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CHAPTER 291

DEPARTMENT OF CORRECTIONS

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FILING CAPTION: Private Sector/Prison Industries Enhancement Program

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RULES:

291-081-0010, 291-081-0025, 291-081-0030, 291-081-0040, 291-081-0050, 291-081-0060, 291-081-0075, 291-081-0085

AMEND: 291-081-0010

RULE TITLE: Authority, Purpose, and Policy

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the policy statement to align with legislative updates to language.

RULE TEXT:

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.440, 423.020, 423.030, 423.075, Oregon Laws 1997, ch 851, and Article I, Section 41 of the Oregon Constitution.

(2) Purpose:

(a) The purpose of this rule is to establish Department of Corrections policy and procedures governing the operation and administration of its Private Sector/Prison Industries Enhancement (PSI/PIE) Program and work projects certified under the federal Prison Industry Enhancement Certification Program (PIECP).

(b) These rules apply only to adults in custody (AIC) working on PS/PIE Program work projects when the goods manufactured will be transported in interstate commerce, except as follows. These rules do not apply to AICs involved in the production of agricultural commodities or parts for the repair of farm machinery, nor do they apply to AICs involved in the production of commodities intended for use by the federal government, the District of Columbia, any state or political subdivisions thereof, or not-for-profit organizations. These rules also do not apply to AICs who produce goods solely for intrastate transport, and AICs on parole, supervised release or probation.

(3) Policy: The Department of Corrections recognizes the value of fully engaging AICs in productive activities, such as PS/PIE Program work projects, if AICs are to successfully re-enter society with practical skills and a viable work ethic. Consistent with the mandate of Article I, section 41 of the Oregon Constitution requiring sufficient work and training programs to ensure that eligible AICs are productively involved in work and training programs, the Department of Corrections will seek opportunities to enter into agreements with private business concerns to accomplish the production or marketing of goods produced by AICs

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0025

RULE TITLE: Definitions

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the definitions used in OAR 291-081 to align with statutory language changes.

RULE TEXT:

- (1) Adult In Custody: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision or probation status.
- (2) Assistant Director: The Assistant Director with oversight of AIC Work Programs or the Assistant Director's designee.
- (3) Compensation: Payment by the Department of Corrections to an AIC for labor or other services rendered while working on a Private Sector/Prison Industry Enhancement Program work project.
- (4) Locality: The geographic area impacted by the presence of a PS/PIE Program work project.
- (5) Piece Work Compensation: Compensation paid on the basis of the quantity of work completed.
- (6) Prison Industry Enhancement Certification Program or PIECP: The federal program authorized under 18 USC § 1761(c) that requires certification of an AIC work program through the U.S. Department of Justice via the Bureau of Justice Assistance before goods produced through that program can be shipped in interstate commerce.
- (7) Private Sector/Prison Industry Enhancement Program or PS/PIE Program: The Department of Corrections AIC work program that is certified under the Prison Industry Enhancement Certification Program.
- (8) PS/PIE Program Work Project: A specific AIC work project that is part of the Private Sector/Prison Industry Enhancement Program.
- (9) Work Week: An AICs work week shall consist of seven consecutive days, beginning on Monday and ending on Sunday, except as otherwise designated by the Department

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0030

RULE TITLE: Adult in Custody Compensation

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the rules to align with statutory language changes.

RULE TEXT:

(1) AICs participating in a Private Sector/Prison Industries Enhancement Program shall be paid compensation as determined and established by the Director in accordance with these rules.

(2) In accordance with 18 USC § 1761, AICs participating in a PS/PIE Program work project shall be paid compensation for actual work performed that is not less than the amount paid for work of a similar nature in the locality in which the work is to be performed. In no case shall compensation paid be less than federal minimum wage. AICs who work more than 40 hours per work week shall be paid compensation for additional hours worked at a rate equal to 1½ times their base hourly compensation rate. If the Director or designee determines that the Department shall pay AICs piece work compensation for their participation in a particular PS/PIE Program work project, the piece work compensation rate shall be determined and established by converting the piece work compensation to an hourly compensation equivalent.

(3) Prior to implementation of a PS/PIE Program work project, the Assistant Director or designee shall request from the Oregon Employment Division, or other appropriate agency, data regarding compensation paid for work of a similar nature to the PS/PIE Program work project in the locality in which the work is to be performed. The Director may rely upon this data and on other available information to determine and establish compensation for AICs participating in a PS/PIE Program work project. The Assistant Director or designee shall, on an annual basis, request the Oregon Employment Department, or other appropriate agency, to review and provide updated compensation data to the Department of Corrections.

