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Supplements the 2015 *Oregon Administrative Rules Compilation*

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KATE BROWN
Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

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

Background on Oregon Administrative Rules

ORS 183.310(9) defines "rule" as "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency." Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit assists agencies with the notification, filing and publication requirements of the administrative rulemaking process.

OAR Citations

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

Understanding an Administrative Rule's "History"

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

Locating Current Versions of Administrative Rules

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

Locating Administrative Rule Publications

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

Filing Adminstrative Rules and Notices

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

Administratrative Rules Coordinators and Delegation of Signing Authority

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

Publication Authority

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

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

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TABLE OF CONTENTS

Page

Information About Administrative Rules 2
Table of Contents 3
Executive Orders 4, 5
Other Notices.....6, 7

Notices of Proposed Rulemaking Hearings/Notices

The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.

Department of Agriculture, Chapter 603.....8, 9
Department of Consumer and Business Services,
Insurance Division, Chapter 836 9
Department of Environmental Quality, Chapter 340 .....9, 10
Department of Fish and Wildlife, Chapter 635 10
Department of Human Services,
Aging and People with Disabilities and Developmental Disabilities, Chapter 411.....10, 11
Self-Sufficiency Programs, Chapter 461 11
Department of Justice, Chapter 137 .....11, 12
Department of State Lands, Chapter 141 12
Department of State Police,
Oregon State Athletic Commission, Chapter 230 .....12, 13
Department of Transportation,
Driver and Motor Vehicle Services Division, Chapter 735 13
Land Conservation and Development Department, Chapter 660.....13
Landscape Contractors Board, Chapter 808 .....13, 14
Occupational Therapy Licensing Board, Chapter 339 14
Oregon Business Development Department, Chapter 123.....14
Oregon Department of Aviation, Chapter 738 14
Oregon Health Authority,
Division of Medical Assistance Programs, Chapter 410 .....14, 15
Public Health Division, Chapter 333.....15, 16
Oregon University System,
Western Oregon University, Chapter 574.....16
Oregon Youth Authority, Chapter 416.....16
Racing Commission, Chapter 462.....16
Veterinary Medical Examining Board, Chapter 875 16
Water Resources Department, Chapter 690 .....16, 17

Administrative Rules

The citations and statements required by ORS 183.335(2)(b)(A)–(D) have been filed with and are available from the Secretary of State.

Board of Accountancy, Chapter 801 18–31
Board of Examiners for Speech-Language Pathology and Audiology, Chapter 335 .....31, 32
Board of Geologist Examiners, Chapter 809 .....32, 33
Board of Nursing, Chapter 851 33–50
Board of Optometry, Chapter 852 50–60
Board of Pharmacy, Chapter 855 .....60, 61
Board of Psychologist Examiners, Chapter 858 61–64
Bureau of Labor and Industries, Chapter 839 64–67
Citizens' Initiative Review Commission, Chapter 710 67
Department of Consumer and Business Services,
Workers' Compensation Board, Chapter 438 67
Workers' Compensation Division, Chapter 436 .....67, 68
Department of Corrections, Chapter 291 68–72
Department of Energy, Chapter 330.....72–83
Department of Fish and Wildlife, Chapter 635 83–89
Department of Human Services,
Administrative Services Division and Director's Office, Chapter 407 89–103
Aging and People with Disabilities and Developmental Disabilities, Chapter 411 103–110
Home Care Commission, Chapter 418 110–115
Self-Sufficiency Programs, Chapter 461 .....115, 116
Department of Transportation,
Driver and Motor Vehicle Services Division, Chapter 735 116–131
Highway Division, Chapter 734 .....131, 132
Health Licensing Office, Chapter 331.....132–136
Health Licensing Office,
Behavior Analysis Regulatory Board, Chapter 824 136
Landscape Architect Board, Chapter 804.....136–139
Landscape Contractors Board, Chapter 808 .....139, 140
Occupational Therapy Licensing Board, Chapter 339.....140, 141
Oregon Criminal Justice Commission, Chapter 213.....141, 142
Oregon Department of Education, Chapter 581.....142–145
Oregon Department of Education,
Early Learning Division, Chapter 414.....145–150
Oregon Health Authority,
Addictions and Mental Health Division: Mental Health Services, Chapter 309 150–153
Division of Medical Assistance Programs, Chapter 410 153–168
Oregon Housing and Community Services Department, Chapter 813.....168–173
Oregon Military Department,
Office of Emergency Management, Chapter 104.....173, 174
Oregon Public Employees Retirement System, Chapter 459.....174, 175
Oregon University System,
Eastern Oregon University, Chapter 579.....175
Public Utility Commission, Chapter 860 .....175, 176
Public Utility Commission,
Board of Maritime Pilots, Chapter 856 176–179
Racing Commission, Chapter 462.....179, 180
Water Resources Department, Chapter 690 180–188

OAR Revision Cumulative Index 189–192

EXECUTIVE ORDER NO. 14 - 16

JUVENILE CORRECTIONS POPULATION FORECASTING ADVISORY COMMITTEE

Executive Order 98-06 originally established the Juvenile Corrections Population Forecasting Advisory Committee, and was later amended by Executive Orders

04-02 and 08-15. The mission of the Forecasting Advisory Committee is to make projections of Oregon's juvenile correctional population to allow policymakers to plan appropriately. Recognizing the continuing vitality of that mission, this Executive Order hereby continues the Committee's charge through 2017.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. There is created a Juvenile Corrections Population Forecasting Advisory Committee that shall assist the Oregon Department of Administrative Services in preparing projections of juvenile offender populations.

a. The Juvenile Corrections Population Forecasting Advisory Committee shall consist of not more than seven members appointed by the Governor and serving at the Governor's pleasure. The committee shall include members who are knowledgeable about the juvenile justice system and trends that may affect the juvenile offender population.

b. Members of the Committee shall serve four-year terms. Initial appointments to the Committee may be for one, two or three years in order to provide staggered terms. Members of the Committee may be reappointed.

c. The Governor shall appoint the Committee's chair, who shall hold that position at the Governor's pleasure. The Committee shall meet at least semi-annually at the call of the chair.

2. The Juvenile Corrections Population Forecasting Advisory Committee shall:

a. Review and discuss the types of data needed to make projections of the juvenile offender population, select the most accurate data available, and inform the Oregon Department of Administrative Services of the potential location of such data for inclusion in the Department's juvenile population projection models.

b. Identify and evaluate trends, assumptions, policy developments, and data inadequacies that may affect preliminary juvenile offender population projections prepared by the Oregon Department of Administrative Services and that may require adjustments to the data collected.

c. Review and discuss the preliminary juvenile offender population projects produced by the Oregon Department of Administrative Services and provide the Department any conclusions regarding trends, assumptions, policy developments, and data inadequacies that should be included in the Department's juvenile offender population projection models or that may require alternation of the preliminary juvenile offender population projections.

d. Evaluate and advise on methodology used by the Oregon Department of Administrative Services in making its computations and projections.

e. Make recommendations to the Oregon Department of Administrative Services concerning procedures to be used and data to be collected to improve the juvenile corrections forecasting process in the future.

f. Define the current demand for Discretionary Beds as defined in OAR 416-410-010. The definition is intended to be used to forecast demand for the Oregon Youth Authority's Discretionary Bed allocation.

g. The Committee will be staffed by the Oregon Department of Administrative Services and may enlist other persons to assist them in this effort.

3. The Oregon Department of Administrative Services and the Juvenile Corrections population Forecasting Advisory Committee shall:

a. Beginning on April 15, 2015, and each subsequent April 15, ascertain by computation and project the number of Public Safety Reserve and Department of Corrections offenders anticipated to be incarcerated under existing law and current practices by the Oregon Youth Authority during each month of the next calendar year, and during the next 10 years. Beginning April 15, 2015, and each subsequent April 15, ascertain by computation and project the demand for Discretionary Beds as defined in OAR 416-410-010 anticipated to be needed by the Oregon Youth Authority during each month of the next calendar year and during the next 10 years.

Subsequent computations and projections are due not later than October 15, 2015, and each subsequent April 15 and October 15 thereafter.

b. To the greatest extent possible, include in its computation and projections a breakdown of anticipated juvenile population by gender, crime of conviction, length of incarceration, and other relevant classifications.

c. Provide its computations, projections and updates every six months to the Governor, and to the Emergency Board if the legislature is not in session, or the Joint Committee on Ways and Means if the legislature is in session.

d. Provide a written report at least biennially to the Governor and legislature on the methodology and assumptions used in preparing its computations and projections.

e. Provide copies of its reports to criminal justice agencies and members of the public who may be interested.

4. The Director of the Department of Administrative Services shall appoint a technical working group including persons with backgrounds in research, statistics and forecasting in the criminal justice context. The technical working group shall provide staff assistance to the Department of Administrative Services and the Juvenile Corrections Population Forecasting Advisory Committee in carrying out their functions under this Executive Order.

5. The computations and projections prepared by the Department of Administrative Services pursuant to this Executive Order shall be used by the Oregon Youth Authority in preparing its biennial budget request and in developing its long-term plans, and by any other agency concerned with the effects of the juvenile offender population on policy development and budgeting.

6. Members of the Committee shall not be entitled to compensation or reimbursement of travel expenses.

7. This order rescinds and supersedes Executive Orders 98-06, 04-02, and 08-15.

8. This Executive Order shall expire on December 31, 2017.

Done at Salem, Oregon this 4th day of December 2014.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

REQUEST FOR COMMENTS
PROPOSAL TO TRANSITION CURRENT FAMILY PLANNING 1115 WAIVER (CCARE) TO A STATE PLAN SERVICE.

COMMENTS DUE: December 31, 2014
PROPOSAL: The Oregon Health Authority will submit a State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to make Oregon's ContraceptiveCare (CCare) program part of Oregon's Medicaid State Plan.

This is considered a technical change between CMS and the State of Oregon; current services under CCare will not change.

BACKGROUND: Implemented in 1998, CCare is a Section 1115 demonstration project/waiver administered by the Oregon Health Division's Reproductive Health Program. CCare has been operating under temporary extensions since November 2012.

Historically, Section 1115 demonstration projects allow states increased program flexibility to test new approaches to financing and delivering Medicaid services. However, CCare does not serve Medicaid recipients; instead, it serves Oregonians not enrolled in Medicaid who have incomes at or below 250% of the federal poverty level for a limited set of contraceptive management services.

Section 2303 of the Affordable Care Act (ACA) established a new Medicaid eligibility group and option for states to begin providing medical assistance for family planning services and supplies to this new group through a SPA.

In general, the provisions and opportunities available with the SPA do not differ greatly from those within a waiver. The SPA, by making CCare a permanent component of Oregon's State Medicaid Plan, permits a number of administrative advantages (e.g., not needing to renew, no need to demonstrate budget neutrality) . Furthermore, the SPA provides an opportunity to slightly expand the set of services covered under CCare to include family planning-related services.

EFFECTIVE DATE: 1/1/15
HOW TO COMMENT: Send written comments by fax, mail or email to:

Jesse Anderson, State Plan Manager
Division of Medical Assistance Programs
500 Summer Street NE
Salem, Oregon 97301
Fax: 503-947-1119
Email: jesse.anderson@state.or.us

REQUEST FOR COMMENTS
PROPOSAL TO UPDATE DESCRIPTIONS OF THE POPULATIONS ELIGIBLE FOR MEDICAID AND ESTABLISH OHP BENEFITS FOR THE NEW ADULT POPULATION UNDER THE AFFORDABLE CARE ACT

COMMENTS DUE: December 31, 2014
PROPOSAL: The Oregon Health Authority (OHA) will submit a State Plan Amendment to the Centers for Medicare and Medicaid Services (CMS) to reflect alignment of the current OHP Plus benefit to the Adult Medicaid population made eligible by the Affordable Care Act.

This is considered a technical change between CMS and the State of Oregon, as this population is currently aligned with the OHP Plus benefit package.

The revisions include previously-approved State Plan Amendment revisions for the PACE program.

EFFECTIVE DATE: 1/1/15
HOW TO COMMENT: Send written comments by fax, mail or email to:

Jesse Anderson, State Plan Manager
Division of Medical Assistance Programs
500 Summer Street NE
Salem, Oregon 97301
Fax: 503-947-1119
Email: jesse.anderson@state.or.us

PUBLIC NOTICE
PROSPECTIVE PURCHASER AGREEMENT FOR FORMER GROCERY MARKET (ANGKOR)

COMMENTS DUE: 5 pm, Monday, Feb 2, 2015
PROJECT LOCATION: 1949 SE Division St. in Portland, OR
Proposal: The Department of Environmental Quality seeks comments on its proposed consent order for a prospective purchaser agreement with Community Vision, Inc. for the property located at 1949 SE Division St. in Portland, Ore. Community Vision, Inc. is acquiring the property from the current owner and plans to use the property for commercial use.

The property was historically used as a fueling facility and a release from the underground storage tank system was reported in 1994. Community Vision, Inc. plans to complete multiple tasks and has agreed to site restrictions, contaminated materials management, vapor intrusion mitigation and surface controls related to any development of the property. Subject to satisfactory recording of an Easement and Equitable Servitude, DEQ will issue a No Further Action determination for the property, conditioned as appropriate to reflect Community Vision's remaining obligations under the agreement and to ensure long-term effectiveness of the remedy.

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

The proposed consent order will provide Community Vision, Inc. with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide Community Vision, Inc. with third party liability protection.

HOW TO COMMENT: Send comments to DEQ Project Manager Rob Hood at 2020 SW 4th Ave, Portland, OR 97201 or hood.robert@deq.state.or.us. For more information contact the project manager at 503-229-5617.

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

Find the file review application form at: http://www.deq.state.or.us/records/RecordsRequestForm.pdf

To access site summary information and other documents in the DEQ Leaking Underground Storage Tank (LUST) Cleanup database, go to http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp, then enter 26-94-0033 in the LUST Number boxes and click "Lookup" at the bottom of the page. Next, click the link labeled in the Log 26-94-0033 Number column. Alternatively, you may go directly to the database website for this page at http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=26-94-0033&SourceIdType=12

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

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed prospective purchaser agreement for the site. A public notice of DEQ's final decision will be issued in this publication.

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

REQUEST FOR COMMENTS PROPOSAL FOR RESTORATION AND CONSENT JUDGMENT FOR THE FORMER LINNTON PLYWOOD ASSOCIATION SITE

COMMENTS DUE: February 2, 2015, 5 p.m.
PROJECT LOCATION: 10504 NW St. Helens Road, Portland, Oregon
PROPOSAL: DEQ is proposing to enter into a prospective purchaser agreement in the form of a consent judgment with Linnton Water Credits LLC (LWC) regarding the former Linnton Plywood Association Site. LWC intends to acquire the development rights in perpetuity on 24 acres for the purpose of constructing a series of open water, emergent wetland, and forested riparian areas. All building and existing infrastructure demolition materials and debris will be recycled or appropriately disposed offsite. Flow from Linnton Creek west of the Site that currently is piped through the Site will be conveyed into an open channel as part of planned shallow water habitat improvements in the central portion of the Site. A minor unnamed tributary from Forest Park flowing into the northwest portion of the Site will be re-routed to a new conveyance system and outfall on the northern portion of the Site along Northwest 107th Avenue. All existing on-Site stormwater conveyance systems and associated outfalls will be demolished or decommissioned in-place.

Soils removed from the southern area will be redistributed on the Site for the creation of upland forested habitat. Because the restoration plan provides for forested riparian and upland habitat on the northern portion of the Site, areas of shallow soil impact previously identified during investigations at the Site will likely not be disturbed unless areas of significant impact are identified that warrant removal action. Based on current estimates, the overall grading plan is largely balanced, with an estimated maximum of 30,000 cubic yards to be transported off the Site for disposal as warranted. All new soil surfaces will have concentrations that are protective of human health and the environment.

To ensure permanent protection of the Site as a wildlife habitat, a conservation easement will be granted to a non-profit entity or government organization approved by the Portland Harbor Trustees or the property will be encumbered by a deed restriction that is approved by the Portland Harbor Trustees.
HIGHLIGHTS: A former lumber and plywood mill operated on the Site from the late 1800s until 2001 when the Linnton Plywood Association (LPA) ceased mill operations. DEQ issued a No Further Action for the Site in 2009 based on land use at that time. More recent investigations showed low level petroleum hydrocarbon concentrations in soil and groundwater samples; however, all analytes were either not detected above the method reporting limit or were below applicable screening levels in the soil and groundwater samples analyzed. There is a petroleum groundwater plume on the Site that originates on the south-adjacent BP bulk fuel facility, and BP is finalizing remedial plans for that plume with DEQ.

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

The proposed consent judgment will provide LWC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent judgment will also provide LWC with third party liability protection.
HOW TO COMMENT: The project file, including environmental investigation reports, the draft prospective purchaser agreement, and the draft restoration plan may be reviewed by appointment at DEQ's Northwest Region office, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201. To schedule an appointment, contact Dawn Weinberger at 503-229-6729. For more information, please contact project manager Tom Gainer at 503-229-5326 or by email (gainer.tom@deq.state.or.us). To access Site summary information in DEQ's Environmental Cleanup Site Information (ECSI) database on the Internet, go to http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp, then enter ECSI #2373 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #2373 in the Site ID/Info column. Send comments by 5 pm Monday, Feb. 2 to gainer.tom@deq.state.or.us, or by mail to Oregon DEQ NW Region, Attn: Tom Gainer, 2020 SW Fourth Avenue, Suite 400, Portland, Oregon 97201.
THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ then determines to enter the consent judgment, the consent judgment will be executed with LWC and filed with the Multnomah County Circuit Court, after which the company intends to acquire the development rights in perpetuity and proceed with the activities described above.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or e-mail to deqinfo@deq.state.or.us.

REQUEST FOR COMMENTS PROPOSED CLEANUP APPROVAL AT PGE HAWTHORNE SITE

COMMENTS DUE: 5 p.m., Friday, January 30, 2015
Project location: 1510 SE Water Avenue, Portland, OR
Proposal: DEQ proposes to approve an environmental cleanup of primarily soil contaminated with polychlorinated biphenyls, commonly known as PCBs, at the PGE Hawthorne site.
HIGHLIGHTS: Since 1935, various PGE departments have occupied the building for storage and maintenance uses that resulted in contamination inside and outside the building. Based on evaluation of on-site human health risks and completed remedial actions, DEQ proposes that no further action is required.
HOW TO COMMENT: Send comments to DEQ Project Manager Tom Gainer at 2020 SW Fourth Ave., Ste. 400, Portland, OR or gainer.tom@deq.state.or.us. For more information contact the project manager at 503-229-5326.

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

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

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to http://www.deq.state.or.us/lq/ECSI/ecsi.htm, select "Search complete ECSI database", then enter 5779 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5779 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at http://www.deq.state.or.us/lq/ecsi/ecsilist.asp?SiteID=5779&Bus_Name=&Address=&County=ALL&City=&Zip_Code=&LatitudeMin=&LatitudeMax=&LongitudeMin=&LongitudeMax=&Township=All&TownshipZone=N&Range=1&RangeZone=E&Section=All&ActionCode=All&Substance=None&Alias=None&Submit=Submit&listtype=lis.

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will respond to comments after the comment period closes and issue the NFA.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

Public comment may be submitted in writing directly to an agency or presented orally at the rulemaking hearing. Written comment must be submitted to an agency by 5:00 p.m. on the Last Day for Comment listed, unless a different time of day is specified. Oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

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

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

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

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Department of Agriculture
Chapter 603

Rule Caption: Prohibits the application of four neonicotinoid insecticides, regardless of application method, on linden trees.

Date:	Time:	Location:
1-21-15	2 p.m.	635 Capitol St. NE, Hearings Rm. Salem OR 97301

Hearing Officer: Eric Edmunds
Stat. Auth.: ORS 183, 561.020, 634.322(6) & 634.900
Other Auth.: ORS 634
Stats. Implemented: ORS 634
Proposed Adoptions: 603-057-0388
Last Date for Comment: 1-21-15, 5 p.m.
Summary: It is prohibited to apply any product containing the neonicotinoid insecticides dinotefuran, imidacloprid, thiamethoxam, or clothianidin, regardless of application method, to linden, basswood or other Tilia species.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Rule Caption: Sets acceptable microcystin level and analytical laboratory procedure for Blue-Green Algae.

Date:	Time:	Location:
1-27-15	10 a.m.	Oregon Dept. of Agriculture 635 Capitol St. NE Salem, OR

Hearing Officer: Eric Edmunds
Stat. Auth.: ORS 561.190 & 616.230
Stats. Implemented: ORS 616.010, 616.230 & 616.235
Proposed Amendments: 603-025-0190
Last Date for Comment: 1-30-15, 5 p.m.
Summary: The proposed rule amendment sets the acceptable level of microcystin in Blue-Green Algae (Aphanizomenon flos aquae) at one microgram per gram (1 ppm). The mycrocystins level in finished products must be evaluated by an approved laboratory analytical procedure that is acceptable to the Oregon Department of Agricultue (ODA). Lastly, the rule amendment will state that publications referenced within Oregon Administrative Rule (OAR) 603-025-0190 are available from ODA. This is a clerical amendment. In a previous rulemaking, this amendment was unintentionally deleted from the OARs. This amendment will readopt the exact provision that was deleted. In the past Oregon had a much larger industry that harvested and prepared Blue-Green Algae for sale. This standard was adopted as a regulatory benchmark that allows ODA to take and sample blue-green algae in relation to food safety.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Rule Caption: Adopt Grade "A" Pasteurized Milk Ordinance, 2013 Revision with appropriate references.

Date:	Time:	Location:
1-29-15	10 a.m.	Oregon Dept. of Agriculture 635 Capitol St. NE Salem, OR

Hearing Officer: Eric Edmunds
Stat. Auth.: ORS 561.020, 561.190, 616.230 & 621
Stats. Implemented: ORS 621.058, 621.060 & 621.261
Proposed Amendments: 603-024-0017, 603-024-0211
Last Date for Comment: 1-30-15, 5 p.m.
Summary: The Grade "A" Pasteurized Milk Ordinance (PMO) is designed to promote national uniformity and ensure a high level of excellence in milk sanitation practices. Every two years (odd-numbered years), there is a National Conference on Interstate Milk Shipments, which is made up of persons involved in the dairy industry. From the dairy farmer, to the processing plant personnel, to those persons involved in inspecting the dairy farmer's operation and/or the processing plant, those persons who make laws concerning the inspections, to those who enforce the loaws to the acadademic researcher and adviser, to the consumer of dairy products. The most recent PMO is the 2013 Revision, it was discussed at the 2013 Conference, and was released in 2014.

During the conference proposals submitted by individuals, regulators, producers, processors, and consumers are deliberated and discussed, after which each state and territory is alotted one vote. After the conclusion of the conference, the current PMO, and applicable reference documents are made available for states to adopt. The PMO regulates the production, transportation, processing, handling, sampling, examination, labeling, and sale of all Grade "A" milk and milk products sold for ultimate consumption. The inspection of dairy farms, milk plants, receiving stations, transfer stations, milk tank truck cleaning facilities, milk tank trucks, bulk milk haulers and samplers, and permits to operate in the milk industry are regulated by the PMO. The dairy industry must be regulated under the PMO for access to interstate markets.
Rules Coordinator: Sue Gooch
Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301
Telephone: (503) 986-4583

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Rule Caption: Amends bovine trichomoniasis rules for clarification and for harmonization with national standards.
Stat. Auth.: 596.020; 596.341
Stats. Implemented: ORS 596.392
Proposed Amendments: 603-011-0610, 603-011-0615, 603-011-0620, 603-011-0630
Last Date for Comment: 1-22-15, 5 p.m.

Summary: Bovine Trichomoniasis is a sexually transmitted parasitic infection caused by the microscopic protozoan Tritrichomonas foetus. The disease is spread primarily by infected bulls that do not exhibit symptoms. Infection causes reproductive failure resulting in significant monetary losses to the beef industry. Oregon's bovine trichomoniasis import and disease control rules are included in OAR 603-011-0610 through 0630. There have been advances in laboratory testing technology and a significant increase in knowledge of the disease. Additionally, there is a national effort to harmonize interstate testing requirements on bulls. For these reasons we propose updating definitions, clarifying testing procedures and amending importation requirements.

The quantitative polymerase chain reaction (qPCR) test is the preferred laboratory diagnostic test nationally. It is a particular category of test with multiple companies manufacturing kits, machines and reagents. Removal of specific references to trade names in the rules is proposed. We would like to clarify that trichomoniasis testing be performed by a certified veterinarian. The current wording refers to a certified person. We also propose that the qPCR test be the defining test for importation purposes and that the virgin status age of bulls be amended from 12 months to 18 months of age. These changes will harmonize Oregon's rules with the majority of states.

The Agency received input and approval of the proposed rule changes from the Oregon Cattlemen's Association's Trichomoniasis Advisory Committee.

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

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Department of Consumer and Business Services, Insurance Division
Chapter 836

Rule Caption: Amend long term care rules to protect consumers and adopt recent model regulation changes.

Date:	Time:	Location:
1-21-15	1:30 p.m.	350 Winter St. NE Salem, OR 97301

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.005
Proposed Adoptions: 836-010-0680
Proposed Amendments: 836-052-0531, 836-052-0566, 836-052-0636, 836-052-0676, 836-052-0740, 836-052-0746
Last Date for Comment: 1-26-15, Close of Business
Summary: The rulemaking adds a new rule and modifies existing rules to incorporate desired pieces of the August, 2014 NAIC Long Term Care Insurance Model Regulation. In addition, new policy options are established for Long Term Care Partnership Policies while still complying with federal requirements.
Rules Coordinator: Victor Garcia
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7260

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Rule Caption: Limitation on the use of discretionary clauses in insurance contracts.

Date:	Time:	Location:
1-22-15	1:30 p.m.	350 Winter St. NE Salem, OR 97301

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.005
Proposed Adoptions: Rules in 836-010
Last Date for Comment: 1-27-15, Close of Business
Summary: This proposed rule prohibits the use of discretionary clause language in insurance contracts for all lines of insurance. Limited use of discretionary clause language is allowed in contracts governed by the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq. A new rule(s) is proposed for OAR 836-010, with the exact number(s) to be determined before the rile is filed.
Rules Coordinator: Victor Garcia
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7260

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Rule Caption: Adoption of Uniform Prescription Drug Prior Authorization Request Form

Date:	Time:	Location:
1-20-15	2 p.m.	Labor & Industries Bldg., Rm. E 350 Winter St. NE Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 731.244 & 743.065
Stats. Implemented: ORS 743.065
Proposed Adoptions: 836-053-1205
Last Date for Comment: 1-27-15, Close of Business
Summary: This new proposed permanent rule adopts requirements for payers to accept a uniform prescription drug prior authorization form. This requirement was established by the 2013 Legislative Assembly in Senate Bill 382 (SB 382). Acceptance of a uniform form by all payers in Oregon is expected to streamline and simplify requests for prior approval for prescription drugs prescribed by providers. The proposed rule applies to payers as defined in ORS 743.061 which includes health insurers, third party administrators, prepaid managed care health services organizations , any person or public body that either individually or jointly establishes a self-insurance plan, program or contract, including but not limited to persons and public bodies that are otherwise exempt from the Insurance Code under ORS 731.036, health care clearinghouses or other entities that process or facilitate the processing of health care financial and administrative transactions from a nonstandard format to a standard format and any other person identified by the department that processes health care financial and administrative transactions between a health care provider and an entity described in this subsection.
Rules Coordinator: Victor Garcia
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7260

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Rule Caption: Adoption of Annual and Supplemental Statement Blanks and Instructions for Reporting Year 2014
Stat. Auth.: ORS 731.244, 731.574 & 733.210
Stats. Implemented: ORS 731.574 & 733.210
Proposed Amendments: 836-011-0000
Last Date for Comment: 1-23-15, Close of Business
Summary: This rulemaking prescribes, for reporting year 2014, the required forms for the annual and supplemental financial statements required of insurers and health care service contractors under ORS 731.574, as well as the necessary instructions for completing the forms.
Rules Coordinator: Victor Garcia
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7260

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Department of Environmental Quality
Chapter 340

Rule Caption: Grants Pass Carbon Monoxide and Particulate Matter (PM10) Limited Maintenance Plans

Date:	Time:	Location:
1-22-15	6 p.m.	Grants Pass City Council Chambers 101 NW 'A' St. Grants Pass, OR 97526

Hearing Officer: DEQ Staff
Stat. Auth.: ORS 468.020 & 468A.025
Stats. Implemented: ORS 468A.025 & 468A.035
Proposed Amendments: 340-200-0040
Last Date for Comment: 1-26-15, 5 p.m.
Summary: Short summary:

DEQ proposes rules to update Oregon maintenance plans designed to protect air quality in Grants Pass for carbon monoxide (CO) and for particulate matter 10 microns and smaller (PM10) as required by federal law. Because CO and PM10 pollution levels have been very low and the area is unlikely to exceed health standards in the future, the area qualifies and DEQ proposes limited maintenance plans that streamline requirements and eliminate costly computer modeling requirements for transportation conformity analysis.

