehicle records access.

(5) National Law Enforcement Telecommunications System (NLETS) Access: NLETS provides a link to criminal justice information systems in other states for the purpose of point-to-point communications between criminal justice agencies and for access to information systems. Access to criminal history records in other states, via NLETS, is restricted to criminal justice agencies, as defined in OAR 257-015-0030(5). Access to motor vehicle records in other states and the use of the agency-to-agency communication facilities may be limited by NLETS policies or policies in other states.

(6) Corrections Offender Records:

(a) The Corrections Offender File contains records of persons under the active supervision (probation, parole, other non-custodial supervision) of a state or local or federal corrections agency. Entries and changes to this file are the responsibility of the supervising state or local or federal corrections agency.

(b) Access to Corrections offender records via LEDS is restricted to criminal justice agencies for criminal justice purposes.

(7) Administrative Messages: An administrative message (AM) is a free text message, from one agency to one or more agencies.

(a) All administrative messages transmitted via LEDS must be by the authority of an authorized user.

(b) Use of administrative messages via LEDS is restricted to criminal justice purposes, with the following exceptions:

(A) Emergency public safety messages such as storm warnings, disaster warnings, road conditions, etc., may be transmitted by agencies with responsibilities in these areas.

(B) Emergency inter-departmental and intra-departmental non-criminal justice business messages may be transmitted at any time. Non criminal justice non-emergency business messages may be transmitted between 12:00 and 1:00 p.m. Monday through Friday, between 5:00 p.m. and 8:00 a.m. Monday through Friday, or any time on weekends and holidays.

(C) Messages from agencies recruiting for personnel are not to be sent as all points bulletins or area broadcast messages. They may be sent to LEDS. LEDS will then compile and transmit a consolidated bulletin weekly, or as needed.

(D) Messages from agencies regarding equipment wanted, or for sale, are not to be sent as all points bulletins or area broadcast messages. They may be sent to LEDS. LEDS will then compile and transmit a consolidated bulletin weekly, or as needed.

(E) Announcements of meetings of recognized criminal justice professional organizations may be sent by the authorized officers of such organizations.

(F) Announcements of official inter-departmental or intra-departmental activities such as training classes, shooting tournaments and other organized professional competition or sports events, public service projects, etc., may be sent by the agency responsible for scheduling the activity. The addressees of such announcements should be limited to those participating in, or interested in, the activity.

(G) Use of LEDS for promotion of a particular political point of view (lobbying) regarding proposed legislation, elections, or other issues is prohibited. However, this does not preclude information announcements of association meetings, hearings, or other forums where such issues will be discussed.

(H) Non-criminal justice LEDS user agencies may send and receive administrative messages when the purpose of such messages

is within the context of their statutory or designated authority and approved purpose for LEDS access.

(8) Demonstration or Display of Records: Any public demonstration involving the display of records or communication received via LEDS shall be confined to information pertaining to the individual performing the demonstration or to appropriate test records.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

257-015-0070

System Security and Privacy

The data stored in the LEDS, NCIC, and other criminal justice information system files is documented criminal justice information. This information must be protected to ensure its integrity and its correct, legal and efficient storage, dissemination and use. It is incumbent upon and agency operating a LEDS terminal, or a terminal on another system which has access to the LEDS network, to implement the procedures necessary to make the terminal secure from any unauthorized use. All agency personnel authorized to access the LEDS network must be instructed in the proper use and dissemination of the information.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95

257-015-0080

Criteria for Terminal Access to LEDS

LEDS uses the following criteria to determine if an agency qualifies for placement of a LEDS terminal, or for access via a terminal on another system which has access to the LEDS network. Questions about whether or not an agency meets one of these criteria or whether LEDS access is appropriate will be resolved by the LEDS Advisory Committee:

(1) The agency is a criminal justice agency as defined in OAR 257-015-0030(5); or

(2) The agency is a service agency which provides computer services, dispatching support, or other direct support service to one or more criminal justice agencies, and which has signed a management control agreement with a criminal justice agency; or

(3) The agency is a non-criminal justice agency with a statutory requirement to use information or capabilities which may be available via LEDS, and use of a terminal by the agency will not adversely affect criminal justice agency users, and use of the terminal will be for a criminal justice purpose as defined in OAR 257-015-0030(6); or

(4) The agency is a non-criminal justice agency which provides information or capabilities needed by criminal justice agencies for a criminal justice purpose, and use of a terminal will improve the ability to provide such information or capabilities; or

(5) The agency is a non-criminal justice agency with statutory requirement to use information or capabilities which may be available via LEDS, and use of a terminal by the agency will not adversely affect criminal justice agency users, and use of the terminal will be for the specific non-criminal justice purpose(s) for which the agency is authorized access to the information or capabilities available via LEDS, and the agency has been approved for terminal access by the LEDS Advisory Committee.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

257-015-0090

Criteria for Revocation of Terminal or Informational Access to LEDS

The authorization of any agency to access the LEDS network or associated systems or to retain access is subject to revocation or cancellation by LEDS on the following grounds:

(1) Violation by the agency or a by a member of the agency of any state statute, administrative rule, or policy pertaining to the use of LEDS or associated systems.

(2) Violation of the security of the LEDS system.

(3) Accessing, retrieving or using information from or through the LEDS system for non-official or unauthorized purposes.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95

257-015-0100

Criteria for Computer Access to the LEDS Network

(1) A local or state government computer center may be given direct access to the LEDS network if the agency operating the computer is a criminal justice agency. If the agency operating the computer is not a criminal justice agency, then there must be a current management control agreement in effect between the computer center management and one of the criminal justice agencies served by the computer center.

(2) The criteria for allowing terminal access to LEDS are described in OAR 257-015-0080. A local or state computer system connected to LEDS may allow such access after giving written notification to the LEDS Director, including the identification of the agency requesting access, the terminal identifier, and other information needed by LEDS to ensure proper authorization.

Stat. Auth.: ORS 181.730(3)

Stats. Implemented: ORS 181.730

Hist.: OSP 1-1995, f. & cert. ef. 8-15-95; OSP 2-1998, f. & cert. ef. 10-6-98

DIVISION 20

PUBLIC RECORDS

257-020-0010

Public Records Access and Fees

(1) The Department of State Police may require any request for public records be made in writing.

(2) The Department may charge fees to cover its reasonable costs in responding to requests for public records:

(a) The Department will establish a schedule of fees. The schedule may be amended from time to time to reflect changes in the actual costs incurred by the Department. The fee schedule is available to any person from the Department without charge.

(b) The Department may prepare an estimate of the cost of responding to any request for public records, and the Department shall prepare an estimate when requested by the person making the request for records.

(c) The Department may require payment of all or a portion of estimated costs prior to making the requested records available.

(d) The Department at its discretion may waive fees.

Stat. Auth.: ORS 181.335 & 192

Stats. Implemented: ORS 192

Hist.: OSP 2-2002, f. 4-4-02, cert. ef. 4-5-02

DIVISION 25

FIELD SOBRIETY TESTS

257-025-0000

Statement of Purpose

The purpose of these rules is to implement and interpret ORS Chapters 801 and 813 with regard to field sobriety tests. The Department of State Police is empowered to make rules interpreting and implementing the described statutes. It is intended by these rules to standardize field sobriety tests throughout the state.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272 & 813.135

Hist.: OSP 5-1989, f. 12-27-89, cert. ef. 1-15-90; OSP 4-1996, f. & cert. ef. 7-16-96; OSP 5-1996(Temp), f. & cert. ef. 12-20-96; OSP 2-1997, f. & cert. ef. 5-22-97

257-025-0005

General Requirements of ORS 801.272

ORS 801.272 generally provides that the Oregon State Police approve by rule, after consultation with the Board on Public Safety Standards and Training (BPSST), physical and/or mental tests that enable a police officer or trier of fact to screen for or detect

evidence of physical condition that indicates probable impairment from intoxicating liquor, a controlled substance or a combination of intoxicating liquor and controlled substance. Tests meeting the requirements of ORS 801.272 are defined as field sobriety tests and are listed and described in OAR 257-025-0012 and 257-025-0020.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272

Hist.: OSP 5-1989, f. 12-27-89, cert. ef. 1-15-90; OSP 4-1992, f. & cert. ef. 12-16-92; OSP 4-1996, f. & cert. ef. 7-16-96

257-025-0010

Acts, Signs, and Symptoms of Intoxicant Impairment

The following acts, signs or symptoms are, typically, present in circumstances of intoxicant impairment. They are not field sobriety tests. A police officer may testify to their presence at any proceeding, criminal or civil, resulting from a DUII (driving under the influence of intoxicants) arrest. These acts, signs and symptoms include, but are not limited to:

- (1) Difficulty in walking or unusual walking.
- (2) Difficulty standing.
- (3) Difficulty following directions.
- (4) Odor of alcoholic beverage on the breath.
- (5) Flushed or pale appearance.
- (6) Speech difficulties or unusual speech patterns.
- (7) Disorderly or unusual conduct or demeanor.
- (8) Lack of muscular coordination or muscular tremors.
- (9) Evidence of mental disturbance.
- (10) Visual disorders or difficulties.
- (11) Sleepiness or drowsiness.
- (12) Dizziness.
- (13) Nausea or vomiting.
- (14) Mood swings.
- (15) Difficulty with divided attention.
- (16) Bloodshot and/or watery and/or glassy eyes.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272

Hist.: OSP 5-1989, f. 12-27-89, cert. ef. 1-15-90; OSP 4-1996, f. & cert. ef. 7-16-96; OSP 5-1996(Temp), f. & cert. ef. 12-20-96; OSP 2-1997, f. & cert. ef. 5-22-97

257-025-0012

Approved Field Sobriety Tests

(1) The following "field sobriety tests," as that phrase is defined by ORS 801.272, are approved by the Department of State Police, after consultation with the Board on Public Safety Standards and Training (BPSST), for use by sworn police officers:

- (a) Horizontal Gaze Nystagmus (HGN);
- (b) Walk and turn test;
- (c) One Leg Stand;
- (d) Modified Finger to Nose Test;
- (e) Finger Count;
- (f) Alphabet;
- (g) Counting;
- (h) Internal Clock;
- (i) Romberg Balance Test.

(2) The following additional approved tests may be performed by police officers who have completed the 8-hour "Drugs That Impair Driving" curriculum:

- (a) Lack of Convergence Test;
- (b) Pupil Size Estimation;
- (c) Pulse Rate Examination.

(3) Officers trained and approved by the Oregon State Police as a Drug Recognition Expert (DRE) may utilize any of the above listed tests plus the following approved tests which are only included in the DRE training. Tests which may be utilized upon successful completion of the 72-hours of DRE training include:

(a) Physical examination tests including the following: the person's vital signs (pulse, temperature and blood pressure); the person's psychophysical responses (coordination of mind and body); signs of administration of drugs (injection sites, etc.); eye responses (horizontal/vertical gaze nystagmus, eye convergence, pupil size under varying light intensities); and physical and behav-

ioral characteristics (muscle rigidity or flaccidity, hyperactivity, etc.).

(4) These rules are necessary for the implementation of ORS 801.272. No stop, arrest, civil or criminal proceeding commenced prior to the effective date of these rules is affected by the requirements of these rules.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272

Hist.: OSP 4-1996, f. & cert. ef. 7-16-96; OSP 5-1996(Temp), f. & cert. ef. 12-20-96; OSP 2-1997, f. & cert. ef. 5-22-97

257-025-0020

Conducting Approved Field Sobriety Tests

(1) Nothing in this rule prohibits the police officer from providing additional information to the person asked or requested to take the field sobriety tests that the officer considers convenient or appropriate. By way of example, but not limitation, the officer may orally describe some or all of the tests intended to be administered. Prior to the administration of each field sobriety test, the officer shall generally explain the field sobriety test to the person requested to take the test. The field sobriety tests shall be administered substantially as described below. Each field sobriety test, as described below, is specifically found to meet the requirements of ORS 801.272:

(a) Horizontal Gaze Nystagmus: The police officer must have received training in the administration of the Horizontal Gaze Nystagmus (HGN) test by the Oregon State Police, BPSST, or other governmental entity prior to its administration under this rule. The officer shall use a stimulus (such as a finger, pencil or penlight) held vertically in front of the person's face approximately 12 to 15 inches away from the person's face. The person tested must hold their head still. The officer, during the administration of the testing procedures, should conduct the testing procedures in the order listed unless circumstances or conditions dictate otherwise:

(A) The officer shall move the stimulus from the center of the face to the side, checking for the lack of smooth pursuit of the eyes as they track the stimulus;

(B) The officer shall check for distinct nystagmus at the maximum deviation of each eye;

(C) The officer shall check for the onset of nystagmus prior to 45 degrees in each eye.

(b) Walk and Turn Test: The officer will instruct the person, while standing, to place the person's left foot on a line (if no line is available, use a general direction for the person to walk an imaginary line) then place the right foot on the line with the heel of that foot ahead of the toes of the left foot. Instruct the person to take nine steps down the line, keeping arms at sides, looking at feet, and counting each step while walking heel-to-toe. Instruct the person how to turn (at the discretion of the officer) and to walk back in the same manner previously described. Generally demonstrate the test.

(c) One Leg Stand: Instruct the person to stand straight with the person's feet together and arms at the sides. Instruct the person to raise one foot approximately six inches off the ground while looking at the foot, and to count "1001, 1002, 1003," etc., until told to stop by the officer. The officer will then time the person for thirty seconds. The person will count 1001, 1002, 1003, etc., until told to stop by the officer. The officer may conduct the same test with the other foot. Generally demonstrate the test.

(d) Romberg Balance Test:

(A) Instruct the person to stand straight with feet together with arms at the person's sides.

(B) While standing as described above, instruct the person to tilt their head backward, close their eyes and estimate the passage of thirty seconds before opening their eyes again. Generally demonstrate the test.

(e) Modified Finger to Nose Test: Instruct the person to stand straight with heels together, eyes closed, arms at sides, and head tilted back. Instruct the person to touch the end of the person's nose with end of the index finger by bringing the person's arm and hand from the person's side directly to the end of the nose. Have the person repeat for the other index finger and repeat the test in the

same manner, if deemed appropriate. Generally demonstrate the test.

(f) Finger count: Have the person hold a hand out and touch each of the four fingers with the thumb of that hand and count 1-2-3-4, 4-3-2-1, or any other order deemed appropriate by the officer. Generally demonstrate the test.

(g) Alphabet: Have the person say the alphabet or any portion of the alphabet the officer may choose. This test may be used as part of the Romberg test.

(h) Counting: Have the person count any length of numbers, forward or backward, as the officer may require. This test may be used as part of the Romberg test.

(i) Internal Clock: Ask the person to tell you when 30 seconds has elapsed. Time the person's estimation.

(2) Pursuant to OAR 257-025-0012 a police officer may administer any, all, or none of the field sobriety tests described in this rule as deemed appropriate in the sole discretion of the police officer.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272

Hist.: OSP 5-1989, f. 12-27-89, cert. ef. 1-15-90; OSP 4-1992, f. & cert. ef. 12-16-92; OSP 4-1996, f. & cert. ef. 7-16-96; OSP 5-1996(Temp), f. & cert. ef. 12-20-96; OSP 2-1997, f. & cert. ef. 5-22-97

257-025-0025

Effective Date

These rules take effect upon filing.

