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**DIVISION 1**

**PROCEDURAL RULES**

**105-001-0000**

**Notice of Rulemaking**

Prior to the adoption, amendment or repeal of any rule, the Department of Administrative Services, shall give notice of the intended action:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule.
- (2) By mailing a copy of the notice to persons on the division mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule; and
- (3) By mailing or furnishing a copy of the notice to:
  - (a) The Associated Press;
  - (b) Agency Heads;
  - (c) Agency Personnel Managers;
  - (d) Employee organizations certified by the Employment Relations Board if the rule affects employees represented by them; and
  - (e) The Capitol Press Room.

Stat. Auth.: ORS 183.335, 183.341, 184.340, 240.250 & 240.145(3)

Stats. Implemented: ORS 183.335 & ORS 183.341

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94; HRSD 5-2003, f. 5-15-03, cert. ef. 5-21-03

**105-001-0005**

**Model Rules Adoption**

The Division adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedure Act as amended and effective September 9, 1995.

Stat. Auth.: ORS 184.340 & ORS 240.145(3)

Stats. Implemented: ORS 183.341

Hist.: PD 5-1981, f. & ef. 12-1-81; PD 3-1983, f. & ef. 10-14-83; PD 1-1986, f. & ef. 2-11-86; PD 3-1988, f. & cert. ef. 4-8-88; PD 5-1990, f. & cert. ef. 12-21-90; PD 3-1992, f. & cert. ef. 3-17-92; PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96

**DIVISION 10**

**GENERAL**

**105-010-0000**

**Definitions Applicable Generally to Personnel Rules and Policies**

The following definitions apply to the Personnel Rules and Policies:

(1) "Administrator": Administrator of the Human Resource Services Division of the Department of Administrative Services.

(2) "Agency": Any department, division, independent board, council, bureau, institution or commission; all the positions of which are under the same appointing authority; a distinct entity for which a separate budget limitation or agency number is maintained.

(3) "Agency Head": An elected or appointed officer who has authority and responsibility for management and operation of a state agency and accountability for appropriate outcomes.

(4) "Allocation": Assignment of a position to a classification.

(5) "Announcement": A written notice of a recruitment which includes a description of duties, salary, entrance requirements, rating process, recruitment period and other pertinent information.

(6) "Appointing Authority": An agency head and any employee designated by the agency head as having power to make appointments to positions in the state service and take other personnel actions.

(7) "Appointment": The hiring of a person into a position in state service.

(8) "Certificate of Eligibles or Certificate": A list of candidates certified to a position.

(9) "Classification": A group of positions sufficiently alike in duties, authorities, and responsibilities for which similar qualifications and schedules of pay can be applied.

(10) "Classified Service": All positions in state service which are not listed in ORS 240.200, 240.205, or 240.212.

(11) "Comparability of the Value of Work": The value of the work measured by the needs of the employer and the knowledge, composite skill, effort, responsibility, and working conditions required in the performance of the work.

(12) "Crossfill": The appointment of an employee to a position in a different classification in the same salary range number.

(13) "Custodian": The custodian of division public records.

(14) "DAS": The Department of Administrative Services

(15) "Delegate": Authorization for agencies to assume responsibility for designated division functions.

(16) "Demotion": The voluntary or involuntary movement of an employee (except temporary employees) from a position in one classification to a position in another classification having a lower salary range number.

(17) "Department": The Department of Administrative Services.

(18) "Direct Appointment": An alternate appointment of an applicant made by the criteria in OAR 105-040-0050.

(19) "Director": The Director of the Department of Administrative Services.

(20) "Disabled Veteran": As defined in ORS 408.225(2).

(21) "Disposition Code": A standardized code assigned by an appointing authority or designee to an applicant on a Certificate. The code identifies the action taken and if their name is inactivated or removed from the List.

(22) "Division": The Human Resource Services Division of the Department of Administrative Services.

(23) "Doublefill": The filling of a position with two or more employees.

(24) "Executive Service": Part of the exempt or unclassified service as specified in HRSD State Policy 30.000.01, Position Management.

(25) "Exempt Service": Positions in state service which are listed in ORS 240.200.

(26) "Full-Time": A work schedule of normally 40 hours during the workweek or any average of 40 hours per week over the course of a monthly pay period.

(27) "Hay Method": The Hay Guide Chart-Profile Method of job evaluation.

(28) "HRSD": The Human Resource Services Division.

(29) "Initial Appointment": The initial appointment to a position in state service or the appointment of a former employee whose reemployment eligibility or layoff rights have expired.

(30) "Injured Worker": an employee who incurred an injury, while employed in a state executive branch agency, determined to be compensable under ORS Chapter 656, who has not exercised or waived reinstatement and reemployment rights under ORS 659A.043 and 659A.046.

(31) "Job Sharing Position": A full-time position identified as one that may be held by two or more employees working part time.

(32) "Layoff": Reduction in force due to lack of work, curtailment of funds, reorganization or but not for reasons specified in ORS 240.555.

(33) "Limited Competitive Appointment: An appointment to a non-competitive classification made by limiting the competition for appointment to economically disadvantaged person who meet the criteria outlined in OAR 105-040-0060.

(34) "Management Service": Positions in state service, not in the exempt or unclassified service, determined to be confidential, under ORS 243.650(6), or managerial, under 243.650(16), or supervisory, under ORS 243.650(23).

(35) "Minimum Qualifications": Minimum experience, training, knowledge, and skills necessary for admission to a test or for successful entry and performance in a classification or position.

(36) "OAR": Oregon Administrative Rule.

(37) "Official Representative": Any person designated or authorized by an employee to act on behalf of the employee in employment relations matters.

(38) "Part-Time": A work schedule less than full time.

(39) "Part-Time Employee": An employee who works less than full time.

(40) "Permanent Position": A full-time or part-time position that is normally expected to last indefinitely subject to availability of permanent funding.

(41) "PERS": Public Employees Retirement System.

(42) "Position": a group of duties, authorities, and responsibilities assigned to a position by an appointing authority.

(43) "Promotion": The movement of an employee (except temporary) from a position in one classification to a position in another classification having a higher salary range number.

(44) "Protected Classes": Those characteristics of people afforded protection under Title VII of the Civil Rights Act and other civil rights legislation.

(45) "Public Record": Any record containing information relating to the conduct of the public's business which is prepared, owned, used or retained by the Division or delegated agency.

(46) "Reclassification": A position and/or employee classification change based on assignment of significantly different duties with continuation of the same general knowledge and skill requirements. The change in duties usually occurs gradually over a period of time.

(47) "Recognized Service Date": The date reflecting an employee's time in state service, with appropriate adjustments, which is used to determine the employee's vacation accrual rate.