DEQ proposes the Oregon Environmental Quality Commission approve the proposed rules for incorporation into the Oregon Clean Air Act State Implementation Plan and submittal to the U. S. Environmental Protection Agency for its approval under the federal Clean Air Act.

Brief history:

Under the Clean Air Act, EPA sets air quality standards to protect public health for six common air pollutants. EPA established the CO standard at 35 parts per million for a 1-hour average and at 9 parts per million for an 8-hour average. EPA established the PM10 standard at 150 micrograms per cubic meter for a 24-hour average and at 50 micrograms per cubic meter for an annual average. The Clean Air Act requires communities that exceed these health standards to adopt plans to achieve and maintain good air quality.

In addition to the PM10 standard, EPA adopted the PM2.5 standard in 1997, for smaller or fine particulate matter 2.5 microns in size or less, since the smaller inhalable particles have been found to pose a greater health risk. Grants Pass has never violated the PM2.5 standard.

In the mid to late 1980s, Grants Pass exceeded the 8-hour CO standard and the 24-hour PM10 standard. The area was designated as a nonattainment area for CO in 1985 and for PM10 in 1990. In response, EQC adopted attainment plans with CO and PM10 control measures to reduce pollution levels within the urban growth boundary to meet the federal standards. This resulted in significant improvement in air quality and Grants Pass was reclassified to attainment for CO in 2000 and PM10 in 2002. EQC adopted the first maintenance plans for Grants Pass at that time.

EPA requires Oregon to establish second maintenance plans for the Grants Pass area to ensure compliance with the standards through 2025. EPA provides an option for states to adopt simplified plans, called limited maintenance plans, for low-risk areas like Grants Pass. Over the last 25 years, Grants Pass's CO and PM10 levels have steadily declined and the area is unlikely to exceed these standards again.

Regulated parties:

The proposed rules affect the Middle Rogue Metropolitan Planning Organization. The proposed amendment of OAR 340-200-0040 to incorporate the limited maintenance plans into State of Oregon Clean Air Act Implementation Plan does not change the regulated parties.

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

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Oregon Department of Fish and Wildlife Art Contests

Date:	Time:	Location:
2-13-15	8 a.m.	4034 Fairview Industrial Dr. SE Salem, OR

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.550, 496.555, 496.558, 496.562, 496.566, 496.574, 497.151, 497.153
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.550, 496.555, 496.558, 496.562, 496.566, 496.574, 497.151, 497.153
Proposed Adoptions: Rules in 635-095
Proposed Amendments: Rules in 635-095
Proposed Repeals: 635-053-0100, 635-053-0105, 635-053-0111, 635-053-0125
Last Date for Comment: 2-13-15, Close of Hearing
Summary: Amend rules to consolidate and streamline the three ODFW art contests (Habitat Conservation Stamp, Upland Game Bird Stamp and Waterfowl Stamp.)
Rules Coordinator: Therese Kucera
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6033

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

Rule Caption: ODDS — Children's Intensive In-Home Services (Behavior Program and Medically Fragile Children's Services)

Date:	Time:	Location:
1-21-15	2 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 409.050
Other Auth.: SB 22 (2013 Regular Session)
Stats. Implemented: ORS 427.005, 427.007, 430.215
Proposed Adoptions: 411-300-0165, 411-300-0175, 411-350-0075, 411-350-0085
Proposed Amendments: Rules in 411-300, 411-350
Proposed Repeals: 411-300-0140, 411-300-0210, 411-300-0220, 411-350-0118, 411-350-0120, 411-300-0110(T), 411-300-0120(T), 411-300-0130(T), 411-300-0150(T), 411-300-0165(T), 411-300-0170(T), 411-300-0190(T), 411-300-0200(T), 411-300-0205(T), 411-300-0220(T), 411-350-0020(T), 411-350-0030(T), 411-350-0040(T), 411-350-0050(T), 411-350-0075(T), 411-350-0080(T), 411-350-0100(T), 411-350-0110(T), 411-350-0115(T)
Last Date for Comment: 1-23-15, 5 p.m.
Summary: The Department of Human Services, Office of Developmental Disability Services (Department) is proposing to update the children's intensive in-home services (CIIS) rules in OAR chapter 411, division 300 for the CIIS Behavior Program and OAR chapter 411, division 350 for medically fragile children's services.

The proposed rules:

- Make permanent temporary rule language that became effective on August 20, 2014;
- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;
- Incorporate expenditure guidelines;
- Account for changes in service eligibility related to the types of Medicaid eligibility a child may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Clarify when a child may be exited from CIIS and reiterate the requirement for a Notification of Planned Action in the instance services are terminated;
- Include a timeframe for when a functional needs assessment and Individual Support Plan (ISP) must be completed and clarify service planning;
- Reflect the completion of the transition period for implementation of the Community First Choice state plan amendment and update the available supports to reflect changes to the proposed Behavioral and Hospital Model Waivers;

- Adopt standards for employers to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from misuse;
- Expand provider types and specify qualifications for personal support workers, independent providers, provider organizations, and general business providers;
- Implement Senate Bill 22 by incorporating the rules for individual rights, complaints, Notification of Planned Action, and hearings adopted in OAR chapter 411, division 318;
- Remove sanctions for providers and include inactivation of provider enrollment for personal support workers and independent providers;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

Rule Caption: Allowing some clients with disabilities to receive free assistance with SSD applications and appeals

Date:	Time:	Location:
1-22-15	2 p.m.	3420 Cherry Ave. NE Suite 140 Salem, OR 97303

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 411.706
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.411, 411.704 & 411.706
Proposed Amendments: 461-125-0370
Last Date for Comment: 1-26-15, 5 p.m.
Summary: OAR 461-125-0370 about disability as a basis of need for Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program-Medical (OSIPM) is being amended to allow an individual who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability to receive free assistance from the department with applications and administrative appeals for Social Security Disability Insurance (SSD) benefits in order to meet the requirements of OAR 461-120-0330 (Requirement to Pursue Assets).

This program was originally created as a pilot through temporary rule adopted on August 1, 2014. The geographical area of the pilot was expanded through temporary rules adopted on September 1, 2014, October 1, 2014, and December 8, 2014. The proposed change makes the program permanent and statewide.

In addition, the above rule may be changed to reflect new Department terminology and to correct formatting and punctuation.

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

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Department of Justice
Chapter 137

Rule Caption: Amends Model Rules for soliciting public contracts, primarily Construction Manager/General Contractor and design professionals.

Date:	Time:	Location:
1-26-15	9 a.m.	DOJ, Robertson Bldg. 1215 State St., Redwood Conf. Rm. (LL1) Salem, OR 97301

Hearing Officer: Karen Johnson, Senior AAG
Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, 279B.065, 279B.070, 279C.100–279C.125, 279C.330, 279C.332, 279C.335, 279C.337, 279C.380, 279C.527, 279C.560, 279C.570, 701.420 & 2013 OL Ch. 522
Proposed Amendments: 137-046-0130, 137-047-0260, 137-047-0265, 137-047-0270, 137-047-0300, 137-047-0450, 137-047-0560, 137-048-0130, 137-048-0210, 137-048-0220, 137-049-0100, 137-049-0120, 137-049-0130, 137-049-0380, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0650, 137-049-0660, 137-049-0690, 137-049-0820
Last Date for Comment: 1-27-15, 8 a.m.
Summary: Most of the rule amendments under this Notice of Proposed Rulemaking Hearing, particularly the amendments to existing rules in OAR chapter 137, division 049, are required by 2013 Oregon Laws, chapter 522 (Senate Bill 254). That enactment establishes new procedures, under ORS 279C.335, for exempting public contracts for construction manager/general contractor ("CM/GC") services from traditional competitive bidding requirements. The legislation (and these rule amendments) also regulates the contractor selection processes and contracting requirements for CM/GC projects. 2013 Oregon Laws, chapter 522, subsection 4 directs the Attorney General to adopt rules to implement that enactment. These rules accomplish that implementation, and represent a more complete version of the Temporary Rules filed by the Department on July 1, 2014.

Amendments to the construction contract retainage rule, OAR 137-049-0820, make the rule comply with 2013 Oregon Laws chapter 410.

Certain amendments to the design services and related services consultant contracting rules (OAR chapter 137, division 048) also were made necessary by 2013 Oregon Laws, chapter 522. The Department of Justice took advantage of this opportunity to make refinements to consultant selection procedures for design services and related services consultants, beyond the revisions related to CM/GC procurements under 2013 Oregon Laws, chapter 522 (Senate Bill 254). Most of these rule refinements pertain to related services consultant selection procedures, and the informal selection procedures for both design services and related services consultants.

2013 Oregon Laws chapter 66 changed the dollar amounts involved in conducting Small Procurement and Intermediate Procurements for goods and services in ORS 279B.065 and 279B.070. The amendments to OAR 137-047-260 and 137-047-0265 implement the increase in the dollars limits on Small Procurements and Intermediate Procurements to meet the new dollar amounts in 2013 Oregon Laws chapter 66.

Additional rule amendments update and correct several cross-references within OAR chapter 137, division 047 to other parts of OAR chapter 137, Division 047 or to provisions within ORS Chapter 279B.

One amendment to OAR 137-046-0130 was needed to update the rule based on provisions within 2013 Oregon Laws, chapter 522 (Senate Bill 254) pertaining to CM/GC procurements and the application of the Model Rules under ORS 279A.065 with regard to CM/GC procurements.

Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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Rule Caption: Qualifications of mediators and schedule of fees for an Environmental Claims Mediation Program.

Date:	Time:	Location:
2-12-15	2:30 p.m.	Department of Justice 1162 Court St. NE, Basement Kulongoski Conf. Rm. Salem, OR 97301

Hearing Officer: Mike Niemeyer
Stat. Auth.: ORS 465.484(2)(e)
Stats. Implemented: ORS 465.484(2) & 465.483(3)(b)

Proposed Adoptions: 137-130-0001, 137-130-0005, 137-130-0010, 137-130-0110, 137-130-0210
Proposed Repeals: 137-130-0001(T), 137-130-0005(T), 137-130-0010(T), 137-130-0110(T), 137-130-0210 (T)
Last Date for Comment: 2-12-15, 5 p.m.
Summary: SB 814 (2013) establishes an environmental claims mediation program that requires, in certain circumstances, participation in mediation by an insurance company when requested by their insured (policyholder.) These rules do not address environmental claims mediation generally but only the qualifications and training of program mediators and the mediation fees paid by the insured and their insurers. The rules list various combinations of subject matter expertise (i.e. expertise in environmental and insurance issues) and process expertise (i.e. experience and training as a mediator) that a mediator must have to participate in the program. The rules also allow a mediator to serve if agreed to by the parties in a specific case. The rules require the mediator's fees to be published on the Department of Justice website and that the fees will be split among the parties to the mediation.
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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Department of State Lands
Chapter 141

Rule Caption: Add rules restricting public recreational use on state-owned land in Deschutes and Crook Counties.

Date:	Time:	Location:
1-21-15	5 p.m.	1300 NW Wall St. Bend, OR 97701
1-26-15	4 p.m.	827 Deschutes Ave. Redmond, OR 97756
2-4-15	5 p.m.	175 NW Meadow Lakes Dr. Prineville, OR 97754

Hearing Officer: Chris Castelli or Lanny Quackenbush
Stat. Auth.: ORS 183 regarding administrative procedures and rules of state agencies; ORS 273 regarding the creation and general powers of the Land Board; ORS 274 regarding submerged and submersible land.
Other Auth.: Oregon Constitution, Article VIII, Section 5
Stats. Implemented: ORS 273 & 274
Proposed Adoptions: 141-088-0195, 141-088-0200, 141-088-0205
Proposed Amendments: 141-088-0002, 141-088-0006, 141-088-0007, 141-088-0008
Last Date for Comment: 2-16-15, 5 p.m.
Summary: This rulemaking will amend the Department of State Lands public recreational use rules for three parcels of state-owned land in Deschutes and Crook County. On October 14, 2014, the State Land Board approved the Department's request to initiate rulemaking for this parcel. The Department has been closely monitoring these parcels with the assistance of law enforcement, adjacent landowners and other affected stakeholders.

The Department has received numerous complaints about the Stevens Road parcel from affected users and adjacent landowners. Stevens Road parcel has seen a dramatic increase in illegal and nuisance activity including: littering, reckless burning, drug and alcohol use, discharge of firearms within range of persons and residential dwellings, and damage to wildlife and property. Homeless encampments are common on this parcel and require a significant amount of time and resources from the Department and law enforcement.

The South Redmond parcel has issues with homeless encampments, littering, reckless burning, drug and alcohol abuse and damage to property. Most of these illegal activities occur at night, and therefore the Department believes that a closure to overnight uses is appropriate. The Department is not proposing a closure to motor vehicles because the parcel has some established roads that lead to federal lands. The Department is not proposing a closure to the discharge of firearms because there have not been reported problems, and the parcel is not in close proximity to residential dwellings.

Department staff has spent significant time and resources cleaning up and restoring the west half of the Juniper Canyon Parcel after damage due to off-roading, littering and other damage to wildlife and property. This parcel is in close vicinity to residential dwellings near the city of Prineville.

The Department has drafted the proposed rule language below after consulting with affected stakeholders, federal, state and local agencies. State and local law enforcement have reviewed the proposed language and support this rulemaking effort.
Rules Coordinator: Tiana Teeters
Address: Department of State Lands, 775 Summer St. NE, Suite 100, Salem, OR 97301
Telephone: (503) 986-5239

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Department of State Police,
Oregon State Athletic Commission
Chapter 230

Rule Caption: Amends and updates procedural rules relating to notice, adoption of AG Model Rules and correspondence.

Date:	Time:	Location:
1-22-15	1 p.m.	4190 Aumsville Hwy. SE Salem, OR 97317

Hearing Officer: Brad Darcy
Stat. Auth.: ORS 183.341 & 183.330
Stats. Implemented: ORS 183.341 & 183.330
Proposed Amendments: 230-001-0000, 230-001-0005, 230-001-0010
Last Date for Comment: 1-22-15, Close of Hearing
Summary: Amendments to OAR Chapter 230 Division 1 merely provide house-keeping changes. Currently OAR Chapter 230 Division 1 contains some outdated information. These amendments update this outdated information; adopt a more current version of the Attorney General's Model Rules of Procedure under the Administrative Procedures Act; and adds OAR 137-003-0580 to the Model Rules adopted. The rule amendments also conform language in notice rule to more closely resemble that of ORS 183.335.
Rules Coordinator: Shannon Peterson
Address: Department of State Police, Oregon State Athletic Commission, 255 Capitol St. NE, 4th Floor, Salem, OR 97301
Telephone: (503) 934-0183

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Rule Caption: Amends OAR 230-030-0150 and 230-140-0030 regarding boxing and MMA weigh-ins and physical examinations.

Date:	Time:	Location:
1-22-15	1 p.m.	4190 Aumsville Hwy. SE Salem, OR 97317

Hearing Officer: Brad Darcy
Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.113 & 463.025
Proposed Amendments: 230-030-0150, 230-140-0030
Last Date for Comment: 1-22-15, Close of Hearing
Summary: This Rulemaking Action makes permanent portions of current Temporary Rule OAR 230-140-0030 (published in the Oregon Secretary of State Archives Division Oregon Bulletin on September 1, 2014), allowing mixed martial arts participants to weigh-in prior to having physical examinations and making other updates to the rule. This rule amendment also seeks to improve the organization, consistency, and clarity of the rules by consolidating provisions regarding mixed martial arts weigh-ins and pre and post-fight physical examinations in OAR 230-140-0030 with similar boxing provisions in OAR 230-030-0150. The amendment also streamlines and improves the clarity and organization of the rule text and updates or eliminates outdated provisions relating to weigh-ins and pre-and post-fight examinations.

Last Day for Public Comment: January 22, 2015 at 1:00 p.m. (During Public Hearing). Public comments may either be mailed to: OSAC, 4190 Aumsville Hwy SE, Salem, OR 97317; emailed to: OSAC@state.or.us; or made in person at the Public Hearing which will be held at the OSAC address previously mentioned.
Rules Coordinator: Shannon Peterson
Address: Department of State Police, Oregon State Athletic Commission, 255 Capitol St. NE, 4th Floor, Salem, OR 97301
Telephone: (503) 934-0183

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

Rule Caption: Updates Rules Relating to Distribution of DMV Secure Odometer and Secure Power of Attorney Forms
Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.102, 803.120, 803.122, 803.124 & 803.370
Other Auth.: 49 CFR, Part 580
Stats. Implemented: ORS 802.200, 803.045, 803.092, 803.045, 803.124 & 803.126
Proposed Adoptions: 735-028-0125
Proposed Amendments: 735-028-0110, 735-028-0120, 735-028-0150
Proposed Repeals: 735-028-0130, 735-028-0140
Last Date for Comment: 1-21-15, Close of Business
Summary: ORS 803.124 authorizes DMV to adopt rules to provide for the issuance of any forms it considers necessary or convenient for providing required odometer disclosures (secure forms) to the public. This includes the authority to enter into agreements authorizing persons (agents) to provide secure forms on behalf of the department and to establish a fee that agents may charge for the service of providing the forms.

Persons who wish to become secure forms agents must enter into an agreement with DMV and agree to abide by applicable DMV rules. DMV has completed a new secure forms agent agreement for 2015-2019. The agreement authorizes qualified persons to provide secure forms-during that period-to vehicle dealers, lending institutions, title companies and other entities that buy or sell vehicles or provide lending services on a regular basis.

In drafting the agreement, DMV identified the need to update and repeal certain rules related to the control and distribution of secure forms. The amendments to OAR 735-028-0110, 735-028-0120 and 735-028-0150 add definitions and clarify requirements for secure forms agent agreements. OAR 735-028-0120 and 735-028-0130 are being repealed because the subject matter of those rules is now incorporated into the secure forms agent agreement.

The proposed adoption of OAR 735-028-0125 establishes the service fee amount authorized by ORS 803.124 that a secure forms agent may charge for the service of providing secure forms. As specified, an agent may not charge a service fee that exceeds 100 percent of the agent's cost to purchase secure forms from the vendor. The fee does not include an agent's cost for postage or shipping fees. Other non-substantive changes simplify rule language to improve readability.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Land Conservation and Development Department
Chapter 660

Rule Caption: Population forecasts for land use purposes

Date:	Time:	Location:
1-22-15	8:30 a.m.	Smith Memorial Student Union Rm. 294 1825 SW Broadway Portland State University Portland, OR 97201

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040 & 195.033(10)
Stats. Implemented: ORS 195.033, 195.036 2013 OL Ch. 574, Sec. 3
Proposed Adoptions: Rules in 660-032, 660-032-0000, 660-032-0010, 660-032-0020, 660-032-0030, 660-032-0040, 660-032-0050
Proposed Amendments: 660-024-0000, 660-024-0040
Proposed Repeals: 660-024-0030
Last Date for Comment: 1-22-15, Close of Hearing
Summary: The proposed new rules and rule amendments will implement the population forecasting program required by ORS 195.033 and 195.036, in coordination with the Portland State University Population Research Center. The proposed rules will regulate the transition to new population forecasts issued by the center and by Metro, from population forecasts produced under previous statutes, former ORS 195.034 and 195.036, as those section were in effect before the effective date of ORS 195.033 and 195.036.
Rules Coordinator: Casaria Taylor
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 322

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Rule Caption: Regulates the transfer of development interests from properties approved for development under Ballot Measure 49.

Date:	Time:	Location:
1-22-15	8:30 a.m.	Smith Memorial Student Union Rm. 294 1825 SW Broadway Portland State University Portland, OR 97201

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040
Stats. Implemented: ORS 195.300-195.336 & 2007 OL Ch. 424
Proposed Adoptions: Rules in 660-029, 660-029-0010, 660-029-0020, 660-029-0030, 660-029-0040, 660-029-0050, 660-029-0060, 660-029-0070, 660-029-0080, 660-029-0090, 660-029-0100, 660-029-0110, 660-029-0120, 660-029-0130, 660-029-0140, 660-029-0150
Proposed Amendments: 660-004-0018, 660-004-0022, 660-004-0040, 660-027-0070
Last Date for Comment: 1-22-15, Close of Hearing
Summary: The proposed new rules and rule amendments will provide a framework for local governments to adopt programs that allow landowners to transfer severable development credits from properties with Measure 49 development authorizations to other locations, and between jurisdictions, as described in Measure 49 (Oregon Laws 2007, chapter 424, section 11), and in accordance with ORS 94.531. The proposed rules will also provide for, as a result of transfers of development credits, the permanent preservation of certain farm, forest and other natural resource lands.
Rules Coordinator: Casaria Taylor
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 322

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Landscape Contractors Board
Chapter 808

Rule Caption: Amend operating budget from July 1, 2013 through June 30, 2015

Date:	Time:	Location:
1-22-15	9 a.m.	2111 Front St. NE, Suite 2-101 Salem, OR 97301

Hearing Officer: Shelley Sneed
Stat. Auth.: ORS 182.462
Stats. Implemented: ORS 182.462 & 671
Proposed Amendments: 808-001-0008
Last Date for Comment: 1-22-15, Close of Hearing

Summary: Amend operating budget from July 1, 2013 through June 30, 2015
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front St. NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 967-6291, ext. 223

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Occupational Therapy Licensing Board
Chapter 339

Rule Caption: CE rule modified to allow maintenance of NBCOT certification as fulfilling the requirements of CE.
Stat. Auth.: ORS 675.320
Other Auth.: Board Meeting 11/7/2014; Board Meeting 2/13/2015; November 2014 Newsletter
Stats. Implemented: ORS 675.320
Proposed Amendments: 339-020-0010
Last Date for Comment: 2-13-15, 2 p.m.
Summary: 339-020-0010 CE Requirements for Current Licensees

(1) All current licensees shall obtain a minimum of 30 points of CE from Board approved categories during the two years immediately preceding the date of the license renewal; or

(2) The Board recognizes the maintenance of current NBCOT Certification (National Board of Certification in Occupational Therapy) as fulfilling the requirements for CE under (1).

(3) Exceptions:

(a) Current licensees who have their first NBCOT certification do not need CE for their first year.

(b) Current licensee who have their second year of NBCOT certification had their licenses for less than two full years, but more than one year, shall obtain a minimum of 15 points of CE from Board approved categories during the year immediately preceding the date of the for their license renewal.

Rules Coordinator: Felicia Holgate
Address: Occupational Therapy Licensing Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0198

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Oregon Business Development Department
Chapter 123

Rule Caption: These rules relate to the Regional Infrastructure Fund.
Stat. Auth.: ORS 285B.551, § 2-4, ch.786 OL 2013
Stats. Implemented: ORS 285B.551, § 2-4, ch.786 OL 2013
Proposed Adoptions: 123-061-0025, 123-061-0031
Proposed Amendments: 123-061-0030
Last Date for Comment: 1-20-15, Close of Business
Summary: Two new rules have been created for this division; one relating to public involvement for Regional Priority Implementation Projects and another relating to when a Regional Priority Implementation Project will be funded. Amendments have been made to clearly state the requirements of a project.
Rules Coordinator: Mindee Sublette
Address: Oregon Business Development Department, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Oregon Department of Aviation
Chapter 738

Rule Caption: Department of Aviation implementation its State Agency Coordination Program
Stat. Auth.: ORS 835.035 & 835.112
Stats. Implemented: ORS 197.180
Proposed Adoptions: 738-130-0005, 738-130-0015, 738-130-0025, 738-130-0035, 738-130-0045, 738-130-0055, 738-130-0065, 738-130-0075, 738-130-0086, 738-130-0095, 738-130-0105, 738-130-0115, 738-130-0125, 738-130-0135
Last Date for Comment: 1-21-15, Close of Business
Summary: These rules are being adopted to establish the procedures to be used by the Department of Aviation in implementing the provisions of its State Agency Coordination Program and to provide guidance to assure that Department land use programs are carried out in compliance with the statewide planning goals and in a manner compatible with acknowledged comprehensive plans.
Rules Coordinator: Lauri Kunze
Address: Oregon Department of Aviation, 3040 25th St. SE, Salem, OR 97302-1125
Telephone: (503) 986-3171

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Oregon Health Authority,
Division of Medical Assistance Programs
Chapter 410

Rule Caption: Rewrite OHP Enrollment Rules to Reflect Current Enrollment Practices Including Full Pregnancy Enrollment Exemption Process

Date:	Time:	Location:
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.725 & 414.610–414.685
Proposed Amendments: 410-141-3060, 410-141-0060
Proposed Repeals: 410-141-3060(T), 410-141-0060(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: These rules provide the framework for Coordinated Care Organization (CCO) and Managed Care Organization (MCO) enrollment requirements, including any existing exemptions from CCO and MCO enrollment. The Authority requested stakeholder and public comment on the following: The Licensed Direct Entry Midwives (LDEM) Staff Advisory Workgroup came out with recommendations related to perinatal service options for Medicaid enrollees. The Authority Director, Suzanne Hoffman responded with a letter dated May 21, 2014, stating the Division would implement changes, necessitating the removal of the sunset date, allowing for time to make further program implementations and additional rule revisions. It has been decided to implement the CCO enrollment exemption criteria on which to build additional program specific criteria later in 2015 outlining the detail level of the program requirements.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amending Prior Authorization Guide DUR/P&T Action Sept. 23, 2014

Date:	Time:	Location:
1-15-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Proposed Amendments: 410-121-0040
Proposed Repeals: 410-121-0040(T)
Last Date for Comment: 1-17-15, 5 p.m.
Summary: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0040:

Sofosbuvir (Sovaldi®) — updated criteria.

ADHD (Attention Deficit Hyperactivity Disorder) Safety Edit — updated criteria (replaces CNS Stimulants).

Biologicals for RA, Psoriasis, Crohn's disease — updated criteria (replaces TIMS).

Botulinum Toxins — new criteria.

Growth Hormone — updated criteria.
Hepatitis C General — updated criteria.
Incretin Enhancers — updated criteria.
Incretin Mimetics — updated criteria.
Oral MS drugs — updated criteria.
Palivizumab (Synagis®) — updated criteria.

Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amending PDL May 29, July 31, 2014 DUR/P&T Action.

Date:	**Time:**	**Location:**
2-17-15	10:30 a.m.	500 Summer St. NE, Rm. 166 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Proposed Amendments: 410-121-0030
Proposed Repeals: 410-121-0030(T)
Last Date for Comment: 2-19-15, 5 p.m.
Summary: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:
Preferred:
Imitrex® — Brand only.
Tobramycin (Bethkis).
Calcium Acetate.
Anafranil — Brand only.
Escitalopram Oxalate.
Imipramine HCL.
Acamprosate Calcium.
Amiloride HCL
Naltrexone HCL
Pulmonary Drug Reorganization removed COPD, Asthma Controllers, Asthma Rescue (New Drug class names)
Combination Inhalers:
- Inhaled Anticholinergics.
- Inhaled Corticosteroids.
- Inhaled Long Acting Bronchodilators.
- Miscellaneous Pulmonary Drugs.
- Short Acting Bronchodilators.
Tazarotene (Tazorac®).
Non-Preferred:
Clomipramine HCL.

Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Eligibility Requirements for the Authority's Office of Client and Community Services Medical Programs

Date:	**Time:**	**Location:**
1-15-15	10:30 a.m.	500 Summer St NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.060, 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Proposed Amendments: 410-200-0010, 410-200-0015, 410-200-0100, 410-200-0105, 410-200-0110, 410-200-0111, 410-200-0115, 410-200-0120, 410-200-0125, 410-200-0130, 410-200-0135, 410-200-0140, 410-200-0145, 410-200-0146, 410-200-0200, 410-200-0205, 410-200-0210, 410-200-0215, 410-200-0220, 410-200-0225, 410-200-0230, 410-200-0235, 410-200-0240, 410-200-0305, 410-200-0310, 410-200-0315, 410-200-0400, 410-200-0405, 410-200-0410, 410-200-0415, 410-200-0420, 410-200-0425, 410-200-0435, 410-200-0440, 410-200-0500, 410-200-0505, 410-200-0510
Proposed Repeals: 410-200-0010(T), 410-200-0015(T), 410-200-0100(T), 410-200-0105(T), 410-200-0110(T), 410-200-0111(T), 410-200-0115(T), 410-200-0120(T), 410-200-0125(T), 410-200-0130(T), 410-200-0135(T), 410-200-0140(T), 410-200-0145(T), 410-200-0146(T), 410-200-0200(T), 410-200-0205(T), 410-200-0210(T), 410-200-0215(T), 410-200-0220(T), 410-200-0225(T), 410-200-0230(T), 410-200-0235(T), 410-200-0240(T), 410-200-0305(T), 410-200-0310(T), 410-200-0315(T), 410-200-0400(T), 410-200-0405(T), 410-200-0410(T), 410-200-0415(T), 410-200-0415(T), 410-200-0420(T), 410-200-0425(T), 410-200-0435(T), 410-200-0440(T), 410-200-0500(T), 410-200-0505(T), 410-200-0510(T)
Last Date for Comment: 1-17-15, 5 p.m.
Summary: With passage of the Affordable Care Act (ACA), Medicaid and CHIP eligibility methodologies were updated effective January 1, 2014. As of November 15, 2014, individuals may begin applying for OCCS medical program coverage through the Federally Facilitated Marketplace (FFM). Additionally, Oregon has received ongoing clarifications and guidance regarding the implementation of the ACA mandated changes. Along with clean-up of formatting, structure and references within rules, these updates are reflected in the attached edits.

Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Hospital Satellite Definition

Date:	**Time:**	**Location:**
1-21-15	11 a.m.	800 NE Oregon St. Rm. 1E Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 441.025, 441.055 & 442.015
Stats. Implemented: ORS 441.020, 441.025 & 441.055
Proposed Amendments: 333-500-0010, 333-500-0025, 333-525-0000
Last Date for Comment: 1-22-15, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division, Health Care Regulation and Quality Improvement section is proposing to permanently amend administrative rules in chapter 333, divisions 500 and 525 relating to hospitals. Treating persons in psychiatric crisis continues to be an issue for hospitals, health systems and community-based organizations. The proposed 'satellite' definition change will allow a hospital or health system more flexibility to set up psychiatric emergency services in a more efficient and patient centered way and possibly reduce the number of psychiatric patients waiting for care in an emergency department. The overall goal is to provide an opportunity for improved care and prompt access to psychiatric emergency services and inpatient psychiatric care as needed.

Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Rule Caption: Health Care Acquired Infection Reporting and Public Disclosure

Date:	**Time:**	**Location:**
1-20-15	1:30 p.m.	800 NE Oregon St., Rm. 1A Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 442.420 & OL 2007, Ch. 838 § 1-6 & 12
Stats. Implemented: ORS 179.505, 192.410, 192.496, 192.502, 441.015, 442.400, 442.405 & OL 2007, Ch. 838 § 1-6 &12
Proposed Amendments: 333-018-0100, 333-018-0110, 333-018-0127
Last Date for Comment: 1-27-15, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division is proposing to permanently amend rules in chapter 333, division 18 pertaining to health care acquired infection reporting and public disclosure. The proposed amendment updates references and adds clarification to OAR 333-018-0110(9) regarding health care acquired process measures. The proposal also adds two new health care facility types to the list of facilities under OAR 333-018-0127.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Oregon University System,
Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general services fees.
Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Proposed Amendments: 574-050-0005
Last Date for Comment: 1-22-15, 5 p.m.
Summary: Amendments will allow for increases, additions, and revisions of special course fees and general service fees.
Rules Coordinator: Dawn Brown
Address: Oregon University System, Western Oregon University, 345 N Monmouth Ave., Monmouth, OR 97361
Telephone: (503) 838-8472

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Oregon Youth Authority
Chapter 416

Rule Caption: Amendments proposed to address certification standards of licensed and unlicensed employees, and correct working titles.
Stat. Auth.: ORS 420A.010, 420A.025 & 420A.022
Stats. Implemented: ORS 420A.022
Proposed Amendments: 416-070-0010, 416-070-0020, 416-070-0030, 416-070-0040, 416-070-0050, 416-070-0060
Last Date for Comment: 2-13-15, Close of Business
Summary: Proposed rule amendments are to update agency assistant director title, and include certification standards for licensed and unlicensed practitioners.
Rules Coordinator: Winifred Skinner
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 373-7570

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Rule Caption: Amendments incorporate "others in youth authority custody" in accordance with ORS 420A.035.
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.030, 420A.032 & 420A.035
Proposed Amendments: 416-260-0010, 416-260-0015, 416-260-0020, 416-260-0030, 416-260-0040, 416-260-0050, 416-260-0060, 416-260-0070
Last Date for Comment: 2-13-15, Close of Business
Summary: Proposed amendments add offenders in the legal custody of the Department of Corrections (DOC) and physical custody of Oregon Youth Authority (OYA) to these rules. Senate Bill 188, section 11, amended ORS 420A.035 by changing the law to, "The Oregon Youth Authority may deposit money belonging to youth offenders or others in youth authority custody in a trust account in the State Treasury separate and distinct from the General Fund. Interest earned by the account, if any, shall accrue to the benefit of the account." Amendments also propose grammatical edits.
Rules Coordinator: Winifred Skinner
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 373-7570

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Racing Commission
Chapter 462

Rule Caption: Rule implements regulation of pari-mutuel wagering for "Instant" or historical racing

Date:	Time:	Location:
1-20-15	11 a.m.	PSOB, 800 NE Oregon St. Rm 1D Portland, OR 97232

Hearing Officer: Charles Williamson
Stat. Auth.: ORS 462.270(3)
Stats. Implemented: SB 1537, ORS 462.155, 462.010 & 462.270(3)
Proposed Adoptions: 462-200-0700
Last Date for Comment: 1-20-15, 11 a.m.
Summary: Rule allows the agency to govern the Instant Racing 1-2-3 with Pick N wager. This wager will be offered on a pari-mutuel wagering device with historic races.
Rules Coordinator: Karen Parkman
Address: Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232
Telephone: (971) 673-0208

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Veterinary Medical Examining Board
Chapter 875

Rule Caption: Deletes obsolete Continuing Education provider; adds current providers.
Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.410–686.420
Proposed Amendments: 875-010-0090
Last Date for Comment: 1-15-14, Close of Business
Summary: Replaces 'Intermountain VMA' with 'North American Veterinary Conference, and adds 'veterinary public health programs' to approved Continuing Education.
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

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Rule Caption: Reinstatement of Expired Certified Veterinary Technician Licenses
Stat. Auth.: ORS 686.201
Stats. Implemented: ORS 686.255 & 686.350–686.370
Proposed Amendments: 875-030-0030
Last Date for Comment: 1-15-15, Close of Business
Summary: A Certified Veterinary Technician whose license has been expired for five years or more will need to meet current qualifications to reinstate the CVT license.
Rules Coordinator: Lori V. Makinen
Address: Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0224

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Water Resources Department
Chapter 690

Rule Caption: Local rules governing control of well use in the Off-Project Area in the Klamath Basin.

Date:	Time:	Location:
1-15-15	6 p.m.	OIT, 3201 Campus Dr. Bailey/Thielsen Conference Rm. Klamath Falls, OR

1-16-15	9 a.m.	OIT, 3201 Campus Dr. Bailey/Thielsen Conference Rm. Klamath Falls, OR

Hearing Officer: John Roberts
Stat. Auth.: ORS 537.505–537.795 & 540.045
Other Auth.: OAR 690-009
Stats. Implemented: ORS 537.505–537.795 & 540.045
Proposed Adoptions: 690-025-0010
Last Date for Comment: 2-17-15, 5 p.m.
Summary: Establishes procedures in the Klamath Basin for the control of groundwater uses in the Off-Project area for the benefit of senior surface water rights. The Off-Project area is defined and limits the rule application to the Wood River, Williamson River, and Sprague River basins.
Rules Coordinator: Joshua Spansail
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0874

Board of Accountancy
Chapter 801

Rule Caption: Updates definitions, licensing requirements and ethics rules and standards
Adm. Order No.: BOA 2-2014
Filed with Sec. of State: 12-15-2014
Certified to be Effective: 1-8-15
Notice Publication Date: 12-1-2014
Rules Amended: 801-001-0000, 801-001-0005, 801-001-0035, 801-005-0010, 801-010-0010, 801-010-0045, 801-010-0050, 801-010-0060, 801-010-0065, 801-010-0073, 801-010-0079, 801-010-0080, 801-010-0100, 801-010-0110, 801-010-0120, 801-010-0130, 801-010-0345, 801-030-0005, 801-030-0010, 801-030-0015, 801-030-0020
Rules Repealed: 801-001-0015, 801-001-0020, 801-010-0078, 801-010-0125
Subject: The proposed rules move the Board of Accountancy Rules closer to the national model rules for the profession, in line with establishing more commonality among states in terms of licensure standards given established mobility and reciprocity in licensure. That policy goal translates into a range of primarily licensing-related proposed rule changes, including proposed adoption of slightly more stringent educational requirements for licensure, effective June 30, 2017, by removing the ability to count introductory or principles-level accounting courses toward the core accounting requirement, The rules proposal clarifies the experience requirements for licensure for all licensing tracks, removes the requirement for continuous 5-year licensure by supervisor licensees, and removes burdensome specificity in definition of part-time experience. The rules further propose to place emphasis on the applicant documenting compliance with experience requirements. The rules proposal also updates references to AICPA ethical standards and professional standards, and the Attorney General's Uniform and Model Rules of Procedure, and updates definitions.
Rules Coordinator: Kimberly Fast—(503) 378-2268

801-001-0000
Notice of Proposed Rule

Prior to permanent adoption, amendment or repeal of any rule, the Oregon Board of Accountancy shall give notice of the intended action:

(1) By publishing Notice at least 21 days prior to the effective date of the rule in the bulletin compiled by the Secretary of State and referred to in ORS 183.360;

(2) By mailing a copy of the Notice to persons on the Board of Accountancy's mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule;

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

(a) Capitol Press Room;

(b) Associated Press;

(c) Oregon Society of Certified Public Accountants;

(d) Oregon Association of Independent Accountants; and

(4) By providing an electronic copy of the Notice to legislators as provided by ORS 183.335(15).

Stat. Auth.: ORS 183.360
Stats. Implemented: ORS 183.335 & 183.360
Hist.: AB 37, f. & ef. 12-3-75; AB 2-1982, f. & ef. 4-20-82; AB 4-1992, f. & cert. ef. 8-10-92; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-001-0005
Model Rules of Procedure

Pursuant to ORS 183.341, the Oregon Board of Accountancy adopts the Attorney General's Uniform and Model Rules of Procedure in effect on January 1, 2015.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Board of Accountancy.]
Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 183.341
Hist.: AB 20A, f. 1-17-72, ef. 2-1-72; AB 25, f. 9-15-72, ef. 10-1-72; 1AB 33, f. 11-6-73, ef. 11-25-73; 1AB 38, f. & ef. 2-10-76; 1AB 3-1978, f. & ef. 3-23-78; 1AB 1-1980, f. & ef. 2-26-80; 1AB 1-1982, f. & ef. 1-8-82; AB 5-1988, f. & cert. ef. 10-31-88; AB 6-1991, f. & cert. ef. 12-18-91; AB 3-1994, f. & cert. ef. 8-10-94; AB 1-1-96, f. & cert. ef. 1-29-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 1-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-001-0035
Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR Chapter 801 are those in effect as of January 1, 2015.

Stat. Auth.: ORS 183.332 & 673.410
Stats. Implemented: ORS 183.337 & 673.410
Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2013, f. & cert. ef. 1-8-13; BOA 1-2014, f. 2-14-14, cert. ef. 3-1-14; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-005-0010
Definitions

As used in OAR Chapter 801, the following terms or abbreviations have the following meanings, unless otherwise defined therein:

(1) Active means a license issued by the Oregon Board of Accountancy to an individual who has met the requirements to hold a CPA or PA license, maintains the license and is in good standing.

(2) AICPA means American Institute of Certified Public Accountants.

(3) Applicant means a person applying for a license to practice public accountancy.

(4) Attestation Services means the following financial statement services must be performed under the following standards means:

(a) An audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS), International Standards on Auditing (ISA), or other internationally recognized auditing standards.

(b) A review of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS);

(c) Any engagement to be performed in accordance with the statements on Standards for Attest Engagements (SSAE);

(d) An engagement to be performed in accordance with the standards of the Public Company Accounting Oversight Board in the United States (PCAOB)

(e) The statements on standards specified in subsections (a) through (c) of this definition are those developed by the AICPA.

(5) Business organization means any form of business organization authorized by law, including but not limited to a proprietorship, partnership, corporation, limited liability company, limited liability partnership or professional corporation.

(6) CPA or Certified Public Accountant means a person who has a certificate of certified public accountant issued under ORS 673.040.

(7) CPA Exam means the Uniform Certified Public Accountant Examination.

(8) CPE means continuing professional education.

(9) Candidate means a person applying for the CPA Exam.

(10) Censure means an official written expression of reprimand, by Board action, to a licensee for specified conduct.

(11) Certificate means a certificate of certified public accountant issued under ORS 673.040.

(12) Client means a person or entity who agrees with a licensee to receive any professional service from the licensee.

(13) Commission means a fee calculated as a percentage of the total value of the sale of a product or service that is paid or received in the form of money or other valuable consideration.

(14) Compilation Services means a professional service performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS) that is presenting, in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(15) Contingent fee means a fee established for the performance of any professional service and directly or indirectly paid to a licensee pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. A fee is not contingent if the fee:

(a) Is fixed by courts or other public authorities; or

(b) In tax matters, is determined based on the results of judicial proceedings or the findings of governmental agencies.

(16) Enterprise means any person or entity, whether organized for profit or not, for which a licensee provides public accounting services.

(17) Expired means a license that has not been renewed after six years from the close of the last license period for which the license was active, inactive or retired. An expired license may be restored only if the Board determines that there is good cause to do so.

(18) Fees include commissions, contingent fees and referral fees.

(19) Financial statements means the presentation of financial data, including accompanying notes, that is derived from accounting records and intended to communicate an entity's economic resources or obligations or the changes therein, at a specific point in time, and/or the results of operations for a specific period of time, presented in accordance with generally accepted accounting principles or a comprehensive basis of accounting other than generally accepted accounting principles. Financial presentations included in tax returns are not financial statements. Incidental financial data included in management advisory services reports to support recommendations to a client are not financial statements. The method of preparation (for example, manual or computer preparation) is not relevant to the definition of a financial statement.

(20) Firm means a business organization as defined in ORS 673.010 that is engaged in the practice of public accountancy and is required to be registered with the Board.

(21) First time candidate means a candidate for the CPA exam who is sitting for the exam for the first time in Oregon.

(22) Generally Accepted Accounting Principles means accounting principles or standards generally accepted in the United States, including but not limited to Statements of Financial Accounting Standards and interpretations thereof, as published by the Financial Accounting Standards Board, and Statements of Governmental Accounting Standards and interpretations thereof, as published by the Government Accounting Standards Board and the International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB).

(23) Generally Accepted Auditing Standards means the Generally Accepted Auditing Standards including but not limited to those standards adopted by the American Institute of Certified Public Accountants, together with interpretations thereof, as set forth in Statements on Auditing Standards issued by the AICPA, and for federal audits, the Single Audit Act and related U.S. Office of Management and Budget Circulars published by the Government Accountability Office, and International Standards on Auditing (ISAs) issued by International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB).

(24) Holding out as a CPA or PA means to assume or use by oral or written communication the titles or designations "certified public accountant" or "public accountant" or the abbreviations "CPA" or "PA", or any number or other title, sign, card, device or use of any internet domain or e-mail name, tending to indicate that the person holds a certificate or license in good standing issued under the authority of ORS 673 as a certified public accountant or a public accountant.

(25) Inactive means a license status granted by the Board to a licensee:

(a) Whose license is not suspended or revoked;

(b) Who is not:

(A) Performing or offering to perform, for a client, services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters; and

(B) Practicing public accountancy in a business organization that is required to be registered in Oregon with the Board under ORS 673.160; or

(c) A sole practitioner.

(d) Licensees who are granted inactive status shall not use the CPA or PA designation unless the word "inactive" is used in conjunction with the designation, such as "CPA Inactive" and is listed in the same size font as the designation.

(26) In good standing means the status of a holder of a license or registration issued by any jurisdiction, that is not suspended, revoked,, expired, resigned, retired or lapsed.

(27) Jurisdiction means the licensing authority for the practice of public accountancy in any state, U.S. Territory or foreign country.

(28) Lapsed means a license status that is not renewed within 60-days of the close of a license period.

(a) A person in lapsed status may not:

(A) Practice public accounting in a business organization required to be registered with the Board under ORS 673.160;

(B) Practice as a sole practitioner; or

(C) Perform or offer to perform for a client services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

(b) A person in lapsed status must not hold out in any form or manner that they are a CPA or PA.

(c) A lapsed license may be reinstated to active status only prior to becoming expired.

(29) License means:

(a) A certificate or permit issued under ORS 673.150 or a license issued under 673.100, enabling the holder thereof to practice public accountancy in this state; or

(b) A certificate, permit, registration or other authorization issued by a jurisdiction outside this state enabling the holder thereof to practice public accountancy in that jurisdiction.

(30) Licensee means the holder of a license as defined in these rules.

(31) Material participation means participation that is regular, continuous and substantial.

(32) Manager means a manager of a limited liability company.

(33) Member means a member of a limited liability company.

(34) NASBA means National Association of State Boards of Accountancy.

(35) Non-licensee owner means a person who does not hold a certificate, license or permit as a certified public accountant or public accountant in Oregon or in any other jurisdiction.

(36) PA or Public Accountant means a person who is the holder of a license issued under ORS 673.100.

(37) Peer Review means a study, appraisal or review of one or more aspects of the public accountancy work of a holder of a license under ORS 673.150 or of a registered business organization that performs attestation or compilation services that is conducted by a CPA who holds an active license issued by any state or a public accountant licensed under 673.100 who was required to pass the audit section of the Uniform CPA Exam as a requirement for licensing. The peer reviewer must also be independent of the license holder or registered business organization being reviewed.

(38) Permit means a license to practice public accountancy issued under ORS 673.150.

(39) Practice of public accountancy means performance of or any offer to perform one or more services for a client or potential client, including the performance of such services while in the employ of another person by a licensee, professional services of accounting, tax, personal financial planning, litigation support services, and those professional services for which standards are promulgated. These standards include Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC), Statements of Financial Accounting Standards, Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Consulting Services, Statements of Governmental Accounting Standards, International Financial Reporting Standards, International Accounting Standards, International Standards on Auditing, Statements on Standards for Attestation Engagements, and Statements on Standards for Valuation Services.

(40) Principal Place of Business means the office location designated by a person for purposes of substantial equivalency and reciprocity.

(41) Professional means arising out of or related to the specialized knowledge or skills associated with certified public accountants and public accountants.

(42) Professional services means any services performed or offered to be performed by a licensee for a client or potential client in the course of the practice of public accountancy.

(43) Regional Accreditation means the college or university is accredited by one of the six regional accrediting associations or by another accrediting body that is recognized by the Board.

(44) Referral fee means a referral fee that includes, but is not limited to, a rebate, preference, discount or any item of value, whether in the form of money or otherwise, given or received by a certified public accountant, public accountant or firm, to or from any third party, directly or indirectly, in exchange for the purchase of any product or service, unless made in the ordinary course of business.

(45) Registration means the authority issued under ORS 673.160 to a business organization to practice public accountancy in this state.

(46) Report. See OAR 801-005-0200 and 801-005-0300

(47) Retired means a license status conferred by the Board upon a licensee who:

(a) At any age, has held an active license in good standing, to practice public accountancy in Oregon for a combined period of not less than 20 years, or

(b) Has reached 65 years of age

(A) A licensee in retired status may not perform any attest services nor sign any tax returns as a preparer.

(B) A licensee in retired status may not perform public accounting services for direct or indirect compensation.

(C) A licensee in retired status may sign any documents related to non-compensated services as a "CPA Retired" or "PA Retired". The word "Retired" must be in the same size font as the designation.

(c) A licensee in retired status, may be restored to active status at the Boards discretion of showing good cause.

(48) Returning candidate means a person who has received grades for any section of the Uniform CPA exam who applies to sit for any part of the CPA exam in Oregon.

(49) Single Audit Act means the Single Audit Act with the Single Audit Act Amendments of 1996, as published by the United States Government Accountability Office, Office of Management and Budget.

(50) Standards for Accounting and Review Services means the Statements on Standards for Accounting and Review Services published by the AICPA.

(51) Standards for board approved peer review programs means the Standards for Performing and Reporting on Peer Reviews published by the AICPA.

(52) Statements on Standards for Attestation Engagements means the statements by that name issued by the AICPA.

(53) State means any state, territory or insular possession of the United States, and the District of Columbia.

(54) Substantial equivalency means:

(a) An individual holds a valid license as a certified public accountant from another state that requires an individual, as a condition of licensure as a certified public accountant to:

(A) Complete at least 150 semester hours of college education and obtain a baccalaureate or higher degree conferred by a college or university;

(B) Achieve a passing grade on the Uniform Certified Public Accountant Examination; and

(C) Possess at least one year of experience, verified by a licensee, providing any type of service or advice involving the use of accounting, attestation, compilation, management advisory, financial advisory, tax or related consulting skills, obtained through public practice or government, industry or academic work; or

(b) An individual has the qualifications specified in paragraph (a) of this subsection and holds a valid license as a certified public accountant from another state that does not require an individual to have the qualifications specified in paragraph (1) of this subsection as a condition of licensure as a certified public accountant.

(55) Uniform Accountancy Act (UAA) is a model bill and set of regulations designed by the AICPA and NASBA to provide a uniform approach to regulation of the accounting profession, provisions of which may or may not be adopted by state boards of accountancy.

(56) Valid means a certified public accountant or a public accountant license, municipal roster authority, firm registration or chartered accountant certificate that is in active status and in good standing with the appropriate licensing authority. A license in active status is one that is not revoked, suspended, subject to probation, lapsed, inactive, retired or expired.

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

Stat. Auth.: ORS 670.310

Stats. Implemented: ORS 670.310

Hist.: 1AB 2-1982, f. & ef. 10-15-86 AB 1-1989, f. & cert. ef. 1-25-89; AB 2-1990, f. & cert ef. 4-9-90; AB 1-1992, f. & cert. ef. 2-18-92; AB 1-1993, f. 1-14-93, cert. ef. 1-15-93; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1994, f. & cert. ef. 11-10-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 3-1995, f. & cert. ef. 5-19-95; AB 4-1995, f. & cert. ef. 8-8-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 2-1996, f. & cert. ef. 9-25-96; AB 2-1997, f. & cert. ef. 3-10-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 3-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 2-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 3-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 6-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 5-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 2-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0010

Fees, Civil Penalties and Cost Recovery

For the purpose of ORS 673.010 to 673.455 and 297.670 to 297.740, the Board of Accountancy shall charge the following fees:

(1) Application fees. All application fees are non- refundable.

(a) CPA Examination:

(A) Initial Examination — $100.

(B) Re-Examination — $50.

(b) CPA or PA License — $150.

(c) Municipal Auditor Roster Application — $100.

(d) Reinstatement application fee — $150.

(2) Initial license and registration fees:

(a) Initial CPA or PA License — $160.

(b) Municipal Auditor — $100.

(c) Firm Registration — $175.

(3) Biennial renewal application fees:

(a) Active CPA or PA License — $160.

(b) Inactive CPA or PA — $50.

(c) Municipal Auditor — $100.

(d) Firm Registration — $175.

(e) Retired License — $25.

(4) Late renewal penalty fees:

(a) Active CPA or PA License — $160.

(b) Inactive CPA and PA — $50.

(c) Municipal Auditor Late Fee — $100.

(d) Firm Registration — $175.

(e) Retired License — $25.

(5) Miscellaneous fees:

(a) Copies of existing mailing lists shall be provided for a fee equal to the amount necessary to prepare each list, including the cost of materials, if any, and the cost of staff time. Staff time shall be calculated at the hourly rates stated in subsection (d) of this section.

(b) Municipal Auditor lists shall be provided at no charge to municipal entities that are subject to audit law.

(c) Copies of records made on a standard office copy machine shall be charged a minimum fee of $2.50 for five pages or less, and 25 cents per page thereafter. If certified copies of records are requested, there will be a $2.50 fee for each document certified in addition to the copy cost.

(d) Staff time required to locate, produce, summarize or otherwise provide records shall be charged as follows:

(A) Staff time, $23 per hour, in quarter hour increments at $5.75 per quarter hour.

(6) Civil Penalties assessed for Specific Violations

(a) Failure to provide change of address in 30 day — $100.

(b) Failure to renew firm registration by January 31 — $500.

(c) Failure to respond to Notice of CPE audit and all follow-up in 21 days — $250.

(d) Failure to respond to Notice of Peer Review Audit in 21 days — $1000.

(7) Cost Recovery:

(a) The Board may recover costs associated with a contested case hearing in which the Board has prevailed. The following costs may be included in cost recovery:

(A) Attorney General Fees.

(B) Administrative Hearing Costs.

(C) Cost of Investigation.

(D) Expert Witness Fees.

(E) Costs of Appeal.

(8) Form of Payment:

(a) Checks or money orders shall be made payable to "Oregon Board of Accountancy".

(b) Credit card payments may be submitted in person, by mail, online or by fax. Any credit card that is rejected by the bank and requested to be confiscated will be retained and returned to the bank. All payments by credit card that are rejected must be paid in full by a check or money order within ten days from notification of rejection. All payments received after Board deadlines, including, but not limited to payments for renewals, applications and civil penalties, will be considered late and a late penalty will be assessed.

Stat. Auth.: ORS 670.310, 673.040, 673.060, 673.100, 673.150, 673.160, 197.720 & 673.153

Stats. Implemented: ORS 673, 297 & 192.440

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0045
Uniform Certified Public Accountant Exam

CPA exam rules. The Board Recognizes the rules of conduct for CPA examination candidates as published in the Candidate Bulletin. The Board may deny credit for any or all sections of the exam and may prohibit candidates from retaking the exam for any of the following reasons:

(1) Conduct that violates the CPA Examination Rules of Conduct,

(2) Violation of the confidentiality provisions of the CPA Examination Rules of Conduct, which shall result in denial of credit for the candidate's scores on the CPA exam and the candidate shall be prohibited from retaking the CPA exam for a period of ten years.

Stat. Auth.: ORS 670.310 & 673.060
Stat. Implemented: ORS 673.060 & 673.410
Hist.: BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0050
Application for Uniform CPA Examination

(1) Definitions.

(a) Authorization to Test (ATT): Issued by the Board of Accountancy to eligible exam candidates to authorize the candidate to test for specified sections of the CPA exam. The ATT may be issued for one or more CPA exam sections. Each ATT authorizes the candidate to take each CPA exam section designated in the ATT one time only. The ATT may become expired as to one exam section named in the ATT, and remain valid as to other specified exam sections. The candidate must submit an application and re-examination fee to the Board of Accountancy for any exam section that is expired under the ATT or to retake any section of the CPA Exam not passed.

(b) Notice to Schedule (NTS): Issued by NASBA and enables the candidate to schedule testing at an examination test center. The NTS must remain open until the candidate schedules testing or until six months have elapsed since the NTS was issued, whichever occurs first.

(c) Testing Center: Board approved computer testing facilities, at which candidates may take the CPA examination, are listed on the Board website.