Stat. Auth.: ORS 801.272

Stats. Implemented: ORS 801.272

Hist.: OSP 5-1989, f. 12-27-89, cert. ef. 1-15-90; OSP 4-1996, f. & cert. ef. 7-16-96; OSP 5-1996(Temp) f. & cert. ef. 12-20-96; OSP 2-1997, f. & cert. ef. 5-22-97

DIVISION 30

ALCOHOL BREATH TESTING

NOTE: OAR 257-030-0040 through 257-030-0100 apply to the Intoxilyzer 5000, which will be phased out and replaced. Upon completion of replacement of the Intoxilyzer 5000, OAR 257-030-0040 through 257-030-0100 will be repealed. OAR 257-030-0105 through OAR 257-030-0170 apply to the new instrument, the Intoxilyzer 8000, which are being phased into service in replacement of the Intoxilyzer 5000.

257-030-0040

Criteria for Approval of Breath Testing Equipment

Any instrument or equipment to be used for the testing of a person's breath to determine the alcohol content of the blood may be approved by the Oregon State Police if one or more of the following criteria are met:

(1) Submission by the manufacturer or distributor of the instrument of at least two reports of studies correlating blood analysis and breath tests performed with this instrument, conducted by two separate laboratories of governmental health or law enforcement agencies, or independent organizations, financially unrelated to the manufacturer or distributor of such instruments.

(2) Provision of a production model of the instrument by the manufacturer or distributor to the Oregon State Police for a sufficient period of time to allow Oregon State Police technician(s) to conduct sufficient investigation and laboratory tests to adequately ascertain accuracy and reproducibility of the breath testing equipment.

(3) Those instruments which have been found by the National Highway Traffic Safety Administration to conform to the model specifications for evidential breath testing devices, and which are listed on the **Conforming Products List in the Federal Register**.

(4) Subsequent series of above instruments, so long as the subsequent changes and series do not diminish the instrument's ability to accurately determine blood alcohol content.

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

Stat. Auth.: ORS 183.335 & 813

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

257-030-0050

Definitions

As used in these rules, "Chemical Test" and "Chemical Analysis" both mean a quantitative analysis for alcohol by means of direct or indirect measurement of physicochemical technique performed on a sample of breath.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92

257-030-0060

Approved Breath Testing Equipment

The following breath testing equipment is approved under OAR 257-030-0040 for performing chemical analysis of a person's breath: The Intoxilyzer 5000:

(1) Reports of correlation studies furnished by the manufacturer(s) are maintained by the Oregon State Police.

(2) Correlation studies performed with the Intoxilyzer 5000 by Oregon State Police technician(s) are incorporated as **Appendix 1: Studies Performed with the Intoxilyzer® 5000**.

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

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 2-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0070

Approved Methods for Operating the Intoxilyzer 5000

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 5000:

(1) Test Identification: A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument.

(2) Pre-Test Requirement:

(a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;

(b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit to test the alcoholic content of blood.

(c) There is no requirement that the subject rinse the mouth or remove dentures.

(3) Test Procedure:

(a) Ensure that the "Power" switch is on and the instrument is out of the "Not Ready" stage;

(b) Push "Start Test" button to initiate testing sequence;

(c) Insert test record card;

(d) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample when "Please Blow" appears on the display;

(e) Remove the test record card with printout of test results.

(4) Testing Sequence: The testing sequence the instrument follows will be:

(a) Diagnostics: The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational parameters are proper, the instrument will proceed to the next step;

(b) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(c) Subject Test: At this time the instrument will display "Please Blow". The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The subject test phase has been completed and will proceed to the next step when:

(A) The instrument has accepted the breath sample and displayed the result; or

(B) The subject test is aborted by action of the operator or by the instrument; or

(C) The three minute request period has lapsed; or

(D) The operator has depressed the Start Test button to indicate a refusal.

(d) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are proper the instrument will print the testing sequence information and display "Test Complete". If the post sample check is improper the instrument will abort the test and an error message will be displayed;

(e) Evidence Card: The final phase of the analysis is the printing of the evidence card. If all parameters and every operational aspect of the instrument were proper, a completed evidence card is received. If at any time there was a malfunction, error or condition that would affect the validity of the test, or any section of the instrument was not in perfect working order, the test would have been aborted and a completed evidence card would not be received.

(5) "Completed" Evidence Card: A "Completed" evidence card is one which indicates a breath test result, a refusal, or the presence of an interfering substance:

(a) An evidence card obtained using the "Reprint" option contains the identical information as would be printed on the original card and may be used in addition to or in place of the original test card;

(b) The operator shall record the following information on the evidence card: Name and date of birth of the subject tested, operator's name and breath test permit number;

(c) If the subject did not provide an adequate breath sample within the three minute request period, the instrument will indicate "Insufficient" and print an asterisk (*) before the "Subject Test" result, and "*Insufficient Sample — Value printed was highest obtained". The value printed is an accurate measurement of the sample provided and is equal to or less than the subject's actual blood alcohol value;

(d) If during the three minute request period the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button to terminate the breath test request phase. The instrument will indicate "Refused" and print "Subject Test Refused". A printed test record card, as described in this subsection, is not required to document the operator's decision to terminate the breath test request phase as "Refused".

(e) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, the message "Interf Detected" will be displayed and the test will be aborted. The printout on the test record will indicate "Invalid Test *Interferant Detected". This is a completed test and the operator should not restart the testing sequence.

(6) Incomplete Evidence Card: The following conditions will result in an incomplete evidence card:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the breath pressure sensor at any time within the three minute request period, the instrument will indicate "No Sample Given" and print an asterisk (*) before "Subject Test" and "*No Sample Given". If the evidence card indicates "*No Sample Given", the operator should restart the testing sequence and proceed until a completed evidence card is obtained or until the subject refuses;

(b) If the operator receives an error message and print out from the instrument, such as "Invalid Test" (not to include "Invalid Test *Interferant Detected"), "Residual Alcohol Present", "Inhibited.RFI", "Invalid Mode", "Check Ambient Conditions", etc., the operator should take corrective action as outlined in the Intoxilyzer 5000 Student Manual, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a

willful act, to follow the instructions of the operator. A printed test record card, as described in section (5) (d), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (5)(b) of this rule does not invalidate the test result obtained if the procedures were followed.

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

Stat. Auth.: ORS 183.335 & 813

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 2-1993(Temp), f. & cert. ef. 9-23-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 1-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0080

Qualifications of Breath Test Equipment Operators

(1) No individual shall operate approved breath testing equipment to determine the alcoholic content of the blood of a person in accordance with the provisions of ORS 813.160 unless that individual has been issued a permit to operate such equipment by the Oregon State Police.

(2) To qualify for training and to obtain a permit for the operation of approved breath testing equipment, an individual must be a police officer as defined in ORS 801.395 or a trained technician of the Oregon State Police. The term police officer includes reserve police officer.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

257-030-0090

Training for Operators of Breath Test Equipment

(1) The Oregon State Police, or instructors approved by the Oregon State Police will provide a course of instruction as provided in ORS 813.160.

(2) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required. Each officer or technician obtaining a passing grade will be issued a permit by the Oregon State Police stating the method and equipment the officer or technician is qualified to operate.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93

257-030-0100

Certification of Accuracy of Breath Test Equipment

A trained technician of the Oregon State Police will conduct an accuracy test of approved breath testing equipment and shall certify the accuracy of the equipment if accuracy test performance is within a range of 0.010 high to 0.020 low of the expected value. The testing can be performed by either an on site test, or by remote testing via telephone modem utilizing a computer. The computerized testing will utilize a security system to ensure the integrity of the scientific testing of the breath test equipment.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

257-030-0105

Definitions; Severability

(1) As used in these rules, "Chemical Test" and "Chemical Analysis" of a person's breath both mean the quantitative analysis for alcohol by means of direct or indirect measurement of physico-chemical technique. Two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result shall constitute a "Chemical Test" of a person's breath.

(2) A "valid breath sample" means a sample of a person's breath provided in such a manner to be acceptable for analysis by the instrument.

(3) Severability: If any part or provision of OAR 257-030-0105 to 257-030-0170 or the application thereof is held invalid, the remaining part(s) or provision(s) shall remain in full force and effect.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0110

Criteria for Approval of Breath Testing Equipment

Any instrument or equipment to be used for the testing of a person's breath to determine the alcohol content of the blood may be approved by the Oregon State Police if one or more of the following criteria are met:

(1) Submission by the manufacturer or distributor of the instrument of at least two reports of studies correlating blood analysis and breath tests performed with this instrument, conducted by two separate laboratories of governmental health or law enforcement agencies, or independent organizations, financially unrelated to the manufacturer or distributor of such instruments.

(2) Provision of a production model of the instrument by the manufacturer or distributor to the Oregon State Police for a sufficient period of time to allow Oregon State Police technician(s) to conduct sufficient investigation and laboratory tests to adequately ascertain accuracy and reproducibility of the breath testing equipment.

(3) Those instruments which have been found by the National Highway Traffic Safety Administration to conform to the model specifications for evidential breath testing devices, and which are listed on the **Conforming Products List in the Federal Register**.

(4) Subsequent series of above instruments, so long as the subsequent changes and series do not diminish the instrument's ability to accurately determine blood alcohol content.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0120

Approved Breath Testing Equipment

The following breath testing equipment is approved under OAR 257-030-0110 for performing chemical analysis of a person's breath: The Intoxilyzer 8000: Correlation studies performed with the Intoxilyzer 8000 by Oregon State Police technician(s) are incorporated as **Appendix 2: Studies Performed with the Intoxilyzer® 8000**.

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

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0130

Approved Methods for Operating the Intoxilyzer 8000

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 8000:

(1) **Test Identification:** A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument. Failure to record information specified in this section does not invalidate the test result obtained if the testing procedures were otherwise followed.

(2) Pre-Test Requirement:

(a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;

(b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit for the testing of alcoholic content of blood;

(c) The Pre-Test Requirement (observation period) does not require that the subject rinse the mouth or remove dentures prior to providing a breath sample;

(d) The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the Pre-Test Requirement.

(3) **Test Procedure:** The operator shall administer the test (consisting of two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result) as follows:

(a) Ensure that the instrument display indicates "Ready to Start";

(b) Push "Start Test" button to initiate the test sequence;

(c) Once the operator initiates the testing sequence by pressing the "Start Test" button, the testing sequence shall be conducted without interruption until:

(A) The instrument completes the test sequence and the operator obtains a completed test report; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The operator or the instrument aborts the testing sequence.

(d) Using the instrument's bar code scanner and/or keyboard, the operator shall enter sufficient information to:

(A) Identify the operator conducting the test; and

(B) Establish that the operator possesses a valid operator permit and PIN combination. The operator should also enter sufficient information to link the test report to the test subject. The instrument will start the testing sequence when the operator's permit has been validated and the data entry process is complete;

(e) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample through the mouthpiece when "Please blow into mouthpiece to activate tone" appears on the display;

(f) Continued Observation Period: The operator shall continue to observe the subject and remain certain that the subject does not take anything by mouth (drink, smoke, eat, take medication(s), etc.), vomit, or regurgitate liquid from the stomach into mouth until the second breath sample request period is completed. The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the observation period.

(g) When "Please blow into mouthpiece to activate tone" again appears on the display, have the subject provide a second breath sample;

(h) Once the instrument accepts the second breath sample, it will automatically perform an analysis of a gaseous sample containing a known alcohol vapor concentration ("control sample") to test the accuracy and proper working order of the instrument. The operator does not need to take any action with the instrument at this time other than to monitor the progression of the instrument through the remainder of the test sequence. If all parameters are met, the instrument will proceed to the next step;

(i) When the instrument has successfully completed the test sequence, the operator will be afforded an opportunity to enter into and review comments added to the test report. The test report will then be printed with the test result.

(k) If at any time the operator has questions concerning the breath testing procedures or sequence, the operator should consult the **Intoxilyzer 8000 Operator's Guide** located near the instrument.

(4) **Testing Sequence:** The instrument will conduct the test as follows:

(a) Test Authorization: The operator shall enter into the instrument a permit and Personal Identification Number (PIN) information through the bar code scanner and/or keyboard for the purpose of: (1) identifying the operator conducting the test, and (2) establishing that the operator possesses a valid operator permit and PIN combination. Only operators who possess both a valid permit and PIN will be authorized to conduct a test sequence. If all parameters are met, the instrument will proceed to the next step;

(b) Data Entry: The operator should enter information into the instrument through the bar code scanner and/or keyboard for the purposes of linking a breath test document to the test subject. The instrument will proceed to the next step when the data entry process is complete;

(c) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(d) Diagnostics: The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational components and standards are within proper parameters, the instrument will proceed to the next step;

(e) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(f) Breath Sample: At this time the instrument will display "Please blow into mouthpiece to activate tone." The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The breath sample collection phase has been completed and will proceed to the next step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject has refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(g) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(h) Air Blank: In preparation for the next breath sample, the instrument will delay for approximately ninety (90) seconds and then will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(i) Breath Sample: At this time, the instrument will again display "Please blow into mouthpiece to activate tone." The subject has approximately three minutes to comply with this request. The breath sample collection phase is complete and the instrument will proceed to the next step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(j) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(k) Control Sample: The instrument will perform an analysis of a gaseous sample containing a known alcohol vapor concentration, the result of which must be within a range of 0.010 high to 0.020 low of the expected value, to test the accuracy and proper working order of the instrument. If all parameters are met, the instrument will proceed to the next step;

(l) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(m) Comments: The instrument will display three (3) prompts for the operator to enter any observations made during the test sequence. This information will be printed on the test report by the instrument. Entry of comment information is not required and does not preclude the operator from placing handwritten comments on

the test report. The instrument will proceed to the next step when the comment entry process is complete.

(n) Test Report: The final phase of the testing sequence is the printing of the test report. If all parameters and every operational aspect of the instrument were proper, a completed test report is produced by the instrument. The test report will be titled "Breath Test Report" with the result of the chemical test printed in the "Test Result" box. If at any time there was a malfunction, event, or condition that would affect the validity of the test, or any section of the instrument was not in correct working order, the instrument would have aborted the test sequence and not produced a completed test report.

(5) **Completed Test Report:** A "Completed" test report is one which indicates a numeric test result, a refusal, or the presence of an interfering substance:

(a) A test report obtained using the "Reprint" option contains the identical information as would be printed on the original report and may be used in addition to or in place of the original test report. A "Reprint" may be performed either locally at the instrument location or remotely by the Oregon State Police;

(b) If during either of the breath sample collection periods, the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button or the "R" key on the instrument keyboard to terminate the breath testing sequence. The instrument will indicate "Refused" on the display and a test result of "Refused" will be produced. A printed test report, as described in this subsection, is not required to document the operator's decision to terminate the breath test request phase as refused.

(c) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, it will display the message "Interfering Substance Detected" and abort the testing sequence. The printout on the test report will indicate "Interfering Substance" and "*Invalid Test — Interfering Substance Detected". This is a completed test and the operator should not restart the testing sequence.

(6) **Incomplete Test Report:** The following conditions will result in an incomplete test report:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the minimum breath flow requirements of the instrument at any time within either of the three minute breath sample collection periods, the instrument will indicate "No Sample Given" and print "*Invalid Test — No Sample Given". If the test report indicates "No Sample Given", the operator should restart the testing sequence and proceed until a completed test report is obtained;

(b) If the operator receives an exception message and printout from the instrument, such as "*Invalid Sample — Residual Alcohol Present", or "*Invalid Test —" (not to include "*Invalid Test — Interfering Substance Detected"), etc., the operator should consult the "Suggested Corrective Action" outlined near the bottom of the test report, take appropriate action, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a willful act, to follow the instructions of the operator. A printed test report, as described in section (5)(b), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (4)(b) of this rule does not invalidate the test result obtained if the testing procedures were otherwise followed.