(48) "Recruitment": A process to solicit a pool of qualified applicants to fill current position vacancies or potential position vacancies.

(49) "Reemployment": the noncompetitive return of a former regular or trial service employee to state service, return from demotion, or return following downward reclassification. See OAR 105-040-0080.

(50) "Regular Status": Status accorded a management service or classified unrepresented employee upon successful completion of a designated trial service period.

(51) "Related List": A list for a comparable higher, lower, or equal classification containing names of applicants who have knowledge, skills, and abilities similar to those required for the vacant position and who have been tested in a manner that reasonably measures their ability to perform the duties of the vacant position.

(52) "Represented Position": A position currently represented by a labor union or other official representative.

(53) "Salary Range": A range of pay established for each classification, normally including a minimum rate, a maximum rate and intermediate rates.

(54) "Salary Range Number": The number, along with any alphabetical suffix characters, which identifies salary relationship among classifications within a compensation plan.

(55) "Skill Code": A code assigned to a special qualification for use in selective certification.

(56) "Substantial Disability": As referenced in ORS 240.306(3)

(57) "Termination": The involuntary separation of an employee from state service.

(58) "Test": Any method of giving a rating to a job applicant or of selecting from among the applicants on a certificate of eligibles.

(59) "Transfer": The lateral movement of an employee (except temporary) from one position to another position in the same classification or from a position in one classification to a position in another classification having the same salary range number.

(60) "Trial Service": a working test period during which an employee is required to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position.

(61) "Unclassified Service": Positions in state service which are listed in ORS 240.205.

(62) "Underfill": Employment of a person in a classification lower than the established classification level of the position.

(63) "Unrepresented Position": A position eligible for official representation by a union or association, but for which representation has not been elected.

(64) "Veteran": As defined in ORS 408.225(1).

(65) "Veteran Preference Points": See ORS 408.230 and 408.235.

Stat. Auth.:

Stats. Implemented:

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 1-1992(Temp), f. & cert. ef. 2-14-92; PD 4-1992, f. & cert. ef. 8-12-92; HRSD 10-2003, f. 6-11-03, cert. ef. 6-20-03

## 105-010-0011

### Human Resource Services Division Public Records

(1) It is the policy of the state to ensure every person has a right to inspect any public record except as otherwise expressly provided by ORS 192.501 to 192.505.

(2) Division Public Records Subject to or Exempt from Disclosure.

(a) The following division public records, falling within the disclosure exemptions under ORS 192.501 to 192.502, shall not be subject to inspection except by authorized division or agency personnel, unless the public interest requires disclosure:

(A) Test questions, scoring keys, and other data used to administer the selection process;

(B) A notice of disciplinary action and materials or documents supporting that action;

(C) A communication within the division or between the division and another public body of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. The division has the burden of showing that the public interest in encouraging frank communications between officials and employees of the division clearly outweighs the public interest in disclosure;

(D) Information of a personal nature, such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in a particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(E) The home addresses, dates of birth, social security numbers and telephone numbers of state employees or volunteers in the agency's or division's personnel records. The exemption from disclosure of the addresses, dates of birth and telephone numbers of state employees and volunteers does not apply if the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; and

(F) Information submitted to the division in confidence and not otherwise required by law to be submitted where such information is reasonably considered confidential, the division has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(b) A division public record pertaining to an individual applicant or employee may be inspected by that applicant or employee or other specifically designated party as follows:

(A) An applicant or employee may inspect a division public record contained in the applicant's or employee's file including a confidential report from a previous employer if the source-identifying information can be redacted.

(B) An applicant's or employee's official representatives, with the applicant's or employee's signed authorization, may inspect a division public record contained in that applicant's or employee's file including a confidential report from a previous employer, if the source-identifying information can be redacted.

(C) The following parties may inspect any division public record contained in an individual employee's file:

(i) An employee's immediate supervisor or higher level supervisor in direct line within the program area;

(ii) The personnel manager or authorized staff of the employing agency;

(iii) The head of the employing agency;

(iv) Human Resource Services Division staff;

(v) A representative of the Employment Relations Board with subpoena or signed authorization;

(vi) A legally authorized law enforcement agency; and

(vii) The Audits Division of the Office of Secretary of State when carrying out its statutory duties.

(D) An agency may inspect a division public record containing the name, home address, social security number, or employing agency of an employee when such data is to be used to enforce a claim due the state or to defend against a claim.

(E) An agency may inspect an application, examination, or certification record relating to a recruitment specifically for that agency or to a certificate received for a job vacancy.

(F) An investigating officer from the Bureau of Labor and Industries Civil Rights Division, Department of Justice or Equal Employment Opportunity Commission may inspect an application or examination record that is pertinent to an official investigation.

(c) A member of the public may inspect the following division public records pertaining to an applicant or employee:

(A) Information contained in an employment application;

(B) Sex identification;

(C) Grouping by age category;

(D) Ethnic identification;

(E) Performance evaluation;

(F) Date of initial hire to state service;

(G) Name, city and zip code;

(H) City and county of work station;

(I) Position number;

(J) Representation code;

(K) Benefit code;

(L) Position type;

(M) Employee's rate of pay;

(N) A confidential report from a previous employer, if the source-identifying information can be redacted.

(3) The State Personnel Records Officer is designated as the custodian of division public records. An alternate shall be designated to act in the absence of the Officer.

(4) A request for inspection of a division public record shall be made either in writing, or in person during normal working hours, to the State Personnel Records Officer, Salem, Oregon.

(5) Information which is exempt from disclosure, but contained within information open to disclosure, shall be blanked out. Upon request, the State Personnel Records Officer shall certify, on a cover sheet or the last page of the copy, that the copy has been compared with the original and that the copy is a true and exact copy of the original. The State Personnel Records Officer shall sign and date such certification.

(6) The State Personnel Records Officer, upon determining that requested records are open to inspection, shall make records, or copies thereof, available within a reasonable time. The division may establish fees reasonably calculated to reimburse it for actual cost to make such records available. Requesting parties shall be provided with estimates of costs to provide requested records.

Stat. Auth: ORS 184.340 & ORS 240.145(3)

Stats. Implemented: ORS 192.502

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 5-1988, f. & cert. ef. 6-28-88; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94; Renumbered from 105-010-0035; HRSD 1-1997, f. 9-30-97, cert. ef. 10-4-97; HRSD 1-1998, f. 6-29-98, cert. ef. 7-1-98; HRSD 2-2000, f. 7-12-00, cert. ef. 7-14-00; HRSD 6-2003, f. 5-15-03, cert. ef. 5-21-03

## **105-010-0016**

### **Public Disclosure**

(1) Each agency head shall provide for public access, upon request, the relevant employment history or financial information on any employee who worked for, or has a financial interest in, an organization he or she is regulating.