(d) Testing Opportunity: Each testing window is considered a testing opportunity. There are four testing opportunities per year. A candidate may test for a particular section only once per testing window. A candidate may not retake a failed test section(s) in the same testing window.

(e) Testing Windows: The testing window is comprised of two months in which the examination is available to be taken and one month in which the examination will not be offered so that exam sections can be graded and maintenance may be performed.

(2) Applications.

(a) Applications for the CPA exam must be submitted on a form provided by the Board and must be accompanied by the appropriate fee. The act of filing an application for the CPA exam constitutes an agreement by the candidate to observe and comply with the CPA Exam rules adopted by the Board.

(b) An application will not be reviewed until the application fee and all required supporting documents have been received, including proof of identity (as determined by the Board and specified on the application form), official transcripts and/or evaluation of foreign credentials from NASBA International Evaluation Services (NIES) and evidence that the candidate has met eligibility requirements.

(c) All foreign academic credentials submitted as evidence of eligibility for the CPA exam are required to be evaluated by NASBA International Evaluation Services (NIES). Applications for the CPA exam received prior to June 1, 2014, involving foreign credentials will not be required to be submitted to NIES if the applicant chooses to submit a credential evaluation from a provider that is a member of the National Association of Credential Evaluation Services, Inc. (NACES);

(d) An application for the CPA examination must be complete in every particular within 3 months from the date it is received at the Board office. If an application is incomplete, the candidate will be found ineligible and the file will be closed. A candidate whose file has been closed as described herein is required to submit a new application, application fee and all required documents.

(e) Candidates shall pay the CPA exam application fee designated in OAR 801-010-0010 to the Board. All other fees associated with the CPA exam are required to be paid to NASBA. All CPA exam fees are non-refundable. If a candidate fails to appear for a scheduled testing at an approved test center, all fees paid will be forfeited for the examinations scheduled on that day.

(f) At the time of application and during the time any ATT issued by the Oregon Board of Accountancy is open, the candidate must not have an open ATT for the same section in any other state or jurisdiction.

(g) The candidate must certify at the time of application that he or she is in compliance with subsection (f) of this rule. Falsifying this certification or including any false, fraudulent, or materially misleading statements on the application for the examination, or including any material omission on the application for the examination is cause for disciplinary action under ORS 673.170.

(h) The Board or its designee will forward authorization to test (ATT) for the computer-based CPA exam to the candidate and to the NASBA National Candidate Database once eligibility is determined.

(i) The Board will offer a candidate the opportunity to voluntarily disclose the candidate's social security number to the Board so that the Board may provide the social security number to NASBA for identification purposes.

(3) Eligibility under education requirements. Candidates for admission to the CPA exam applying under the educational requirements of ORS 673.050(1)(a) must demonstrate eligibility as follows:

(a) 150 Hour rule: Satisfactory evidence that the candidate has successfully completed 150 semester hours or 225 quarter hours, including:

(A) A baccalaureate or higher degree from a regionally accredited college or university as described in ORS 673.050(1)(a);

(B) A minimum of 24 semester hours or 36 quarter hours, or the equivalent thereof, in the study of accounting. For candidates applying on or after June 30, 2017, these hours must be upper-division courses. Principles and introductory courses cannot be used to meet this requirement; and

(C) A minimum of 24 semester hours or 36 quarter hours in accounting or related subjects. Related subjects are defined as business, finance, economics, and written and oral communication.

(D) Credit for community college courses. Applicants who have earned a baccalaureate or higher degree from a regionally accredited college or university may obtain additional hours from a community college, if such hours would be transferable to an accredited college or university.

(E) Applicants applying on or after June 30, 2017: Internship courses are limited to a maximum of 4 semester hours or 6 quarter hours.

(b) Evidence of eligibility. Candidates must meet all requirements under this rule at the time of application. Satisfactory evidence of the educational requirement may be provided in the following manner:

(A) Candidates who have completed all course requirements and been awarded a baccalaureate or higher degree must provide an official transcript(s) demonstrating successful completion of all courses required under these rules, and that a degree was awarded.

(B) Candidates who have completed all course requirements at the time of application, but for whom a baccalaureate degree has not yet been awarded must provide an official transcript(s) showing successful completion of all courses required under these rules, together with a letter from the Registrar's Office of the college or university stating that the candidate has met the degree requirements and the date that the degree will be awarded.

(C) Only official transcripts that are forwarded directly to the Board office by the issuing college or university will be accepted.

(D) Colleges or universities, which are accredited by one of the six regional accrediting associations and listed as accredited in the Directory of Post secondary Institutions, published by the National Center for Education Statistics, are recognized by the Board.

(4) Eligibility under experience standards. Candidates for the CPA exam who are applying under the experience requirements of ORS 673.050(2) to be licensed as a Public Accountant must submit satisfactory evidence that:

(a) The candidate graduated from a high school with a four-year program, or the equivalent; and

(b) The candidate completed two years of experience in public accountancy or the equivalent satisfactory to the Board that meets the requirements of OAR 801-010-0100(2) and 801-010-0065(2).

(c) Returning candidates after January 1, 2002 who were eligible to take two sections of the CPA Exam under provisions of ORS 673.100 in effect prior to January 1, 2002, are required to sit for at least one exam section in any two testing windows each year in order to maintain eligibility under those requirements.

(5) Authorization to Test and Notice to Schedule.

(a) An ATT authorizes the candidate to test one time for those sections of the CPA exam that are specified in the ATT. An ATT is effective for six months from the date on which the corresponding NTS is issued or until the NTS expires, whichever occurs first; however, the ATT will expire ninety

(90) days after it is issued if the candidate has not paid the appropriate fees to NASBA.

(b) Expiration of the ATT. Authorization to take a specified exam section will expire on any of the following events:

(A) When the candidate schedules and takes a designated exam section;

(B) If the candidate schedules a testing date for a designated exam section but fails to appear and take the section at the scheduled time;

(C) If the candidate fails to schedule a designated exam section within the six-month period defined by the NTS; or

(D) If the candidate fails to request an NTS and pay the appropriate fees to NASBA within 90 days of the date the ATT is issued.

(c) Suspension of the ATT. An ATT may be suspended by the Board of Accountancy based on a report from NASBA that a problem related to the candidate is identified on the National Candidate Database, or for other good cause as determined by the Board.

(d) Payment of CPA Exam testing fees. To obtain a Notice to Schedule (NTS), the candidate must remit the CPA exam testing fees required for the CPA exam sections specified in the ATT to NASBA within ninety (90) days from the date the ATT is issued. Failure to remit the required fees and obtain the NTS will cause the ATT to expire, and the candidate must submit a re-examination application to the Board, with the appropriate CPA exam fee, to receive another ATT.

(e) NTS. When the candidate receives an ATT from the Board, the candidate is required to:

(A) Submit to NASBA payment of all fees related to testing of the CPA exam sections authorized by the ATT;

(B) Upon receipt of the NTS, contact an approved test center to schedule the time and place for testing of the exam sections authorized by the NTS. CPA exam sections do not have to be scheduled on the same date.

(C) The NTS remains valid for each exam section until the candidate schedules testing for that specific section, or for six months from the date the NTS was issued, whichever occurs first.

(D) The NTS expires as to each individual exam section when the candidate schedules testing for that section, whether or not the candidate appears at the scheduled testing appointment.

(f) Testing.

(A) A candidate may schedule testing at an approved testing center in Oregon or in another jurisdiction. A list of approved testing centers is on the Board of Accountancy website.

(B) Candidates must comply with the procedures and rules of the test center.

(g) Re-examination. A completed re-examination application and payment of the appropriate fee to the Board of Accountancy is required:

(A) To retake any exam section that the candidate does not pass;

(B) To obtain an NTS for any exam section that the candidate failed to schedule during the six-month period for which a previous NTS was issued;

(C) To obtain an NTS for any exam section for which the candidate failed to obtain an NTS during the ninety (90) day period after the date the ATT was issued.

Stat. Auth.: ORS 670.310, 673.050 & 673.100

Stats. Implemented: ORS 673.050, 673.100 & 673.410

Hist.: 1AB 10, f. 2-7-63; 1AB 14, f. 8-15-68; 1AB 20, f. 10-22-71, ef. 11-15-71; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 41, f. & ef. 12-2-76; 1AB 44, f. & ef. 3-31-77; 1AB 48, f. & ef. 7-21-77; 1AB 6-1978, f. & ef. 6-22-78; 1AB 7-1981, f. & ef. 7-27-81; 1AB 2-1983, f. & ef. 9-20-83; AB 3-1988, f. & cert. ef. 6-9-88; AB 2-1989, f. & cert. ef. 1-25-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 1-1996, f. & cert. ef. 1-29-96; AB 1-1997, f. & cert. ef. 1-28-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 7-1998(Temp), f. & cert. 7-29-98 thru 1-25-99; BOA 8-1998, f. & cert. ef. 10-22-98; BOA 4-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2004(Temp), f. & cert. ef. 3-15-04 thru 7-1-04; BOA 2-2004(Temp), f. & cert. ef. 7-2-04 thru 12-29-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2014, f. 2-14-14, cert. ef. 3-1-14; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0060
Credit for Uniform CPA Examination Sections

(1) Exam section requirements.

(a) A candidate may sit for any of the four sections of the computer-based CPA exam individually and in any order. A candidate who fails to pass any section of the exam may retake that section; however, a candidate may not retake a failed section more than once in any testing window.

(b) Candidates who are eligible under ORS 673.050(2) (2001 Edition) to take the CPA exam as a public accountant candidate are required to take and pass the following three sections of the CPA exam: Financial Accounting and Reporting, Regulation, and Business Environment & Concepts.

(2) Credit for CPA exam sections.

(a) Passing Grade. The passing grade for all sections of the exam is 75.

(b) Credit for Computer Based CPA Exam. Upon implementation of the computer based CPA exam, a candidate may take the required exam sections individually and in any order. Credit for any exam section(s) passed are valid for eighteen (18) months from the actual date the candidate took that section(s), without having to attain a minimum score on any failed section and without regard to whether the candidate has taken other exam sections provided that:

(A) Candidates must pass all four sections of the CPA exam within a rolling eighteen month period, which begins on the date of the first section is passed;

(B) Upon passing any CPA exam section, the passing date of that section is the date the candidate took the section; and

(C) Candidates who do not pass all sections of the CPA exam within the rolling eighteen month period lose credit for any section passed outside the eighteen month period and that section must be retaken.

(c) The Board may extend the period for conditional credit for an exam section upon demonstration by the candidate that the credit was lost because of circumstances beyond the candidate's control.

(d) The time limitations for a candidate to complete all sections of the CPA exam may be extended by the Board because of illness, accident or other exigent circumstance, and shall be extended during the time a candidate is in active military service.

(3) Transfer of CPA exam scores from other jurisdictions. The Board allows the transfer of CPA exam scores and may grant credit to a candidate who has successfully completed any section of the CPA exam in another jurisdiction if the Board determines that:

(a) The examination for which credit is requested is the Uniform Certified Public Accountant Examination;

(b) The candidate received a grade of 75 or higher in the section passed; and

(c) A candidate who first sat for the CPA exam, after January 1, 2000, and met the 150 hour educational requirement at the time the section was taken and passed for which grades are requested to be transferred.

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

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.050, 673.060 & 673.075

Hist.: 1AB 12, f. 3-30-65; 1AB 14, f. 8-15-68; 1AB 16, f. 1-30-70, ef. 2-25-70; 1AB 19, f. 10-22-71, ef. 11-15-71; 1AB 21, f. 3-2-72, ef. 3-15-72; 1AB 30, f. 9-18-73, ef. 10-1-73; 1AB 35, f. 10-29-74, ef. 11-25-74; 1AB 36, f. 1-28-75, ef. 2-25-75; 1AB 40, f. & ef. 5-5-76; 1AB 41, f. & ef. 12-2-76; 1AB 43, f. & ef. 3-31-77; 1AB 2-1978, f. & ef. 3-21-78; 1AB 11-1978, f. & ef. 12-1-78; 1AB 3-1979, f. & ef. 12-21-79; 1AB 2-1980, f. & ef. 4-8-80; 1AB 3-1980, f. 10-23-80, ef. 12-1-80; 1AB 5-1981, f. & ef. 7-27-81; 1AB 6-1981, f. & ef. 7-27-81; 1AB 3-1982, f. & ef. 4-20-82; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 5-1995, f. & cert. ef. 8-22-95; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0065
Qualifications for Licensure

(1) Requirements. Applicants for the license of Certified Public Accountant must meet the following requirements:

(a) Complete and pass all sections of the CPA exam

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Have a minimum of 12 months of full-time employment or a total of 2,000 hours of part-time employment;

(A) One hundred sixty seven (167) hours of part-time experience is equivalent to one month.

(d) Applicants for the CPA license must obtain the experience competencies as described in sections (2) through (4) of this rule and a minimum of 12 months full-time employment or a total of 2,000 hours of equivalent part-time employment.

(2) Experience Requirements:

(a) "Supervisor licensee" is a person who qualifies under this rule as a supervisor for the purpose of verifying the experience requirement of an applicant for a CPA license under OAR 801-010-0065 or the experience requirement of an applicant for a public accountant license under 801-010-0100.

(b) To qualify as a supervisor licensee the person providing supervision must hold an active CPA license issued by any state or a PA license

issued under ORS 673.100 during the period of supervision and for at least five of the past seven years immediately prior to such supervision.

(i) Notwithstanding subset (2)(b) above, a public accountant (PA) may not act as a supervising licensee or verify an applicant's experience relating to attest services.

(c) A licensee who provides direct supervision over an applicant must act as supervisor licensee and shall certify to the Board whether or not the applicant has gained qualifying experience under this rule.

(d) "Direct supervision" as used in this rule means that there is a regular and meaningful interaction between the supervisor licensee and the person being supervised in terms of planning, coordinating, guiding, inspecting, controlling, and evaluating activities, and having authority over the employee being supervised.

(A) A licensee acting as a consultant or independent contractor to the applicant's employer will not meet the requirement of direct supervision.

(e) The experience required under ORS 673.040 consists of activities generally performed by Oregon licensed CPAs and PAs engaged in public practice. Typical public practice experience includes attestation engagements, tax return preparation, financial advisory services and/or compliance and internal control evaluation. Experience obtained while performing financial advisory services or tax advisory services must be performed while employed at a public accounting firm.

(3) Experience portfolio. The applicant must develop a portfolio that demonstrates to the satisfaction of the Board that the applicant has achieved each of the following competencies, together with the supervisory licensee verification.

(a) Understanding of the Code of Professional Conduct promulgated and adopted by the Board;

(b) Ability to assess the achievement of a client's objectives by demonstrating knowledge of various business organizations, understanding of the objectives and goals of business entities, ability to develop and analyze performance measures and critical success factors, and understanding of the economic and regulatory trends that affect the environment of a business entity.

(c) Experience in preparing working papers that include sufficient relevant data to support the analysis and conclusions required by the applicant's work.

(d) Understanding transaction streams and information systems, including the ability to understand how individual transactions aggregate at the organizational level, to infer how transactions impact the organization as a whole, and to evaluate the integrity and reliability of various client information systems, including relevant computer aspects.

(e) Skills in risk assessment and verification demonstrated by a sufficient understanding of accounting and other information systems to:

(A) Assess the risk of misstatement in an information system;

(B) Obtain sufficient relevant data based on the risk of misstatement and the nature of the engagement to determine the appropriateness of underlying data in terms of its completeness, existence and occurrence, valuation and allocation, rights and obligations, presentation and disclosures.

(f) Skills in decision making, problem solving, critical analytical thinking including the ability to evaluate and interpret sufficient relevant data in a variety of engagements and settings. For example, the candidate must evaluate a client's cash flow, profitability, liquidity, solvency, operating cycle, achievement of management's plans, accomplishment of service efforts and systems reliability.

(g) Ability to express scope of work, findings and conclusions including the ability to determine the appropriateness of reports on financial statements, system reliability, or reports expressing scope of work, findings and conclusions.

(4) Qualifying experience. An applicant must demonstrate to the satisfaction of the Board that the portfolio of experience submitted is of sufficient quality and diversity to meet the requirements of this rule. Qualifying experience may be obtained in the following categories:

(a) Attest. Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a certified public accountant or a firm of certified public accountants;

(B) Employed in an organization where employment is equivalent to that described in paragraph (4)(a)(A) of this rule if a peer review is conducted or if such employment is with audit agencies, internal audit departments or other organizations where a peer review is conducted and the audit agency, internal audit department, or other organization is independent of the entity.

(C) Experience under this subsection must include:

(i) Conducting attest-oriented functions where third party reliance is an objective of the report;

(ii) Preparing opinions in accordance with professional standards;

(iii) Preparing financial statements with footnotes to generally accepted accounting principles or other comprehensive bases of accounting; and

(iv) Accounting and review services.

(D) "Third party reliance" as used in this rule means:

(i) Actual third party reliance, such as takes place with respect to the reader of financial statements upon which an audit opinion has been rendered by a public accountant licensed in Oregon or a certified public accountant;

(ii) Audits performed by government agencies, including tax authorities, on organizations which are not subject to management control by the auditing agency; or

(iii) Financial audits performed by independent working groups where the purpose of the audit is reliance by the board of directors on the fairness of the presentation of internally generated financial statements in accordance with generally accepted accounting principles or other comprehensive bases of accounting.

(E) Attest experience will be evaluated on a case-by-case basis to ensure that experience meets the criteria of subsections (3)(a) through (g).

(b) Tax. Experience that demonstrates the competencies prescribed in section (3) of this rule must be obtained while the applicant is:

(A) Employed in public practice on the staff of a public accountant, a certified public accountant or a firm of public accountants or certified public accountants;

(B) Engaged in employment that is equivalent to that described in paragraph (4)(b)(A) of this rule including internal tax departments.

(C) Tax experience related to subsection (3)(a) of this rule will include the practice of tax with integrity, objectivity, independence, professional judgment, due professional care and professional skepticism.

(D) Tax experience related to subsection (3)(b) of this rule will be in the context of federal and state tax law, federal and state tax regulation, judicial precedence and other technical tax sources applied to a variety of taxable and nontaxable business entities, non-business entities, individuals, families, estates and trusts.

(E) Tax experience related to subsection (3)(c) of this rule will be in the context of records that are clearly organized, complete, cross-referenced and with adequate documentation and support for positions taken or proposed within the context of federal and state tax law, federal and state tax regulations, judicial precedence and other technical tax sources.

(F) Tax experience related to subsection (3)(d) of this rule will be in the context of the application of tax law to various types of transactions both individually and in the aggregate and both actual and proposed.

(G) Tax experience related to subsection (3)(e) of this rule will be in the context of the evaluation of the reasonableness of data provided by clients and the sufficiency and adequacy of the data to support reasonable tax positions and conclusions.

(H) Tax experience related to subsection (3)(f) of this rule will be in the context of identifying tax issues, researching technical guidance, choosing appropriate courses of action and proposing solutions.

(I) Tax experience related to subsection (3)(g) of this rule will be in the context of researching and preparing supporting documents for technical tax positions.

(J) Tax experience will be evaluated on a case-by-case basis to ensure that experience meets criteria of subsections (3)(a) through (g).

(c) Industry accountancy. Experience that demonstrates the competencies described in section (3) of this rule may also be obtained while the applicant is employed under the direct supervision of a public accountant or certified public accountant as provided under this rule.

(A) Industry experience related to subsection (3)(a) of this rule, will include the practice of accountancy with integrity, objectivity, independence, professional judgment, due professional care and professional skepticism.

(B) Industry experience related to subsection (3)(b) of this rule, will be in the context of assessing the objectives and goals, performance measures, critical success factors and the economic and regulatory trends affecting the applicant's company and industry.

(C) Industry experience related to subsection (3)(c) will be in the context of documenting an analysis of a financial accountancy issue affecting the applicant's company from the collection and summarization of financial data to the identification of alternative conclusions such that others of equal training and experience can trace information to source data and draw similar conclusions.

(D) Industry experience related to subsection (3)(d) of this rule will be in the context of evaluating an accounting system within the applicant's company, performing internal control and substantive testing (analytical procedures, technical research and conclusion), and providing a written conclusion on the reasonableness of the procedures conducted, specific controls that were missing or ineffective, and the measures taken to corroborate data accuracy and conclusions drawn.

(E) Industry experience related to subsection (3)(e) of this rule will be in the context of evaluating risks of misstated financial data within the applicant's company and performing tests to substantiate data accuracy.

(F) Industry experience related to subsection (3)(f) of this rule will be in the context of identifying significant data trends and the impact of the trends on the applicant's company on both a short and long term basis.

(G) Industry experience related to subsection (3)(g) of this rule will be in the context of both written and oral presentation of financial information and related accounting conventions within the applicant's company that include the significance of the financial information, applicable accounting rules and consideration of alternatives and conclusions drawn.

(d) Experience, other than experience described in subsections (4)(a), (b), and (c) of this rule will be evaluated by the Board on a case-by-case basis to ensure that experience meets the criteria of subsections (3)(a) through (g).

(5) Submitting applications to the Board.

(a) An applicant's file must be complete in every particular within three months of the date of application or the file will be closed and the license fee will be refunded. The application fee is not refundable.

(b) An applicant's file may be included on the agenda of any meeting of the Board if the file is complete in every particular no less than seven days prior to the date of a scheduled Board meeting.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 2-1988, f. 3-31-88, cert. ef. 3-30-88; AB 7-1989, f. & cert. ef. 9-11-89; AB 1-1991, f. & cert. ef. 1-2-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 2-1993, f. 1-14-93, cert. ef. 1-15-93; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; AB 5-1995, f. & cert. ef. 8-22-95; AB 3-1997, f. & cert. ef. 6-5-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 3-1998, f. & cert. ef 6-16-98; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 3-1999, f. & cert. ef. 3-26-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2000, f. 8-30-00, cert. ef. 9-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2004, f. 12-30-04, cert. ef. 1-1-05; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0073
Certification of Applicant's Experience

(1) Requirement to provide verification of experience.

(a) An applicant is responsible for providing to the Board, written documentation of their experience, including descriptions and examples for each competency. The applicant's supervisor licensee is required to verify the written documentation prepared by the applicant, in a format prescribed by the Board.

(b) A supervisor licensee who submits a certification of experience must maintain the Competency Evaluation worksheet for a period of three years after the applicant's license is issued.

(c) A supervisor licensee must not commit any act, which unjustly jeopardizes an applicant's ability to obtain a license in this or any jurisdiction.

(2) Cooperation of supervisor licensee. A supervisor licensee who has verified the documentation and evidence of an applicant's experience must provide full cooperation with any Board inquiry pertaining to such certification.

(a) The supervisor licensee must respond in writing to any request for further information from the Board including, but not limited to, the following:

(A) Description of any disagreement between an applicant and the supervisor licensee as to dates, quality, and/or type of work performed;

(B) Explanation regarding a certificate of experience submitted to the Board for which the period of experience appears to be unduly short for achievement of the competencies;

(C) Verification, on a sample basis, of information submitted by an applicant or attested thereto on a certificate of experience;

(D) Explanation regarding questions based on the Board's reasonable belief that the information in the certificate of experience may be false or incorrect; or

(E) Explanation regarding the basis of refusal, if any, for which the supervisor licensee declines to submit evidence of an applicant's experience to the Board or to the licensing agency of another jurisdiction.

(b) The supervisor licensee must cooperate with any inspection, by the Board or by its representative, of documentation relating to an applicant's claimed experience. The inspection may, at the option of the Board, be made at the Board's offices or such other places as the Board may designate. A licensee or audit agency or group who has custody of the documentation must produce the required documentation upon request.

Stat. Auth.: ORS 670.310 & 673.040
Stats. Implemented: ORS 673.040
Hist.: 1AB 3-1984, f. 12-19-84, ef. 1-1-85; 1AB 3-1986, f. & ef. 11-17-86; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 2-2000, f. & cert. ef. 5-31-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0079
Experience Obtained in Foreign Countries

Experience obtained by an applicant outside the United States that is claimed to be equivalent to public accountancy experience obtained in the United States may be acceptable under ORS 673.040 provided that the experience meets all of the requirements of OAR 801-010-0065. The applicant's experience must be directly supervised by:

(1) A licensed public accountant or a certified public accountant whose license is active and in good standing, and who held an active license during the period of supervision and for a period of no less than five years prior to the period of supervision, or

(2) A chartered accountant licensed by a jurisdiction that is eligible for reciprocal licensing under agreement with the International Qualifications Appraisal Board (IQAB) as described in OAR 801-010-0085, who also meets the following requirements:

(a) The chartered accountant license is active and in good standing;

(b) The chartered accountant held an active chartered accountant license during the period of supervision and for no less than five years prior to the period of supervision, and

(3) The person who directly supervises the applicant's experience must certify to the Board that the applicant's experience is obtained under professional standards approved by the Board of Accountancy, including but not limited to the Statements on Auditing Standards (SAS) for audits or other engagements, the Statement of Standards for Accounting and Review Services (SSARS) for the review of financial statements and the Statements on Standards of Attestation Engagements (SSAE) for examinations of prospective financial information, or similarly recognized International Standards on Auditing, or

(4) That the applicant's experience is obtained under professional standards deemed by the Board of Accountancy to be equivalent to experience obtained in the practice of public accountancy in this state.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.040
Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0080
Holders of Certificates or License in Other States, US Territories or Foreign Countries

(1) Substantial equivalency. An individual whose principal place of business is not in this state, who has an active license in good standing as a certified public accountant issued by another jurisdiction, and who meets the standards of substantial equivalency as defined in ORS 673.010(21) and OAR 801-005-0010(48), may practice public accountancy in this state.

(2) Applications by reciprocity. Individuals who wish to establish a principal place of business in this state are required to obtain a CPA license under this section prior to practicing as a CPA in this state.

(a) The applicant must complete an application and certify that:

(A) The applicant holds an active license in good standing as a certified public accountant issued by another jurisdiction whose requirements are substantially equivalent to Oregon as defined in Section 23 of the Uniform Accountancy Act.

(b) Applications based on an active CPA license that is in good standing, but that do not meet the requirements of subsections (2)(A) of this rule, are eligible under this subsection if the applicant demonstrates to the satisfaction of the Board that the applicant:

(A) Held an active CPA license issued by another jurisdiction that is in good standing at the time of application;

(B) Has four years of public accounting experience or the equivalent thereof, after completing the CPA exam and during the ten year period immediately preceding the application. Four years means 48 months of full-time employment or equivalent 8,000 hours of part-time employment.

(3) Reciprocity application requirements. Applicants under section (2) of this rule must:

(a) Submit an application on a form provided by the Board;

(b) Pay the fees specified in OAR 801-010-0010;

(c) Provide a written statement from the jurisdiction on which the application is based confirming that the applicant:

(A) Is in good standing in that jurisdiction;

(B) Has not been disciplined for violations of that jurisdiction's standards of conduct or practice;

(C) Has no pending actions alleging violations of that jurisdiction's standards of conduct of practice; and

(D) Is in compliance with continuing education requirements and peer review requirements of the licensing jurisdiction.

(4) Verification of National Qualification Appraisal Service comparable licensing standards. The Board reviews the licensing requirements of other jurisdictions as needed to verify substantial equivalency eligibility. The Board may use information developed by NASBA to make this determination.

Stat. Auth.: ORS 670.310, 673.410 & 673.153
Stats. Implemented: ORS 673.040 & 673.153
Hist.: 1AB 14, f. 8-15-68; 1AB 22, f. 3-2-72, ef. 3-15-72; 1AB 34, f. 1-29-74, ef. 2-25-74; 1AB 3-1982, f. & ef. 4-20-82; 1AB 1-1986, f. & ef. 10-1-86; AB 5-1990, f. & cert. ef. 8-16-90; AB 5-1993, f. & cert. ef. 8-16-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1997, f. & cert. ef. 1-28-97; AB 4-1997, f. & cert. ef. 7-25-97; BOA 5-1998, f. & cert. ef. 7-9-98; BOA 9-1998, f. & cert. ef. 11-10-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 7-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0100
Public Accountant Licenses

(1) Application requirements. Applicants for the license of public accountant must meet the following requirements:

(a) Complete and pass the required sections of the CPA exam as described in ORS 673.100 and OAR 801-010-0060;

(b) Complete and pass an ethics exam that has been adopted by the Board; and

(c) Meet the experience requirements stated in ORS 673.100 as follows:

(A) Obtain one year of experience, which means at least 12 months of full-time employment or a total of 2,000 hours of part-time employment.