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

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0140

Determining Agreement of Breath Samples Within a Testing Sequence

Agreement between two valid breath samples within a testing sequence is established when the subject sample measurements agree within plus or minus ten percent of their mean, inclusive of the upper and lower bounds of the range. If the instrument establishes agreement, the lower breath sample measurement shall be truncated to two decimal places and reported as the chemical test result. If the subject sample measurements do not agree, the instrument will abort the testing sequence and display "Sample Correlation Failure".

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0150

Qualifications of Breath Test Equipment Operators

(1) No individual shall operate approved breath testing equipment to determine the alcoholic content of the blood of a person in accordance with the provisions of ORS 813.160 unless that individual has been issued and maintains a valid permit to operate such equipment by the Oregon State Police.

(2) To qualify for training and to obtain a permit for the operation of approved breath testing equipment, an individual must be a police officer as defined in ORS 801.395 or a trained technician of the Oregon State Police. The term police officer includes reserve police officer.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0160

Training for Operators of Breath Test Equipment

(1) The Oregon State Police, or instructors approved by the Oregon State Police will provide a course of instruction as provided in ORS 813.160.

(2) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required. Each officer or technician obtaining a passing grade will be issued a permit by the Oregon State Police stating the method and equipment the officer or technician is qualified to operate.

(3) Upon issuance of a permit to operate by the Oregon State Police, the operator shall select a Personal Identification Number (PIN) to be used by the Oregon State Police to establish the operator's operator permit and PIN combination. The operator permit number shall be the operator's Department of Public Safety Standards and Training (DPSST) number. The operator's permit and PIN combination shall be unique and kept confidential by both the operator and the Oregon Department of State Police.

(4) Expiration:

(a) Permits shall expire at intervals not to exceed three (3) years from the original date of issue, unless renewed for an additional three (3) year period.

(5) Renewal:

(a) Operators that successfully complete the permit renewal process shall be issued a new expiration date not to exceed three years from the date of renewal. The issuance of a renewal date shall have the effect of extending the same authorizations granted under the original permit to operate breath testing equipment.

(6) Suspension and Re-instatement of Permits:

(a) Operators that do not successfully complete the permit renewal process before the expiration date assigned to the individual permit shall have their authorization to operate breath testing equipment suspended.

(b) Upon suspension of a permit, an operator shall be granted a "grace period" not to exceed ninety (90) days in which to complete the renewal process without further penalty or reduction in operator status. Upon successful completion of the renewal process,

the operator's permit shall be re-instated with the same authorizations issued under the original permit.

(c) Failure to complete the renewal process within the ninety (90) day grace period shall result in termination of the operator's permit.

(7) Termination and Revocation of Permits:

(a) Pursuant to ORS 813.160, operator permits are subject to termination and revocation at the discretion of the Department of Oregon State Police.

(b) Termination of an operator permit shall occur at 12:01 a.m. upon the ninety-first (91st) day after the date of expiration assigned to the permit.

(c) Revocation of an operator permit shall occur for any of the following reasons including, but not limited to:

(A) Disqualification of operator status or eligibility for training under OAR 257-030-0150;

(B) Failure to adhere to approved methods and procedures for operating breath testing equipment under ORS 813.160;

(C) For any other conduct deemed contrary to the Implied Consent Program at the discretion of the Department of State Police.

(d) An operator whose permit has been terminated or revoked by the Department may be eligible for reinstatement of their permit upon successful completion of an approved course of instruction as provided in ORS 813.160.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

257-030-0170

Certification of Accuracy of Breath Test Equipment

Pursuant to ORS 813.160(b)(C), a trained technician of the Oregon State Police shall conduct an accuracy test of approved breath testing equipment and certify the accuracy of the equipment if accuracy test performance is within a range of 0.010 high to 0.020 low of the expected value. The testing can be performed by either an on site test, or by remote testing via telephone, modem, or Internet connection utilizing a computer. The computerized testing will utilize a security system to ensure the integrity of the scientific testing of the breath test equipment.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

DIVISION 35

USE OF CRIME DETECTION LABORATORIES EQUIPMENT

257-035-0005

Use of Crime Detection Laboratories Equipment

"Services" as used in ORS 181.080 means the operation of the equipment by authorized Department personnel and excludes the private use of laboratory facilities.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 181.080

Hist.: OSP 2-1985, f. & ef. 10-1-85

DIVISION 40

ELECTRONIC SIGNALING DEVICES

257-040-0005

Introductory Provisions

(1) Nothing in these rules is intended to impose any duty or any standard of care or conduct on any public or private body, entity or person to initiate or undertake any search and rescue or related operation, to conduct any such operation in any particular manner, or to provide any form of monitoring of radio signals in any geographic area.

(2) The distributor of electronic signaling devices may require that users of the devices execute a release or waiver form under which users absolve the distributor or liability based on a claim that the device failed to function successfully, but no such release shall apply with respect to wilful or wanton misconduct or to distribution of a device with actual knowledge that it fails to meet the specifications in **Exhibit 1** of these rules.

(3) Distributors shall require users to report to the distributor, its agents or employees any activation, dropping, abuse, damage or impacts sustained by the devices.

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

Stat. Auth.: ORS 401.635

Stats. Implemented: ORS 401.605 - 401.635

Hist.: OSP 1-1988(Temp), f. 4-11-88, cert. ef. 4-8-88; OSP 2-1988, f. 8-17-88, cert. ef. 10-1-88

257-040-0010

Distribution Procedures

(1) Prior to giving any users custody of an electronic signaling device, the distributor must:

(a) Test the device for minimum power and so indicate on the user log (a Model User Log is attached as **Exhibit 1**);

(b) Visually inspect the device for external signs of damage and so indicate on the user log;

(c) Visually ascertain that the real on the device is intact and so indicate on the user log;

(d) Provide the user a copy of the written device instructions and a copy of the user's fact sheet (a Model User's Fact Sheet is attached as **Exhibit 2**), alert the user to any use instructions on the device or its harness, and obtain the user's written acknowledgement that the user has read the written instructions and witnessed the minimum power test;

(e) Enter his or her initial on the "Check Out Procedures" portion of the user log.

(f) The distributor shall not permit the use of any device that fails any test or inspection required above. However, where the visual inspection discloses only superficial damage of the device, as opposed to breakage of any component or a breach of the case, the device may be used it it passes the other tests and inspections.

(2) The distributor must obtain in writing the name, home or business address, telephone number if any, and state-issued license to operate a motor vehicle or equally reliable identification, such as Oregon Division of Motor Vehicles identification card.

(3) The distributor may require users to provide other identifying information, to pose security or a deposit to ensure the return of the device, take other customary business measures to prevent loss of or damage to the devices, and may limit the geographic area in which the device may be transported or used.

(4) Nothing in these rules shall be construed as requiring a distributor to record the anticipated return time of the user or the device, nor as requiring a distributor to notify any authority in the event a device is not timely returned.

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

Stat. Auth.: ORS 401.635

Stats. Implemented: ORS 401.605 - 401.635

Hist.: OSP 1-1988(Temp), f. 4-11-88, cert. ef. 4-8-88; OSP 2-1988, f. 8-17-88, cert. ef. 10-1-88

257-040-0020

Return of a Device to a Distributor

(1) On the return of a device to a distributor, the distributor must:

(a) Test the device for minimum power and so indicate on the user log;

(b) Visually inspect the device for external signs of damage and so indicate on the user log;

(c) Visually inspect the seal on the device and record the seal number on the user log;

(d) Enter his or her initials on the "Check In Procedures" portion of the user log.

(2) These rules impose only minimum requirements. Nothing in these rules is intended to prevent distributors from using addi-

tional forms, agreements or leases, or from requiring compensation for use of the devices.

(3) Distributor may use their own instructions, forms, logos and letterheads as written device instructions, user's fact sheets and users logs. However, any user's fact sheets and user logs shall contain, as a minimum, the information set forth in **Exhibits 1 and 2**, which are incorporated into these rules.

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

Stat. Auth.: ORS 401.635

Stats. Implemented: ORS 401.605 - 401.635

Hist.: OSP 1-1988(Temp), f. 4-11-88, cert. ef. 4-8-88; OSP 2-1988, f. 8-17-88, cert. ef. 10-1-88

257-040-0030

Specifications

(1) The Department of State Police has adopted the document entitled: "**Specifications for the Electronic Signaling Device Pilot System (ESD), March 28, 1988, Oregon State Police, Advisory Committee — Senate Bill 915,**" as the specifications required by ORS 401.635 for electronic signaling devices. Those specifications are incorporated into these rules and are available at the Oregon Department of State Police, Communications Division, 107 Public Service Building, Salem, OR 97310, (503) 378-2575).

(2) Nothing in these rules is intended to restrict the development of or commerce in electronic signaling devices. Upon the written request of a manufacturer or distributor of such devices, the Department of State Police will consider additions or amendments to the specifications, provided that the proposed changes will not impair the reliability of electronic location devices, the safety of climbers or wilderness travelers, and will comply with federal and state laws regulating electronic transmitters and transmissions.

Stat. Auth.: ORS 401.635

Stats. Implemented: ORS 401.605 - 401.635

Hist.: OSP 1-1988(Temp), f. 4-11-88, cert. ef. 4-8-88; OSP 2-1988, f. 8-17-88, cert. ef. 10-1-88

DIVISION 45

VEHICLE TOW HEARING PROCESS

257-045-0010

Purpose and Authority

(1) These administrative rules govern the hearing process regarding vehicles that will be, or have been taken, into custody by the department pursuant to ORS 819.110 or 819.120.

(2) These administrative rules are promulgated pursuant to Oregon Laws 2009, chapter 371 (HB 2738), which require that if the department is the authority that takes a vehicle into custody pursuant to ORS 819.110 or 819.120 that is located upon the right of way of a state highway, an interstate highway that is part of the National System of Interstate and Defense Highways, or state property, the department is responsible for notices and hearings related to the vehicle taken into custody.

Stat. Auth.: OL 2009, ch. 371 (HB 2738)

Stats. Implemented: OL 2009, ch. 371 (HB 2738)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

257-045-0020

Scope of Hearing

(1) The owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle, may request a hearing to contest the validity of the towing and custody of the vehicle.

(2) The owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle, may request a hearing to contest the reasonableness of the charges for towing and storage only if the department used its own personnel, equipment and facilities in conducting the tow or in storing the vehicle.

Stat. Auth.: OL 2009, ch. 371 (HB 2738)

Stats. Implemented: OL 2009, ch. 371 (HB 2738)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

257-045-0030

Notice and Request for Hearing

(1) If the department proposes to take or has taken custody of a vehicle in accordance with ORS 819.110 or 819.120, the department shall provide notice as described in ORS 819.170 or 819.180.

(2) A request for hearing shall be made in writing to the department at the address contained in the notice.

(3) Requests for hearing must be received by the department by 5:00 p.m. of the fifth business day (Saturdays, Sundays, and Holidays excluded) following the date of the posting or mailing of the notice. For purposes of this rule, "received by the department" means:

(a) Personally delivered to the Station Commander of the local patrol office in the area in which the vehicle will be, or has been, taken into custody and towed;

(b) Delivered by mail to OSP Headquarters, Patrol Services Division, 255 Capitol Street NE, 4th Floor, Salem, Oregon 97310; or

(c) Received by facsimile machine at telephone number (503) 391-5910.

(4) Requests for hearing shall contain at least the following information:

(a) Petitioner's full name;

(b) Petitioner's complete mailing address;

(c) Telephone number where petitioner can be called between 8 a.m. and 5 p.m.;

(d) A statement of the grounds upon which the person believes the custody and towing of the vehicle is not justified; and

(e) Dates and times within the immediate future that the petitioner cannot appear at a hearing.

(5) Untimely requests for hearing shall not be granted by the department.

(6) A person who requests a hearing but who fails to appear for a scheduled hearing shall not be entitled to another hearing unless the person provides written good cause to the department for the person's failure to appear. For purposes of these administrative rules, "good cause" shall be limited to serious impediments that affect a person's ability to attend a scheduled hearing, such as court conflicts, the death of an immediate family member of the person (verified to the satisfaction of the department), the person's physical incapacity (verified by a physician to the satisfaction of the department), or the person's service in the US Armed Forces, military reserves, National Guard or the organized militia.

Stat. Auth.: OL 2009, ch. 371 (HB 2738)

Stats. Implemented: OL 2009, ch. 371 (HB 2738)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

257-045-0040

Hearing Process

(1) Within 72 hours of its receipt of a timely request for hearing, the department shall schedule a hearing. The 72 hour period shall not include Saturdays, Sundays, or Holidays.

(2) The department shall provide notice of the hearing to the following persons:

(a) The person requesting the hearing;

(b) The owner(s) of the vehicle; and

(c) Any lessors or security interest holders of the vehicle, as shown in the records of the Oregon Department of Transportation.

(3) Except as otherwise provided in these administrative rules, actions taken by the department or the hearing officer in conducting the hearing or issuing a written order are not subject to the Oregon Administrative Procedures Act, ORS Chapter 183.

(4) The Superintendent of the Oregon State Police shall designate officers, officials, or employees of the department to act as hearing officers under these administrative rules, except that a hearing officer shall not be an officer, official, or employee of the department who participated in any determination or investigation related to the actual or proposed taking into custody and removal of the vehicle that is the subject of the hearing. In such case, the Superintendent shall designate another officer, official, or employee of the department to act as the hearing officer.

(5) Hearings shall be conducted by telephonic means, unless the person requesting the hearing provides written justification to the department why the hearing should be conducted in person. In the event a hearing is conducted in person, the hearing shall be conducted at the Oregon State Police Headquarters located in Salem, Oregon, or at any other location designated by the hearing officer.

(6) Hearings shall be informal in nature. Hearings shall be recorded and the presentation of evidence shall be consistent with the requirements of ORS 183.450.

(7) If, after the hearing and by substantial evidence on the record, the hearing officer determines that the towing of the vehicle was invalid, the hearing officer shall issue a written order stating the facts of the vehicle tow and the hearing officer's reasoning why the vehicle tow is invalid. The hearing officer's written order shall further order that:

(a) The department shall pay the costs of towing and storage fees as soon as reasonably possible;

(b) The department shall immediately notify the tow company responsible for towing and storing the vehicle that the department is the party responsible for the charges and fees incurred in towing and storing the vehicle;

(c) The vehicle shall be immediately released to the person having a right of possession to the vehicle upon the department notifying the towing company of the department's liability for the towing charges and storage fees;

(d) The person to whom the vehicle is released is not liable for any towing or storage costs or fees; and

(e) If the person to whom the vehicle is to be released has already paid the towing and storage charges for the vehicle, the department shall reimburse the person for those towing and storage charges upon presentation, to the department's satisfaction, of proof of payment of those charges.

(8) If, after the hearing and by substantial evidence on the record, the hearing officer determines that the towing of the vehicle was valid, the hearing officer shall issue a written order stating the facts of the vehicle tow and the hearing officer's reasoning why the vehicle tow is valid. The hearing officer's written order shall further order that the vehicle shall remain in custody until the party claiming the vehicle pays the costs of the department's hearing, if any, as well as all towing and storage costs for the vehicle. In the event that the department has not yet taken the vehicle into custody, the hearing officer shall further order the removal of the vehicle.