(2) Persons hired in positions to regulate persons or organization where there is, or may be perceived, a personal conflict of interest shall be informed that public disclosure of such potential conflict is required.

(3) Materials developed for recruitment of people to positions where they will be performing regulatory duties shall make clear that relevant employment and financial information may be disclosed to the public upon request.

(4) Regulating includes proposing rules, issuing orders, and/or making decisions or recommendations which benefit or impair the person or organization being regulated.

Stat. Auth: ORS 184.340 & ORS 240.145(3)

Stats. Implemented: Executive Order 78-10

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-049-0000; HRSD 7-2003, f. 5-15-03, cert. ef. 5-21-03

## **DIVISION 20**

### **CLASSIFICATION COMPENSATION**

## **105-020-0001**

### **Comparability of Work**

(1) The Department of Administrative Services shall use the Hay Method of Job Evaluation as the neutral and objective method to determine the comparability of the value of work performed by employees within the State Executive Branch and the compensation and classification structure of the state system.

(2) This methodology measures the know-how, problem solving, accountability and working conditions required to perform the duties within a classification of work.

Stat. Auth.: ORS 184.340, 240.145, 240.240, 240.245 & 240.250

Stats. Implemented: ORS 240.190 & ORS 240.235



Hist.: PD 4-1988, f. & cert. ef. 4-29-88; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-030-0095; HRSD 8-2003, f. 5-15-03, cert. ef. 5-21-03

#### 105-020-0015

##### "Pick-up" of Employee Contributions to Retirement

(1) The Department of Administrative Services shall treat any employee contribution to PERS from the employees' salaries as the employer's contribution, thus "picking up" that contribution for purposes of Internal Revenue Code Section 414(h)(2).

(2) The contribution shall be deducted directly from the employee's wages and the employee shall not have the option of receiving his or her contribution as salary and of making the contribution himself or herself.

(3) The employee's reported salary on the W-2 form for tax purposes shall be reduced by the amount of that contribution.

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

Stat. Auth.: ORS 184.340, ORS 240.145(3), ORS 240.250 & 26 USC § 414(h)

Stats. Implemented: ORS 238.200, 238.205, EO 94-23 & 26 USC § 414(h)

Hist.: PD 3-1994(Temp), f. 12-23-94, cert. ef. 1-1-95; PD 1-1995, f. 3-31-95, cert. ef. 4-1-95

### DIVISION 40

#### FILLING POSITIONS

#### 105-040-0001

##### Equal Employment Opportunity and Affirmative Action

(1) The State of Oregon is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:

(a) State agency heads shall insure:

(A) Equal employment opportunities are afforded to all applicants and employees by making employment related decisions that are non-discriminatory;

(B) Employment practices are consistent with the state's Affirmative Action Plan and state and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action goals, which include persons with disabilities; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies and assess the diversity of each applicant pool prior to closing a job announcement.

(b) The Department of Administrative Services shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action goals for each state agency. The system shall also communicate goals for hiring persons with disabilities as required by state and federal law;

(B) Produce periodic reports showing hiring opportunities and each agency's progress toward achieving established affirmative action goals as identified in the state wide automated system.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's designated office within 30 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and performance evaluations;

(3) Diverse applicant pools are developed by using proactive steps in outreach strategies which generally include targeted newspapers, professional organizations, employee networks, community organizations, and resume banks;

(4) The statewide automated affirmative action system establishes goals for each equal employment opportunity category and ethnic group for each state agency;

(5) Nothing in this rule precludes any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.306 & ORS 243.305

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03

#### 105-040-0010

##### Recruitment and Selection Process

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. It is the policy of the State of Oregon to base hiring and promotion decisions on an applicant's relative knowledge, experience, and skills, determined by competition without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, disability, or other non-job-related factors, with proper regard for an individual's privacy.

(1) An applicant shall complete and submit an official State of Oregon application (PD 100), or an alternative application form approved by the Division, and follow the instructions on the recruitment announcement within the designated time period.

(a) An applicant claiming veteran's preference points must submit as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon application (PD 100). Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the Department of Veteran Affairs, unless the information is included in the DD Form 214/215.

(b) Clients of State Department of Human Services programs who meet the eligibility criteria under Administrative Rule 105-040-0060, Limited Competitive and Non-competitive Appointments, may identify themselves as participants by selecting the "AFS" skill code on the State of Oregon application (PD 100). The applicant must submit proof of current program participation at the request of the appointing authority before a job offer will be made.

(2) An appointing authority shall provide the public and state employees a minimum two (2) weeks notice of employment opportunities when filling vacancies other than agency promotions by using the State's Jobs page on the internet and the Employment Department services. Accordingly:

(a) The recruitment announcement shall include job requirements, minimum qualifications from classification specifications and any special qualifications, salary, selection method, how, when, and where to apply, the length of the recruitment, the type of test, if any, and the basis and method for an applicant's request for review of disqualification. Minimum qualifications means minimum experience, training, knowledge and skills required for a position in a classification according to the classification specifications.

(b) Any tests administered shall be competitive, unbiased and of such content as to assist in determining an applicant's qualifications to perform the work.

(3) An appointing authority shall have the authority to verify a statement contained in an application or a statement made in an interview and secure further information concerning the applicant's qualifications. An adjustment may be made to the applicant's rating if information obtained materially affects the applicant's rating of experience, training, or suitability.

(4) Members of the public and state employees may:

(a) Obtain information regarding employment opportunities by accessing the State's Jobs page on the internet and/or visiting a local office of the Employment Department where recruitment announcements are posted;

(b) Request a review of disqualification within 10 calendar days from the date of grade notice for not meeting minimum qualifications as stated in the recruitment announcement. Any changes due to a disqualification review shall not affect the previous selection decision(s) concerning other applicants;

(c) Request a review, in writing, of test results for reevaluation within 10 calendar days from the date of the grade notice from the hiring agency or the Division. The review shall be limited to the verification of scoring, and any changes due to a review shall not affect the previous selection decision(s) concerning other applicants.

(d) Retake a test if more than three (3) months have elapsed since the test was previously taken and if the recruitment is open to application. An appointing authority with delegated recruitment and selection authority may determine the time period before retesting. The most recent score obtained shall determine the candidate's placement on the eligible list or failure to make the list. Retaking of a test applies only to written tests.

(5) The Division may delegate authority to an agency head to establish and administer a recruitment and selection process, for specific positions, which includes the development and administration of tests.

(6) Upon request, the Division may delegate the development and administration of an alternate recruitment process for positions in classifications that have an existing statewide screening process and list of eligibles.

(7) Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Records Retention.