(d) The experience and examination requirements must be obtained and completed within eight years immediately preceding the date of application for license.

(2) Experience requirements.

(a) Applicants must meet the experience requirements described in OAR 801-010-0065(2).

(b) The experience required under ORS 673.100 consists of activities generally performed by Oregon licensed CPAs and PAs engaged in public practice. Typical public practice experience includes attestation engagements, tax return preparation, financial advisory services, and reporting on an entity's internal controls. Experience obtained while performing financial advisory services or tax advisory services must be performed while employed at a public accounting firm.

(3) Experience portfolio. The applicant's experience portfolio must meet the requirements stated in OAR 801-010-0065(3).

(4) Public Accountant practice restrictions.

(a) Licensed public accountants who qualified for the CPA exam after January 1, 2002 must not perform audits.

Stat. Auth.: ORS 670.310, 673.410 & 673.100
Stats. Implemented: ORS 673.100, 673.150 & 673.103
Hist.: 1AB 9, f. 6-24-60; 1AB 41, f. & ef. 12-2-76; 1AB 4-1982, f. & ef. 5-21-82; 1AB 3-1984, f. 12-19-84, ef. 1-1-85; AB 4-1994, f. & cert. ef. 9-27-94; BOA 1-1998, f. & cert. ef. 1-26-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0110
Renewal of License

(1) Unless properly renewed, licenses issued under ORS 673.150 that end in even numbers expire on June 30 of even-numbered years and licenses that end in odd numbers expire on June 30 of odd-numbered years. To renew an active, inactive or retired license, the license holder must:

(a) Submit the current renewal form published by the Board, fully completed and postmarked or received no later than June 30 of the year in which the license expires. Applications that are postmarked by the US Postal Service or other delivery service, electronically stamped by fax machine or submitted by an online; process managed by the Board after June 30 must include a late fee described in OAR 801-010-0010;

(b) Pay the renewal fee specified in OAR 801-010-0010, and

(c) If applying for renewal of an active or inactive license, provide evidence that the applicant has satisfied continuing education.

(d) Submit the late fee described in OAR 801-010-0010, if the renewal application is postmarked by the US Post Office or other delivery service after June 30.

(2) A licensee that does not renew by June 30 of the year in which the license expires shall not hold out as a CPA or PA and practice public accounting until the license is renewed.

(3) The Board will pro-rate a licensee's first renewal fee in six month increments, depending on the date of issuance.

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.150
Hist.: 1AB 4-1981, f. & ef. 6-17-81; AB 3-1991, f. & cert. ef. 4-10-91; AB 4-1991, f. & cert. ef. 7-1-91; AB 5-1993, f. & cert. ef. 8-16-93; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 1-1995, f. & cert. ef. 1-25-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2002, f. 12-27-02, cert. ef. 1-1-03; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0120
Inactive Status

(1) Inactive:

(a) An application for inactive license status must be made on a form provided by the Board and must be accompanied by a fee prescribed by OAR 801-010-0010.

(b) The licensee applying for inactive status must certify to the Board that:

(A) The licensee holds a license issued under ORS 673.150 which is not lapsed, expired, revoked or suspended; and

(B) The licensee is not employed in a public accounting firm that is required to be registered in Oregon; and

(C) The licensee is not a sole practitioner; and

(D) The licensee does not perform or offer to perform in Oregon or for an Oregon client, services involving the use of accounting or auditing skills, including but not limited to issuance of reports on financial statements, management advisory, financial advisory or consulting services, preparation of tax returns or the furnishing of advice on tax matters.

(2) Renewal and CPE Requirements. A licensee who is granted inactive status must:

(a) Obtain 32 hours of qualified continuing professional education during a two-year renewal period;

(A) A maximum of 8 hours may be in non-technical subjects

(B) A maximum of 8 hours may be carried-forward to the next renewal period.

(b) Must renew on or before June 30

(A) Licensees with a license number that is even will renew in even numbered years;

(B) Licensees with a license number that is odd will renew in odd numbered years.

(c) Renewal applications that are postmarked by the US Postal Service or other delivery service, electronically stamped by fax machine or submitted by an online process managed by the Board after June 30 must include a late fee described in OAR 801-010-0010.

(3) Inactive Licensees' Use of CPA or PA Designation. A licensee who is granted inactive status shall not use the CPA or PA designation unless the word "Inactive" is used in conjunction with the designation, such as "CPA Inactive" and is listed in the same font size.

(a) Licensees who are granted inactive status will not receive a license card from the Board office upon renewal.

(b) Does not otherwise violate the provisions of OAR 801-030-0005(5).

Stat. Auth.: ORS 670.310 & 673.220
Stats. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 5-1989, f. & cert. ef. 8-2-89; AB 4-1991, f. & cert. ef. 7-1-91; AB 1-1994, f. & cert. ef. 1-21-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0130
Restoration to Active Status

(1) A person who is granted inactive status under ORS 673.220 and who subsequently applies to renew such permit to active status must submit an application on a form provided by the Board. The applicant must:

(a) Pay the license fee for the renewal period in which the application is submitted;

(b) Meet the CPE requirements for reinstatement described in OAR 801-040-0090;

(c) The applicant must not perform any public accountancy services until after the applicant receives an active license.

Stat. Auth.: ORS 670.310 & 673.220
Stat. Implemented: ORS 673.220
Hist.: 1AB 2-1986, f. & ef. 10-15-86; AB 3-1994, f. & cert. ef. 8-10-94; AB 2-1995, f. & cert. ef. 3-22-95; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-010-0345
Registration of Business Organizations

(1) Requirement to register as a firm. A business organization organized for the practice of public accountancy must register with the Board as a firm if the business organization:

(a) Is located in Oregon and

(A) Uses the terms "certified public accountant", "CPA", "public accountant" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy; or

(C) Performs attestation or compilation services, as defined by these rules.

(b) Is not located in Oregon and

(A) Uses the terms "certified public accountants", "CPA", "public accountants" or "PA", or any derivation of such terms;

(B) Holds out to clients or to the public that the business organization is in any way engaged in the practice of public accountancy and performs any of the following services:

(i) An audit or other engagement for which performance standards are included in Statements on Auditing Standard (SAS)

(ii) Examination of prospective financial information for which performance standards are included in the Statement on Standards for Attestation Engagements (SSAE)

(iii) Engagements for which performance standards are included in the auditing standards of the Public Company Accounting Oversight Board (PCAOB)

(C) Has a person, who is a license holder under ORS 673.150 or meets the substantial equivalency requirements of ORS 673.153, that is responsible for supervising attestation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the business organization.

(2) Registration of sole proprietors. A business organization organized as a sole proprietorship, a professional corporation or a limited liability company, and comprised of a single license holder under ORS 673.150, is required to register as a firm if the business organization engages in any of the following activities in this state:

(a) Holds out to clients or to the public that it is composed of more than one licensee, or

(b) Performs attestation or compilation services.

(3) Application requirements.

(a) Firms located in Oregon: Application by a business organization to be registered as a firm to practice as Certified Public Accountant(s) or Public Accountant(s) must be made to the Board in writing on a form provided by the Board and shall be accompanied by the appropriate fee, stated in OAR 801-010-0010. The application and each renewal application must provide the following information in writing:

(A) Name of the firm;

(B) Identification by name and by certificate or license number of each CPA and PA in this state who is associated with or employed by the business organization;

(C) The physical address of every office and branch office in this state;

(D) Notice of every denial, revocation, lapse or suspension of authority to perform public accountancy services that is or has been issued by any jurisdiction against any licensee associated with the business organization;

(E) Notice of the filing of any lawsuit relating to the professional services of the business organization, if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation; and

(F) Notice of any criminal action filed against the business organization or against any owner or manager and notice of any conviction against any owner or manager of the business organization. Notice of a conviction under this rule includes the initial plea, verdict or finding of guilt, pleas of no contest or pronouncement of sentence by a trial court even though that conviction may not be final and sentence may not be actually imposed until appeals are exhausted. The notice provided shall be signed by the person to whom the conviction or criminal action applies, and shall state the facts that constitute the reportable event and identify the event by the name of the agency or court, the title of the matter, the docket number and the date of occurrence of the event.

(G) Provide a letter of completion of the firm's most recent peer review if the firm intends to perform attest or compilation services in this state.

(b) Firms not located in Oregon

(A) Name of the firm

(B) Identification by name and by active certificate or license number, indicating the state in which the certificate or license is issued of each CPA who is associated with or employed by the business organization and is authorized to practice in Oregon under substantial equivalency pursuant to ORS 673.153 who will practice public accounting in Oregon.

(C) Provide a letter of completion of the firm's most recent peer review if the firm intends to perform attest or compilation services in this state.

(D) Any out of state firm that is required to register in Oregon and subsequently opens an office in Oregon shall notify the Board of the existence of the new office within 30 days of opening the office.

(4) Application requirements for firms with non-CPA and non-PA ownership. In addition to the information required under section (3) of this rule for firm registrations, business organizations with non-CPA or non-PA owners that are required to register as a firm must provide the following information with the application for initial registration and with each registration renewal.

(a) The name of the firm and a list of the states in which the business organization has applied, or is currently authorized to practice public accountancy;

(b) Evidence to the satisfaction of the Board that the business organization satisfies the requirements of OAR 801-010-0340;

(c) The identities of all owners or managers of the business organization who work regularly in this state;

(d) The physical address of every office maintained in this state;

(e) The identity of every person with management responsibility for each office in this state;

(f) Notice of every denial, revocation, lapse, or suspension of authority to perform accounting services or other services issued against any owner or manager of the business organization in any jurisdiction;

(5) Issuance of firm registration. The Board shall, upon receipt of an application that satisfies all the requirements of these rules and payment of the registration fee, issue a certificate of registration, which shall remain in effect until December 31 of the odd-numbered year following the date of such registration. The business organization shall:

(a) Renew the firm registration on or before December 31 of each odd-numbered year by submitting the renewal form provided by the Board, together with the appropriate registration renewal fee. The Board may waive the renewal fee if an initial firm registration is issued in November or December of the year in which the registration is due for renewal.

(b) Business organizations that fail to renew a registration within 60-days of the close of the renewal period will be terminated and required to pay the renewal fee plus a late fee and submit a reinstatement form to the Board office;

(c) Notify the Board in writing of any change in the firm name within 30 days of such change;

(d) In addition to the notice that is required upon application and for each renewal of the firm registration under section (3) of this rule, business organizations are required to provide written notice to the Board within 45 days of the filing of any lawsuit, settlement or arbitration relating to the professional services of the business organization if an essential element of such lawsuit involves fraud, dishonesty or misrepresentation;

(e) Display the letter of registration issued by the Board in a conspicuous place at the principal office of the firm.

(6) Form of practice. A licensee may practice public accountancy in a business organization as defined in ORS 673.010 that is organized in accordance with statutory provisions.

(a) Non-CPA or non-PA ownership. A licensee may form a business organization with a non-licensee for the purpose of engaging in the practice

of public accountancy in accordance with the provisions of ORS 673.160 and OAR 801-010-0340.

(A) Notwithstanding subsection (6)(a) of this rule, any certified public accountant or public accountant whose license to practice public accountancy has been suspended or revoked for disciplinary reasons in any jurisdiction, may not participate as a non-licensee owner in a business organization required to be registered under ORS 673.160.

(b) Branch offices.

(A) Every branch office located in this state shall be managed by a licensee holding a license issued under ORS 673.150 who shall be in residence at the branch office, on a full-time basis, during the time the branch office is open to the public. A licensee operating a branch office is responsible for managing the office, staff and services rendered to the public.

(B) The Board may, at its discretion, approve the operation of a branch office that does not meet the supervision requirements of paragraph A of this subsection. Licensees seeking approval under this paragraph shall submit in advance a written proposal describing how the licensee will provide adequate supervision of the branch office. The proposal shall specify the minimum number of hours each week that a named licensee will provide physical supervision at the branch office.

(C) Any licensee operating a branch office under approval authorized by paragraph (B) of this subsection shall notify the Board in writing of any deviation from an approved plan within 30 days of the deviation.

(D) The location of each branch office in Oregon shall be reported to the Board at the time of application for registration as a firm and with each renewal application, together with a statement that each branch office meets the requirements of OAR 801-010-0345(6)(b)

(c) Internet Practice. Licensees using the CPA or PA title to perform or solicit services via a website, are required to include information on the website naming the state(s) in which each CPA or PA is licensed to perform public accounting services, or provide a name and contact information for an individual who will respond within seven business days to inquiries regarding individual licensee information. Information required to be posted by this rule must be clearly visible and prominently displayed.

(7) Firm Names

(a) False and misleading firm names

(A) A public accounting firm shall not offer or provide public accounting services using a firm name that is misleading as to the legal entity or organization of the firm, as to the owners or employees of the firm, or as to any matter restricted by section (4) of this rule.

(B) A firm name shall not include false or misleading language about the business organization of the firm, the nature of the services provided, and the number of licensees associated with or working for the firm or the identity of individual members of the firm. Except as provided in paragraphs (D) and (E) of this subsection, a firm name shall not include information about or indicate an association with, individuals who are not members of the firm.

(C) A firm name shall include words or abbreviations required by the laws under which the business organization is organized to identify the form of business organization or legal entity being used by the firm.

(D) A firm name may be composed of the names of one or more past partners, shareholders, owners, or members of the business organization or its successor, so long as the past partner, shareholder, owner or member:

(i) Is not actively engaged in the practice of public accountancy as a sole proprietor in the same market area, and

(ii) Approves in writing of the continued use of such name. Approval given by a licensee for the continued use of licensee's name may be withdrawn by the licensee, in writing and shall allow a reasonable period of time for the firm to withdraw such name.

(E) A partner, shareholder, owner or member surviving the death or withdrawal of all other partners, shareholders, owners or members may continue to practice under the firm name provided that the firm meets the requirements stated in this rule.

(b) Singular firm names. The use by a certified public accountant or public accountant in individual practice of the individual's full legal name in the singular form, followed by the title "Certified Public Accountant," "Public Accountant", "CPA" or "PA" is not misleading.

(c) Plural firm names.

(A) The use by a firm of a plural title or designation, including words like "and company", "associates" and "accountants", is not misleading if, in addition to the names of persons included in the firm name, the firm has at least one additional partner, shareholder, owner or member, or employs at least one staff person (excluding independent contractors), who work a minimum of 20 hours per week, who is licensed to practice public accountancy under ORS 673.150, or who is authorized under 673.153 and whose permit is not revoked, suspended, lapsed or inactive.

(B) A firm using a plural name that ceases to qualify for use of a firm name under (A) shall:

(i) Cease using the plural name and so notify the Board in writing; or

(ii) Notify the Board in writing within 30 days of non-compliance. Such firm shall have 90 days in which to employ a licensed staff person as required under paragraph (A) of this subsection. The firm shall provide written notice to the Board when the firm has employed the required licensed staff person.

(C) A firm may file a written request for an additional 90-day extension to satisfy the requirements of (A).

(d) Assumed business names.

(A) A firm name that does not include the designations "PC", "LLC", "LP", or "LLP" to indicate the form of legal entity through which the practice of public accountancy is being conducted, or that does not include the full legal name of every owner of such business organization, shall be filed as an assumed business name with the Corporations Division of the Office of the Secretary of State. A copy of the registration of the assumed business name shall be provided to the Board with the application for registration as a firm and with every renewal application.

(B) An assumed business name that is registered with the Corporate Division of the Office of the Secretary of State may be composed in whole or in part of initials. Such abbreviated firm name shall not spell a word or form an acronym that may be misleading to the public. Every assumed business name shall meet the requirements of paragraph (6)(a)(B) of this rule.

(e) Notice to Board. A business organization registered as a firm under ORS 673.160 shall provide the following information to the Board:

(A) List of the names and certificate or license numbers of all Oregon licensees employed by the firm at the time of application for registration as a firm and with every renewal application, and

(B) Written notice of any change of firm name, firm address or firm ownership within 30 days of such change.

Stat. Auth.: ORS 670.310, 673.410 & 673.160

Stats. Implemented: ; ORS 673.160

Hist.: AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; BOA 2-1998, f. & cert. ef. 3-30-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 4-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 4-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 3-2009, f. 12-15-09, cert. ef. 1-1-10; BOA 3-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 3-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-030-0005

Independence, Integrity, and Objectivity

(1) Independence. The Board adopts the Independence Rule established by the AICPA. The AICPA Interpretations and Ethics Rulings on Independence are adopted as non-exclusive guidance to licensees, prospective licensees, the Board and members of the public.

(a) Licensees who perform services that are subject to independence standards promulgated by other regulatory or professional standard setting bodies, agencies and organizations, including but not limited to the Securities and Exchange Commission, the General Accounting Office and the US Department of Labor, or other similarly recognized international bodies must also comply with those standards applicable to the services provided.

(2) Integrity and objectivity.

(a) In the performance of any professional service, a licensee shall maintain objectivity and integrity and shall be free of conflicts of interest, and shall not knowingly misrepresent facts or subordinate the licensee's judgment to the judgment of others.

(b) In tax practice, however, a licensee may resolve doubt in favor of the client as long as there is reasonable support for the client's position.

(c) When accepting new employment or a new engagement, a licensee shall not use confidential client information in a manner that is adverse to a former client or employer. Confidential client information is any information communicated to or obtained by the licensee from a client or employer that relates to services rendered by the licensee to the client or employer.

(d) The Board adopts the Integrity and Objectivity Rules established by the AICPA. The AICPA Interpretations and definitions are adopted as a non-exclusive list to provide guidance to licensees, prospective licensees, the Board and members of the public.

(3) Commissions and referral fees. Certified public accountants, public accountants and firms in the practice of public accountancy are permitted to pay and receive commissions and referral fees subject to the requirements of ORS 673.345 and this rule.

(a) Notice to the Board. Licensees who receive or pay commissions or referral fees shall report this fact on the application for biennial renewal of the license.

(b) Related licensure/registration. Prior to accepting commissions, licensees shall acquire and maintain in good standing any license or registration required by another governmental or private standard-setting body for the purpose of receiving commissions. Examples of licensing requirements include, but are not limited to the following:

(A) Oregon Department of Consumer and Business Services,

(B) National Association of Securities Dealers,

(C) Oregon Real Estate Agency, and

(D) Oregon Appraiser Certification and Licensure Board.

(c) Prohibited commissions and referral fees. A certified public accountant, public accountant or firm engaged in the practice of public accountancy shall not recommend or refer to a client any product or service, or recommend or refer any product or service to be supplied by a client in exchange for the payment or acceptance of a commission or referral fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(A) An audit, review or agreed-upon-procedures of a financial statement;

(B) An examination of prospective financial information; or

(C) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the certified public accountant.

(d) Application of prohibitions. The prohibitions in this rule apply:

(A) When the holder of a permit or any partner, officer, shareholder, member, manager or owner of the firm performs the services listed in this rule, and

(B) During the period in which the certified public accountant, public accountant or firm is engaged to perform any of the services listed in this rule, including the period(s) subject of the report and the period covered by any historical financial statements involved in the listed services.

(e) Disclosure requirements. A certified public accountant, public accountant or firm engaged in the practice of public accountancy who is not prohibited by this rule from paying or receiving a commission or referral fee, and who is paid or expects to be paid a commission or referral fee, shall disclose that fact to any client to whom the commission or referral fee relates.

(A) A copy of each disclosure shall be provided to the client prior to the time the product or service that is the basis of the fee is recommended, referred or sold, or prior to the time the client retains the licensee to whom the client has been referred and for which the fee or other valuable consideration will be paid.

(B) A copy of the disclosure shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs any services for the client.

(C) In the event of continuing engagements or a series of related transactions involving similar products or services with the same client, one written disclosure may cover more than one recommendation, referral or sale so long as the disclosure is provided at least annually and is not misleading.

(D) Disclosures under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed) and provided on a separate form that is acknowledged in writing by the client with the client's signature and date of acknowledgement;

(ii) State the amount of the commission or referral fee or the basis on which the payment will be calculated;

(iii) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment; and

(iv) Specify the services to be performed by the Licensee for the compensation to be received by the Licensee.

(f) Transactions not prohibited. This rule does not prohibit the following transactions:

(A) Payments for the purchase of all or a material part of, an accounting practice;

(B) Retirement payments to persons formerly engaged in the practice of public accountancy, or payments to the heirs or estates of such persons; or

(C) Payments, including incentive or bonus payments, to employees or members of an accounting firm as compensation for their services.

(g) Audit of disclosure requirements. Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of disclosure records required under this rule.

(4) Contingent fees. Certified public accountants, public accountants and firms in the practice of public accountancy may perform professional services for a client in exchange for a contingent fee subject to the requirements of ORS 673.345 and this rule.

(a) Notice to the Board. Licensees who receive contingent fees in exchange for professional services shall report this fact on the application for biennial renewal of the license.

(b) Prohibited contingent fees.

(A) A certified public accountant, public accountant or firm in the practice of public accountancy may not perform professional services for a client in exchange for a contingent fee when the certified public accountant, public accountant or firm also performs any of the following listed services for that client:

(i) An audit, review or agreed-upon-procedures of a financial statement;

(ii) A compilation of a financial statement if the compilation report does not disclose a lack of independence between the client and the licensee, or

(iii) An examination of prospective financial information.

(B) A certified public accountant, public accountant or firm in the practice of public accountancy may not prepare an original or amended tax return or a claim for a tax refund for any client in exchange for a contingent fee.

(c) Application of prohibitions. The prohibitions stated in paragraph (4)(b)(A) of this rule apply during the period in which the licensee or the licensee's firm is engaged to perform any of the services listed in this rule and during any period covered by any historical or prospective financial statements involved with or related to such services.

(d) Requirement for written agreement. Every agreement to perform services in exchange for a contingent fee shall be in writing and shall be signed by the client.

(A) A copy of the agreement shall be provided to the client prior to the time the client retains the licensee for the service, or prior to the time that the service that is subject to the agreement is performed.

(B) Agreements under this rule shall:

(i) Be in legible, clear and conspicuous writing, in no less than 12 point characters (if typed);

(ii) Include the signatures of all parties and date of each signature; and

(iii) State the amount of the contingent fee or the basis on which the fee will be calculated;

(C) A copy of the agreement shall be retained by the certified public accountant, public accountant or firm for a period of at least six years after the licensee performs the disclosed services for the client.

(e) Contingent fee transactions not prohibited. Fees are not contingent if fixed by courts or other public authorities, or in tax matters if such fees are determined based on the results of judicial proceedings or the findings of governmental agencies.

(f) Audit of contingent fee agreements. Licensees are subject to audits conducted by the Board or its designee to determine licensee compliance with the provisions of this rule. Licensees shall, upon request, furnish to the Board copies of contingent fee agreements required under this rule.

(5) Improper use of CPA and PA designation.

(a) Non-public accounting business. Licensees engaged in a business or occupation other than the practice of public accountancy or performance of attestation services may use the "CPA" or "PA" designation in oral or other communications such as business cards, stationery or comparable forms if the use of the designation does not indicate in any way that the licensee is authorized to perform public accountancy or attestation services as part of the licensee's other business or occupation.

(b) Commissions or contingent fees. Licensees shall not engage in any activity for which the licensee receives commissions or contingent fees while holding out to the public as a CPA or PA, except as provided under sections (3) and (4) of this rule.

(c) Non-licensee owners.

(A) A non-licensee owner of a business organization registered in Oregon under the provisions of ORS 673.160(4) shall not use any name or title that indicates or suggests that such owner is a certified public accountant or public accountant. This does not preclude a non-licensee owner from using the title "principal," "partner," "officer," "member" or "shareholder" to describe the ownership interest in the business organization.

(B) A business organization that includes non-licensee owners shall not use a firm name that includes both the name of a non-licensee owner and the title or designation for "certified public accountant", "public

accountant", or any other words or description that would imply that the non-licensee owner included in the firm name is authorized to provide public accounting services.

Stat. Auth.: ORS 670.310, 673.410 & OL 2001, Ch. 313
Stats. Implemented: ORS 673.160, 673.320, 673.345 & 673.445
Hist.: AB 1-1978, f. & ef. 1-11-78; AB 4-1994, f. & cert. ef. 9-27-94; AB 2-1995, f. & cert. ef. 3-22-95; AB 2-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 1-2001(Temp), f. & cert. ef. 7-9-01 thru 1-1-02; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-030-0010
General and Technical Standards

(1) General Standards. Licensees shall comply with the following general standards.

(a) Professional Competence. Licensees shall undertake only those professional services that the licensee or the licensee's firm can reasonably expect to be completed with professional competence.

(b) Due Professional Care. Licensees shall exercise due professional care in the performance of professional services.

(c) Planning and Supervision. Licensees shall plan and supervise the performance of professional services.

(d) Sufficient Relevant Data. Licensees shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

(e) The Board adopts the General Standards and the compliance with the General Standards sections of the AICPA Code of Professional Conduct. The AICPA interpretations and definitions of these sections are adopted as non-exclusive guidance to licensees, prospective licensees, the board and members of the public.

(2) Auditing standards. A licensee shall not permit the licensee's name to be associated with financial statements in such a manner as to imply that the licensee is independent with respect to such financial statements unless the licensee has complied with applicable generally accepted auditing standards. Statements on Auditing Standards issued by the AICPA, and other pronouncements having similar generally recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures there from must be justified when such standards are not followed.

(3) Accounting principles.

(a) Responsibility of Licensees in Public Accounting. A licensee shall not express an opinion that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the licensee can demonstrate that by reason of unusual circumstances, the financial statements would otherwise have been misleading. In such a case, the licensee's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this rule, generally accepted accounting principles are defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority, including International Financial Reporting Standards promulgated by the International Accounting Standards Board.

(b) Responsibility for the preparation of financial statements in conformity with GAAP. A person who holds an active, inactive shall not state affirmatively that financial statements or other financial data of an entity are presented in conformity with generally accepted accounting principles (GAAP) if such statements or data contain any departure from an accounting principle promulgated by the Financial Accounting Standards Board and its predecessor entities and similar generally recognized authority that has a material effect on the statements or data taken as a whole, including International Financial Reporting Standards promulgated by the International Accounting Standards Board.

(c) Departures from Established Accounting Principles. There is a strong presumption that adherence to officially established accounting principles would in nearly all instances result in financial statements that are not misleading. There may be unusual circumstances where literal application of pronouncements on accounting principles would have the effect of rendering financial statements misleading. In such cases the proper accounting treatment is that which will render the financial statements not misleading. The question of what constitutes unusual circumstances is a matter of professional judgment involving the ability to support the position that adherence to a promulgated principle would be regarded by a reasonable person as producing a misleading result.

(4) Tax standards. Licensees shall not perform tax planning services, recommend tax return positions or prepare or sign tax returns (including amended returns, claims for refund and information returns) filed with any taxing authority unless the licensee has complied with Statements on Standards for Tax Services issued by the Tax Executive Committee of the American Institute of Certified Public Accountants and with United States Department of Treasury Circular No. 230.

(5) Other professional standards. Licensees, in the performance of consulting services or accounting and review services, shall conform to the professional standards applicable to such services. For purposes of this rule such professional standards are considered to be defined by Statements on Consulting Services and Statements for Accounting and Review Services, respectively, in each instance issued by the AICPA, and by similar pronouncements by other entities having generally recognized authority.

Stat. Auth.: ORS 670.310, 673.410 & 673.445
Stats. Implemented: ORS 673.445
Hist.: AB 1-1978, f. & ef. 1-11-78; AB 3-1989, f. & cert. ef. 1-25-89; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-030-0015
Responsibilities to Clients

(1) Confidential client information. A member in public practice shall not disclose any confidential client information without the specific written consent of the client.

(a) Prohibited disclosures. Except as provided in subsection (b) of this rule:

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to or obtained by the licensee from a client or on behalf of a client if such information relates to services that the licensee rendered for the client.

(B) Members of the Board, members of Board committees and professional practice reviewers shall not disclose confidential client information which comes to their attention in the course of investigations, disciplinary proceedings or otherwise in carrying out their responsibilities, except that the Board may furnish such information when disclosure is required as described in subsection (b) of this rule.