(9) In the event that the department has used its own personnel, equipment and facilities for the towing and storage of a vehicle and the owner of the vehicle, a person entitled to possession of the vehicle, or a person with a recorded interest on the title of the vehicle requests a hearing to contest the reasonableness of the charges for towing and storage, the hearing officer shall make written findings and conclusion as to the reasonableness of the tow charges and storage fees in his or her written order.

(10) The hearing officer shall provide a copy of a written order to the person requesting a hearing.

(11) The department shall conduct only one hearing for each vehicle taken into custody or towed under ORS 819.110 or 819.120, even if an otherwise interested party fails to appear at a scheduled hearing, unless the party failing to appear provides written good cause to the department for the interested party's failure to appear.

Stat. Auth.: OL 2009, ch. 371 (HB 2738)

Stats. Implemented: OL 2009, ch. 371 (HB 2738)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

257-045-0050

Appeals

The determination of the hearing officer is final and not subject to appeal.

Stat. Auth.: OL 2009, ch. 371 (HB 2738)

Stats. Implemented: OL 2009, ch. 371 (HB 2738)

Hist.: OSP 4-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 6-29-10; OSP 2-2010, f. 6-1-10, cert. ef. 6-30-10

DIVISION 50

NON-PREFERENCE TOWING

257-050-0020

Policy and Purpose

It is the policy and purpose of the Oregon State Police that:

(1) To further the Oregon State Police's interest in the prompt and orderly removal of disabled or abandoned vehicles from the highways of the State of Oregon, and to meet the towing needs of the Department, the Department has established a non-preference tow program as defined in Oregon Administrative Rules (OAR) 257-050-0020 to 257-050-0200. The program, in part, consists of a non-preference tow rotational list comprised of qualified tow businesses. The non-preference tow rotational list is computer generated and does not favor any one qualified tow business. The non-preference tow rotational list is not a guarantee of business to the towing industry by the Department. Qualified tow businesses participating in the non-preference tow rotational list understand that they may be called upon to conduct vehicle tows at the operational need of the Oregon State Police, as may be determined by the requesting State Police Officer or Department member.

(2) Because the non-preference tow rotational list is designed to meet the towing needs of the Department, tow businesses do not need to be on the list to conduct business with the general public in the State of Oregon.

(3) The Oregon State Police do not charge any fees to the owner or driver of a vehicle towed under its non-preference tow program. Therefore, the Department does not require any qualified tow business participating in the non-preference tow rotational list to charge any fees to the owner or driver of a vehicle towed under the Department's non-preference tow program. Accordingly, the Department shall not establish, recommend, or in any way dictate the cost of a non-preference tow conducted by a qualified tow business under the Department's non-preference tow program. It is also the policy of the Department that qualified tow businesses that participate in the Department's non-preference tow rotational program shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(4) Qualified tow businesses called upon by the Oregon State Police to conduct non-preference tows must reflect the highest standards of professionalism. Qualified tow businesses that, through their conduct or actions, abuse the non-preference tow system or the integrity, trust or security of the Oregon State Police shall be removed from the non-preference tow rotational list through the suspension and/ or revocation processes.

Stat. Auth.: ORS 181.440

Stats. Implemented: 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0040

Authority

(1) These Administrative Rules are promulgated pursuant to ORS 181.440, which permits the Superintendent of the Oregon State Police to make rules governing the eligibility of tow businesses to be placed and remain on any list of qualified tow businesses used by the Department when it requests towing services on behalf of any person.

(2) All qualified tow businesses providing service to the public and the Department through calls received from the Oregon State Police shall conduct their operation in accordance with all applicable federal, state, and local laws, rules, or their equivalent.

(3) In the event the Oregon State Police enters into an agreement with any other state agency, allowing that state agency the use of the non-preference tow rotational list, then these rules shall apply to tow requests made by that state agency.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09

cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0050

Definitions

(1) "Abandoned Auto" or "Abandoned Vehicle" — A vehicle, as defined in ORS 819.110, that has been parked or left standing upon any public way for a period in excess of 24 hours without authorization by statute or local ordinance.

(2) "Area Commander" or "Station Commander" — The local commanding officer of an area established by the Oregon State Police.

(3) "Business Records" — Those records maintained by a qualified tow business that relate to the non-preference tows and which include, but are not limited to, tow bills, letters of appointment, and inspection sheets.

(4) "Certified" or "Certification" — The successful completion by an employee of a tow business of a written test administered by a nationally recognized towing affiliated body/organization relating to the level of towing the employee operates.

(5) "Convicted" — An adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(6) "Denial" — Action taken by the Department in refusing to issue a letter of appointment to a tow business.

(7) "Department" — The Department of State Police, also referred to as "Oregon State Police," and its employees.

(8) "Employee" — Any person in the service of a tow business under contract of hire, express or implied, oral or written, where the business has the power or right to control and direct the employee in the material details of how the work for the business is to be performed.

(9) "Fencing" — Permanent fencing meeting zoning requirements, with a minimum height of six (6) feet.

(10) "Hazardous Vehicle" — A vehicle, as defined in ORS 819.120, that is disabled, abandoned, parked, or left standing unattended on a road or highway right of way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway given that term in OAR 734-020-0147.

(11) "Hearings Officer" — A person appointed by an agency or entity contracted by the Department of State Police to conduct contested case hearings.

(12) "Highway" — Every public way, road, street, thoroughfare and place including bridges, viaducts and other structures within the boundaries of the state open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right (ORS 801.305).

(13) "Inspector" — A commissioned officer or other appointed representative of the Oregon State Police who has been designated by the Department to examine tow trucks and qualified tow businesses.

(14) "Letter of Appointment" — A letter issued by the Department that authorizes a tow business to tow abandoned or disabled vehicles on a non-preference rotational basis for the Oregon State Police.

(15) "Non-Preference tow rotational List" or "Non-Preference List" — The list of qualified tow businesses maintained at Oregon State Police Headquarters that is used to dispatch the tow trucks on an equitable basis when no choice or preference to a tow business is stated by the vehicle owner, driver, or other person responsible for the vehicle.

(16) "On Road Time" — The time it takes a qualified tow business to have a tow truck started and on the road from the time the dispatcher was called by the Department.

(17) "Patrol Services Division" — The administrative body of the Oregon State Police that is located at General Headquarters in Salem, Oregon.

(18) "Place of Business" — A separate building or physical structure that a qualified tow business occupies, either continuously or at regular times, where the qualified tow business' business books and records are kept and the business of towing vehicles is transacted in each assigned tow zone. Multiple or different qualified

tow businesses may operate on a single piece of real property, provided that each qualified tow business maintains individual and separate records, storage facilities, and letters of appointment in order to be placed on the Department's non-preference tow rotational list.

(19) "Principal" — an owner, partner, corporate officer or other person who controls or manages the business organization or employees or agents of the business organization.

(20) "Qualified Tow Business" is a tow business with a current letter of appointment issued by the Department.

(21) "Region Commander" or "District Commander" — The commanding officer of the region as established by the Oregon State Police.

(22) "Recovery Vehicle" — A motor vehicle that is:

(a) A commercially available truck chassis equipped with a commercially manufactured tow body or bed, that is rated and issued a serial number by the manufacturer;

(b) Designed and equipped for, and used in, the towing and/or recovery of vehicles;

(c) Capable of towing a vehicle by means of a tow bar, sling or wheel lift; and

(d) Capable of recovering a vehicle by means of a hoist, winch and towline.

(23) "Response Time" — The reasonable driving time it takes a tow truck to respond to the dispatched location once the tow truck is on the road.

(24) "Revocation" and "revoked" — The termination of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police's non-preference towing program for a period of not less than 10 years, which becomes effective from the date of the Notice of Revocation from the Oregon State Police.

(25) "Right to apply" — The right of a tow business or its principal(s) to apply for, and the right of a qualified tow business or its principal(s) to re-apply for, a letter of appointment.

(26) "Suspension" and "suspend" — The temporary withdrawal of a letter of appointment or right to apply for a letter of appointment, and the removal from the Oregon State Police non-preference towing program for a period of not more than 10 years.

(27) "Tow business" — Any person, enterprise, corporation or partnership that engages in the impounding, transporting, recovery or storage of towed or abandoned vehicles or in the disposal of abandoned vehicles.

(28) "Tow Vehicle" — A motor vehicle that is:

(a) Altered or designed and equipped for, and used in, the business of towing vehicles; and

(b) Used to tow vehicles by means of a crane hoist, tow bar, towline or dolly, or otherwise used to render assistance to other vehicles (ORS 801.530).

(29) "Tow Zone" — The geographical area designated by the area commander for the removal of vehicles.

(30) "Vehicle Storage Area" — The approved yard or enclosed building where a qualified tow business keeps or stores towed vehicles.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 2-2000(Temp), f. & cert. ef. 7-14-00 thru 1-9-01; Administrative correction 6-12-01; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11; Administrative correction 1-25-11; OSP 4-2011, f. 9-2-11, cert. ef. 9-7-11

257-050-0060

Application for Appointment

(1) An application for letter of appointment to provide towing services for the Department shall be filed by the authorized agent or representative of a tow business with the Patrol Services Division on a form prescribed by the Department. In case of a tow

business that is a partnership, each partner will apply on the form prescribed by the Department. In the case of a tow business that is a corporation, the Department may require that each of the present, and any subsequent officers, managers, and stockholders holding 10% or more of the total issued and outstanding stock of the applicant corporation complete an application form.

(2) The application form will be assigned a document number by the Patrol Services Division which shall be its yearly identification number for all matters relating to appointments, granted or denied, and any other correspondence thereafter.

(3) The filing of an application for a letter of appointment to provide towing to the Department from a non-preference list does not in itself authorize a tow business to provide towing services pursuant to these regulations until a letter of appointment has been granted by the Department. The Department shall not call a towing business for non-preference towing unless a current/valid yearly appointment letter has been issued in connection with such tow business by the Department. Nothing herein shall prohibit the Department from calling a towing business upon a specific request of the person responsible for the vehicle or his agent. An appointment letter will not be granted until all application sections of the application form have been completed by the authorized agent or representative of a tow business.

(4) During implementation of the Administrative Rules, the present non-preference tow list system will be in effect until such time that the Administrative Rules are in place at the Patrol Services Division of the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0070

Application Requirements

(1) Application for placement on the non-preference tow rotational list shall be made on the forms furnished by the Department and shall be accompanied by an inspection report. The inspection report shall be furnished by the Department, and shall be completed by the authorized agent or representative of a tow business. The application form shall establish or provide all of the following:

(a) The tow business has an established place of business at the address shown.

(b) The tow business' place of business has an office area that is accessible to the public without entering the storage area and that the storage area complies with these Administrative Rules and all local zoning rules and regulations.

(c) Each tow business is separately registered with the Secretary of State Corporate Division, with a separate place of business and a separate storage area. Only one tow business may be operated at any one place of business.

(d) The authorized agent or representative of the tow business has inspected and certifies, under penalty of perjury, suspension, revocation and/or criminal prosecution that all of the information supplied in the application form and inspection form is true and accurate and that the tow business' place of business and all tow truck equipment meet the minimum requirements established by these Administrative Rules.

(e) The tow business has proof of the following current, minimum insurance coverage (Proof of required current insurance coverage shall be submitted with applications and inspection forms.).

(A) \$750,000, or the minimum required by the Federal Motor Carrier Regulations, or the Oregon Department of Transportation (ODOT), which ever is greater when towing under authority of Federal Motor Carrier Regulations or ODOT, for liability, for bodily injury or property damage per occurrence;

(B) Garage keeper's legal liability (for care, custody and control) per occurrence in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$150,000;

(iii) Class C — \$200,000;

(iv) Class D (Note: Class “D” equipment is not considered to be recovery tow vehicles):

(I) Class D-A or Other Equipment under this classification — \$50,000;

(II) Class D-B or Other Equipment under this classification — \$75,000;

(III) Class D-C or Other Equipment under this classification — \$200,000.

(C) Insurance to protect against vehicle damage including, but not limited to fire and theft, from the time a vehicle comes into custody and control of the tow business and is hooked onto, throughout the recovery, and until that vehicle is reclaimed or sold.

(D) Insurance for cargo transported in the amount of:

(i) Class A — \$50,000;

(ii) Class B — \$100,000;

(iii) Class C — \$200,000;

(iv) Class D-A — or Other Equipment under this classification — \$50,000;

(v) Class D-B — or Other Equipment under this classification — \$100,000;

(vi) Class D-C — or Other Equipment under this classification — \$200,000.

(f) Nothing in this section will relieve a tow business or qualified tow business from maintaining insurance in the amounts and providing coverage of the type for motor carriers in ORS Chapter 825 if the amounts exceed, or coverage is different from, that required by this section.

(g) A certificate of insurance from the insurance carrier to the Department that includes the type and amounts of coverage and provides for notification of cancellation of the tow business’s insurance is mandatory.

(h) The information for the letter of appointment may be included in the inspection form that is completed by the authorized agent or representative of the tow business.

(i) The tow business or tow business owner has a minimum of three (3) years of documented experience in the towing industry, either as a tow business or a tow business owner or tow vehicle driver for a tow business.

(j) The tow business has a dedicated recovery vehicle assigned to the tow zone applied for and capable of handling the classifications of tows requested in the application. A tow business may list a class B recovery vehicle to cover both class A and class B tows and a tow business may list a class C recovery vehicle to cover both class B and/or class A tows. If a larger recovery vehicle is listed by a tow business, that vehicle may only be listed for one tow zone for the smaller recovery tow classes it is used for, even if the larger tow vehicle tow zone overlaps with the other tow classification zones. Recovery Tow vehicles may only be listed for one tow zone. All tow vehicles approved must comply with these Administrative Rules for the classification of tow applied for. Only equipment approved through the letter of appointment to be used for the non-preference tow program for a specific tow zone can be used in that tow zone.

NOTE: A written waiver may be granted by the Oregon State Police based on local non-preference towing operational needs.

(k) The names of all drivers authorized by a tow business to drive in the tow zone for which the tow business applied, and all employees of a tow business who will have contact with the towed/assisted vehicle(s) and/or the driver/owner of the towed/assisted vehicle(s) or other representative(s) of the towed/assisted vehicle(s) owner(s). The use of non-listed and/or unreported drivers by a qualified tow business shall not be permitted.

(2) Within 30 days of the receipt of a request for an application for a letter of appointment, the Patrol Services Division of the Oregon State Police shall send an application packet, and include a current copy of these Administrative Rules and all forms related to the self certification, inspection and certification of equipment, and other related information required by these Administrative Rules.

(3) The address the tow business lists on its application shall be the place of business where the tow business keeps its business records. The application also shall list all locations of vehicle

storage areas and places for redemption of vehicles. If there is a change in address of the tow business, the authorized agent or representative of the tow business shall immediately notify the Patrol Services Division, and in no event will notification take longer than ten (10) days.

(4) All tow trucks shall display the tow business’s name, city, and telephone number. This information shall be painted or permanently affixed to both sides of the vehicle and the lettering shall be at least 2 inches in height with 1/2 inch stroke and in a color that is in contrast with the tow truck’s color.