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

Stat. Auth.: ORS 184.340 & ORS 240.145(3)

Stats. Implemented: ORS 240.250, ORS 240.306, ORS 240.321 & ORS 240.391

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-1999, f. & cert. ef. 9-1-99; HRSD 12-2003, f. 7-15-03, cert. ef. 7-21-03

## 105-040-0020

### Types and Order of Applicant Lists

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

(1) The State of Oregon uses a variety of applicant lists (some of which have an established order of use) to facilitate the selection of qualified applicants.

(a) First Consideration: Injured Worker Lists shall consist of the names of employees who are injured while employed with a state agency in the Executive Branch. The injury must have been determined to be a compensable work related injury, and the employee must not have waived reinstatement and reemployment rights in accordance with state workers' compensation laws.

(A) These lists are established by classification for specific entry level classes. Placement on the list shall be in ascending order by date of injury. The term of eligibility on the list shall be until one of the following occurs:

(i) 3 years from date of injury; or

(ii) Until the employee is returned to an available and suitable position (as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers); or

(iii) Until an employee is deemed ineligible for retention on the list for reasons identified under HRSD State Policy 50.020.01.

(B) Injured Worker lists shall be used first when filling a vacant position in an entry level classification identified in OAR 105-050-0020(1)(c), Return to Work of Injured Workers. Exceptions to this consideration are other injured workers and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of a valid collective bargaining agreement between the employer and a representative of the employer's employees. Employees shall be appointed in the order in which they appear on the list if the employee meets the qualifications for the position.

**NOTE:** This list is by-passed when the classification of the position to be filled is other than an injured worker entry level class.

(b) Second Consideration: Agency Layoff Lists shall consist of the names of permanent (full or part-time) and/or seasonal employees who have completed initial trial service with the State and have separated from the service in good standing due to layoff or demotion in lieu of layoff.

(A) These lists are established by classification within the type of service (i.e. classified represented, classified unrepresented, management service). The term of eligibility on the list is two years from date of layoff/demotion. An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from which laid off (other than temporary work).

(B) Agency Layoff Lists shall be used when no qualified injured worker is available to fill the vacant position or the position is other than an injured worker entry level class. An employee, on the agency layoff list of the same classification and type of service of the position to be filled, shall be appointed if the employee meets the special qualifications, if any, for the position. Appointments from the list shall be made consistent with the agency's layoff plan.

(c) Third Consideration: Statewide Reemployment Layoff Lists shall consist of names of permanent (full or part-time) employees in either the management or classified unrepresented service who have separated due to a layoff from state or unclassified executive service employees terminated from state service due to reduction in force. Employees on the Statewide Reemployment Layoff List shall have completed initial trial service.

(A) These lists are established by classification. An employee may request placement on the list via his/her agency's personnel office for classifications for which qualified and which are the same classification, or same, equal, or lower salary range number. The term of eligibility on the list shall not be longer than two years from the date of layoff. An individual shall be removed from the list upon the second refusal of a job offer or when a person accepts a position and is returned to work (other than temporary work).

(B) Statewide Reemployment Layoff Lists shall be used when there are no qualified employees on the agency's layoff list or no agency layoff list exists. An agency shall consider employees on the list for the classification and may consider related classifications having similar knowledge and skills as the position to be filled and shall interview those employees who meet the special qualifications, if any, for the position.

(C) Agency promotion lists, statewide promotion lists, statewide transfer lists and open competitive lists may be used to supplement the applicant pool when fewer than five qualified applicants appear on the Statewide Reemployment Layoff List.

(d) The consideration of using other lists shall follow the injured worker, agency layoff, and statewide reemployment layoff lists, at the agency's discretion, with sequence optional.

**NOTE:** Use of these lists applies to classified represented positions only when an initial appointment.

(A) Agency Promotion Lists shall consist of names of an agency's employees who meet the qualifications for the position and pass the appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later;

(B) Statewide Promotion Lists shall consist of names of eligible state employees who meet the qualifications of the position and pass the appropriate promotional test, if any. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from date of placement or adoption of the list, whichever is later. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide promotion list;

(C) Statewide Transfer Lists shall consist of names of eligible state employees who desire a transfer to a position of the same classification, or same, equal, or lower salary range number. These lists are established by classification. Employees may request placement on these lists via their agency's personnel office. The term of eligibility shall be two years from date of application or until the administrator elects to discontinue use of such lists. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide transfer list;

(D) Open Competitive Lists shall consist of names of persons seeking employment with the state who meet the qualification of the position and pass the appropriate entrance test, if any. In addition, the list will consist of any state employee seeking other employment with the state who has gained regular status in the classification of the position applied for and who meets any special qualification if any, for the position. These lists are established by classification. The term of eligibility shall not be less than one month nor more than two years from the date of placement or adoption of the list, whichever is later.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250  
Stats. Implemented: ORS 240.306, 659A.052, 659A.043 & 659A.046  
Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 13-2003, f. 7-15-03, cert. ef. 7-21-03

#### 105-040-0030

##### Use of Applicant Lists

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

(1) It is the policy of the State of Oregon to establish and maintain lists of qualified applicants to facilitate a selection process based upon required knowledge and skills.

(a) The order in which applicant lists are to be used shall be in accordance with Administrative Rule 105-040-0020, Types and Order of Applicant Lists, or as specified in collective bargaining agreements.

(b) Lists of eligibles necessary to provide an adequate number of qualified candidates shall, except for agency layoff or agency informational lists, be established and maintained on the Division's central system.

(c) When a vacant position is to be filled, an appointing authority, when appropriate, shall request a list of qualified applicants and receive a "certificate of eligibles" prior to conducting interviews.

(d) The certificate of eligibles shall be issued in one of the following formats, whichever is applicable:

(A) All applicants listed in rank order from the highest to lowest score;

(B) All applicants who meet the minimum qualifications for the position;

(C) A limited number of applicants selected at random from a list of all applicants who meet the minimum qualifications for the position.

(e) When a certificate of eligibles is issued in rank order from the highest to lowest score, applicants for interviews shall be selected in that same order. When certificates issued contain tied scores, all applicants with that score shall be offered an interview if one applicant with that score is interviewed.

(f) When a certificate of eligibles is issued for all applicants who meet the minimum qualifications for the position or for a limited number of applicants selected at random from such a list, all applicants shall be interviewed unless a valid screening process is developed and documented to select only the most qualified candidates for interview. If not all qualified applicants are to be interviewed, the job announcement shall inform applicants of the selection process being used. If the selection process includes ranking applicants using a numerical score or any other method of ranking applicants that does not result in a score, veterans' preference points shall be added, where applicable, at the time of ranking.