(4) In the absence of available, relevant rate information, the Director may establish compensation at the federal minimum wage rate, or its piece work compensation equivalent.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0040

RULE TITLE: Labor Analysis

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the rules to align with statutory language changes.

RULE TEXT:

(1) Prior to implementation of a PS/PIE Program, the Assistant Director or designee shall submit a request to the Oregon Employment Department, or other appropriate agency, to provide a written analysis of the potential impact the proposed project may have on private labor in the locality in which the project will be performed.

(2) The Assistant Director or designee shall not implement a PS/PIE Program work project that would result in significant displacement of employed workers, utilize skills or trades in which there is a surplus of available gainful labor in the locality, or impair existing private sector contracts for services.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0050

RULE TITLE: Local Business and Labor Union Consultation

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the rules to align with statutory language changes.

RULE TEXT:

(1) Prior to implementing a PS/PIE Program work project, the Assistant Director or designee shall consult with representatives of local businesses and local union central bodies or similar labor organizations that would potentially be affected by the project. If there is no local union body or similar labor organization, the Assistant Director or designee shall consult with the state's union body or similar state-wide labor organization.

(2) The Assistant Director or designee shall:

(a) Provide a notice of intent to the local Chamber of Commerce, appropriate trade organizations and appropriate local or state labor union central bodies or similar labor organizations requesting comments, concerns, recommendations and names of private businesses and local labor organizations that would potentially be affected by the project. The notice of intent shall include a general description of the PS/PIE Program work project, a description of the project location, the type and quantity of goods to be produced, the number of AICs expected to be employed, the potential market for the goods, the project initiation date, and an explanation that federal law requires this consultation; and

(b) Maintain a file of all replies and Department of Corrections responses, if applicable, and submit them to the Prison Industries Board and the Director of Department of Corrections for their consideration prior to final approval of the PS/PIE Program work projec.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0060

RULE TITLE: Conditions of AIC Participation in the PS/PIE Program

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Amends the rules to align with statutory language changes.

RULE TEXT:

(1) AIC participation in a Private Sector/Prison Industries Program shall be voluntary. Prior to acceptance for participation in a PS/PIE Program work project, all AIC applicants shall sign a form indicating the AICs voluntary participation in the work project and acknowledging the AICs consent to the Department's PS/PIE Program requirements, including the compensation disposition procedure set forth in these rules.

(2) The following deductions shall be made from a participating AIC's gross compensation, which shall not in the aggregate exceed 80% of the AIC's gross compensation:

(a) State, federal, and local taxes if required to be withheld from the AIC's compensation by law;

(b) Family support obligations pursuant to state statute or court order, including income withholding orders and garnishments for family support;

(c) Five percent of the AIC's gross compensation shall be contributed to the Victims Compensation Fund established pursuant to ORS 147.005 through ORS 147.415;

(d) Room and board shall be as follows: The amount deducted from an AIC's monthly gross compensation for room and board charges shall equal the amount of compensation remaining after deductions from 80% of gross compensation are made as required under subsections (a) through (c) of this section.

(3) An AIC shall receive 20% of gross compensation for personal use, which shall be deposited into the AIC's trust account. In no instance shall the AIC retain more than 20% of gross compensation for personal use.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

REPEAL: 291-081-0075

RULE TITLE: Charges for Room and Board

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: Repeals rule language that is no longer applicable.

RULE TEXT:

The Director or his/her designee shall determine a reasonable monthly room and board charge based on the average total cost to the Department for inmate care including, but not limited to, cost of food, health care, administrative costs, housing and clothing costs. Daily room and board charges are calculated through the budgeting process on a biennial basis. The monthly room and board charge shall be calculated by multiplying the daily room and board charge by 30.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075

AMEND: 291-081-0085

RULE TITLE: AIC Injury Fund

NOTICE FILED DATE: 07/23/2021

RULE SUMMARY: :Amends these rules to align with statutory language changes.

RULE TEXT:

AICs participating in a PS/PIE Program work project shall receive benefits under the AIC Injury Fund set forth in ORS 655.505 - ORS 655.555.

STATUTORY/OTHER AUTHORITY: ORS 179.040, 421.440, 423.020, 423.030, 423.075

STATUTES/OTHER IMPLEMENTED: ORS 179.040, 421.440, 423.020, 423.030, 423.075