(5) Any tow business in violation of this Administrative Rule may be denied a letter of appointment and shall be notified of the denial in writing. The Department may also deny a renewal application for any qualified tow business with an existing letter of appointment that is in violation of this Administrative Rule and may have its existing letter of appointment immediately suspended, prior to any hearing and shall be notified of the suspension in writing. A suspension under this rule will be in effect until the violation is corrected and inspected. Other sanctions, up to revocation and/or criminal prosecution, may be applied to a qualified tow business upon finding by the Department that the qualified tow business is in violation of this Administrative Rule.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0090

Inspections

The authorized agent or representative of the tow business shall self-certify on its application under penalty of False Swearing related to Regulation of Vehicles related to Businesses (ORS 822.605), penalty of Perjury (ORS 162.065), suspension or revocation from the non-preference tow rotational list that its tow business, employees and vehicles meet the minimum requirements as set forth in these Administrative Rules. This self-certification shall verify that the tow business’ request for a letter of appointment complies with all applicable local laws and regulations as prescribed for the geographical area where the tow business will be established. If local zoning regulations are applicable, the authorized agent or representative of the tow business must include with the application a copy of the certification of approval from the local planning department, zoning commission or other authorized unit of local government, to the Department. A zoning certification will become part of the permanent record maintained for each qualified tow business by the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0095

Letter of Appointment

The letter of appointment shall be completed by the Department establishing that the tow business has met the requirements for a letter of appointment. The designated tow zone(s), class of tow vehicle(s), specific vehicles authorized to operate in each zone, and any waivers will be listed in the letter.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0100

Issuance of Letter of Appointment

(1) No tow business shall be called upon to perform a non-preference towing service at the request of the Department unless such tow business has a valid letter of appointment from the Department, as described herein. A letter of appointment will not be issued by the Department unless the Department is satisfied that all qualifications set out in these Administrative Rules either have been met by the tow business or that a waiver of one or more qualifications has been granted by the Department.

(2) A letter of appointment will be valid only in the zone or zones assigned by the area commander and will identify specific vehicles of a qualified tow business authorized to operate in each zone. Applications for additional letters of appointment in other zones must be based on a complete and separate place of business capable of independent operation within the additional zone.

(3) A tow business may petition the Department for a waiver of a non-safety related requirement. The waiver shall be sent to the area commander who may make a recommendation regarding the waiver as an operational need. The Department may grant a waiver if, it finds that the towing services available to the Department are inadequate in the area to meet the needs of the public.

(4) In the event a qualified tow business that meets all requirements and qualifications receives a letter of appointment in the same zone as a qualified tow business that has been granted a waiver, the qualified tow business currently operating under a waiver, upon notification, will be advised that it has up to 30 days to come into compliance with these rules before removal from the affected non-preference tow zone. If the qualified tow business operating under a waiver fails to come into compliance within the time specified by the Department, it may have its letter of appointment suspended or revoked by the Department and will not be called for Department initiated tows.

(5) Every letter of appointment shall be issued in the name of a tow business and the holder thereof shall not allow any other person or qualified tow business to use the letter of appointment.

(6) The letter of appointment will be valid only for the place of business named on the application and will not apply to any other place of business.

(7) A letter of appointment shall be valid for one (1) year unless suspended or revoked by the Department.

(8) Each separate place of business will have a letter of appointment.

(9) Before a letter of appointment can be issued by the Department the tow business must have a tow vehicle meeting the minimum standards set forth in these Administrative Rules OAR 257-050-0020 to 257-050-0200.

(10) The letter of appointment shall state the zone the qualified tow business is authorized to operate in. The zones will be determined by the area commander.

(11) All qualified tow businesses shall agree to tow abandoned vehicles in accordance with Chapter 819 of the Oregon Revised Statutes.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0110

Suspension, Revocation and Voluntary Relinquishment of Letter of Appointment

(1) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with any requirement or provision of these Administrative Rules or that the authorized agent or representative of a tow business has falsified any documentation or certification related to compliance of these Administrative Rules in an application for a letter of appointment, the Department shall suspend or revoke the qualified tow business's letter of appointment. The Department may suspend or revoke the

qualified tow business's letter of appointment at any time once the qualified tow business has been given notice in accordance with these Administrative Rules. A qualified tow business whose letter of appointment has been suspended or revoked may request an administrative hearing as outlined in these Administrative Rules.

(2) Upon receiving evidence that a qualified tow business has failed to comply, or no longer complies, with the requirements of these Administrative Rules, the qualified tow business's letter of appointment shall be suspended or revoked by the Department.

(3) The qualified tow business may voluntarily relinquish his/her appointment. The Department will be advised in writing of this voluntary relinquishment. After receiving written notice the Department will cause an inspector to obtain the original letter of appointment and forward the same to the Department.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0115

Suspension and Revocation

(1) For purpose of 257-050-0115, the following suspension periods apply:

(a) "First suspension" — any first violation of OAR 257-050-0115 shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation of OAR 257-050-0115 that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation of OAR 257-050-0115 that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitutes grounds for suspension of a qualified tow business:

(a) A qualified tow business that commits a violation, traffic crime or traffic infraction of Oregon Law during the course and operation of the qualified tow business's business shall be suspended.

(b) An employee of a qualified tow business that commits any violation or traffic infraction of Oregon Law while in the performance of his or her duties of employment shall be suspended.

(3) The following constitutes grounds for revocation of a qualified tow business:

(a) A qualified tow business that commits a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony during the course and operation of the qualified tow business's business shall be revoked.

(b) An employee of a qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment shall be revoked.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1999(Temp), f. & cert. ef. 9-10-99 thru 3-7-00; OSP 1-2000, f. & cert. ef. 3-15-00; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0125

Reinspection/Certification

(1) Self Certification/re-inspections will be conducted at least once a year by all qualified tow businesses. Unscheduled inspections of the qualified tow business may be conducted without notice by any Oregon State Police inspector to determine the fitness of tow trucks, facilities, and business records. These inspections shall be done during business hours.

(2)(a) In the event of missing or defective tow truck equipment that is not safety related, but that was required for initial approval, the Oregon State Police shall advise the qualified tow business of the defect. If the qualified tow business fails or refuses to repair the defect within 15 days of the notice, the defective truck will be removed from the list of tow vehicles in the qualified tow

business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list for the duration of the letter of appointment without renewal, until after the last day of authorization of the letter of appointment and the defect is repaired.

(b) In the event of a violation of these Administrative Rules by a qualified tow business relating to the qualified tow business's facilities, records or other conditions, the Oregon State Police shall advise the qualified tow business of the violation. If the qualified tow business fails or refuses to fix the violation within 15 days of the notice, the qualified tow business's letter of appointment will be suspended for its duration without renewal until after the last day of authorization of the letter of appointment and the violation is fixed.

(c) A qualified tow business may avoid suspension under this section by voluntarily removing the involved tow or recovery vehicle from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon 97310, advising the Oregon State Police of the qualified tow business's voluntary removal of the vehicle from service on non-preference calls for the Oregon State Police. This voluntary removal of defective equipment letter shall be received by the Oregon State Police, Patrol Services Division no later than 15 days after the initial notification of the defect.

(3)(a) In the event of a safety related violation which renders the tow truck a safety hazard upon a public highway, the tow truck shall be immediately removed from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Department's non-preference tow rotation list. If the defect is corrected and reinspected within 30 days of the immediate suspension, the tow truck shall be reinstated on the tow business's letter of appointment. If the defect is not corrected and reinspected within 30 days, the suspension will continue without reinstatement until after the last day of the authorization of the letter of appointment and the defect is repaired and reinspected.

(b) In the event of a safety related violation which renders a qualified tow business's facilities unsafe, the qualified tow business shall immediately be suspended for the duration of the letter of appointment from the Department's non-preference tow rotational list, without renewal until after the last day of the authorization of the letter of appointment and the defect is repaired. If the defect is corrected and reinspected within 30 days of the immediate suspension, the qualified tow business's letter of appointment shall be reinstated.

(c) A qualified tow business may avoid immediate suspension under this section by voluntarily removing the tow or recovery vehicle from the list of tow vehicles in the qualified tow business's letter of appointment that are authorized for use in the Oregon State Police's non-preference tow list until such repairs or corrections are made or by correcting the violation relating to the qualified tow business's facilities or records. Voluntary removal under this section shall be done by sending a letter to the Oregon State Police General Headquarters, Patrol Services Division, 4th Floor, 255 Capitol Street NE, Salem, Oregon, 97310, advising of the qualified tow business's voluntary removal of the vehicle from service or the business on non-preference calls for the Oregon State Police. This voluntary removal safety hazard letter shall be received by the Oregon State Police, Patrol Services Division no later than 30 days after the initial notification of the defect.

(4) Upon repair or correction of a defect of a voluntarily removed tow truck or a defect related to a qualified tow business, an Oregon State Police inspector, upon written request from the affected qualified tow business, shall reinspect the equipment/facility which was found to be defective or missing. If the defects have been satisfactorily corrected, the inspector shall reinstate the tow truck to the list of tow vehicles in the qualified tow business's letter

of appointment that are authorized for use in the Department's non-preference list and/or shall reinstate a qualified tow business's letter of appointment. In the event an Oregon State Police inspector is not readily available to reinspect, another officer appointed by the inspector's supervisor may reinspect and re-instate the tow truck or qualified tow business. The reinspection shall be completed as soon as possible after a written request from the qualified tow business has been received by the Patrol Services Division, advising that the defect has been repaired. In no event shall a reinspection take longer than ten (10) business days after the written request for inspection has been received by the Patrol Services Division.

(5) Upon revocation, suspension, expiration or voluntary relinquishment of a letter of appointment, a qualified tow business's right to conduct towing services at the request of the Department is terminated, unless the call for service is a preference tow made by the owner and/or driver of a vehicle.

(6) Upon sale or transfer by the qualified tow business of a truck listed in the qualified tow business's letter of appointment that is authorized for use in the Department's non-preference tow rotation list, the qualified tow business shall advise the department so that the truck may be removed from the non-preference list. This notification must be made immediately and in no event may exceed ten (10) days after the sale or transfer.

(7) Upon the purchase or acquisition of any additional tow truck(s) to be used pursuant to this rule, a qualified tow business shall immediately notify the Department. The qualified tow business shall make a self-certified inspection of the new unit and submit this inspection to the Department, prior to the tow truck being used for non-preference towing.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0130

Appeal

A tow business or qualified tow business aggrieved by the decision of the Hearings Program officer denying, suspending, or revoking a letter of appointment must make any further appeal of such decision to the Oregon Court of Appeals.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0140

Place of Business Requirement and Business Hours

A qualified tow business's hours for the purpose of inspection of business records and towing equipment shall be 8AM-5PM, excluding weekends and holidays:

(1) When a qualified tow business is not open and does not have personnel present at the place of business, the qualified tow business shall post a clearly visible telephone number at its place of business for the purpose of public contact for the release of vehicles or personal property.

(2) The qualified tow business shall maintain personnel who can be contacted 24 hours a day to release impounded vehicles within a 30-minute period of time.

(3) The qualified tow business must post and maintain its letter of appointment at its place of business.

(4)(a) Dispatch service. The qualified tow business shall provide dispatch services 24 hours a day, 365 days a year. Each tow vehicle used by a qualified tow business shall be equipped with a two-way radio (not a citizen's band radio) or cellular phone capable of direct communications with the qualified tow business's dispatch service. Equipment provided shall be subject to approval of the Oregon State Police. Equipment shall be maintained in proper working condition at all times.

(b) Failure to respond to a call:

(A) Refusal or failure of a qualified tow business to respond to calls from the Department for towing services may result in the suspension or revocation of the qualified tow business's letter of appointment;

(B) The qualified tow business shall advise the appropriate Oregon State Police Dispatch Center when the qualified tow business is temporarily unavailable to respond to non-preference tow calls. Unavailability may occur due to conditions which include, but are not limited to, a disabled tow truck or a tow truck under repair, or unforeseen driver shortage due to illness or vacation. The qualified tow business shall advise the Oregon State Police Dispatch Center once the qualified tow business is available to resume its normal operation;

(C) Regardless of the unavailability of any qualified tow business, the non-preference list rotation shall continue as if the qualified tow business was available.

(5) Service call response time. Response times are mandatory. Class A and D-A tow trucks shall be on the road within fifteen minutes. Class B, C, D-B and D-C tow trucks shall be on the road within thirty minutes. At the time of the dispatch, all classes of tow trucks shall provide an estimated time of arrival at the scene. The station commander may waive this requirement due to inclement weather or unusual circumstances that might exist.

(6) For abandoned vehicles not deemed to be a hazard, tow requests will be made during business hours, defined as 8 A.M. to 5 P.M., seven (7) days a week, including holidays. Qualified tow businesses may tow abandoned vehicles at the qualified tow business's convenience during business hours on the date of the tow request. Once a vehicle is removed from the roadway and in possession of the qualified tow business, the qualified tow business shall notify the requesting Oregon State Police Office Dispatch Center as soon as possible on the date of the tow request of its possession of the abandoned vehicle. Notification of possession of the abandoned vehicle should be made immediately by the qualified tow business. In no case will notification to the Oregon State Police be made more than two hours after the abandoned vehicle comes into the possession of the qualified tow business.

(7) At the time a response is requested, the Department will provide the location, make, model, year of car license plate and estimated gross vehicle weight (if necessary) to the qualified tow business. Also, the Department will inform the qualified tow business about any condition or circumstances that may require special handling or assistance. The qualified tow business shall transmit the information to the person driving the tow truck.

(8) Qualified Tow business's record requirements: At its place of business of each tow zone, qualified tow businesses shall maintain the following records on each vehicle towed for a period of three years:

- (a) Vehicle description;
- (b) License number;
- (c) Issuing state;
- (d) Make;
- (e) Model;
- (f) Year;
- (g) Vehicle identification number;
- (h) Towing location;
- (i) Location vehicle was towed from;
- (j) Location to where the vehicle was towed;
- (k) Qualified Tow Business, Name, Address and Phone Number;

(l) Name of tow truck driver;

(m) Reasons for towing and/or service;

(n) Time and date of service include storage dates as applicable;

- (o) Class of tow truck or truck number;
- (p) OSP Impound Forms;
- (q) All invoices for abandoned vehicles towed;
- (r) All invoices for all OSP non-preference tows.

(9) All fees for service shall be itemized. A copy of voided invoices shall be filed by invoice number at the qualified tow business's place of business and shall be retained in a file for a period of three years.

ness's place of business and shall be retained in a file for a period of three years.

(10) All vehicles shall be handled and returned in substantially the same condition that they were in before being towed.

(11) All employees who operate tow truck(s) for a qualified tow business shall have an operator's license with the proper class or type for vehicle combinations. As prescribed by the state issuing the license, Oregon licensees shall comply with all applicable Oregon laws.

(12) Any person who shows proof of ownership or written authorization from the owner of the impounded vehicle may inspect and view the vehicle without charge during normal business hours. This does not apply to a vehicle seized and stored as evidence.

(13) All towing receipts on impounded vehicles, or confiscated vehicles, shall be made available by the qualified tow business to the nearest Department office after the tow has been completed.

(14) The qualified tow business shall notify the Oregon State Police Dispatch Center immediately when any person seeks to redeem any vehicle towed as abandoned or where a police hold has been placed on the vehicle. Release of vehicle under temporary or formal hold shall require written release from the Department. When a person entitled to take possession of the vehicle subject to a hold presents the qualified tow business with an official Oregon State Police release form, the qualified tow business shall release the vehicle to the person named.