(g) When a certificate of eligibles is issued for a limited number of applicants selected at random from a longer list of all qualified candidates and the agency has not met its affirmative action goals, the certificate may include the same proportion of protected class candidates as the list of all qualified candidates. An appointing authority may supplement a randomly selected certificate of eligibles in the following manner:

(A) When a random certificate is requested to fill a vacant position for which there is an existing temporary appointment, an appointing authority may interview the temporary employee, or all temporary employees in the agency or work unit, in addition to the candidates listed on the randomly selected certificate of eligibles, provided that the temporary employee is included in the list of all qualified candidates and is performing the same duties of the vacant position.

(B) A randomly selected certificate of eligibles may be supplemented with the names of all qualified candidates who are clients of the Department of Human Services or Juvenile Justice Division

programs described under OAR 105-040-0060, Limited-Competitive and Non-competitive Appointments.

(h) The number of candidates on the certificate of eligibles shall be determined by the appointing authority. However, all names with the same score, where scores are used, shall be included.

(i) A related applicant list of a classification having similar knowledge and skills may be used. However, applicants must meet the minimum qualifications for the position being filled.

(j) New and existing applicant lists may be consolidated, as necessary, provided minimum qualifications and the exam requirements are the same.

(k) Except for the expiration of the term of eligibility on an applicant list, any person whose name is removed from a list shall be promptly notified by the Administrator or delegated agency appointing authority of the reason for such removal.

(l) Appointment to a classification from an applicant list will automatically inactivate the applicant from all applicant lists except for agency layoff list, for classifications that:

(A) have a top step salary rate equal to or less than the appointed classification top step salary rate; and

(B) have a salary range number equal to or less than the appointed classification salary range number.

(m) The Administrator or delegated agency may remove a name from an applicant list for reasons including, but not limited to the following:

(A) Failure to respond within a reasonable time period to any inquiry to availability for appointment;

(B) Expiration of the term of eligibility on the list;

(C) Willful violation of these rules or policies, or provisions of the law;

(D) Falsifying statements on the application;

(E) Failure to pass required and job related criminal record or driving record checks;

(F) Cancellation of a list;

(G) Appointment made from a lay-off list to any classification;

(n) A disposition code shall be reported for each candidate appearing on the certificate of eligibles who was invited to interview.

(2) A certificate of eligibles is a list of candidates certified to a position, as a result of submitting of an application and meeting the minimum qualifications on the job announcement, passing the exam, where applicable, and were included in the number requested by the agency.

(3) A disposition code is a standardized code assigned by an appointing authority or designee to an applicant on a Certificate. The code identifies the action taken and if their name is inactivated or removed from the List. Documentation retention requirements are outlined under HRSD State Policy 40.010.01, Recruitment and Selection Record Retention.

(4) A protected class candidate is a female or person of color in one of the following groups:

(a) Asian or Pacific Islander: Persons having origins in any of the peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, The Philippine Islands and Samoa.

(b) African American (not of Hispanic origin): Persons having origins in any of the black ethnic groups.

(c) Hispanic: Persons having origins in any of the Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultures, regardless of ethnicity.

(d) Native American or Alaskan Native: Persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

(5) "Affirmative action goals" means those goals established in the state's Affirmative Action Plan.

Stat. Auth.: ORS 184.340 & 240.145

Stats. Implemented: ORS 240.010 & 240.306

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-2000, f. 1-28-00 cert. ef. 2-1-00; HRSD 14-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 21-2003(Temp), f. & cert. ef. 9-23-03 thru 12-19-03; HRSD 23-2003(Temp), f. 12-19-03, cert. ef. 12-20-03 thru 3-20-04; HRSD 1-2004, f. & cert. ef. 3-5-04



**105-040-0040**

**Types of Appointments**

Applicability: Classified unrepresented and management service positions, initial appointment to all classified positions and temporary appointments.

(1) The State of Oregon has a variety of appointment types which are made in accordance with the type of position being filled and the individual needs of the agency. An agency head shall use one of the following methods to appoint persons to state service:

(a) Permanent Appointment: The appointment of a person to a permanent position;

(b) Seasonal Appointment: The appointment of a person to a position which occurs, terminates and recurs periodically or regularly;

(c) Temporary Appointment: The noncompetitive, non-status, appointment of a person for the purpose of meeting emergency, non-recurring or short-term workload needs of the agency. A temporary employee shall be exempt from all provisions of the State Personnel Relations Law, Administrative Rules and HRSD Policies unless otherwise specified in accordance with HRSD State Policy 40.025.01, Temporary Appointments;

(d) Limited Duration Appointment: The appointment of a person for a study, project, workload need or when position reduction is anticipated.

(A) An appointment made for a study or project shall be for a period not to exceed two years, except when the position is grant funded, but shall expire upon the completion of the study or project or when funding is exhausted.

(B) Appointments made when position reduction is anticipated shall not exceed the end of the current biennium or current season that ends prior to the end of the biennium.

(C) Appointments made for workload need shall be for a period not to exceed two years.

(D) An applicant/employee accepting a limited duration appointment shall be informed of the conditions of the appointment, including employee status at the termination of the appointment, and shall acknowledge in writing acceptance of the appointment under those conditions.

(E) The Limited Duration Agreement model serves as a guide to establish conditions of a limited duration appointment. The agreement will require modification to fit each employee's individual appointment circumstance.

(e) Academic Year Appointment: The appointment of a person to a position which generally conforms to the academic year of mid-September to mid-June. Appointing authorities may extend employment into the period between academic years;

(A) Employees appointed to positions designated as academic year shall be placed on leave without pay during the unextended period between academic years. The employee shall be returned to the position on termination of leave without pay status. Time spent on such leave shall constitute service for purposes of computing vacation accrual rates, recognized service dates and any other purpose where service time is computed except for the period of trial service;

(B) A person accepting an academic year appointment shall be informed of the conditions of the appointment and shall acknowledge in writing acceptance of the appointment under those conditions.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.001, Recruitment and Selection Records Retention.

[ED. NOTE: The Agreement model referenced is available from the agency.]

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

Stat. Auth.: ORS 240.145

Stats. Implemented: ORS 240.306, ORS 240.309, ORS 240.321 & ORS 240.425

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1985(Temp), f. & ef. 7-26-85; PD 1-1986, f. & ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1992(Temp), f. & cert. ef. 2-21-92; PD 4-1992, f. & cert. ef. 8-12-92; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0000; HRSD 2-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 4-2003, f. & cert. ef. 4-30-03; HRSD 15-2003, f. 7-15-03, cert. ef. 7-21-03

**105-040-0050**

**Direct Appointment**

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. This rule provides state agencies an alternative method to the open competitive process when making appointments to positions in state service. Through this alternative method, as in the competitive process, agency heads shall take proactive steps to achieve a diverse workforce representative of the Oregon community as a means of fulfilling their Affirmative Action Plans.