(b) Permitted disclosures. Nothing in subsection (a) of this rule shall prohibit the disclosure of confidential client information under the following circumstances:

(A) When disclosure is required by the standards of the public accountancy profession

(B) When disclosure is required by a court order;

(C) In response to subpoenas issued in state or federal agency proceedings;

(D) In investigations or proceedings under ORS 673.170 or 673.400;

(E) In ethical investigations conducted by private professional organizations in the course of peer reviews;

(F) To the insurance carrier of a licensee in connection with a claim or potential claim; or

(G) When disclosure is required by the Oregon Board of Accountancy for regulatory purposes of the Board.

(2) Client records and working papers.

(a) Definitions. As used in this rule:

(A) Client records include any accounting or other records belonging to or obtained from or on behalf of the client or former client that the licensee received for the client's account or removed from the client's premises.

(B) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(C) In addition to the requirements specified in paragraph (B) of this rule, attest documentation shall include, but not be limited to, the following:

(i) The objectives, scope and methodology, including any sampling criteria used;

(ii) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(iii) Evidence of any supervisory review of the work performed.

(b) Requested records. Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(i) A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;

(ii) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(c) Non-payment by client. Licensees shall not refuse to provide client records and working papers as described in subsection (b) of this rule based on the client's failure or refusal to pay the licensee's fees.

(d) Custody and disposition of working papers.

(A) A licensee may not sell, transfer or bequeath working papers described in this rule to anyone other than one or more surviving partners or stockholders, or new partners or stockholders of the licensee, or any combined or merged organization or successor in interest to the licensee, without the prior written consent of the client or the client's personal representative or assignee.

(B) A licensee is not prohibited from making a temporary transfer of working papers or other material necessary to the conduct of peer reviews or for the disclosure of information as provided by section (1)(b) of this rule.

(C) A licensee shall implement reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(D) A licensee shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

(e) Retention of attest and audit working papers.

(A) Licensees must maintain, for a period of at least seven years, the working papers for any attest or compilation services performed by the licensee together with any other supporting information, in sufficient detail to support the conclusions reached in such services.

(B) The seven-year retention period described in paragraph (A) of this subsection is extended if a longer period is required for purposes of a Board investigation as provided in paragraph (d)(D) of this rule and OAR 801-010-0115(3).

Stat. Auth.: ORS 670.310 & 673.410
Stats. Implemented: ORS 673.445
Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2005, f. 1-26-05, cert. ef. 2-1-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

801-030-0020
Other Responsibilities and Practices

(1) Professional misconduct.

(a) A licensee shall not commit any act or engage in any conduct that reflects adversely on the licensee's fitness to practice public accountancy.

(b) Professional misconduct may be established by reference to acts or conduct that would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others or for the laws of the state and the Nation. The acts or conduct in question must be rationally connected to the person's fitness to practice public accountancy.

(c) A licensee shall not act in a way that would cause the licensee to be disciplined for violation of laws or rules on ethics by a federal or state agency or by any jurisdiction for the practice of public accountancy.

(d) A licensee shall not engage in acts of gross negligence including, but not limited to:

(A) Failure to disclose a known material fact which is not disclosed in the financial statements, but disclosure of which is necessary to make the financial statements complete or not misleading, or

(B) Failure to report any known material misstatement which appears in the financial statements.

(2) Verification of experience for CPA or PA applicants.

(a) Licensees who supervise the work experience of CPA or PA applicants for the purpose of verifying the applicant's eligibility under ORS 673.040 shall provide to the Board an accurate and complete certificate of experience for the applicant. Licensees who provide any certificate of experience for an applicant shall not:

(A) Make any false or misleading statement as to material matters in any certificate of experience, or

(B) Commit any act that would unjustly jeopardize an applicant's ability to obtain a certificate in this or any other jurisdiction.

(3) Acting through others.

(a) A licensee shall not permit others to perform any acts on behalf of the licensee, either with or without compensation, which, if performed by the licensee would place the licensee in violation of the Code of Professional Conduct.

(b) A licensee shall not ratify, endorse, facilitate, solicit, plan or otherwise assist another licensee to violate any Board law or rule.

(c) A licensee is bound by the Board laws and rules notwithstanding that the licensee acted at the direction of another person.

(A) A subordinate licensee does not violate this rule if the licensee acts in accordance with a supervisory licensee's reasonable resolution of an arguable question of professional duty.

(4) Public communications and advertising. A licensee shall not use or participate in the use of any form of public communication, including the use of internet domains, e-mail names, advertising or solicitation by direct personal communication, having reference to the licensee's professional services that contains a false, fraudulent, misleading, or deceptive statement or claim. A false, fraudulent, misleading, or deceptive statement or claim includes, but is not limited to, a statement or claim that:

(a) Includes a misrepresentation of fact;

(b) Is intended or likely to mislead or deceive because it fails to disclose relevant facts;

(c) Is intended or likely to create false or unjustified expectations of favorable results;

(d) Falsely states or implies educational or professional attainments or licensing recognition;

(e) Falsely states or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy;

(f) Falsely represents that professional services can or will be competently performed for a stated fee, or misrepresents fees for professional services by failing to disclose all variables affecting the fees that will in fact be charged; or

(g) Contains other representations or implications of fact that would cause a reasonable person to misunderstand or be deceived.

(5) Professional designations. A licensee shall not represent that the licensee is a member of any professional society, association, organization or an association of firms, or that the licensee has a correspondent relationship with another licensee unless the representation is true at the time it is made or published.

(6) Board communications and investigations.

(a) Communications from the Board to licensees shall be sent by first class mail or certified mail and addressed to the licensee at the last official address or the alternate address furnished to the Board by the licensee.

(b) Licensees who receive any Board communication requesting the licensee to provide a written response shall:

(A) Provide a written response to the Board within 21 days of the date the Board communication was mailed,

(B) Respond fully and truthfully to inquiries from and comply with all Board requests.

(c) The Board of Accountancy shall provide written notice to licensees of complaints filed against the licensee and of any Board investigation that affects the licensee. Licensees who receive notice of a complaint investigation:

(A) Shall cooperate fully with all Board investigations, including any request to appear to answer questions concerning such investigations, and

(B) Shall not engage in any conduct or activity that would hinder or obstruct a Board investigation.

(7) Business transactions with clients.

(a) Except for business transactions that occur in the ordinary course of business, licensees shall not enter into a business transaction with a client if the licensee and client have differing interests therein unless the client has consented in writing to the transaction after receiving full written disclosure of the differing interests from the licensee. Both written disclosure and client's written consent shall be made prior to the time the business transaction is accepted.

(b) A loan transaction between a licensee and a client does not require disclosure under this rule if the client is in the business of making loans of the type obtained by the licensee and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness and the transaction is not prohibited by other professional standards.

(8) Notification of change of address, employer or assumed business name. Licensees are required to maintain a current record with the Board of the information described in this rule, and to provide written notice to the Board of any change in such information within 30 days of such change. Written notice required under this rule may be provided by US mail, private delivery service, fax transmittal, e-mail or personal delivery. The information required under this rule will not be accepted over the telephone:

(a) Licensee's current business and residential addresses. If the number of a post office box, mail drop or pick-up service is provided for either address, the licensee must also provide the physical address;

(b) The name and address of licensee's current employer; and

(c) Any assumed business name used by licensee, if licensee is conducting the practice of public accountancy under an assumed business name.

(9) Child support defaults. In accordance with ORS 25.750 to 25.783, the Board shall provide the Support Enforcement Division of the Department of Justice with certification and licensing information which may be electronically cross-matched with Support Enforcement Division's records for persons under order of judgment to pay monthly child support and who are in arrears according to 25.750(a), (b) and/or (c).

(a) The Board shall suspend a licensee's certificate or license and permit to practice upon notice from the Support Enforcement Division or the appropriate District Attorney that such licensee is in arrears of any judgment or order requiring the payment of child support and such payment is being enforced under the provisions of ORS 25.080.

(b) Pursuant to ORS 25.762 or 25.765, the Board shall notify the licensee of the action being taken and refer such licensee to the Support Enforcement Division or the District Attorney for resolution of the support payment issue.

(c) Upon notification by the Support Enforcement Division or District Attorney and receipt of a release notice that the conditions resulting in the action have been resolved, the Board shall reinstate the licensee's certificate or license and permit to practice upon compliance with any additional requirements for issuance, renewal or reinstatement.

(10) State tax defaults. In accordance with ORS 305.385, and upon request by the Department of Revenue (DOR), the Board shall provide DOR with license information for the purpose of determining whether a licensee has neglected or refused to file any tax return, or neglected or refused to pay any tax without filing a petition with DOR as stated in ORS 305.385(4)(a).

(a) The Board shall issue a notice of proposed action against a licensee who is identified by DOR under this rule. The licensee shall be provided with the opportunity for hearing as provided in ORS 183.310 to 183.550 for contested cases.

(b) Upon notification by DOR and receipt of a certificate issued by DOR that the certificate/license holder is in good standing with respect to any returns due and taxes payable to DOR as of the date of the certificate, the Board shall renew or reinstate the certificate or license and permit to practice upon compliance with any additional requirements of the Board for issuance, renewal or reinstatement.

(11) Continuing violation. A continuing violation is a violation of any provision of ORS 673.010–673.457 or OAR chapter 801 that remains in place ("continues") without additional conduct on the part of the violator. For example the continued existence of an office sign purporting to offer public accounting services by an unregistered firm would be a continuing violation. The Board shall provide written notice of the alleged continuing violation to the individual or firm. The duration of the violation prior to the date of notice from the Board shall be deemed a single violation, and each day of continuance after the date of notice from the Board is a separate violation and may be subject to a civil penalty.

(12) Non-Disclosure Agreement. "Non-disclosure agreement" means any written or oral agreement that inhibits any party to the agreement from reporting an alleged violation of ORS Chapter 673 or OAR chapter 801 to the Board, or that inhibits any party from cooperating with an investigation by the Board, an agency of any state, or an agency of the Federal government.

(a) Licensees shall not enter into, nor benefit directly or indirectly from, any non-disclosure agreement.

(b) Any licensee who is a party to a non-disclosure agreement and who receives written notice from the Board, an agency of any state, or an agency of the Federal government requesting information that is subject to the provisions of such non-disclosure agreement, shall provide a written release for information requested within 30 days of the date of notice.

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.160, 673.410 & 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 1-1981, f. 1-6-81, ef. 6-1-81; 1AB 3-1981, f. & ef. 1-6-81; 1AB 2-1984, f. & ef. 5-21-84; 1AB 3-1986, f. & ef. 11-17-86; AB 3-1989, f. & cert. ef. 10-3-89; AB 6-1993(Temp), f. 11-2-93, cert. ef. 11-4-93; AB 1-1994, f. & cert. ef. 1-21-94; AB 3-1994, f. & cert. ef. 8-10-94; AB 4-1994, f. & cert. ef. 9-27-94; AB 3-1996, f. & cert. ef. 9-25-96; BOA 6-1998, f. & cert. ef. 7-29-98; BOA 1-1999, f. & cert. ef. 1-20-99; BOA 5-1999, f. & cert. ef. 7-23-99; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 5-2002 f. 12-27-02, cert. ef. 1-1-03; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 4-2005, f. & cert. ef. 8-12-05; BOA 9-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 3-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 3-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 3-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 5-2009, f. 12-15-09 cert. ef. 1-1-10; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15

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Board of Examiners for Speech-Language Pathology and Audiology
Chapter 335

Rule Caption: Permanently adopts temporary rules regarding criminal background checks, including fingerprints.
Adm. Order No.: SPA 3-2014
Filed with Sec. of State: 11-17-2014
Certified to be Effective: 11-17-14
Notice Publication Date: 9-1-2014
Rules Adopted: 335-005-0026
Subject: Permanently adopts rules temporarily adopted May 19, 2014, and adopted as permanent rules by the Board of Examiners on November 7, 2014. Implements authority to conduct enhanced state and national criminal background checks, including requiring fingerprints, to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or hold a license issued by the Board. Also allows for such checks to be required for current or prospective employees, Board members, volunteers, vendors or other contractors as a condition of employment or Board service.
Rules Coordinator: Sandy Leybold—(971) 673-0220

335-005-0026
Determination of Fitness; State and Nationwide Criminal Background Checks

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or hold a license that is issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may request applicants and licensees to undergo a state criminal history check and a national criminal history check, using fingerprint identification of applicants or licensees. State criminal records checks using the Law Enforcement Data System maintained by the Department of State Police and national checks using the Federal Bureau of Investigation system will be conducted in accordance with ORS Chapter 181 and applicable rules adopted and procedures established by the Department of State Police. Applicants and licenses are required to:

(a) Comply with Board requirements in completing these checks;

(b) Pay relevant fees as outlined in OAR 335-060-0010(1)(f).

(4) The Board will determine if an applicant or licensee is fit to practice, or whether they are subject to denial, suspension, or revocation or a license under ORS 681.350. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit the licensee's license may not be renewed or it may be suspended or revoked. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or

other restrictions upon licensure. To make this determination, the Board may consider:

(a) A criminal records background check;

(b) Any false statements made by the applicant or licensee regarding their criminal history or other background;

(c) Any refusal to submit or consent to a criminal records check including fingerprint identification;

(d) Any other pertinent information provided by the applicant or licensee or obtained as part of an investigation.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

(e) Any other relevant information.

(6) All background checks shall be requested to include available state and national data, unless obtaining one or the other is an acceptable alternative.

(7) In order to conduct the Oregon and National Criminal Records Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary, such as but not limited to, proof of identity; residential and employment history; names used while living at each residence; or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under this rule is part of the investigation of an applicant or licensee and as such is confidential pursuant to ORS 676.175.

(9) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and in compliance with ORS 681.490. The Board may also consider any arrests and court records that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(11) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.414–183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183.

(12) If the applicant discontinues the application process or fails to cooperate with the criminal records check process, the application is considered incomplete.

(13) The Board may require current or prospective employees, Board members, volunteers, vendors or other contractors to undergo a criminal background check as described in this rule as a condition of employment or Board service.

Stat. Auth.: ORS 181.534, 676.303, 681.330 & 681.350

Stat. Implemented: ORS 181.534, 676.175, 676.303, 681.260, 681.264, 681.320, 681.325, 681.350 & 681.360

Hist.: SPA 2-2014(Temp), f. 5-6-14, cert. ef. 5-19-14 thru 11-15-14; SPA 3-2014, f. & cert. ef. 11-17-14

Board of Geologist Examiners
Chapter 809

Rule Caption: Updates regarding public records requests, exam application deadlines, requirements for social security numbers, and rosters.

Adm. Order No.: BGE 2-2014

Filed with Sec. of State: 12-5-2014

Certified to be Effective: 12-5-14

Notice Publication Date: 10-1-2014

Rules Amended: 809-001-0015, 809-040-0001, 809-050-0050

Rules Repealed: 809-050-0020, 809-050-0050(T)

Subject: The Board adopted updated rules for: (1) public records requests and associated fees; (2) exam application deadlines; and (3) required application information. The Board deleted a temporary rule addressing required application information as the permanent rule replaces the temporary rule. The Board also deleted its rule requiring annual publication of a registrant roster as the Board uses more modern means to make this information available.

Rules Coordinator: Christine Valentine—(503) 566-2837

809-001-0015
Public Records Requests

(1) All requests for copies of public records in the custody of the Board of Geologist Examiners (Board) shall be made in writing to the Board Administrator. Written requests may be delivered in person, by mail, by fax or by email. All requests are subject to disclosure according to the Public Records Law.

(2) A public records request may be submitted on a request form provided by the Board. If the form is not used, the requestor must include the following information in the request:

(a) The name and address of the person requesting the public record;

(b) The telephone number, email address, and other relevant contact information for the person requesting the public record;

(c) A sufficiently detailed description of the records requested to allow the Board to search for and identify the responsive records;

(d) The date the request is submitted to the Board;

(e) Statement as to whether the person making the request wants to inspect any responsive, non-exempt records at the Board office or to receive copies of the records, and

(f) Signature of the person making the request if the request is not made by email.

(3) A reasonable period of time shall be allowed for the staff to locate and assemble the non-exempt public records responsive to the request. The regular discharge of duties of the Board will neither be interrupted nor substantially interfered with because of time and effort required to respond to the request.

(4) The Board charges fees for responding to public records requests which are reasonably calculated to cover costs of the response and records provided. Fees are designed to cover the cost of locating, reviewing, compiling, making available for inspection, preparing copies, and delivering the response and public records. Fees are as follows:

(a) Twenty-five (25) cents per page for photocopies, where a double-sided copy equals two (2) pages;

(b) One (1) dollar for the first page faxed and fifty (50) cents for each additional page, limited to a 20-page maximum, not including the cover page;

(c) At the Board Administrator's discretion, copies of public records may be provided electronically if stored in the Board's computer system. Electronic records may be provided by email or by other means as deemed appropriate by the Board Administrator. Due to the potential threat of computer viruses, the agency will not permit requestors to provide disks, USB drives, or other electronic devices for reproduction of electronic records;

(A) The cost of records transmitted by email is five (5) dollars per email, except when (6) of this rule applies, and may contain as much information as the Board email system will handle per email.

(B) The cost of records transmitted by other electronic means is five (5) dollars per device and may contain as much information as the electronic device will hold.

(d) Estimated cost for delivery of records such as postage and courier fees; and

(e) Labor charges that include researching, locating, reviewing, compiling, editing and otherwise processing information and records responsive to the request:

(A) No charge for the first fifteen (15) minutes of staff time;

(B) After the first fifteen (15) minutes, the staff labor rate is twenty-five (25) dollars per hour, with a six dollars twenty-five cents (6.25) minimum;

(C) Actual attorney and other legal fees and costs charged to the Board for review of the request, records, redacting confidential materials from the public records, segregating the public records into exempt and nonexempt records, and response.

(f) If fees are estimated to be more than twenty-five (25) dollars, the requestor will be provided a written cost estimate by Board staff before the Board responds to the request. The requestor must then confirm to the Board in writing that the requestor wants the Board to proceed with making the records available and understands the estimated fees. The Board will not take further action on the request prior to receiving such confirmation from the requestor.

(5) Fees for public records requests must be paid as follows:

(a) Before the requested public records will be made available for inspection or copies provided. The Board Administrator may require prepayment of estimated fees before taking further action on a request.

(b) By check, money order, or any credit card accepted by the Board office.

(c) If payment is rejected by the bank or credit card company, the requesting party will be notified and be responsible for any charges incurred by the Board as a result of the rejected payment. This is in addition to the fees for response to the request.

(6) The Board Administrator may waive or reduce fees for:

(a) Responses to requests that can be provided with less than 15 minutes of staff time and in electronic format via email delivery or

(b) Responses to requests that the Board Administrator determines are in the public interest because making the public records available primarily benefit the general public or Board registrants.

Stat. Auth. ORS 192.430, 192.440, 192.502, 192.505, 182.466, 670.310
Stat. Implemented. ORS 192.430, 192.440, 192.502, 192.505
Hist.: GE 1-1984, f. & ef. 2-1-84; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 2-2014, f. & cert. ef. 12-5-14

809-040-0001
Date of Application

(1) Application for examination must be postmarked 120 days prior to the examination date for which the candidate is applying except as provided in (2).

(2) Application for retake of any examination or an initial application for the engineering geology examination must be postmarked 75 days prior to the examination date for which the candidate is applying. Applicants requesting to retake an examination are subject to 809-040-0022.

Stat. Auth.: ORS 670.310, 672.555, 672.575
Stats. Implemented:, 672.555, 672.575
Hist.: GE 1-1984, f. & ef. 2-1-84; BGE 2-1999, f. & cert. ef. 11-8-99; BGE 4-2002, f. & cert. ef. 10-17-02; BGE 2-2014, f. & cert. ef. 12-5-14

809-050-0050
Required Application Information

(1) The Board will not issue or renew any registration or specialty certification unless an applicant or registrant provides his or her Social Security Number on the application or renewal form.

(a) A registrant need not provide the Social Security Number on the renewal form if the Social Security Number has been previously provided to the Board and is in the record.

(b) An applicant need not provide the Social Security number on a subsequent application if the Social Security Number has been previously provided to the Board and remains in the record.

(2) If an individual has not been issued a Social Security Number by the United States Social Security Administration, the Board will accept a written statement from the applicant to fulfill the requirements of OAR 809-050-0050(1) and this rule. The individual may, but is not required to, submit the written statement on a form provided by the Board. Any written statement submitted must:

(a) Be signed by the individual;

(b) Attest to the fact that no Social Security Number has been issued to the individual by the United States Social Security Administration;

(c) Assert that the information provided about the Social Security Number is true and correct; and

(d) Acknowledge that knowingly supplying false information under this section is as crime.

(3) Individuals must provide Social Security Numbers as required by ORS 25.785, 305.385, 42 USC § 666(a)(13), and 42 USC § 405(c)(2)(C)(i) for child support enforcement purposes and Department of Revenue purposes.

Stat. Auth.: ORS 670.310, 25.785, 305.385, 42 USC §666, 42 USC §405
Stats. Implemented:, 672.555, 672.565, 672.585, 672.595, 25.785, 305.385
Hist.: BGE 10-2004, f. & cert.ef. 10-19-04; BGE 1-2014(Temp), f. & cert. ef. 9-15-14 thru 3-13-15; BGE 2-2014, f. & cert. ef. 12-5-14

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Board of Nursing
Chapter 851

Rule Caption: To address rules related to the standards for nursing assistant and medication aide training programs
Adm. Order No.: BN 5-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 851-061-0020, 851-061-0030, 851-061-0040, 851-061-0050, 851-061-0070, 851-061-0080, 851-061-0090
Subject: The proposed revisions are to add clarity to the rules by adding or re-defining definitions, remove references to the three different CNA 2 categories, mirror Division 21 faculty terminology, update references, clarify current standards, add language to ensure that the students are allowed to give anonymous and confidential feedback to the training programs, and increase the nursing assistant level one training program curriculum to 155 hours divided into 80 hours of classroom instruction and 75 hours of supervised clinical experience.
Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-061-0020
Definitions

As used in these rules:

(1) "Assisted Living Facility" means a facility that is licensed by the State of Oregon and as defined by the Oregon Department of Human Services.

(2) "Board" refers to the Oregon State Board of Nursing.

(3) "Board-approved Curriculum" means content required in nursing assistant and medication aide training programs established by Board policy.

(4) "Certified Medication Aide (CMA)" means a certified nursing assistant who has successfully completed additional training in administration of non-injectable medications, holds current Oregon CMA certification, and performs CMA authorized duties under the supervision of a licensed nurse.

(5) "Certified Nursing Assistant (CNA)" means an individual who holds current Oregon CNA; whose name is listed on the CNA Registry; and through their position as a CNA assists a licensed nurse in the provision of nursing care. The phrase certified nursing assistant and the acronym CNA are generic and may refer to a CNA 1, a CNA 2 or all CNAs.

(6) "Certified Nursing Assistant 1 (CNA 1)" means an individual who holds current Oregon CNA certification and who assists a licensed nurse in the provision of nursing care.

(7) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has successfully completed additional training and competency validation in accordance with these rules.

(8) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(9) "Clinical Site" is a location or situation in which hands-on experience with actual clients is obtained.

(10) "Clinical Teaching Associate" refers to a licensed nurse who has undergone specific education/training to serve as a role model, resource, and coach for nursing assistant or medication aide students. The clinical teaching associate functions under the direction of the program director or primary instructor.

(11) "CNA Registry" means the listing of Oregon certified nursing assistants maintained by the Board.

(12) "Competency validation" means the Board approved process for determining competency.

(13) "Criminal History Check" means the Oregon criminal history check and when required, a national criminal history check or a state-specific criminal history check, and processes and procedures equivalent to the Department of Human Services (DHS) rules.

(14) "Direct supervision" means that the registered nurse, clinical nurse specialist, or nurse practitioner is physically present and accessible in the immediate client care area and is available to intervene if necessary.

(15) "Facility-Based Program" means an approved nursing assistant or medication aide training program in a licensed nursing facility.

(16) "Faculty" means the nursing assistant or medication aide faculty as a whole, functioning as a collective body.

(17) "Faculty member" means the individual nurse primary instructor or clinical teaching associate.

(18) "Full-time" means at least 32 hours of regularly scheduled work each week.

(19) "Independent Training Program" means an approved nursing assistant or medication aide training program that is not a facility-based program.

(20) "Instructor-directed" means an on-line training that is managed, directed, and facilitated through interaction between learners and identified instructor. Learning activities may occur through either synchronous or asynchronous interaction between the instructor and students, and among students.

(21) "Level one training" is the minimum training required to prepare a graduate to take the state certification examination for CNA 1.

(22) "Level two training" is training available to a CNA 1 to prepare them for a role in performing additional Board approved authorized duties at the direction of a registered nurse.

(23) "Licensed Nurse" means the licensed practical nurse (LPN) and registered nurse (RN) licensed under ORS 678.

(24) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(25) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care per ORS 678.440(5).

(26) "On-line program" means an interactive computer based training program that provides at least the equivalent of the Board required classroom, laboratory, and clinical hours under the supervision of a Board approved primary instructor and clinical teaching associate.

(27) "On-line program provider" means a provider that has a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in Oregon, either directly or in partnership, in the previous 24 months of application, and meets all Board requirements.

(28) "Program" means a training program that prepares graduates for certification as a nursing assistant level one, level two, or medication aide. The terms "nursing assistant program", or "medication aide program" as used in these rules, are synonymous with "Program."

(29) "Representative of the Board" means the Board staff member or Board designee qualified to perform the necessary responsibilities.

(30) "Residential Care Facility" means a facility that is licensed as such by the State of Oregon and as defined by the Oregon Department of Human Services.

(31) "Self-directed" means an on-line program in which course materials, learning activities, communications, and assessment activities are delivered and completed electronically. Learners engage in and complete activities at their own pace.

(32) "Self-Evaluation" means a review of a nursing assistant level one, level two, or medication aide training program conducted by the program director using forms provided by the Board and submitted to the Board.

(33) "Site Visit" means that representatives of the Board go to the location of a program for specified purposes which may include a survey for program approval.

(34) "Standards for Approval" means authoritative statements which set expectations for a program to achieve and maintain approval status. (OAR 851-061-0080 through 0130).

(35) "Survey Visit" means that representatives of the Board go to the location of a program to review the program for compliance with Standards for Approval, and to prepare a report and recommendation regarding approval status.

(36) "Waiver of Prohibition" authorizes a program to be taught in but not by a facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2).

Stat. Auth.: ORS 678.440, 678.442 & 678.444
Stats. Implemented: ORS 678.440, 678.442 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0030
Process for Program Approval

(1) Any person, partnership, association, corporation, or limited liability company desiring to offer training other than just nursing assistant or medication aide training to non-employed students will need to be licensed through the Oregon Department of Education in addition to meeting the Board's standards as described in these rules.

(2) All nursing assistant level one, level two, or medication aide training programs shall be Board-approved prior to being offered. Retroactive approval shall not be granted.

(3) Application for initial approval of level one, level two, and medication aide training programs: A facility, agency, on-line program provider, or individual wishing to establish a new nursing assistant level one, level two, or medication aide training program shall make application to the Board at least 45 days in advance of expected start date. The application for initial approval of a training program shall include:

(a) A completed form provided by the Board;

(b) Appropriate fees;

(c) Faculty names and qualifications;

(d) Names of classroom and clinical facilities;

(e) Name of person authorized to accept service of notices issued by the Board;

(f) Program rationale, philosophy and purpose;

(g) Program outline:

(A) Objectives;

(B) Curriculum content divided into number and sequence of didactic and clinical hours; and

(C) Teaching methodology.

(h) Evaluation method:

(A) Laboratory and clinical skills checklist approved by the Board;

(B) Final exam; and

(C) In addition, for level 2 training programs, a Board approved competency validation.