(15) When inspection or reinspection of a tow truck is necessary, the area commander shall designate a location and time for the inspection to be conducted. When practical the inspection or reinspection shall be made within ten (10) days following the request by the qualified tow business.

(16) The qualified tow business shall provide either locked outside storage or locked, secure indoor storage, or both, which meets the following requirements:

(a) The qualified tow business's storage facility shall be in conformance with all zoning requirements of all applicable governments. Storage shall be provided, and of sufficient size, for each class of vehicle towed for the Oregon State Police, including semi trucks and motor homes, except as provided in ORS 819.110. Storage shall be located within the contractual geographical service area described as tow zones. The vehicle storage area may be located up to five (5) miles from the qualified tow business's place of business, provided that both facilities are located within the appointed tow zone. Contact phone numbers and addresses are to be posted at both locations for the place of business and the storage area. When the towed vehicle storage area is not located at the qualified tow business's place of business, employees shall be able to respond from one location to the other within 30 minutes or less.

(b) The storage area will be under the exclusive access and control of the individual qualified tow business. The storage area cannot be shared with other businesses, including non-tow businesses not owned by the owner of a qualified tow business.

(17) The qualified tow business shall provide fencing around the outside storage area. The fencing must meet the following requirements:

(a) Fencing must comply with the requirements established in these Administrative Rules and all local zoning rules and regulations.

(b) Fencing shall be either made of a woven wire composition normally referred to as "cyclone fencing-chain link fencing," or made of a solid material, such as wood or concrete block, inclusive of a permanent natural barrier which would prevent access and unauthorized entry to the storage area. Fencing shall be topped by a minimum of three (3) strands of barbwire. Fencing not meeting the requirements of these regulations as determined by the Oregon State Police will not be accepted. Qualified tow businesses that are unable to comply with these fencing requirements due to local zoning requirements will be addressed on a case by case basis by the Department.

(c) Gates and entryways shall be of a solid frame, and the same minimum height as the other fencing material. All gates and

entryways shall be designed to afford locking the gate or entryway securely to prevent unauthorized entry.

NOTE: Qualified tow businesses holding a valid appointment letter for a specific tow zone as of the adoption date of this Administrative Rule, will have one (1) year from their renewal date in the year 2003 to comply with this rule for the tow zone listed in the appointment letter. New tow businesses applying for a letter of appointment for the non-preference tow program shall immediately comply with this Administrative Rule after the adoption date of this rule.

(18) The qualified tow business shall allow the owner of a towed vehicle or anyone authorized in writing by the Oregon State Police, and/or an Oregon State Police Officer or other Department Member, to go to the vehicle and remove items of personal emergency nature, e/g/ eyeglasses, medication, clothing, identification, wallets-purses (and their contents), credit cards, check books, any known money-currency, child safety car and booster seats, except as provided in ORS 819.110 and 819.160.

(19) The qualified tow business shall be responsible for the contents, storage and disposal of all personal items, except items taken by authorized personnel in OAR 257-050-0140(18).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 5-1992, f. & cert. ef. 12-16-92; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0145

Felony Convictions

The Oregon State Police in the interest of public safety shall deny, suspend, or revoke a tow business' application or a qualified tow business' letter of appointment for the Department's non-preference towing program for any of the following reasons:

(1) A tow business, or any owner or employee of a tow business, convicted of any felony charge, or any charge in any state, which in Oregon is considered to be a felony, within the last fifteen (15) years from the date the tow business' application is received by the Oregon State Police. This subsection is subject to the provisions set forth under ORS 166.270.

(2) Any tow business, qualified tow business, or owner or employee of a tow business or qualified tow business convicted of two felony charges, regardless of when those felonies were committed.

(3) Any owner or employee of a tow business or qualified tow business convicted of a felony charge, or any charge from another state which in Oregon is considered to be a felony, where a weapon was used or threatened to be used in the commission of the crime, regardless of the date of the felony charge.

(4) Any owner or employee of a tow business or qualified tow business convicted of any of the sex crimes listed in ORS 181.594(4) or the equivalent conviction of a sex crime from another jurisdiction regardless of the degree of the charge.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0150

Towing

(1) The Department shall not establish, recommend or in any way dictate the cost of a non-preference tow conducted by a qualified tow business.

(2) A qualified tow business that conducts a non-preference tow under these administrative rules shall not represent to any person or business that a particular fee has been or will be charged by the Oregon State Police.

(3) Qualified tow businesses shall furnish the Patrol Services Division with an itemized list of charges that can be incurred during a non-preference tow including, but not limited to:

(a) Hookup charge;

(b) Mileage fee;

(c) Response fee.

(4) Qualified tow businesses shall not charge for items not declared on the list relating to the towing of a vehicle. This does not include mechanical work, bodywork or other repair work conducted subsequent to the tow.

(5) Complaints of unfair charges against a qualified tow business shall be referred to the Oregon Attorney General's Office.

(6) Qualified Tow businesses shall not transport passengers in any towed or carried vehicle(s).

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-1989, f. & cert. ef. 1-3-89; OSP 3-1989, f. 10-16-89, cert. ef. 10-15-89; OSP 2-1995, f. & cert. ef. 10-20-95; OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0155

Suspension and Revocation (for Violation of a Law Chargeable as a Violation or Crime)

(1) The following suspension or revocation periods apply when a tow business, qualified tow business, or any principal or employee of a tow business or qualified tow business, has been convicted of a violation of law charged as a Violation or Crime:

(a) "First Suspension" — any first violation shall be for a period of not less than 60 days.

(b) "Second Suspension" — any second violation that is committed within a one (1) year period from the date of any final order under this rule shall be for a period of not less than one (1) year.

(c) "Third Suspension" — any third violation that is committed within a three (3) year period of the date of any final order under this rule shall be a revocation.

(2) The following constitute grounds for suspension:

(a) Commission of a violation or traffic crime of Oregon Law during the course and operation of the tow business' or qualified tow business' tow business.

(b) A principal or employee of a tow business or qualified tow business that commits any violation of Oregon Law while in the performance of his or her duties of employment.

(3) The following constitutes grounds for revocation:

(a) Commission of a crime, other than a traffic crime and that is chargeable as a misdemeanor or felony, by a tow business or qualified tow business during the course and operation of the tow business' or qualified tow business' tow business.

(b) A principal or employee of a tow business or qualified tow business that commits a crime chargeable as a misdemeanor or felony while in the performance of his or her duties of employment.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11; Administrative correction 1-25-11; OSP 4-2011, f. 9-2-11, cert. ef. 9-7-11

257-050-0157

Suspension or Revocation for Violation (other than a Law Chargeable as a Violation or Crime)

(1) Suspensions or revocations, unless otherwise outlined or defined in these rules, shall fall under one of the following four levels:

(a) Immediate suspension — A suspension that takes place immediately, upon written notice from the Oregon State Police, as evidenced by the date of the postmark, removing a tow vehicle, tow equipment, tow business, or a qualified tow business from the non-preference rotational tow list.

(b) Level one suspension — any first violation of these Administrative Rules unless otherwise defined in the rule and shall be for a period of not less than sixty (60) days, and not more than one (1) year in length.

(c) Level two suspension — any second violation of these Administrative Rules that is committed within a one (1) year period from the date of any final order and shall be for a period of not less than one (1) year and not more than two (2) years in length.

(d) Revocation — any third violation of these Administrative Rules that is committed within a three (3) year period of the date of any final order and shall result in a revocation.

(2) A suspension shall be in effect until the violation is corrected, or the Department orders reinstatement of a letter of appointment or right to apply for a letter of appointment.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 5-2010(Temp), f. 7-13-10, cert. ef. 7-14-10 thru 1-10-11; Administrative correction 1-25-11; OSP 4-2011, f. 9-2-11, cert. ef. 9-7-11

257-050-0170

Hearings

(1) The Oregon Administrative Procedures Act shall govern the conduct of any hearing held pursuant to these regulations. The burden of proof in any hearing before the Hearing Officer shall be on the tow business seeking a letter of appointment, or on the qualified tow business that has had its letter of appointment suspended or revoked by the Oregon State Police.

(2) A request for an administrative hearing must be in writing and be received by the Department no later than fifteen (15) days from the date of notice of denial, suspension and/or revocation as evidenced by the postmark. The Department may also initiate or request an administrative hearing, regarding a denial, suspension and/or revocation of a letter of appointment.

(3) An administrative hearing must be conducted within ninety (90) days from the date the written request is received by the Department or on the first business day thereafter if the 90th day is a weekend or holiday, unless the parties agree to an extension of time.

(4) Any request by a qualified tow business for a continuance or reset of the hearing after the original scheduled date will result in the temporary suspension and/or extension of any temporary suspension of the qualified tow business's letter of appointment until a ruling is issued from the hearing with no liability to the Department. If the Department requests a continuance or reset of a hearing, the qualified tow business shall be left on the tow rotational list until a ruling is issued from the hearing unless a temporary suspension has been levied against the qualified tow business.

(5) Oral proceedings shall be recorded and shall become part of the hearing record.

(6) The Department shall appoint a Hearing Officer to conduct the hearing. The Hearings Officer shall issue a proposed order that shall include written findings of facts based on the evidence and written conclusions of law based on the findings.

(7) Exceptions to proposed orders must be submitted to the Department in writing within ten (10) days of the date the proposed order is issued, or on the first business day thereafter if the 10th day is a weekend or holiday. Written argument submitted with the

exceptions will be considered; no opportunity for oral argument will be allowed. The Department shall issue a final order.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0180

Judicial Review

A tow business or qualified tow business aggrieved by a final order of the Department denying, suspending, or revoking a letter of appointment may seek judicial review of such decision in the Oregon Court of Appeals. The denial, suspension or revocation shall remain in effect during the appeal.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10

257-050-0200

Mandatory Equipment Standards for Tow Trucks/Safety Related Requirements

(1) All tow vehicles operated by a qualified tow business under a letter of appointment under these rules shall have the following minimum equipment:

(a) Minimum of two (2) lights mounted behind the cab of the tow truck controlled by a dedicated on/off switch. This lighting must be capable of illuminating the area of the tow under darkened, foggy or dangerous conditions;

(b) An FCC licensed two-way radio, in conformance with Part 93 FCC Regulations, or cellular phone (citizen band radios so not meet this requirement);

(c) Cables or wire ropes as called for in each class. Cable/wire rope lengths shall be measured from the point of attachment on each drum. Cables/wire ropes shall meet the following requirements.

(A) Each cable shall be capable of being fully extended from and fully wound onto its drum;

(B) Cables or wire ropes shall be free from the following defects or conditions:

(i) There shall be no more than six randomly distributed broken wires in one rope lay, or more than three broken wires in one strand in one rope lay;

(ii) There shall be no evidence of any heat damage from any cause;

(iii) There shall be no end attachments that are cracked, deformed, worn or loosened;

(iv) Where a wire rope is attached to a hook with clamps instead of being swaged, a minimum of three clamps shall be used on end attachments. Clamps shall be spaced at least six rope diameters apart and attached with the base or saddle of the clamp against the longer or "live" end of the rope. The "U" bolt will be placed over the short or "dead" end of the rope and will be of the proper size.

(d) Two revolving or intermittent red or amber lamps with 360 degree visibility. The truck may also be equipped with flashing amber lights, which may be used in conjunction with the red lamp(s). Such lighting will not be used when responding to a call, but only at the scene when necessary to warn approaching traffic of impending danger.

(e) A broom and a shovel. The broom shall be at least twelve inches wide and have a handle at least four feet long. The shovel shall be flat scoop type with a minimum width of seven inches and overall length of at least three feet. Tow truck driver shall clean accident/incident scenes of all vehicle glass and debris required by ORS 822.225.

(f) A tow sling, wheel lift, car carrier or other comparable device made of a material designed to protect vehicles.

(g) Motorcycle Tows — A tow sling, wheel lift, car carrier or other comparable device that has the ability to tow motorcycles.

(h) One fire extinguisher, 25 BC rating or equivalent.

(i) One snatch block, or equivalent block, in good working condition for each working line.

(j) Commercially manufactured dollies on all class A recovery vehicles and class B recovery vehicles up to 26,000 GVW. Commercially manufactured dollies are required for all tow class categories when dollies are used and/or defined for use up to 26,000 GVW.

(k) All class A and B tow vehicles that are inclusive of class DA and DB tow vehicles shall carry at least one pinch bar, or an equivalent device. The bar or equivalent device must be 4 feet in length and 3/4 inch in diameter, and the ends may either be tapered or flattened.

(l) Portable lights for unit being towed including, but not limited to, tail lights, stop lights and directional signals.

NOTE: Class D tow trucks roll backs are exempt from this section if not towing a second vehicle.

(m) All tow vehicles must have a minimum of two “wreck ahead” signs to be placed by tow truck drivers as required by ORS 822.220. The signs shall confirm to all specifications as set forth in the Oregon Department of Transportation’s publication “Oregon Temporary Traffic Control Handbook” (OTTCH) as adopted by OAR 734-020-0005 and the “Manual Uniform of Traffic Control Devices.”

(n) All tow trucks and equipment used to perform services under these rules shall be maintained in good working order. Failure to maintain equipment shall be cause for suspension and removal of the defective equipment from the non-preference list. If equipment does not meet the Department’s criteria for non-preference tows under these Administrative Rules, the Department may suspend and remove the equipment from the non-preference list.

(2) Class A Tow Trucks (Small): Tow trucks shall be provided that are capable of towing and recovery operations for passenger cars, pickup trucks, small trailers or equivalent vehicles. All equipment used in conjunction with the tow truck must be compatible with the manufacturer’s basic boom rating and must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Ten thousand pounds minimum manufacturer’s gross vehicle weight rating or equivalent;

(b) Dual tires on the rear axle or duplex type tires, referred to as super single with a load rating that is comparable to dual tire rating;

(c) Six ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(d) A minimum of one hundred (100) feet of 3/8-inch continuous length cable; and

(e) A wheel lift for this class of tow truck.

(3) Class B Tow Trucks (Medium): Class B tow trucks shall be capable of towing and recovery operations for medium size trucks, trailers, motor homes or equivalent vehicles. In addition to standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Seventeen thousand pounds minimum manufacturer’s gross vehicle weight rating or equivalent;

(b) Ten ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Class B tow trucks in excess of 26,000 pounds GVW will not be required to carry dollies when used for heavy towing;

(d) A wheel lift for this class of tow truck; and

(e) A minimum of 150 feet of seven-sixteenths inch cable.

(4) Class C Tow Trucks (Large): Tow trucks that are capable of towing and recovery operations for large trucks, trailers, motor homes or equivalent vehicles. In addition to the standard equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(a) Twenty-seven thousand five hundred pounds minimum manufacturer’s gross vehicle weight rating or equivalent;

(b) Twenty-five ton minimum boom rating dual or single boom with dual or single winches to control a minimum of one service cable;

(c) Minimum of 150 feet of cable, five-eighths inch diameter;

(d) Air brakes and an air system capable of supplying air to the towed unit;

(e) Portable dollies are not required;

(f) Tandem rear axle truck chassis (three axle truck);

(g) May include an under-lift for this class of tow truck.