(1) The agency head has the delegated authority and discretion to make direct appointments consistent with the criteria established in (a) and (b) below:

(a) Criteria for direct appointment:

(A) A recent open competitive recruitment results in no suitable candidates as determined, documented, and certified by the agency head. To be considered recent, an open competitive recruitment must have been completed within the previous six (6) months. When a recent statewide or agency promotion recruitment results in no suitable candidates, OAR 105-040-0020, Types and Order of Applicant Lists, requires an open competitive recruitment to be completed before a direct appointment can be made; or

(B) The appointment is made consistent with a court or administrative order, consent decree, court or administrative settlement, or negotiated tort claim settlement; or

(C) The position requires special or unique skills at the professional level. Special or unique skills at the professional level are those which require specialized knowledge typically acquired from college coursework at the bachelor degree level or beyond; or

(D) The position being filled has critical timing requirements affecting recruitment. Critical timing requirements affecting recruitment means that the position is critical to agency operations and there is a demonstrated need to fill the position quickly; and

(b) Minimum Qualifications:

(A) The individual to be direct appointed meets the minimum qualifications of the classification; or

(B) The individual is appointed as an underfill and will meet the minimum qualifications of the position within 12 months of the appointment.

(2) The agency head has the delegated authority and discretion to make direct appointments consistent with HRSD State Policy 30.005.01, Effect of Position Change on Incumbents.

(3) Each direct appointment shall be documented. The documentation shall be retained for a minimum of three (3) years. The documentation shall cite the applicable rule criteria, results of any open competitive recruitment, the qualifications of the individual selected, and the agency appointing authority authorization signature.

Stat. Auth.: ORS 240.306(5), 240.145(3) & 240.250

Stats. Implemented: ORS 240.145(3), 240.250, 240.306, 240.311 & 240.321(2)

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 4-1982, f. & ef. 7-1-82; PD 1-1985, f. & ef. 3-1-85; PD 1-1986, f. & ef. 1-23-86; PD 1-1989, f. & cert. ef. 2-10-89; PD 2-1989, f. & cert. ef. 12-1-89; Suspended by PD 1-1993(Temp), f. & cert. ef. 2-17-93; PD 2-1993(Temp), f. & cert. ef. 8-27-93; PD 1-1994, f. & cert. ef. 2-23-94; PD 2-1994, f. & cert. ef. 8-1-94; Renumbered from 105-043-0005; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 2-1997, f. & cert. ef. 11-5-97; HRSD 16-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 23-2003(Temp), f. & cert. ef. 11-25-03 thru 3-23-04; HRSD 2-2004, f. & cert. ef. 3-15-04

**105-040-0060**

**Limited-Competitive and Noncompetitive Appointments**

Applicability: Classified unrepresented and management service positions and initial appointment to all classified positions.

(1) It is the policy of the State of Oregon to facilitate the employment of persons who are substantially disabled, economically disadvantaged or unskilled or semi-skilled through a limited-competitive or non-competitive appointment process.

(a) Recruitment for positions using the HIRE system are not limited to the Limited-Competitive and Non-Competitive Classification lists. A limited-competitive selection process through the HIRE system may be used to facilitate employment of those with a substantial disability.

(b) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this rule (Limited-Competitive and Non-Competitive Appointment

Classifications List) unless otherwise authorized by the Division. When an appointing authority chooses to make an appointment using limited-competitive or non-competitive selection and appointment procedures, the appointing authority shall:

(A) Report vacancies to the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public;

(B) Provide the Employment Department field office with a brief description of any job reported to that office; and

(C) Make affirmative efforts to supplement referrals to create a diverse pool of candidates.

(c) A limited-competitive selection process may be used for economically disadvantaged persons who meet the following criteria:

(A) Clients of the Department of Human Services programs.

(B) Clients of the Juvenile Justice Division programs funded by the state.

(d) The Division shall use the following criteria when reviewing appointing authority requests for additions to the Limited-Competitive and Non-competitive Appointment Classifications List:

(A) The classification requires minimal or no requisite knowledge or skills;

(B) It is impractical to develop an examination; and

(C) It is impractical to follow the normal recruiting process.

(2) The agency may also report by phone to the Salem field office of the Employment Department, a vacancy in the Portland, Salem, Monmouth, and Corvallis areas that is open to the public, if the referral of walk-in applicants is desired.

(3) A non-competitive appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening and no ranking. Where more than one candidate is referred, the hiring manager may use a limited-competitive process to select the most qualified.

(4) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria outlined in (1)(b)(A) above.

(5) Following is a list of Limited-Competitive and Non-competitive Appointment Classifications:

- (a) 001, Supported Employment Worker;
- (b) 0100, Student Office Worker;
- (c) 0101, Office Assistant 1;
- (d) 0150, Student Professional/Technical Worker;
- (e) 0230, Cashier 1; (Abolished 09/98)
- (f) 0312, Campus Dispatcher; (Abolished 06/02)
- (g) 0315, Forestry Communications Dispatcher;
- (h) 0405, Mail Services Assistant;
- (i) 0714, Issuing Agent; (Abolished 12/99)
- (j) 1105, Traffic Survey Interviewer;
- (k) 1476, Computer Output Microfiche Technician; (Abolished

07/97)

- (l) 2394, Artist's Model; (Abolished 01/98)
- (m) 3101, Student Engineering Specialist;
- (n) 3769, Experimental Biology Aide;
- (o) 4101, Custodian;
- (p) 4114, Student Worker Labor/Trades/Service;
- (q) 4115, Laborer 1;
- (r) 4116, Laborer 2;
- (s) 4120, Trades/Maintenance Worker 1;
- (t) 4125, Litter Patrol Worker;
- (u) 4137, Liquor Distribution Worker 1;
- (v) 4140, Warehouse Worker; (Abolished 06/02)
- (w) 4403, Transporter;
- (x) 5440, Grain Weigher/Sampler; (Abolished 04/02)
- (y) 5515, Property Guard;
- (z) 5520, Campus Patrol Officer; (Abolished 09/98)
- (aa) 5522, Campus Security and Public Safety Officer; (Abolished 09/98)

(bb) 5550, Parking Services Representative;

(cc) 6100, Transportation Aide; (Abolished 04/96)

(dd) 6104, Supply Processing and Distribution Aide; (Abolished 04/96)

(ee) 6109, Hospital Aide; (Abolished 01/98)

(ff) 6114, Surgical Services Assistant; (Abolished 01/95)

(gg) 6500, Therapy Aide; (Abolished 06/02)

(hh) 6605, Human Service Assistant 1;

(ii) 6701, Student Human Services Worker;

(jj) 6725, Habilitative Training Technician 1

(kk) 6750, Group Life Coordinator 1;

(ll) 6805, Laboratory Aide; (Abolished 04/02)