(i) Enrollment agreement and disclosure statement that includes:

(A) Beginning and ending dates of the training;

(B) An outline of the instructional program as required by these rules for which the student is enrolled;

(C) Fees, tuition, and other program costs (books, clothing, etc.) itemized separately;

(D) A published cancellation and refund policy, procedure, and schedule that is fully explained during orientation, prior to the beginning of instruction, and requires no less than:

(i) If the training program discontinues after the fees and tuition have been paid, the program provider must refund the tuition and fees in full if the closure happens before the course is completed;

(ii) If the student cancels enrollment in writing three days before the commencement of the first day of classes or three days before they receive access to the online didactic training, all tuition and fees paid to the program specific to the enrollment agreement, will be refunded, less a cancellation fee that cannot exceed ten percent of the tuition and fees paid; and

(iii) Clearly stated reasons for which a refund will not be granted; and

(E) Information about how the student can file a complaint about the program with the Board.

(j) Tentative time schedule for initiating the program; and

(k) Plan for what job placement assistance will consist of from the training program.

(4) A site visit may be conducted by a representatives of the Board;

(5) The program director will be notified of approval or non-approval. Following receipt of notification from the Board of approval or non-approval:

(a) A program that is approved may begin classes according to the schedule submitted;

(b) A program that is not approved will be notified of the deficiencies and will be re-evaluated after appropriate modifications are made;

(c) A program denied approval may petition the Board for reconsideration.

(6) An approved nursing assistant level one, level 2, or medication aide training program:

(a) Shall be required to demonstrate ongoing compliance with the standards of approval at least every two years for continued approval.

(b) Shall be surveyed for consideration of continued approval and may have a survey visit or interim self-evaluation report required by the Board at any time.

(c) May be subject to scheduled or non-scheduled site visits for continued approval or any other purpose at any time.

(d) Shall submit an interim self-evaluation during the intervening year or as requested by the Board on forms provided by the Board.

(e) Shall have records available for review.

(f) Shall have adequate financial support for the stability and continuation of the program.

(7) An on-line provider shall have a proven track record of successfully providing professional development, training and educational programs in both classroom and on-line environments in Oregon, either directly or in partnership, in the previous 24 months, and meet all Board requirements prior to being approved.

(8) Program changes requiring Board approval:

(a) Change of program ownership:

(A) If the change only causes minor changes, there is no need to seek new approval of the program.

(B) If the change causes a substantial difference as determined by the Board through the impact on the students, faculty, or program resources, an application and approval for the program shall be required.

(b) Changes in course content, lab/clinical skill checklist, final exam, certificate of completion, program director, primary instructor, clinical teaching associate, policies and procedures related to attendance, course requirements, cancellation and refunds, or classroom or clinical training sites shall be submitted to the Board for approval.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 5-2002, f. & cert. ef. 3-5-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0040
Inactive Status or Closure of a Program

(1) Voluntary Inactive Status. A training program may be granted temporary inactive status for up to two years:

(a) The program director shall notify the Board in writing of the intended inactive date and the plan for allowing the currently enrolled students to complete the program.

(b) The program shall be continued until the committed class schedule of currently enrolled students is completed.

(2) Involuntary Inactive Status. A training program shall be placed on temporary inactive status for up to one year for the following reasons:

(a) To allow an opportunity for the program to take corrective action; or

(b) After a period of 12 months during which no classes were taught.

(3) Process to reinstate active status: A training program may be reinstated subsequent to voluntary or involuntary inactive status by submitting satisfactory evidence that the program meets Board standards.

(4) Voluntary Closing. When a facility, institution or individual considers closing a training program, the program director shall:

(a) Notify the Board in writing of the intended closing date and the plan for allowing the currently enrolled students to complete the program.

(b) Continue the program until the committed class schedule of currently enrolled students is completed.

(c) Provide for the custody of the records:

(A) If the training program closes but the educational institution or licensed health care agency continues to function, the institution shall assume responsibility for the records of the students and the graduates. The Board of Nursing shall be advised of the arrangements made to safeguard the records.

(B) If the facility-based or independent training program ceases to exist, the Board of Nursing shall be consulted about the maintenance of student records.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.440 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 2-2011, f. & cert. ef. 7-11-11; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0050
Denial or Withdrawal of Program Approval

(1) The Board may deny or withdraw approval if standards for approval of new or existing nursing assistant level one, level two, or medication aide training programs are not being met:

(a) Notice of the deficiency(ies) shall be given in writing to the program director;

(b) The program director may submit evidence of correction to the Board;

(c) The Board may withdraw program approval immediately or prescribe the time within which the deficiency(ies) shall be corrected;

(d) The approval may be withdrawn, if the program fails to correct the deficiency(ies) within the time specified;

(e) A program may request a hearing if the approval is withdrawn; and

(f) The withdrawal may be effective after the last currently enrolled student has completed the program.

(2) Pursuant to Federal Regulations the Board shall deny approval to a training program and shall withdraw approval from a previously approved training program offered by or in a licensed nursing facility or a skilled nursing facility which, in the previous two years:

(a) Has operated under a waiver of the federal requirement for nursing facilities and skilled nursing facilities to have 24 hour a day licensed nurse staffing with eight hour a day RN staffing when such waiver is in excess of 48 hours per week; or

(b) Has been determined by surveyors from the Oregon Department of Human Services (DHS) or federal Center for Medicare and Medicaid Services to have conditions which pose an immediate threat to resident health and safety; or

(c) Has been subject to an extended or partial extended survey, a restriction of admissions or an impending restriction of admissions for provision of substandard quality of care; or

(d) Was subject to a denial of payment under federal law; or

(e) Has had its Medicare participation terminated under federal or state law; or

(f) Was assessed a civil penalty of $5,000 or more, for deficiencies in nursing facility standards, except if waived pursuant to 42 CFR § 483.151; or

(g) Has operated under trusteeship appointed to oversee the operation of the nursing facility and to ensure the health and safety of its residents; or

(h) As a result of state action terminated the operation of the facility or was closed or has had its residents transferred.

(3) A program or facility that has had its approval denied or withdrawn pursuant to OAR 851-061-0050(2) may apply for waiver of prohibition if:

(a) The facility has received written notice from DHS that it is in compliance with regulations governing licensure and certification; and

(b) There is not another program within ten road-miles from the facility submitting the request.

(4) The letter of request for waiver of prohibition shall:

(a) Address the distance in road-miles from the sanctioned facility to the closest program or facility that is willing and eligible for approval to serve as a clinical site for the training program; and

(b) Include a written statement of compliance with the standards for licensure and certification.

(5) The Board shall grant or deny the waiver based upon information received from applicant and DHS.

(6) The Board may withdraw program approval of a nursing assistant level one, level two, or medication aide training program if:

(a) The program cannot provide satisfactory evidence that the standards for nursing assistant level one, level two, or medication aide training programs are consistently maintained as determined by a survey visit or interim self-evaluation report which may be required by the Board at any time, for any purpose, and may be announced or unannounced; or

(b) No classes have been taught for 24 consecutive months; or

(c) The average pass rate for graduates of the program falls below 85% over a two year period; or

(d) A training site visit is not permitted or records are not available for review; or

(e) The clinical facility fails to permit a site visit of the training program.

(7) When program approval is withdrawn, the program shall:

(a) Submit a plan to the Board within ten working days for completion of the currently enrolled students;

(b) Allow students who have started a training program from which approval has been withdrawn to complete the course; and

(c) Submit the required student information to the Board, using the Board approved format, when the students have completed the course.

(8) The Board may reinstate approval of the nursing assistant level one, level two, or medication aide training program upon submission of satisfactory evidence that the program meets the Board standards.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2008, f. & cert. ef. 6-24-08; BN 2-2011, f. & cert. ef. 7-11-11; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0070
Reports

(1) When ownership of a training program changes, a report must be submitted to the Board containing the following information:

(a) Anticipated effects on students, faculty and resources; and

(b) Plans for the orderly transition of the program.

(2) Program data to be sent to Board:

(a) Nursing assistant level one and medication aide training programs shall register with the Board:

(A) By the end of the second class day, each student's:

(i) Name;

(ii) Date of birth;

(iii) Board approved unique identifier; and

(iv) Current addresses.

(B) Within two weeks of completion of a class, each student's:

(i) Name;

(ii) Date of birth;

(iii) Board approved unique identifier;

(iv) Current addresses; and

(v) Date of program completion.

(b) Nursing assistant level two training programs shall submit to the Board, within two weeks of completion of a class, verification of each student's program completion by the Board approved format.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.440 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 6-2008, f. & cert. ef. 6-24-08; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0080
Standards for Program Approval: Faculty Qualifications and Responsibilities

(1) The training of nursing assistants level one shall be by or under the supervision of a program director or primary instructor who has at least one year of nursing experience in a licensed nursing facility.

(2) The program director shall hold a current, unencumbered license to practice as a RN in Oregon. An RN who has an encumbered license may be considered on an individual basis; and

(a) For a nursing assistant level one and level two training program, have at least three years of nursing experience, including at least one year of working in direct patient care; and one of the following:

(A) One year of experience on a nursing faculty;

(B) One year of experience in staff development;

(C) Evidence of academic preparation for teaching adults; or

(D) Evidence of equivalent experience.

(b) For a medication aide training program, have at least three years of experience as a RN, including at least one year as a nurse educator or nurse administrator.

(3) The program director shall:

(a) Act as liaison with the Board related to the program's continuing compliance with the required elements of these rules;

(b) Implement and maintain a program that complies with all Board standards;

(c) Assume the ultimate responsibility for the implementation of the Board-approved curriculum;

(d) Have sufficient time provided for carrying out administrative responsibilities. Number of faculty, students, classes in progress, and locations utilized for classroom and clinical training are to be considered in determining appropriate time allocated;

(e) Recruit, supervise, and evaluate qualified primary instructors and clinical teaching associates;

(f) Develop and implement written policies necessary for the operation of the program, including those maintained under OAR 851-061-0110(1)(c)(G);

(g) Ensure that all students have initiated a criminal history check prior to entering the program and that all students are eligible pursuant to laws governing the clinical site facility to participate in the program's clinical experiences.

(h) Coordinate classroom and clinical sites and activities;

(i) Ensure that the classroom, lab, and clinical environment is conducive to teaching and learning;

(j) Assure that the clinical setting provides an opportunity for the students to perform the skills taught in the curriculum;

(k) Ensure that a Board-approved primary instructor or clinical teaching associate is on the premises at all times during scheduled clinical hours;

(l) Supervise or coordinate supervision of students in the clinical setting or assign this responsibility to the primary instructor.

(m) Provide or arrange for the orientation of the primary instructors and clinical teaching associates to their role and responsibilities.

(n) Assess students' reactions to course content, instructional effectiveness, and other aspects of the learning experience through an anonymous and confidential process;

(o) Submit program data upon request of the Board on forms provided by the Board;

(p) Submit required reports;

(q) Verify that the training facility in which the training program is offered or utilized for the clinical experience is licensed under the appropriate licensing agency and is in substantial compliance with all standards for licensure;

(r) Verify that a facility utilized for out-of-state clinical experience:

(A) Has not been found within the preceding two years, by the state survey and certification agency, using the currently applicable Center for Medicare and Medicaid Services regulations, to be categorized as providing substandard quality of care;

(B) Is no more than 50 miles from an Oregon border; and

(C) Has given permission for site visits by Board staff.

(s) For medication aide training programs, determine student eligibility by verifying that the applicant:

(A) Holds a current certificate to practice as a CNA 1 on the CNA Registry prior to starting and throughout the medication aide training;

(B) Has graduated from an approved basic nurse aide training program at least six months prior to enrollment in the medication aide training program; and

(C) Meets the employment requirement of at least six months of full time experience as a nursing assistant or the equivalent in part time experience since graduation from a basic nursing assistant training program unless the applicant is exempt under OAR 851-062-0090.

(t) For level two training programs, determine student eligibility by verifying that the applicant holds a current certificate to practice as a CNA 1 on the CNA Registry prior to starting and throughout the level two training.

(4) The primary instructor shall hold a current, unencumbered license to practice as a RN in Oregon. An RN who has an encumbered license may be considered on an individual basis; and

(a) For a nursing assistant level one and level two training program, have two years experience as an RN and teaching experience or educational preparation for teaching adults.

(b) For a medication aide training program, have at least three years of nursing experience, to include:

(A) One year as a nurse educator, a primary instructor in a nursing assistant training program or as a nurse administrator, and

(B) One year working with the particular type of clientele or providing clinical instruction in a setting with the particular type of clientele with whom students will have their clinical experience.

(c) May be the director of nursing service in a long term care facility only if there is evidence of formal arrangements for the director of nursing position to be filled by another qualified nurse during the period of instruction.

(5) The primary instructor shall:

(a) Implement the required Board-approved curriculum;

(b) Provide effective teaching strategies in an environment that encourages student and instructor interaction;

(c) Supervise and be present in the classroom at least 75% of the time that classes are being taught, or for on-line programs, be available for consultation and additional clarification at least every 72 hours;

(d) Evaluate competency of students; and

(e) In addition, for medication aide training programs, the primary instructor shall:

(A) Obtain approval from a facility prior to using a facility employee as a clinical teaching associate. The facility has the right to refuse such approval;

(B) Ensure that each student's clinical experience includes administration of medications by all approved routes of administration and includes administration of a variety of medications; and

(C) Supervise the clinical experience for all medication aide students. Clinical teaching associates may be used as appropriate.

(6) Other personnel from the healthcare professions may supplement the instructor in their area of expertise:

(a) For a nursing assistant level one and level two training program, the program director or primary instructor may:

(A) Involve as trainers for a specific portion of the nursing assistant training, other licensed nursing personnel or other licensed health care professionals who have at least one year of experience in their field.

(B) Use an approved clinical teaching associate who shall:

(i) Hold a current, unencumbered license to practice nursing in Oregon. A licensed nurse who has an encumbered license may be considered on an individual basis; and

(ii) Have the equivalent of at least one year of experience as a licensed nurse.

(b) For a medication aide training program, the clinical teaching associate shall:

(A) Hold a current, unencumbered license to practice nursing in Oregon. A licensed nurse who has an encumbered license may be considered on an individual basis;

(B) Have the equivalent of one year full time experience as a licensed nurse and shall have three months' nursing experience in a facility licensed the same as the setting in which the medication aide student will be passing medications;

(C) Provide direct supervision; and

(D) Have only the responsibility for clinical precepting during the scheduled clinical experience.

(c) Certified medication aides, resident care managers, and directors of nursing are prohibited from acting as clinical teaching associates for medication aide students.

Stat. Auth.: ORS 678.440 & 678.444

Stats. Implemented: ORS 678.440 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 18-2002, f. & cert. ef. 10-18-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 2-2011, f. & cert. ef. 7-11-11; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

851-061-0090

Standards for Program Approval: Curriculum

(1) Board-approved curriculum shall be used in approved nursing assistant level one, level two, and medication aide training programs.

(2) A nursing assistant level one training program shall consist of:

(a) At least 155 hours of instruction divided into 80 hours of classroom instruction and 75 hours of supervised clinical experience;

(b) At least 24 hours of supervised classroom/laboratory instruction with return student demonstrations of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients; and

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has an RN on duty during all scheduled student clinical hours, is in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum.

(3) An on-line nursing assistant level one training program shall consist of:

(a) At least the equivalent of 53 hours according to the nationally recognized standard of content to credit ratio;

(b) At least 27 hours of supervised laboratory instruction provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) At least 75 hours of supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has an RN on duty during all scheduled student clinical hours, is in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum;

(d) Ongoing technical support services to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support services for students on each required educational technology hardware, software, and delivery system.

(4) A nursing assistant level two training program shall consist of:

(a) At least 88 hours of instruction divided into 60 hours of classroom/lab instruction and 28 hours of supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has a RN on duty during all scheduled student clinical hours, is in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum; and

(b) Board approved competency validation.

(5) Medication aide training program shall consist of:

(a) At least 84 hours of instruction divided into at least 60 hours of classroom/lab instruction and at least 24 hours of 1:1 supervised clinical experience.

(b) All clinical hours shall be completed at one site (licensed nursing facility, hospital, assisted living facility, or residential care facility).

(c) All required clinical hours shall be in medication administration related activities.

(6) Admission requirements for medication aide training programs shall be:

(a) Current, CNA 1 status on the Oregon CNA Registry maintained by the Board;

(b) Documentation of graduation from an approved basic nursing assistant level 1 training program at least six months prior to enrollment in the medication aide training program; and

(c) Documentation of at least six months full time experience as a nursing assistant level 1 or the equivalent in part time experience since graduation from a basic nursing assistant training program.

(7) An on-line nursing assistant level two or medication aide training program shall consist of:

(a) At least the nationally recognized standard of content to credit ratio to meet the Board's curriculum policy for the specific training program;

(b) Supervised laboratory instruction that meets the Board's approved curriculum provided no later than two weeks after the successful completion of the on-line portion of the curriculum. The laboratory portion of the program shall include return student demonstration of learned skills to determine comprehension and competency, in addition to facility orientation, preceding the students' care of clients;

(c) Supervised clinical experience in a hospital, licensed nursing, residential care, or assisted living facility that has an RN on duty during all scheduled student clinical hours, is in substantial compliance with all standards of licensure, and provides an opportunity for the student to perform the skills taught in the Board's approved curriculum;

(d) Ongoing technical support services to sustain the electronically offered program including provisions for staffing, reliability, privacy, and security; and

(e) Ongoing technical support services for students on each required educational technology hardware, software, and delivery system.

(8) Classroom and clinical faculty/student ratios for nursing assistant level one, level two, and medication aide training programs:

(a) Classroom:

(A) The ratio of students per instructor in the classroom shall be such that each trainee is provided with RN assistance and supervision and be no more than 30 students per instructor for nursing assistant level one training programs, 20 students per instructor for medication aide training programs, and 32 students per instructor for CNA level two training programs.

(B) The amount of students assigned per instructor with self-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry.

(C) The ratio of students per instructor with instructor-directed, on-line instruction shall be such that each trainee is provided with consultation and additional clarification by a Board approved instructor within 72 hours of a trainee's inquiry, and the class size shall be no more than 20 students per instructor per on-line classroom.

(b) Lab: The ratio of students per instructor in nursing assistant level one, level two, and medication aide training programs shall be no more than 10 students per instructor at all times during the lab experience.

(c) Clinical:

(A) The ratio of students per instructor in a nursing assistant level one training program shall be no more than ten students per instructor at all times during the clinical experience.

(B) The ratio of students per instructor in a nursing assistant level two training program shall be no more than eight students per instructor at all times during the clinical experience.

(C) The ratio of students per instructor in a medication aide training program shall begin with a ratio of one clinical teaching associate to one medication aide student during the first 24 hours of the clinical experience. Less intensive supervision (either more students per instructor/clinical teaching associate or less direct supervision by instructor/clinical teaching associate) may occur after the first 24 hours, with satisfactory evaluation and approval of the primary instructor and clinical teaching associate.

(9) Clinical experience and demonstration of competency for nursing assistant level one and medication aide training programs:

(a) A clinical schedule shall be prepared for all students prior to the beginning of the clinical experience, and provided to the clinical facility director of nursing, the clinical teaching associate, and the student.

(b) Student practice and demonstration of competency for nursing assistant level one and medication aide training programs:

(A) Students may provide direct client care within their authorized duties under the supervision of an approved faculty member.

(B) Students shall be identified as students at all times while in the clinical area.

(C) Students must not be counted as staff or utilized as staff during the hours that are scheduled for clinical experience.

(D) Students may be on a unit, floor or wing of a facility only under direct supervision of a qualified faculty member.

(E) Students shall not be on a unit, floor, or wing without a CNA or licensed nurse.

(F) Students shall provide care only to the level they have been taught and determined competent by the approved clinical teaching associate.

(c) In addition, for medication aide training programs, the clinical experience shall be progressive with the Board approved clinical teaching associate observing the medication administration and gradually increasing the number of clients to whom the student is administering medications;

(10) Program completion:

(a) Completion of a nursing assistant level one or medication aide training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum;

(B) The student has successfully demonstrated the required skills on the laboratory and clinical skills checklist;

(C) The student has achieved a score of 75% or higher on the program's final examination;

(D) The student has successfully completed the clinical portion of the program no later than four months following the last date of classroom instruction or within four months after the successful completion of the online portion of the program; and

(E) In addition, for nursing assistant level one training programs, the student has successfully completed current, adult CPR certification in accordance with Board-approved curriculum.

(b) Completion of a nursing assistant level two training means that:

(A) The student has successfully completed 100% of the required classroom and clinical hours and content in the curriculum; and

(B) The student has successfully completed the competency validation.

Stat. Auth.: ORS 678.440 & 678.444
Stats. Implemented: ORS 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 15-2002, f. & cert. ef. 7-17-02; BN 1-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2004, f. & cert. ef. 7-13-04; BN 12-2005, f. & cert. ef. 12-21-05; BN 7-2006, f. & cert. ef. 5-8-06; BN 2-2008, f. & cert. ef. 2-25-08; BN 1-2009, f. & cert. ef. 5-15-09; BN 10-2009, f. & cert. ef. 12-17-09; BN 2-2011, f. & cert. ef. 7-11-11; BN 13-2013, f. 12-3-13, cert. ef. 1-1-14; BN 5-2014, f. 12-1-14, cert. ef. 1-1-15

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Rule Caption: To address rules related to the standards for certification of nursing assistants and medication aides
Adm. Order No.: BN 6-2014
Filed with Sec. of State: 12-2-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 851-062-0010, 851-062-0050, 851-062-0070
Rules Repealed: 851-062-0016
Subject: The proposed revisions are to add clarity to the rules by adding or re-defining definitions, remove references to the three different CNA 2 categories, clarify eligibility for military trained individuals to obtain Oregon nursing assistant certification, and add language to facilitate the transition of current CNA 2s to one general CNA 2 certification.
Rules Coordinator: Peggy A. Lightfoot—(971) 673-0638

851-062-0010
Definitions

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

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

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

(4) "Attempt" means checking in for the examination and receiving the knowledge test booklet or the skill test instructions including the skills that are to be performed.

(5) "Certificate of Completion" means a document meeting the standards set in OAR 851-061-0100(3)(a)–(i) and awarded upon successfully meeting all requirements of a nursing assistant or medication aide training program.

(6) "Certified Medication Aide (CMA)" means a certified nursing assistant who has successfully completed additional training in administration of non-injectable medications, holds current Oregon CMA certification, and performs CMA authorized duties under the supervision of a licensed nurse.

(7) "Certified Nursing Assistant (CNA)" means an individual who holds current Oregon CNA certification; whose name is listed on the CNA Registry; and through their position as a CNA assists a licensed nurse in the provision of nursing care. The phrase certified nursing assistant and the acronym CNA are generic and may refer to a CNA 1, a CNA 2 or all CNAs.

(8) "Certified Nursing Assistant 1 (CNA1)" means an individual who holds current Oregon CNA certification and who assists a licensed nurse in the provision of nursing care.

(9) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has successfully completed additional training and competency validation in accordance with these rules.

(10) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(11) "CNA Registry" means the listing of Oregon certified nursing assistants maintained by the Board.

(12) "Competency validation" means the Board-approved process for determining competency.

(13) "Completed Application" means a signed application, paid application fee and submission of all supporting documents related to certification requirements.

(14) "Completed Application Process" means a completed application, a criminal history check including any subsequent investigation; successful competency examination, if required; and final review for issue or denial.

(15) "Endorsement" means the process of certification for an applicant who is trained and certified as a CNA in another state or jurisdiction.

(16) "Enrolled" means making progress toward completion of a nursing program, whether or not registered in the current quarter or semester, as verified by the director or dean of the program.

(17) Examinations:

(a) "Competency Examination" means the Board-approved examination administered to determine minimum competency for CNA 1 authorized duties. The competency examination consists of a written examination and a manual skills examination. The examination is administered in English.

(b) "Medication Aide Examination" means the Board-approved examination administered to determine minimum competency for CMA authorized duties. The examination is administered in English.

(18) "Full-time" means at least 32 hours of regularly scheduled work each week.

(19) "Licensed Nurse" means the licensed practical nurse (LPN) and registered nurse (RN) licensed under ORS 678.

(20) "Licensed Nursing Facility" means a licensed nursing home or a Medicare or Medicaid certified long term care facility.

(21) "Monitoring" means that a registered nurse assesses and plans for care of the client, assigns or delegates duties to the nursing assistant according to the nursing care plan, and evaluates client outcomes as an indicator of CNA/CMA competency.

(22) "Nurse Aide Registry" means the listing of certified nursing assistants maintained by the appropriate state agency in another state or jurisdiction of the United States.

(23) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care per ORS 678.440(5).

(24) "OBRA" means the Omnibus Budget Reconciliation Act of 1987, successor legislation and written directives from the Center for Medicare and Medicaid Services (CMS).

(25) "Qualifying Disability" means a diagnosed physical or mental impairment which substantially limits one or more major life activities, and is subject to the protection of the Americans with Disabilities Act (ADA).

(26) "Reactivation" is the process of renewing certification after the certificate is expired.

(27) "Reinstatement" is the process of activating a certificate after it has been subject to disciplinary sanction by the Board.

(28) "Supervision" means that the licensed nurse is physically present and accessible in the immediate client care area, is available to intervene if necessary, and periodically observes and evaluates the skills and abilities of the CNA/CMA to perform authorized duties.

(29) "Unlicensed Persons" means individuals who are not necessarily licensed or certified by this Board or another Oregon health regulatory agency but who are engaged in the care of clients.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 4-2004, f. & cert. ef. 2-20-04; BN 13-2005, f. & cert. ef. 12-21-05; BN 10-2010, f. & cert. ef. 6-25-10; BN 14-2013, f. 12-4-13, cert. ef. 1-1-14; BN 3-2014, f. 6-25-14, cert. ef. 8-1-14; BN 6-2014, f. 12-2-14, cert. ef. 1-1-15

851-062-0050
CNA Certification

(1) An applicant for CNA 1 certification must submit a completed application using forms and instructions provided by the Board and pay fees established by the Board. CNA 1 certification may be obtained in one of the following ways:

(a) Training and Competency Examination:

(A) Complete an approved nursing assistant level one training program.

(B) Pass the competency examination within two years of the date of completion of the training program and within three attempts.

(b) Military corpsman or medic training and experience and competency examination:

(A) Complete combat medic 68W or naval corpsman military medical training as evidenced by DD 214 document; and

(B) Military service in the United States Air Force, Army, Coast Guard, Marines, or Navy within five years of application for competency examination; and

(C) Pass the competency examination within two years of application and within three attempts.

(c) RN or LPN licensure:

(A) Hold a current unencumbered RN or LPN license in any U.S. state or jurisdiction.

(B) Provide verification of current unencumbered licensure.

(C) A nurse in any U.S. state or jurisdiction who has an encumbered license may be considered on an individual basis.

(d) Enrollment in an approved nursing education program in the United States:

(A) Provide verification of enrollment in an approved nursing program; and

(B) Complete required course work equivalent to a Board-approved nursing assistant level one training program documented by:

(i) An official transcript from the nursing program; or

(ii) Written verification of completion of equivalent coursework from the nursing program director or dean.

(e) Graduation from an approved nursing program in the United States:

(A) Within one year after graduation, submit an official transcript documenting graduation from an approved nursing program.

(B) Between one and three years after graduation:

(i) Submit an official transcript documenting graduation from an approved nursing program; and

(ii) Pass the competency examination within two years and three attempts.

(C) Three or more years after graduation. The individual shall meet requirements for initial CNA 1 certification by training and competency examination.

(f) Graduation from a nursing program outside of the United States and competency examination:

(A) Submit a transcript or other documentation, in English, of nursing education which includes nursing knowledge and skills necessary to perform the CNA 1 authorized duties; and

(B) Pass the competency examination; or

(C) Complete the training and competency examination as provided in OAR 851-062-0050(1).

(g) Nursing assistant training outside of the United States. Complete training and competency examination as provided in OAR 851-062-0050(1).

(h) Endorsement:

(A) Provide documentation of successful completion of a nursing assistant training program that met OBRA standards.

(i) Certificate of completion meeting the standards set in OAR 851-061-0100(3)(a-i); or

(ii) Letter from facility where training was completed, on letterhead, indicating the date that program was completed and the number of classroom and clinical hours; or

(iii) Information from the appropriate state agency attesting to program completion.