(h) Exception to commercially manufactured tow vehicles (for Class C recovery tow trucks/equipment only). Class C Recovery Tow Equipment that has been approved by the Oregon State Police to be used on the Department’s non-preference towing list prior to the adoption of these Administrative Rules, but does not meet the criteria outlined under these Administrative Rules, may continue to be used for the Department’s non-preference tows if the following conditions are met:

(A) The equipment must first be inspected and approved by the Oregon State Police;

(B) If a qualified tow business has the only “Class C” tow truck in a zone, then the qualified tow business must replace the equipment after 5 years from the adoption date of these rules. The Oregon State Police reserve the option to extend the time period for the use of Class C Towing Equipment under this exception based on operational need by the Department; and

(C) If it is determined at any time that the equipment does not meet Oregon State Police criteria for towing under these Administrative Rules, then the Oregon State Police can remove the equipment from the non-preference list.

(5) Class D Tow Trucks (Trucks and equipment in this class are not considered recovery vehicles):

(a) Tow trucks and other vehicles in this class are to be used for towing and/or hauling purposes only. No recovery can be performed by equipment in this class;

(b) Equipment in this class capable of towing/hauling passenger cars, pickup trucks, trailers, trucks or equivalent vehicles, and debris is based on the size and ratings of the Class D tow unit used. All equipment used in conjunction with the tow truck must comply with current state laws and Oregon Administrative Rule 735-154-0040. In addition to the equipment required for all trucks used to provide service under this rule, all trucks in this class shall have:

(A) Class D-A:

(i) Eleven thousand pounds minimum manufacturer’s gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of fifty feet three-eighths inch continuous length cable;

(iv) May include wheel lift, if chassis GVW is over 14,500 pounds; and

(v) If a Metro unit, dollies and a wheel lift.

(B) Class D-B:

(i) Seventeen thousand pounds minimum manufacturer’s gross vehicle weight rating or equivalent;

(ii) Dual tires on the rear axle;

(iii) A minimum of 50 feet of three-eighths inch cable;

(iv) May include wheel lift; and

(v) If a Metro unit, dollies and a wheel lift.

(C) Class D-C:

(i) Twenty-seven thousand five hundred pounds minimum manufacturer’s gross vehicle weight rating or equivalent.

(ii) Minimum of 50 feet of cable, five-eighths inch diameter.

(iii) Tandem rear axle truck chassis (three axle truck).

(iv) May include wheel lift; and

(v) Air brakes and an air system capable of supplying air to the towed unit.

Stat. Auth.: ORS 181.440

Stats. Implemented: ORS 181.440

Hist.: OSP 5-2005, f. & cert. ef. 11-18-05; OSP 1-2006, f. 3-29-06, cert. ef. 3-31-06; OSP 1-2009(Temp), f. & cert. ef. 8-6-09 thru 1-31-10; OSP 2-2009, f. 10-8-09 cert. ef. 1-1-10; OSP 3-2009(Temp), f. 12-18-09, cert. ef. 1-1-10 thru 6-29-10; OSP 3-2010, f. 6-1-10, cert. ef. 6-30-10; OSP 3-2011, f. & cert. ef. 3-8-11

DIVISION 55

EMPLOYMENT STANDARDS AND PRACTICES

257-055-0001

Gaming Industry Employment Prohibition

As required by ORS 244.045(5)(a), the Superintendent of the Department of State Police has designated the following positions to be subject to the prohibitions outlined in the statute:

- (1) Superintendent.
- (2) Deputy Superintendent.
- (3) Operations Services Bureau Commander.
- (4) Director of the Gaming Enforcement Division.
- (5) Administrative Lieutenant of the Lottery Security Section.
- (6) Administrative Lieutenant of the Tribal Gaming Section.

Stat. Auth.: ORS 244.045 (5)(a)

Stats. Implemented: ORS 750 & OL 1997 (ORS 244.045)

Hist.: OSP 1-2001, f. & cert. ef. 10-1-01

DIVISION 60

DNA PROFILING OF CONVICTED OFFENDERS

257-060-0005

Collection and Submission of Samples

(1) Blood Samples. Any blood sample drawn under the authority of ORS 137.076, 161.325, 419C.473 or 181.085 shall be collected in one 1 purple-stoppered vacutainers containing an EDTA preservative. The submitted sample shall consist of at least one full vacutainer. Agencies submitting blood samples shall:

(a) Label the vacutainers with the contributor's name and SID number. If no SID number has been assigned to the contributor, the submitting agency shall use the contributor's date of birth.

(b) Complete a submission form supplied by the Oregon State Police and enclose the completed form with the samples submitted.

(c) Deliver the blood samples within seven (7) days of the date of collection to the Oregon State Police Crime Lab DNA Profiling Unit. Samples should be refrigerated prior to delivery to the Oregon State Police Crime Lab.

(2) Buccal Samples. Oral buccal cell samples shall be submitted on proper preservation media as described in the Oregon State Police protocols.

Stat. Auth.: ORS 181.085(1)(e)

Stats. Implemented: ORS 137.076

Hist.: OSP 2-1991(Temp), f. 9-12-91, cert. ef. 9-29-91; OSP 5-1991, f. & cert. ef. 11-21-91; OSP 3-2002, f. & cert. ef. 6-14-02

257-060-0010

Inspection of DNA Profile Records

(1) Any person who believes that he or she is the subject of a record within the criminal offender DNA database may make a request to the Oregon State Police Crime Lab to verify the existence or accuracy of such a record. All requests shall be in writing and on the form "request to view genetic database information." This form may be obtained by contacting the Oregon State Police. The form shall include all of the following information:

- (a) Name;
- (b) Mailing address;
- (c) Date of birth;
- (d) SID number (unless a SID number has not been assigned to the requestor);
- (e) Signature; and
- (f) Right thumbprint. The right thumbprint submitted with any request must be obtained from and witnessed by a law enforcement official authorized to take fingerprints.

(2) If the criminal offender DNA database contains no record pertaining to the requestor, the Oregon State Police Crime Lab shall notify the requestor in writing that no record exists.

(3) If the criminal offender DNA database contains a record pertaining to the requestor, the Oregon State Police Crime Lab shall send a printout of the pertinent genetic profile to the address of the requestor listed in the request. Profiles pertaining to

individuals other than the requestor shall not be released to the requestor.

(4) Prior to the release of a printout of pertinent genetic profile, the Oregon State Police Crime Lab may require the requestor to pay the cost of preparing and photocopying the genetic profile as established by OAR 257-020-0005.

(5) This rule applies only to those records, samples, and autoradiographs actually stored by the Oregon State Police Crime Lab, and it is not intended to preclude the crime lab from destroying those items after analysis.

Stat. Auth.: ORS 181.085(1)(e)

Stats. Implemented: ORS 137.076

Hist.: OSP 2-1991(Temp), f. 9-12-91, cert. ef. 9-29-91; OSP 5-1991, f. & cert. ef. 11-21-91; OSP 3-2002, f. & cert. ef. 6-14-02

257-060-0015

Challenges of DNA Profile Records

(1) Any contributor of a record within the criminal offenders DNA profile database may challenge the accuracy of the record by filing a challenge in writing with the Oregon State Police Crime Lab. The challenge shall identify the record by the name, date of birth, and SID number of the contributor and shall contain the contributor's address and signature and a thumbprint from each thumb.

(2) If the challenge pertains to the accuracy of the profile, it must be accompanied by a profile of the contributor's genetic material produced by an independent laboratory using the same genetic markers as those used to create the challenged record. The Oregon State Police will not be responsible for the cost of producing this independent profile.

(3) Any discrepancy between the database profile and the profile filed by the contributor will be classified as either significant or insignificant. A discrepancy is significant if it is more than twice the match criteria established by the Oregon State Police Crime Laboratory. Any lesser discrepancy will be classified as insignificant.

(4) If the discrepancy is significant, the Oregon State Police Crime Lab staff shall directly supervise the withdrawal of a new blood sample from the contributor and shall create a new profile from that sample. This new profile shall be entered into the database as the sole profile pertaining to the contributor.

(5) If the discrepancy is insignificant, the existing database record shall not be removed or altered, but shall remain the sole database profile pertaining to the contributor. The Oregon State Police Crime Lab shall retain in a separate file all materials submitted by the contributor to challenge the record.

Stat. Auth.: ORS 181.085(1)(e)

Stats. Implemented: ORS 137.076

Hist.: OSP 2-1991(Temp), f. 9-12-91, cert. ef. 9-29-91; OSP 5-1991, f. & cert. ef. 11-21-91

DIVISION 70

SEX OFFENDER REGISTRATION;

257-070-0005

Statement of Purpose

The purpose of these rules is to implement and interpret ORS 181.585 to 181.608. The Oregon State Police is authorized to adopt rules interpreting and implementing the described statutes. These rules establish standards and procedures for victim and public access to sex offender information and for designation of unsupervised adult and juvenile offenders as predatory sex offenders.

Stat. Auth.: ORS 183.335, 181 & 192.430

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

257-070-0015

Definitions

As used in these rules:

(1) “Another United States court” means a federal court; military court; tribal court of a federally recognized Indian tribe; court in a state other than Oregon; or a court of the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the United States Virgin Islands.

(2) “Electronic signature” means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(3) “Predatory sex offender” means an adult person who has been determined to be predatory prior to January 1, 2014 under former ORS 181.585 to 181.589.

(4) “Registerable sex offender” means an adult person who is required to report and be registered as a sex offender under ORS 181.806, 181.807, or 181.809 either before, on, or after January 1, 2014.

(5) “Registering agency” and “registering agencies” means a local police department, county sheriff’s office, or a regional Oregon State Police office.

(6) “Sex offender” means a person convicted, adjudicated or found guilty of a crime:

(a) That would constitute a sex crime if convicted in this state; or

(b) Which the person would have to register as a sex offender in another United States court’s jurisdiction, or as required under federal law; regardless of whether the crime would constitute a sex crime in this state.

(7) “Sex offender web site” means an internet web site established for criminal justice agencies and maintained by the Department that contains information about registered sex offenders.

(8) “Sex offender registration form” means information regarding sex offenders that is formatted, inscribed, stored and retrievable on a Department approved medium.

(9) “Victim” means a person, or the legal guardian of a person, who is:

(a) The victim of a sex crime listed in ORS 181.805 the commission of which resulted in a conviction, a finding of guilty except for insanity, or a finding that a youth was within the jurisdiction of the juvenile court for an act which, if committed by an adult, would constitute a sex crime; or

(b) Any person who is named in a criminal complaint as a victim of a sex crime listed in ORS 181.805 who in the course of any judicial proceeding is acknowledged by the defendant to be the victim of a sex crime listed in ORS 181.805.

Stat. Auth.: ORS 181.814

Stats. Implemented: ORS 181.800 - 181.845

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 3-1994, f. & cert. ef. 8-1-94; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05; OSP 1-2016, f. & cert. ef. 3-7-16

257-070-0025

Victim Access to Registered Sex Offender Information

(1) A victim shall be issued a victim identification number and shall be given the registry identification number of the registered sex offender who committed the crime against the victim:

(a) At any time, upon request by the victim; and

(b) Upon verification of the identification of the victim.

(2) The Department of State Police has established a toll-free telephone number, 1-800-551-2934, to provide victims with updates on the prison status, release information, parole status and any information concerning the registered sex offender who committed the crime against the victim that is authorized for release under ORS 181.585 to 181.601. The telephone line will be operational 8 a.m. to 5 p.m. Monday through Friday.

Stat. Auth.: ORS 183.335, 181 & 192.430

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 3-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; OSP 6-1991, f. & cert. ef. 11-21-91; OSP 2-1999(Temp), f. & cert. ef. 9-13-99 thru 3-10-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

257-070-0040

Designation of Persons as Predatory Sex Offenders; Notice and Opportunity to Be Heard Regarding Designation as Predatory Sex Offender

(1) Under ORS 181.585 to 181.589, the Department of State Police is authorized to designate as predatory sex offenders:

(a) Persons who exhibit characteristics showing a tendency to victimize or injure others and who have been convicted of a sex crime listed in ORS 181.594(2)(a) to (d), convicted of attempting to commit one of those crimes, or found guilty except for insanity of one of those crimes, and who are not under the supervision of the Oregon Department of Corrections or a community corrections agency; and

(b) Persons who are required to report under ORS 181.595, 181.596, or 181.597 after having been found to be within the jurisdiction of the juvenile court for having committed acts that if committed by an adult would constitute sex crimes and who the Department of State Police has designated as predatory after consultation with the person’s last primary supervising agency, and who are not under the supervision of the juvenile court.

(2) The Department of State Police will designate persons as predatory sex offenders as provided in ORS 181.585 to 181.589 and this rule.

(3) The Department of State Police will designate a person as a predatory sex offender if the person exhibits characteristics showing a tendency to victimize or injure others and meets the criteria for designation as a predatory sex offender established in the risk assessment scale approved by the Oregon Department of Corrections.

(4) Prior to designating a person as a predatory sex offender, the Department will notify the person in writing of the proposed designation, the basis for the designation and the method for submitting written objections to the proposed designation. The notice will include a copy of the risk assessment scale approved by the Oregon Department of Corrections as scored for that person. The notice of proposed designation will be sent to the person by registered or certified mail.

(5) A person who has received notice under subsection (4) of this rule may submit written objections to the proposed designation. The person must complete and sign the “Objections to Predatory Sex Offender Designation” form provided for that purpose.

(6) In addition to the person’s signed “Objections to Predatory Sex Offender Designation” form, a person who has received notice under subsection (4) of this rule may submit other relevant written materials in support of the person’s objection to the designation. For the purpose of this rule, “relevant written materials” means documentary evidence that will assist the Department of State Police in determining as a factual matter whether the person meets one or more of the sex offender risk assessment scale criteria upon which the Department of State Police proposes to rely in designating the person as a predatory sex offender. For the purpose of this rule, relevant written materials includes:

(a) A court order reversing, vacating or setting aside a judgment of conviction for a crime;

(b) A court order reversing, vacating or expunging a finding that the person was within the jurisdiction of the juvenile court for committing an act that if committed by an adult would constitute a crime;

(c) An order of pardon for a crime; or

(d) Police reports, pre-sentence investigation reports, court records and transcripts, or other documentary evidence relating to the circumstances of the person’s crime or crimes.

(7) The person’s signed “Objections to Predatory Sex Offender Designation” form and other relevant written materials, if any, must be received by the Department of State Police within 35 days of the date of the Department of State Police notice of proposed designation provided under subsection (4) of this rule.

(8) The Department of State Police will consider materials submitted under subsections (5) and (6) of this rule prior to making its final determination of whether the person meets the criteria for designation as a predatory sex offender, if the Department of State

Police receives these materials within the time limit set forth in subsection (7) of this rule.

(9) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person meets the criteria for designation as a predatory sex offender, the Department of State Police will designate the person as a predatory sex offender and will inform the person in writing by registered or certified mail of the designation. The designation is effective as of the date of the letter informing the person of the designation.

(10) If, after considering materials submitted under subsections (5) and (6) of this rule, the Department of State Police determines that the person does not meet the criteria for designation as a predatory sex offender, the Department of State Police will inform the person in writing by registered or certified mail, that the Department of State Police is not designating the person as a predatory sex offender at that time.

(11) A person from whom the Department of State Police does not receive any materials under subsections (5) and (6) of this rule within 35 days of the date of the notice of proposed designation provided under subsection (4) of this rule will be deemed not to object to designation as a predatory sex offender, unless the cause for the failure to submit materials was beyond the reasonable control of the person, as determined by the Department of State Police. The designation is effective as of the thirty-sixth day after the date of the notice of proposed designation provided under subsection (4) of this section.