(mm) 8101, Seed Certification Aide; (Abolished 01/98)

(nn) 8104, Seed Analyst (Entry); (Abolished 01/98)

(oo) 8125, Agricultural Worker;

(pp) 8201, Forest Nursery Worker 1;

(qq) 8202, Forest Nursery Worker 2;

(rr) 8208, Forest Lookout;

(ss) 8235, Student/Professional Forester Worker;

(tt) 8319, Fish and Wildlife Technician (Entry);

(uu) 8419, Park Conservation Aide; (Abolished 09/00)

(vv) 8420, Ranger Aid;

(ww) 9100, Food Service Worker 1;

(xx) 9210, Laundry Worker. (Abolished 06/02),

Stat. Auth.: ORS 184.340, ORS 240.145(3) & ORS 240.250

Stats Implemented: ORS 240.306, ORS 240.321 & ORS 657.710

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 17-2003, f. 7-15-03, cert. ef. 7-21-03

## 105-040-0070

### Alternate Methods of Filling Positions

Applicability: All employees (where not in conflict with collective bargaining agreements). All positions shall normally be filled at the budgeted salary range level and classification. However, an appointing authority may use the following alternate methods of filling positions to provide for situations such as employee development, job sharing, and short-term transitioning.

(1) Underfill:

(a) A position may be underfilled with an individual in a lower salary range number and classification when there is a reasonable expectation that the employee will meet minimum qualifications of the allocated level of the position within twenty-four (24) months of appointment made from a certificate or within 12 months of a Direct Appointment. Appointment may be from a certificate or as a direct appointment consistent with Administrative Rule 105-040-0050, Direct Appointment. Upon meeting position qualification and performance requirements, the employee shall be changed to the allocated level of the position;

(b) An employee underfilling shall be advised of the requirements necessary to qualify for the position they are underfilling.

(2) Doublefill:

(a) An appointing authority may employ two or more employees in a position as a doublefill for the following purposes:

(A) To cover an employee on leave for any reason when a temporary appointment is not appropriate and a vacant position does not exist to address the workload need;

(B) Short-term transitioning of employees into impending vacant positions for purposes of training;

(C) The position establishment is pending the Position Inventory Control System (PICS) update;

(D) When approved and/or directed by Budget and Management Division to address budget issues, or

(E) Job share not exceeding 1.0 FTE.

(b) Employees doublefilling positions shall meet the minimum qualifications of those positions and be appointed in accordance with applicable recruitment and appointment rules, policies, or collective bargaining agreements;

(c) The doublefill method of filling positions shall not be used to permanently increase legislatively authorized staffing levels.

(3) Crossfill: A position may be crossfilled to a different classification with an equal salary range number providing the position establishment or modification is pending the PICS update.

Stat. Auth.: ORS 184.340 & ORS 240.145

Stats. Implemented: ORS 240.145, 240.012, 240.013, 240.015 & 240.250

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 3-1996, f. & cert. ef. 8-1-96; HRSD 18-2003, f. 7-15-03, cert. ef. 7-21-03



**105-040-0080**

**Reemployment**

Applicability: Classified unrepresented, management service and exempt service employees.

(1) This rule provides state agencies a non-competitive method of reemploying experienced former state employees who separated from state service in good standing.

(a) An appointing authority may non-competitively reemploy classified service unrepresented and management service employees who separate from state service in good standing, voluntarily demote, or are reclassified downward in any agency in the same, equal, or lower classification for which qualified within two years from the effective date of such action;

(b) An appointing authority may non-competitively reemploy an exempt service employee who has been employed full-time for at least 12 months consecutively in such service in a position for which qualified within two years from the date of separation from state service if such separation is in good standing;

(c) Reemployment of an exempt service employee shall occur only after any current collective bargaining unit member has exhausted any right under an applicable collective bargaining agreement and after a current classified unrepresented or management service employee has exhausted layoff and reemployment eligibility under applicable Administrative Rules and HRSD State Policies.

(2) In the event of a subsequent appointment to a classification with a lower salary range, reemployment eligibility continues for the remainder of the two year period for the original classification from which separated.

Stat. Auth.: ORS 184.340, ORS 240.145 & ORS 240.250

Stats. Implemented: ORS 240.590

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 3-1982, f. & ef. 3-1-82; PD 2-1985(Temp), f. & ef. 7-26-85; PD 1-1986, f. & ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0010; HRSD 19-2003, f. 7-15-03, cert. ef. 7-21-03

**DIVISION 50**

**WORKFORCE MANAGEMENT**

[ED. NOTE: The Human Resource Services Division State Policies referred to or incorporated by reference in these rules are available from the Human Resource Services Division (HRSD).]

**105-050-0003**

**Alcohol and Controlled Substance Testing of Employees Having Commercial Drivers License**

(1) To promote public and employee health, safety and productivity effective January 1, 1995, the head of the Department of Transportation, Department of Fish and Wildlife and Department of Forestry and, effective January 1, 1996, other agency heads shall apply to management service and classified unrepresented employees required to have a Commercial Drivers License (CDL):

(a) Federal Highway Administration rules stated in 49 CFR Part 382 requiring preemployment, post-accident, reasonable suspicion, random, return-to-duty and follow-up testing for alcohol or controlled substances; and

(b) National Highway Traffic Safety Administration rules stated in 49 CFR Part 40 which provide procedures for breath alcohol testing and urine specimen controlled substance testing.

(2) An agency head shall be subject to the Alcohol and Drug Testing Contract between the Department of Administrative Services and the vendor for the performance of alcohol and controlled substance testing, Substance Abuse Professional Services, Medical Review Officer Services, record keeping and other related service.

(3) An agency head shall provide or contract for training and educational materials as required by 49 CFR Part 382.601, 382.603 and 382.605.

(4) Except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, an employee who violates alcohol misuse or controlled substance use rules may be terminated by an agency head or, if not terminated, shall be removed from duties requiring a CDL and shall be evaluated by a substance abuse professional to assess any need for rehabilitation or treatment

and, as determined to be appropriate by the agency head, may be assigned to duties not requiring a CDL, granted leave with or without pay at employee request, or disciplined as provided by HRSD State Policy 70.000.01, Management Service Discipline or 70.005.01, Classified Unrepresented Discipline and Discharge.

(5) Any employee rehabilitation or treatment shall be at employee expense except as it may be covered by insurance. Leave with or without pay may be granted at employee request during the period of treatment or rehabilitation.

(6) Except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, an agency head may return an employee, who violates alcohol misuse or controlled substance use rules, to the former duties requiring a CDL if the employee:

(a) Has been evaluated by a substance abuse professional;

(b) Has complied with the recommended treatment or rehabilitation;

(c) Has taken a return to duty alcohol or controlled substance test and has a negative result; and

(d) Is subject to unannounced follow-up alcohol or controlled substance tests.