(12) The Department of State Police may designate a person as a predatory sex offender if the person meets the Department of Corrections sex offender risk assessment scale criteria for designation as a predatory sex offender, regardless of whether the Department of State Police or any other agency determined at any previous time that the person was not a predatory sex offender.

(13) Prior to petitioning for judicial review of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the person shall file with the Department of State Police a petition for reconsideration of the designation. The petition for reconsideration must be received by the Department of State Police within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule and must also comply with other requirements of OAR 137-004-0080. The Department of State Police will inform the person in writing of its decision on reconsideration. The Department's decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(14) Notwithstanding subsection (13) of this rule, within 60 calendar days of the date of the Department's designation of the person as a predatory sex offender under subsection (9) of this rule, the Department of State Police may reconsider the designation on its own initiative as provided in OAR 137-004-0080. Following reconsideration of a designation on the Department's own initiative, the Department will inform the person in writing of its decision on reconsideration. The decision on reconsideration will be sent by registered or certified mail and is effective as of the date of the decision on reconsideration.

(15) In its discretion, the Department of State Police may conduct community notification or notify the public concerning a person designated as a predatory sex offender in any manner authorized by law.

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

Stat. Auth.: ORS 183.335, 181 & 192.430

Stats. Implemented: ORS 181.585 - 181.608

Hist.: OSP 4-1999(Temp), f. & cert. ef. 10-29-99 thru 4-25-00; OSP 3-2000, f. & cert. ef. 7-11-00; OSP 1-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05;

Administrative correction, 2-17-05; OSP 2-2005, f. 7-15-05, cert. ef. 8-21-05

257-070-0100

Registration Process for Registering Agencies

(1) The Department will provide a secure internet website to enable registering agencies to register sex offenders. Except as authorized under subsection (5) of this administrative rule, regis-

tering agencies shall use the Department's secure internet website to complete and forward to the Department an electronic sex offender registration form for each registerable sex offender. For purposes of this administrative rule, an electronic sex offender registration form is forwarded to the Department when the registering agency:

(a) Fully completes the sex offender registration form using the Department's secure internet website; and

(b) Submits the sex offender registration form to the Department by pressing the designated submission button.

(2) Registering agencies shall complete a separate sex offender registration form for each type of sex offender registration event required by law, which includes but is not limited to, initial registrations, annual registrations, changes of address, changes in employment, or changes in higher education facilities.

(3) Registering agencies shall submit separate electronic sex offender registration forms when simultaneous sex offender registration events occur (for example, if a registerable sex offender changes residence at the same time the registerable sex offender is also required to complete an annual sex offender registration form, the registering agency shall complete two separate electronic sex offender registration forms: one for the change of residence registration event and one for the annual registration event).

(4) When registering sex offenders, a registering agency's representative shall:

(a) Log in to the Department's secure internet website to complete and forward the sex offender registration form;

(b) Follow the instructions posted on the Department's secure internet website;

(c) Require registerable sex offenders to:

(A) Electronically complete the entire sex offender registration form;

(B) Electronically initial the sex offender registration form where required; and

(C) Provide an electronic signature.

(d) Ensure that the sex offender registration form is complete and accurate; and

(e) Upload the sex offender registration form and photograph(s) of the registerable sex offender, along with any required fingerprints, to the Department's secure website; and

(f) Electronically forward the sex offender registration form, photographs, and required fingerprints to the Department.

(5) Registering agencies shall electronically forward sex offender registration forms and related information to the Department unless a technical problem prevents access to the Department's secure internet website or the electronic transmission of the sex offender registration form and related materials to the Department. Registering agencies may only use a paper sex offender registration form if a technical problem exists that prevents a registering agency from electronically submitting a sex offender registration form and related materials to the Department. If a registering agency uses a paper sex offender registration form, the registering agency shall send a Law Enforcement Data System (LEDS) Administrative Message without delay, and shall submit the paper form to the Department within three (3) business days by regular mail. If an agency is unable to submit an Administrative Message via LEDS, the agency shall notify the Department by email. A paper sex offender registration form is submitted to the Department when the registering agency deposits the paper sex offender registration form, properly addressed and prepaid, into the U.S. Postal Service.

(6) In addition to electronically completing and submitting a sex offender registration form for each registerable sex offender registered, a registering agency during registration shall:

(a) Photograph the registerable sex offender. Registering agencies also may photograph any identifying scars, marks or tattoos physically present on the registerable sex offender, and include those photographs with the materials submitted to OSP SOR; and

(b) Fingerprint the registerable sex offender, unless the registerable sex offender's fingerprints already exist in the Department's

record file. Registering agencies shall check LEDS for the registerable sex offender's record. If the registerable sex offender has not been fingerprinted, the registering agency shall fingerprint the registerable sex offender and send the fingerprints to the Department's Criminal Justice Information Services (CJIS) division within three (3) business days in a CJIS approved manner.

Stat. Auth.: ORS 181.810
Stats. Implemented: ORS 181.810
Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

257-070-0110

Registration Requirements for Registerable Sex Offenders

(1) Registerable sex offenders shall only register with a registering agency in their county of residence.

(2) Registerable sex offenders shall submit to registration as directed by the registering agency and as required by law.

(3) When registering with a registering agency, each registerable sex offender shall:

(a) Provide all information necessary to complete the sex offender registration form;

(b) Sign the form by electronic signature or as directed by the registering agency; and

(c) Submit to being photographed and, if required, fingerprinted.

Stat. Auth.: ORS 181.805 - 181.810
Stats. Implemented: ORS 181.805 - 181.810
Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

257-070-0120

Recordkeeping

(1) Once a sex offender registration form is received by the Department, the Department will:

(a) Update the Department's sex offender registry records; and

(b) Retain an electronic copy of the sex offender registration form.

(2) The Department will not retain paper copies of sex offender registration forms.

Stat. Auth.: ORS 181.810, 192.001 - 192.190
Stats. Implemented: ORS 181.810, 192.001 - 192.190
Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

257-070-0130

Internet Notification of Predatory Sex Offenders

The Department shall utilize the sex offender web site to make information available to the public regarding all predatory sex offenders unless or until:

(1) The designating agency notifies the Department that the predatory designation for the sex offender is incorrect;

(2) The predatory sex offender is assessed and classified by the Board of Parole and Post-Prison Supervision as either a level one or level two sex offender; or

(3) December 1, 2018.

Stat. Auth.: OL 2013, Ch. 708 §7 (HB 2549), OL 2015, ch. 820 §27 (HB 2320)
Stats. Implemented: OL 2013, Ch. 708 §7 (HB 2549), OL 2015, Ch. 820 §27 (HB 2320)

Hist.: OSP 1-2016, f. & cert. ef. 3-7-16

DIVISION 80

TRIAL BOARD PROCEDURES

257-080-0000

Purpose of Rules

These rules outline the process afforded sworn, unrepresented members of the Department during consideration of their removal from State service, with the following objectives:

(1) To permit the member to address the review board prior to a final decision on removal.

(2) To establish procedures for the member and the review board to follow.

(3) To recognize that sworn, unrepresented members of the department hold their respective positions in an "at-will" status.

(4) To provide the procedure for the decision of the Board to

be communicated to the member and to the individual who made

the initial recommendation on removal.

(5) To establish the internal mechanism for the member to

make a request that the Review Board decision be considered and

examined by the Office of the Superintendent.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f.

& cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru

11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0005

Statutory Authority for Rules

These rules are adopted under the authority provided by ORS

181.280

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f.

& cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru

11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0010

Definitions

(1) Department — refers to the Oregon Department of State Police.

(2) Member — refers to the sworn, unrepresented member with sustained allegations who is afforded an informal meeting under these rules.

(3) Review Board members — Department members appointed by the Superintendent or designee.

(4) Recommending staff — the Department staff making the initial recommendation for removal of the member.

(5) Personnel Report — the record of information that was gathered during a personnel investigation and fact-finding process which is used to decide whether there are grounds to consider the removal of the member from the Department.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0015

Grounds for Removal

Because members subject to these rules hold their position as “at-will” employees, the member’s employment is not subject to any cause standard and the Department legally retains discretion in making a decision on removal.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0020

Investigation and Fact Finding Processes

(1) The investigation process will be the fact-gathering process the Department follows in conducting personnel investigations as found in the most current form of the Department Manual titled “Personnel Complaint Procedures and Guidelines for investigations and Corrective Action.”

(2) The fact-finding process will follow those provisions in the most current form of the same Department Manual under the “Making Findings of Fact” section.

(3) If the results of this process result in “sustained” Findings of Fact the process under these rules will continue.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Administrative Reformatting 12-1-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0025

Procedure to notify member of Findings, Recommendation, and Request to convene a Review Board

(1) The sustained Findings of Fact and Recommendation will be prepared and signed by the recommending staff, or the Office of Professional Standards, and shall include:

(a) The name and duty station of the member.

(b) A listing of sustained allegation(s) with a finding for each.

(c) A statement that removal of the member is being recommended along with a request to convene a Review Board.

(2) The document may include:

(a) A description of information concerning the member’s tenure with the department such as performance reviews and any letters in the file which may be relevant to an understanding of the allegations;

(b) Particular training or education provided;

(c) Prior corrective action(s);

(d) Informal discussions or other communications with the member by other managers or supervisors;

(e) The availability of written standards or expectations - whether formal or informal; and

(f) Any other matters which may provide a context in which to review the specific conduct at issue.

(3) A suggested format for the document is:

(a) Member’s name;

(b) Member’s duty station;

(c) As a sworn member of the department, subject to ORS 181.280 and OAR 257, division 80, this is written notice of allegation(s) from which a recommendation for your removal as a member of the department has been made along with a request to convene a Review Board.

(d) Relevant background information as appropriate.

(e) The facts that have been sustained, setting them out in a logical and chronological format, using headings and subheadings if necessary, to assist the reader in understanding the particulars that form the basis of the recommendation.

(4) The completed document with the sustained allegations, recommendation and request shall be delivered to the Office of Professional Standards, where they will be filed and logged.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0030

Initiating a Review Board

(1) Upon notice from the Office of Professional Standards that the completed document with the sustained allegations, recommendation and request has been filed and logged, the Superintendent or designee, shall appoint a three person Board of Review.

(2) The Board shall consist of three members who are of superior rank to the involved member, if that is possible, and the three members shall be of equal rank, also to the extent that is possible.

(3) The Board shall convene, select a Presiding Officer, and determine the time and place of the meeting to be scheduled with no less than ten days notice to the member.

(4) The member shall be notified, in writing, of the following:

(a) The individuals composing the Review Board and the member’s right to demand, in writing and one time only, that any or all of the persons appointed to the board be replaced without stating reason or cause. On receipt of such a demand, the Superintendent or designee shall appoint new representatives to replace those removed;

(b) The location, date and time of the member to meet with the Board;

(c) The member’s right to be accompanied by legal counsel, at their own expense, or another employee of their choosing to assist them in presenting information or suggesting further inquiry before a decision is made by the Board ;

(5) If an extension of time is necessary for the member to prepare a presentation, the board shall grant a reasonable period of time upon request.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0035

Review Board — Generally

(1) An audio recording of the meeting will be made, which shall constitute the only record.

(2) The Board may have legal counsel from the Oregon Department of Justice to advise them on any matters and attend the meeting and deliberative process as it deems necessary.

(3) Failure to comply with one or more of the terms of these rules concerning the Review Board process shall not invalidate any sustained allegations or negate any proceeding before the board.

(4) All attendees shall conduct themselves in a respectful manner. Failure to comply with the Board’s effort to retain order will result in expulsion from the meeting.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0040

Review Board Pre-meeting Matters

(1) The Department shall forward to the member, within a reasonable time after the hearing is set, all investigative reports and other documents prepared according to the requirements of the department's personnel review manual.

(2) The member's official personnel file shall be available for inspection by the parties or their respective representatives upon advance request to the Office of Professional Standards Section at General Headquarters.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0045

Board Meeting

(1) The Board designated Presiding Officer shall open the meeting on the record, by introducing the parties and identifying the purpose of the meeting.

(2) The record made available to the Board shall be identified by the Presiding officer.

(3) The member, or designee, may make opening remarks.

(4) The member may offer physical evidence and written statements.

(5) Review Board members may ask questions of the member.

(6) The member or designee may make concluding remarks.

(7) The meeting will be private unless the member makes written request that it be public.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 1-1997, f. & cert. ef. 1-22-97; Suspended by OSP 1-2012(Temp), f. & cert. ef. 5-9-12 thru 11-1-12; OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0050

The Board's Decision

(1) The Board shall adjourn the meeting and meet in private to reach a decision regarding corrective action, which decision shall then be reduced to written form.

(2) The Board decision shall state specifically whether removal or other corrective action is appropriate with a brief explanation of its rationale.

(3) In assessing an appropriate action the board may consider:

(a) The rank and corresponding duties and expectations for the position held by the member;

(b) The number and relative severity of sustained allegations; and

(c) Any information presented by the member at the meeting regarding the sustained allegations.

(4) The Board is not authorized to apply the concept of "progressive discipline" as a matter of right.

(5) The Board is not authorized to nor shall it require proof of "cause" as it makes a decision.

(6) The decision of the Board shall be delivered to the member and the Office of Professional Standards by hand-delivery or certified mail, return receipt requested, as is most expeditious.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

257-080-0055

Office of Superintendent's consideration of Review Board Decision

(1) Following receipt of the Board's decision the member may request the Office of the Superintendent to consider the Board's decision by an examination of all materials, including the tape of the Review Board meeting.

(2) The request must be in writing and received by the Office of Professional Standards not later than fifteen (15) days after the date of the Board's decision.

(3) The request may include a meeting by the member with the Superintendent or a designee in addition to the examination of the associated documentation.

(4) If no request is made, the Superintendent will send a notice to the member with a Final decision.

(6) The Superintendent retains the ultimate legal authority on whether to remove the member.

(7) The Superintendent shall inform the member in writing of the final decision, with a brief explanation that the Superintendent has exercised the legal discretion afforded the Department in arriving at a decision.

(8) There is no right of appeal of the decision on removal.

Stat. Auth.: ORS 181.280 & 181.310

Stats. Implemented: ORS 181.290 - 181.340

Hist.: OSP 3-2012(Temp), f. & cert. ef. 7-12-12 thru 11-1-12; OSP 4-2012, f. & cert. ef. 9-5-12

DIVISION 90

CONFIDENTIALITY AND INADMISSIBILITY OF MEDIATION COMMUNICATIONS

257-090-0010

Confidentiality and Inadmissibility of Mediation Communications

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

(c) the mediator shall disclose and testify to any information obtained during the mediation which poses a life, health, safety concern or the information disclosed would tend to indicate the likelihood of a violation of criminal law or statute.

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondiscoverable and inadmissible to the extent authorized by OAR 257-090-0010 and this agreement. This agreement relates to the following mediation:

- a) _____
(Identify the mediation to which this agreement applies)
- b) To the extent authorized by OAR 257-090-0010, mediation communications in this mediation are: (check one or more)
- ____ confidential and may not be disclosed to any other person
- ____ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding
- ____ not admissible in any subsequent administrative, judicial or arbitration

proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____
Name of Agency

Signature of Agency's authorized representative _____ Date _____
(when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

Signature of party's authorized representative _____ Date _____

e) _____
Name of party to the mediation

Signature of party's authorized representative _____ Date _____

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated

to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Superintendent of the Oregon State Police or their designee determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

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

Hist.: OSP 4-2005, f. 9-20-05, cert. ef. 9-22-05