(7) An employee having a CDL shall inform the appointing authority of any medical use of controlled substances.

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

Stat. Auth.: ORS Omnibus Transportation Employee Testing Act of 1991; 49 CFR Part 40 & Part 382, ORS 240.145

Stats. Implemented:

Hist.: PD 4-1994, f. 12-23-94, cert. ef. 1-1-95

**105-050-0004**

**Drug Testing of Final Applicants for Certain State Classifications/Positions**

(1) It is the policy of the Executive Branch of Oregon state government to provide the public with a drug-free workplace. Accordingly:

(a) An appointing authority of an agency providing public safety and/or mental health services may institute a drug testing program for the final applicant for classifications and/or positions designated by the appointing authority. A final applicant is the employing agency's first choice after completion of all hiring tests and standards, including reference checks, prior to offering employment.

(b) Prior to implementing the drug testing program for the final applicant the appointing authority shall develop an agency drug testing policy which shall include:

(A) The designated classifications and/or positions for which the final applicant shall be tested for prohibited drugs;

(B) The prohibited drugs/controlled substances for which a final applicant shall be tested;

(C) Assurance that the drug testing shall be conducted by a laboratory which is licensed and operated in accordance with ORS 438.010 and OAR 333-024-0305 through 333-024-0350;

(D) A description of the drug testing protocol, i.e., how and when the drug testing shall be carried out.

(c) An appointing authority shall not select a final applicant who refuses to take or fails a test for prohibited drug use.

(d) An applicant disqualified under this rule for a current opening may reapply for subsequent openings for those positions designated for pre-employment drug testing:

(A) Upon presenting proof of successful completion of a drug rehabilitation program; or

(B) Passing any drug test required for the final applicant for subsequent openings.

(e) Drug tests for the final applicant shall be paid for by the hiring agency and conducted in accordance with the agency's drug testing policy.

(f) At the time of implementation, an appointing authority shall submit a copy of the agency drug testing policy for the final applicant to the Division for filing.

(g) All recruiting announcements for designated classifications/positions shall include the statement: "All applicants for, and employees in this classification/position, shall be subject to testing for the use of prohibited drugs."

(h) An appointing authority shall maintain records of drug testing, stating the number of applicants tested, the number of confirmed positive tests and the classifications/positions involved.

(i) An agency's administration of its drug testing policy and drug testing records for applicants shall be subject to audit by the Division.

(2) Failing a drug test means the confirmation test result indicates positive evidence of a prohibited drug.

(3) Mental health services are those provided at Mental Health and Developmental Disability Services Division institutions.

(4) Prohibited drugs are marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and substances specified in Schedules I through V of Section 202 of the Controlled Substances Act, 21 USC 811, 812 and as defined in 21 CFR 1300.11 through 1300.15 unless authorized by legal prescription or are exempt from federal or state law.

(5) Public safety services are those performed by police officers, firefighters, public safety trainers, correctional officers, group life coordinators at juvenile corrections institutions, parole and probation officers, strike-prohibited employees at mental health institutions and services performed by other strike-prohibited employees.

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

Stat. Auth.: ORS 183.340, ORS 240.145(3) & ORS 240.250

Stats. Implemented: ORS 240.135, ORS 240.250 & ORS 240.321(2)

Hist.: HRMD 1-1996, f. & cert. ef. 1-31-96; HRSD 9-2003, f. 5-15-03, cert. ef. 5-21-03

#### 105-050-0006

##### Smoke-Free Workplace

To protect public and employee health by restricting smoking in state-operated facilities:

(1) An agency head shall designate areas in the workplace where smoking is prohibited. The designation may declare the entire workplace "smoke-free."

(2) An agency head shall assure that work areas are controlled to provide a smoke-free atmosphere by using one or more of the following methods:

(a) Physical barriers that separate smoking from nonsmoking areas;

(b) Ventilate work place or rest area so that visible smoke is removed in no more than five minutes after such space has been used by smokers;

(c) Space separation;

(d) Other methods determined by an agency head to be appropriate.

(3) Unless the agency head has declared a smoke-free workplace, this rule shall not apply to enclosed office spaces occupied exclusively by smokers.

Stat. Auth.: ORS 184.340, 240.145, 240.250, 243.345 & 243.650

Stats. Implemented: ORS 243.345 & ORS 243.350

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-010-0060

#### 105-050-0020

##### Return to Work of Injured Workers

Applicability: All employees: (where not in conflict with a collective bargaining agreement.) The State of Oregon is committed to return employees with compensable work-related injuries/illnesses to an available and suitable position as soon as possible.

(1) Each state agency shall provide early return of its injured workers in accordance with HRSD State Policy 50.020.01, Return to Work of Injured Workers;

(2) An injured worker shall be any employee who has incurred an injury while employed in a state Executive Branch agency, was determined to be compensable under ORS Chapter 656, and has not exercised or waived reinstatement/reemployment rights under ORS 659A.043 and 659A.043;

(3) For the purpose of placing injured workers, entry level classification shall mean any of the following classifications not requiring prior agency experience: all limited competitive and non-competitive appointment classes per OAR105-040-0060; all classes defined as entry in their title; single-level classes and the first level of a class series. Supervisory and managerial classifications and clas-

sifications that are at a higher level than the classification in which the employee was working at the time of injury are not considered entry level;

(4) Each state agency shall provide available and suitable employment (as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers) to the extent required by law to its injured workers with work restrictions who request to return to work;

(5) In filling vacant positions, each state agency shall give injured workers with work restrictions, injured at another agency, preference for available and suitable positions [as identified in HRSD State Policy 50.020.01, Return to Work of Injured Workers] when filling entry level classifications positions in accordance with OAR105-040-0020, Types and Order of Applicant Lists;

(6) Preference shall mean that qualified injured state workers shall be appointed over all applicants for available and suitable entry level positions in an agency of the state Executive Branch. Exceptions are other injured workers and employees entitled to appointment to the position pursuant to provisions or other employment restrictions of a valid collective bargaining agreement between the employer and a representative of the employer's employees;

(7) ORS 659A.052 authorizes the Administrator of HRSD to "compel compliance" with the provisions of the law and OAR 105-050-0020 Return to Work of Injured Workers.

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

Stat. Auth.: ORS 184.340 & ORS 240.145

Stats. Implemented: ORS 240.306, 240.391, 659A.052, 659A.043 & 659A.046

Hist.: PD 2, 1994, f. & cert. ef. 8-1-94; Renumbered from 105-070-0006; PD 2-

1995, f. 6-30-95, cert. ef. 7-1-95; HRSD 19-2003, f. 7-15-03, cert. ef. 7-21-03