(B) Supply evidence of at least 400 hours of paid employment within CNA 1 authorized duties under the supervision of a nurse in another state where the individual held current certification in the two years immediately preceding application for endorsement. A CNA who has graduated from a nursing assistant training program within the previous two years has satisfied this requirement.

(C) Submit verification of current certification by the state agency in which CNA certification is held.

(D) An individual who cannot satisfy these requirements may be eligible for CNA 1 certification by training and competency examination as provided in OAR 851-062-0050(1).

(2) CNA Testing Eligibility:

(a) An applicant who has completed a nursing assistant training program in Oregon or another of the United States, that met OBRA standards shall be eligible for examination for two years from the date of completion of the nursing assistant training program.

(b) An applicant who is eligible for the competency examination as provided in OAR 851-062-0050(1)(b)(e)(f) shall be eligible for examination for two years from the date of application.

(c) A completed application shall be valid for the period of eligibility to test.

(d) An incomplete application becomes void in one year.

(e) An applicant who fails to pass the competency examination within two years of eligibility and within three attempts shall not be eligible to reapply for the examination except that the applicant may regain eligibility enrolling in and successfully completing a Board-approved nursing assistant program.

(f) If a candidate decides to not complete the examination after receiving the knowledge test booklet or the skill test instructions, the attempt will be scored as a failure.

(3) CNA 2 certification may be obtained in one of the following ways:

(a) Training and Competency Examination:

(A) Obtain CNA 1 certification;

(B) Complete an approved CNA 2 training program; and

(C) Pass the corresponding competency evaluation.

(b) RN or LPN licensure:

(A) Hold a current unencumbered RN or LPN license in any U.S. state or jurisdiction.

(B) Provide verification of current unencumbered licensure.

(C) A nurse in any U.S. state or jurisdiction who has an encumbered license may be considered on an individual basis.

(c) Enrollment in an approved nursing education program in the United States:

(A) Provide verification of enrollment in an approved nursing program; and

(B) Complete required course work equivalent to a Board-approved CNA 2 training program documented by:

(i) An official transcript from the nursing program; and

(ii) Written verification of completion of equivalent coursework from the nursing program director or dean.

(4) As of March 1, 2015, all current CNA 2s in Acute Care, Dementia Care, or Restorative Care will have a general CNA 2 certification. It will be incumbent on the CNA 2 to:

(a) Not assume an assignment, duty, or responsibility unless competency has been established and maintained;

(b) Not perform duties or tasks for which the CNA 2 has not demonstrated knowledge, skill, and ability to a Oregon RN with at least one year of nursing experience;

(c) Inform employer of any current CNA 2 authorized duties that were not obtained within his/her original CNA 2 training program curriculum; and

(d) Maintain documentation to support any attained CNA 2 authorized duty knowledge or skill competency that was not obtained within his/her original CNA 2 training program curriculum.

Stat. Auth.: ORS 678.440 & 678.442
Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 10-2010, f. & cert. ef. 6-25-10; BN 14-2013, f. 12-4-13, cert. ef. 1-1-14; BN 3-2014, f. 6-25-14, cert. ef. 8-1-14; BN 6-2014, f. 12-2-14, cert. ef. 1-1-15

851-062-0070
Renewal or Reactivation of Certification

(1) The expiration date of a CNA certificate occurs biennially the midnight before the individual's birthdate:

(a) For individuals born in odd numbered years the certificate expires in odd numbered years.

(b) For individuals born in even numbered years the certificate expires in even numbered years.

(c) Persons whose birthdate falls on February 29 shall be treated as if the birthdate were March 1 for purpose of establishing the expiration date.

(2) The certificate shall automatically expire if the CNA fails to renew by the expiration date.

(a) A CNA may not work as a CNA with an expired certificate.

(b) Failure to receive the application for renewal shall not relieve the CNA of the responsibility of renewing the certificate by the expiration date.

(3) To renew certification a CNA must, prior to the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay renewal fees established by the Board;

(c) Document paid employment:

(A) Document at least 400 hours of paid employment as a CNA within the CNA or CMA authorized duties, under supervision or monitoring by a nurse, in the two years immediately preceding the certificate expiration date.

(B) A CNA who has been certified for less than two years is exempt from the requirement in OAR 851-062-0070(3)(c)(A).

(d) A nursing assistant who cannot meet all the practice requirements for renewal in OAR 851-062-0070(3)(c)(A) may renew certification upon passing the competency examination.

(A) A nursing assistant has three attempts within two years of the expiration date on the certificate to pass the competency examination.

(B) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved nursing assistant training program and then passing the competency examination.

(4) To reactivate certification, within two years after the certificate expiration date:

(a) Submit a completed application using forms and instructions provided by the Board;

(b) Pay the fees established by the Board; and

(c) Document at least 400 hours of paid employment as a CNA under supervision or monitoring by a nurse, or the successful completion of the competency exam, within two years immediately preceding receipt of application.

(d) A nursing assistant who cannot meet all the requirements for reactivation in OAR 851-062-0070(4)(c) must apply for and pass the competency examination within three attempts and within two years of the expiration date on the certificate.

(e) A nursing assistant who fails to pass the competency examination in three attempts or within two years of the expiration date on the certificate may become certified by completing a Board-approved training program and then passing the competency examination.

(f) Individuals whose CNA 2 has been expired for less than two years may reactivate their CNA 2 once their CNA 1 is current.

(5) Individuals whose CNA 1 certificate has been expired for more than two years are required to take a Board-approved nursing assistant training program and pass the competency examination according to OAR 851-062-0050(1) to reactivate certification.

(6) Individuals whose CNA 2 category designation has been expired for more than two years are required to take a Board-approved CNA 2 training program and pass the competency examination to reactivate the CNA 2.

(7) A current licensed RN or LPN may use their RN or LPN practice hours within the last two years as part or all of the required 400 hours of paid employment for their CNA renewal.

(8) An enrolled nursing student may renew without documentation of paid employment.

(9) A former nursing student may use clinical practice hours in the nursing program within the last two years as part or all of the required 400 hours in lieu of paid employment.

(10) Information provided to the Board to establish eligibility for renewal is subject to audit. Falsification of an application is grounds for disciplinary action.

(11) An applicant for renewal must answer all mandatory questions on the application form, including those about employment and education.

Stat. Auth: ORS 678.440, 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 2-2004, f. 1-29-04, cert. ef. 2-12-04; BN 4-2004, f. & cert. ef. 2-20-04; BN 10-2010, f. & cert. ef. 6-25-10; BN 6-2014, f. 12-2-14, cert. ef. 1-1-15

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Rule Caption: To address standards and authorized duties for certified nursing assistants (CNAs)
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Subject: The proposed revisions are to add clarity to the rules by adding or re-defining definitions, add definitions from Division 45 for consistency between divisions, remove references to CNA 2 categories, increase CNA 1 authorized duties by moving some tasks from level two to level one, eliminate the three categories of CNA 2 and create one general CNA 2, expand CNA 2 authorized duties, and mirror the Division 45 conduct derogatory standards.
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851-063-0010
Purpose of Authorized Duties and Standards

(1) To identify the range of authorized duties which may be performed by the certified nursing assistant (CNA) and certified medication aide (CMA) in the process of assisting a licensed nurse;

(2) To serve as a guide to the Board to evaluate safe and effective assistance in nursing care; and

(3) To establish standards and conduct unbecoming for CNAs and CMAs.

Stat. Auth.: ORS 678.440, 678.442 & 678.444
Stats. Implemented: ORS 678.440, 678.442 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0020
Definitions

(1) "Activities of Daily Living" means self-care activities which a person performs independently, when able, to sustain personal needs or to participate in society.

(2) "Assessment" means the systematic collection of data about a person for the purpose of judging that person's health/illness status and actual or potential health care needs.

(3) "Certified Medication Aide (CMA)" means a certified nursing assistant who has successfully completed additional training in administration of non-injectable medications, holds current Oregon CMA certification, and performs CMA authorized duties under the supervision of a licensed nurse.

(4) "Certified Nursing Assistant (CNA)" means an individual who holds current Oregon CNA certification; whose name is listed on the CNA Registry; and through their position as a CNA assists a licensed nurse in the provision of nursing care. The phrase certified nursing assistant and the acronym CNA are generic and may refer to a CNA 1, a CNA 2 or all CNAs.

(5) "Certified Nursing Assistant 1 (CNA 1)" means an individual who holds current Oregon CNA certification and who assists a licensed nurse in the provision of nursing care.

(6) "Certified Nursing Assistant 2 (CNA 2)" means a CNA 1 who has successfully completed additional training and competency validation in accordance with these rules.

(7) "Client" means the individual who is provided care by the CNA or CMA including a person who may be referred to as "patient" or "resident" in some settings.

(8) "CNA Registry" means the listing of Oregon certified nursing assistants maintained by the Board.

(9) "Community-Based Care (CBC) Setting" means a setting that does not exist for the purpose of providing medical and nursing service but where nursing service can be provided incidental to the setting. This is a setting where federal or state regulations do not require the presence of

nursing personnel 24-hours a day. These settings include those identified in ORS 678.150(8).

(10) "Context of Care" means the cumulative factors which affect the manner in which nursing service is rendered. Factors include, but are not limited to, nursing role, job description, practice setting, organizational policy, regulations governing the setting, demographics of the population served, the surrounding environment, current community and industry standards, and the ability of the person to direct and to engage in their own care.

(11) "Hand Hygiene" means those measures recommended by the Centers for Disease Control (CDC) and used by the CNA or CMA to protect themselves and others from infection. Hand hygiene includes handwashing with soap and water, use of alcohol-based hand rubs and proper use of disposable gloves.

(12) "Health Care Team" means the team of people working with the client to achieve the client's identified outcomes. The composition of the health care team is appropriate to the context of care and the practice setting.

(13) "Licensed Independent Practitioner (LIP)" means a licensed health care professional who is authorized by Oregon statute to independently diagnose and treat.

(14) "Licensed Nurse" means the licensed practical nurse (LPN) and registered nurse (RN) licensed under ORS 678.

(15) "Monitoring" means that a registered nurse assesses and plans for the care of the client, assigns or delegates duties to the nursing assistant according to the nursing care plan, and evaluates client outcomes as an indicator of CNA or CMA competency.

(16) "Nursing Assistant" means a person who assists licensed nursing personnel in the provision of nursing care per ORS 678.440(5).

(17) "Periodic Assessment and Evaluation" means that the RN, at regular intervals, assesses and evaluates the condition of the client and reviews, and modifies if necessary, the procedures and directions established for the provision of care. The interval shall be determined by the RN based on the condition of the client and the nature of the nursing care tasks being performed.

(18) "Person-centered Care" means to collaborate with the client regarding their health in a manner that is considerate and respectful of the client's expressed wishes, choices, and health goals.

(19) "Plan of Care" means the licensed nurse-generated document that identifies desired outcomes and the nursing activities selected to attain the desired outcomes.

(20) "Professional Boundaries" means the relationship limitations that promote professional and therapeutic interactions. Professional boundaries allow for safe and therapeutic interactions between the nursing assistant and the person, the nursing assistant and colleagues, the nursing assistant and society.

(21) "PRN" means as necessary.

(22) "Site" means the specific geographic location of the facility or institution.

(23) "Stable/Predictable Condition" means a situation where the client's health and behavioral state is known, is not characterized by rapid changes, and does not require frequent reassessment and evaluation. This includes the client whose deteriorating condition is predictable such as the client receiving hospice services.

(24) "Supervision" means that the licensed nurse regularly observes, provides guidance, direction, oversight, and evaluation of the skills and abilities of the CNA or CMA to perform authorized duties.

Stat. Auth.: ORS 678.440, 678.442 & 678.444
Stats. Implemented: ORS 678.440, 678.442 & 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2010, f. & cert. ef. 6-25-10; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0030
Authorized Duties and Standards for Certified Nursing Assistant 1 (CNA 1)

(1) Under the supervision and at the direction of a licensed nurse, the CNA may provide care and assist clients with the following tasks:

(a) Tasks associated with communication and interpersonal skills:
(A) Answering and placing call signals;
(B) Coaching and mentoring other nursing assistants;
(C) Communicating with clients and co-workers;
(D) Maintaining confidentiality;
(E) Reporting abuse, mistreatment, and neglect; and
(F) Utilizing de-escalation techniques.

(b) Tasks associated with person-centered care.

(c) Tasks associated with infection control and Standard or Transmission Based Precautions:
(A) Assisting with coughing and deep breathing;
(B) Bedmaking and handling of linen;
(C) Caring for the client's environment;
(D) Handling and disposal of hazardous wastes;
(E) Handling of contaminated materials;
(F) Handwashing and hand hygiene;
(G) Implementing precautions associated with communicable and infectious diseases;
(H) Implementing neutropenic precautions;
(I) Maintaining client cleanliness and grooming; and
(J) Utilizing personal protective equipment.

(d) Tasks associated with safety and emergency procedures:
(A) Implementing bleeding, cervical, hip, and sternal precautions;
(B) Moving and transferring clients;
(C) Transporting clients in wheelchairs and specialized chairs;
(D) Turning and positioning clients;
(E) Using lifts and safe client handling devices;
(F) Turning oxygen on and off or transferring oxygen between wall and tank at pre-established flow rate for stable clients;
(G) Managing hazards in the workplace;
(H) Preventing burns;
(I) Preventing falls; and
(J) Performing cardiopulmonary resuscitation.

(e) Tasks associated with activities of daily living (ADL):
(A) Assisting with nutrition and hydration:
(i) Measuring and recording height and weight;
(ii) Measuring and recording intake and output;
(iii) Positioning clients for nutritional and fluid intake;
(iv) Preventing choking and aspiration;
(v) Preventing dehydration; and
(vi) Thickening liquids; and
(vii) Utilizing techniques for assisting with eating.
(B) Assisting with elimination:
(i) Administering bowel evacuation suppositories that are available without a prescription;
(ii) Administering enemas;
(iii) Assisting with the use of bedpan and urinal;
(iv) Assisting with toileting;
(v) Collecting specimens; sputum, stool, and urine including clean catch urine specimens;
(vi) Providing catheter care including the application of and removal of external urinary catheters;
(vii) Providing ostomy care for established, healthy ostomy including cleaning the ostomy site and emptying the ostomy bag or changing the dressing or ostomy appliance or bag; and
(viii) Providing perineal and incontinence care.
(C) Assisting with personal care:
(i) Bathing;
(ii) Providing comfort care;
(iii) Dressing and undressing;
(iv) Grooming to include: application and care of dentures, eye glasses, and hearing aids.
(v) Nail care for fingernails and toenails of persons with uncompromised circulation;
(vi) Oral hygiene;
(vii) Personal care considerations for persons who have tubes or special equipment;
(viii) Shampooing and caring for hair;
(ix) Shaving; and
(x) Skin Care to include: application of non-prescription pediculicides; application of topical barrier creams and ointments for skin care; maintenance of skin integrity; prevention of pressure, friction, and shearing; and use of anti-pressure devices;
(D) Assisting with positioning devices and restraints;
(E) Assisting with restorative care:
(i) Ambulating;
(ii) Applying, turn on and off, sequential compression devices;
(iii) Assisting with and encouraging the use of self-help devices for eating, grooming and other personal care tasks;
(iv) Assisting with bowel and bladder training;
(v) Assisting with ADL programs;
(vi) Assisting with the use of crutches, walkers, or wheelchairs;
(vii) Assisting with warm and cold therapies;
(viii) Caring for, applying, and removing antiembolus stockings, braces, orthotic devices, and prosthetic devices;

(ix) Elevating extremities;
(x) Maintaining alignment;
(xi) Performing range of motion exercises;
(xii) Reinforcing task sequence by breaking down tasks into small, obtainable steps;
(xiii) Reinforcing the use of an incentive spirometer;
(xiv) Using footboards; and
(xv) Utilizing devices for transferring, ambulation, and alignment.
(f) Tasks associated with collaboration with health care team.
(g) Tasks associated with observation and reporting:
(A) Observing and reporting changes of condition to licensed nurse; and
(B) Measuring and recording:
(i) Temperature, apical and radial pulse, respiration and blood pressure (manual and electronic- forearm, lower leg, thigh, upper arm and orthostatic blood pressure readings);
(ii) Emesis;
(iii) Liquid stool;
(iv) Pain level using a facility approved pain scale;
(v) Pulse oximetry; and
(vi) Urinary output, both voided and from urinary drainage systems.
(h) Tasks associated with documentation.
(i) Tasks associated with end of life care.
(2) The CNA may, as an unlicensed person, provide care as delegated or assigned by a nurse in a CBC setting.
(3) ORS 678.440(5) defines the term "nursing assistant" as a person who assists licensed nursing personnel in the provision of nursing care. Consistent with that definition, a CNA must either:
(a) Be regularly supervised by a licensed nurse; or
(b) Work under licensed nurse monitoring in a CBC setting or other setting where there is no regularly scheduled presence of a licensed nurse provided there is periodic supervision and evaluation of clients.
(4) Under no circumstance shall a CNA work independently without supervision or monitoring by a licensed nurse who provides assessment of clients as described in OAR 851-063-0030(3)(a)(b).
(5) A CNA may accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat only when working in the following settings under the specified administrative rule:
(a) When working in Adult Foster Homes, as permitted under OAR Chapter 411, division 50;
(b) When working in Residential Care Facilities, as permitted under OAR Chapter 411, division 54; and
(c) When working in Assisted Living Facilities, as permitted under OAR Chapter 411, division 54.
(6) Standards of Care for Certified Nursing Assistants. In the process of client care the CNA shall consistently:
(a) Apply standard precautions according to the Centers for Disease Control and Prevention guidelines;
(b) Use hand hygiene between episodes of care;
(c) Use appropriate body mechanics to prevent injury to self and client;
(d) Follow the care plan as directed by the licensed nurse;
(e) Use appropriate communication with client, client's family and friends, and coworkers;
(f) Use alternatives to physical restraints, or apply physical restraints as directed by the licensed nurse;
(g) Determine absence of pulse or respiration, and initiate an emergency response;
(h) Report to the licensed nurse any recognized abnormality in client's signs and symptoms;
(i) Record observations and measurements, tasks completed, and client statements about condition or care;
(j) Apply safety concepts in the workplace;
(k) Report signs of abuse, neglect, mistreatment, misappropriation or exploitation;
(l) Demonstrate respect for rights and property of clients and coworkers; and
(m) Maintain client confidentiality.

Stat. Auth: ORS 678.440, ORS 678.442, 678.444
Stats. Implemented: ORS 678.440, ORS 678.442, 678.444
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 11-2009, f. & cert. ef. 12-17-09; BN 11-2010, f. & cert. ef. 6-25-10; BN 1-2011(Temp), f. 6-6-11, cert. ef. 6-23-11 thru 12-20-11; BN 4-2011, f. & cert. ef. 10-6-11; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0035
Authorized Duties and Standards for Certified Nursing Assistant 2 (CNA 2)

(1) Under the supervision and at the direction of a licensed nurse, a CNA 2 may provide care and assist clients with the following:
(a) Tasks associated with communication and interpersonal skills including:
(A) Coaching and mentoring peers; and
(B) Crisis intervention.
(b) Tasks associated with observation and reporting:
(A) Observing and collecting pain responses; and
(B) Relieving pain:
(i) Assisting with complementary therapies such as using pre-recorded audio/visuals for guided imagery; deep relaxation.
(ii) Planning activities in relation to pain;
(iii) Providing comfort measures;
(iv) Reporting to the nurse;
(v) Repositioning; and
(vi) Using touch to massage non-diseased tissue.
(C) Understanding the concept of Situation, Background, Assessment (Observation), Recommendation, and Read-back/Review (SBARR).
(c) Tasks associated with person-centered care:
(A) Embracing the friendship philosophy of care;
(B) Positively impacting the environment for person with dementia; and
(C) Cultural responsiveness.
(d) Tasks associated with technical skills:
(A) Adjusting oxygen rate of flow;
(B) Applying and removing delivery device and turning continuous positive airway pressure (CPAP) or bilevel positive airway (BiPAP) devices on and off;
(C) Bladder scanning;
(D) Clipping hair in preparation for surgical procedure;
(E) Discontinuing saline lock;
(F) Fingerstick capillary blood testing;
(G) Interrupting and re-establishing nasogastric (NG) suction;
(H) Obtaining nasal or rectal swab;
(I) Placing electrodes/leads and run electrocardiogram (EKG);
(J) Placing electrodes/leads for telemetry;
(K) Removing casts in non-emergent situations;
(L) Screening newborn hearing;
(M) Setting up traction equipment;
(N) Suctioning nose or oral pharynx;
(O) Testing stool for occult blood; and
(P) Urine dip stick testing.
(e) Tasks associated with infection prevention and control:
(A) Establishing and maintaining a sterile field;
(B) Obtaining urine specimen from port of catheter;
(C) Discontinuing Foley catheters;
(D) Measuring, recording and emptying output from drainage devices and closed drainage systems; and
(E) Changing wound vac canisters.
(f) Tasks associated with safety:
(A) Implementing preventive/protective strategies; and
(B) Minimizing safety risks.
(g) Tasks associated with promoting nutrition and hydration.
(A) Adding fluid to established post pyloric, jejunostomy and gastrostomy tube feedings;
(B) Changing established tube feeding bags; and
(C) Pausing and resuming established post pyloric, jejunostomy and gastrostomy tube feedings to provide personal care;
(h) Tasks associated with promoting functional abilities:
(A) Assisting persons in and out of continuous passive motion (CPM) machines;
(B) Performing range of motion on persons with complex medical problems: fragile skin, at risk for pathological fractures, spascity, and contractures;
(C) Therapeutic positioning in a variety of situations and considering a person's condition including but not limited to bridging and proning; and
(D) Use of adaptive, assistive and therapeutic equipment:
(i) Ankle and foot orthotics;
(ii) Braces;
(iii) Established traction equipment: remove and re-apply;
(iv) Foot lifter; and
(v) Splints.

(i) Tasks associated with end-of-life care:

(A) Comfort care; and

(B) Removal of non-surgically inserted tubes and devices from post-mortem persons.

(j) Tasks associated with documentation.

(2) Standards of Care for CNA 2. In the process of client care the CNA 2 shall consistently apply standards set for CNA 1s and:

(a) Establish competency as a CNA 2;

(b) Maintain competency as a CNA 2;

(c) Perform only authorized duties for which the CNA 2 has established competency.

Stat. Auth.: ORS 678.440 & 678.442

Stats. Implemented: ORS 678.440 & 678.442

Hist.: BN10-2007, f. & cert. ef. 10-1-07; BN 2-2009, f. & cert. ef. 5-15-09; BN 11-2009, f. & cert. ef. 12-17-09; BN 11-2010, f. & cert. ef. 6-25-10; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0070

Authorized Duties and Standards for Certified Medication Aide (CMA)

(1) Under supervision by a licensed nurse, a CMA may administer:

(a) Oral, sublingual and buccal medications;

(b) Eye medications with the exception of eye medications to new post-operative eye clients;

(c) Ear medications;

(d) Nasal medications;

(e) Rectal medications;

(f) Vaginal medications;

(g) Skin ointments, topical medications including patches and transdermal medications;

(h) Medications by gastrostomy and jejunostomy tubes;

(i) Premeasured medication delivered by Aerosol/Nebulizer; and

(j) Medications delivered by metered hand-held inhalers.

(2) Administration of PRN Medications. A CMA may administer PRN medications (including controlled substances) to stable clients according to physician's or nurse practitioner's orders in the following circumstances:

(a) In response to specific client requests:

(A) Client request must be reported to licensed nurse; and

(B) Client response must be reported to licensed nurse.

(b) At the direction of the licensed nurse, when:

(A) A licensed nurse assesses the patient prior to administration of the PRN medications; and

(B) A licensed nurse assesses the patient following the administration of the PRN medication.

(3) A CMA may:

(a) Administer regularly scheduled controlled substances;

(b) Jointly witness wasted controlled substances with a licensed nurse;

(c) Count controlled substances with a licensed nurse or another CMA;

(d) Perform capillary blood glucose (CBG);

(e) Turn oxygen on and off at predetermined, established flow rate;

(f) Add fluid to established jejunostomy or gastrostomy tube feedings and change established tube feeding bags; and

(g) Accept verbal or telephone orders for medication from a licensed health care professional who is authorized to independently diagnose and treat. Such acceptance can occur only when the CMA is working in the following settings under the specified administrative rules:

(A) Adult Foster Homes, as permitted under OAR Chapter 411, division 050;

(B) Residential Care Facilities, as permitted under OAR Chapter 411, division 054; and

(C) Assisted Living Facilities, as permitted under OAR Chapter 411, division 054.

(4) A CMA may not administer medications by the following routes:

(a) Central lines;

(b) Colostomy;

(c) Intramuscular;

(d) Intrathecal;

(e) Intravenous;

(f) Nasogastric;

(g) Nonmetered inhaler;

(h) Subcutaneous;

(i) Intradermal;

(j) Urethral;

(k) Epidural; or

(l) Endotracheal.

(5) A CMA may not administer the following kinds of medications:

(a) Barium and other diagnostic contrast media; or

(b) Chemotherapeutic agents except oral maintenance chemotherapy.

(6) A CMA may not administer medication by, nor assume responsibility for, medication pumps, including client controlled analgesia.

(7) A CMA may not act as a clinical teaching associate to a student in a medication aide training program.

(8) In a community-based care setting, a CMA may, as an unlicensed person, provide care as delegated or assigned by a licensed nurse.

(9) Standards of Care for a certified medication assistant. In the process of client care a CMA shall consistently apply standards set for CNAs and:

(a) Establish competency as a CMA;

(b) Maintain competency as a CMA;

(c) Perform within Authorized Duties;

(d) Follow written instructions of a LIP authorized to independently diagnose and treat as transcribed in the medication administration record (MAR); and

(e) Accurately record on the MAR medications administered, medications withheld or refused and the reason why a medication was withheld or refused.

Stat. Auth.: ORS 678.440, 678.442, 678.444 & 678.445

Stats. Implemented: ORS 678.440, 678.442 & 678.444

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0080

Causes for Denial, Reprimand, Suspension, Probation or Revocation of CNA Certificate

Under the contested case procedure in ORS 183.310 to 183.550 the Board may impose a range of disciplinary sanctions including, but not limited to deny, reprimand, suspend, place on probation or revoke the certificate to perform duties as a CNA for the following causes:

(1) Conviction of the nursing assistant of a crime where such crime bears demonstrable relationship to the duties of a nursing assistant;

(2) Any willful fraud or misrepresentation in applying for or procuring a certificate or renewal thereof;

(3) Use of any controlled substance or intoxicating liquor to an extent or in a manner injurious to the certificate holder or others or to an extent that such use impairs the ability to conduct safely the duties of a nursing assistant;

(4) Violation of any provision of ORS 678.010 to 678.445 or rules adopted thereunder;

(5) Physical or mental condition that makes the certificate holder unable to perform the duties of a nursing assistant; or

(6) Conduct unbecoming a nursing assistant.

Stat. Auth.: ORS 678.442

Stats. Implemented: ORS 678.442

Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0090

Conduct Unbecoming a Nursing Assistant

A CNA, regardless of job location, responsibilities, or use of the title "CNA," whose behavior fails to conform to the legal standard and accepted standards of the nursing assistant profession, or who may adversely affect the health, safety or welfare of the public, may be found guilty of conduct unbecoming a nursing assistant. Such conduct includes but is not limited to:

(1) Conduct, regardless of setting, related to general fitness to perform nursing assistant authorized duties:

(a) Demonstrated incidents of violent, abusive, neglectful or reckless behavior; or

(b) Demonstrated incidents of dishonesty, misrepresentation, or fraud.

(2) Conduct related to achieving and maintaining clinical competency:

(a) Failing to conform to the essential standards of acceptable and prevailing nursing assistant performance of duties. Actual injury need not be established;

(b) Performing acts beyond the authorized duties except for as allowed for in these rules;

(c) Assuming duties and responsibilities for a person's care without documented preparation for the duties and responsibilities and when competency has not been established and maintained; or

(d) Performing new nursing assistant techniques or procedures without documented education specific to the technique or procedure and supervised clinical experience to establish competency.

(3) Conduct related to client safety and integrity:

(a) Failing to take action to preserve or promote a person's safety based on nursing assistant knowledge, skills, and abilities;

(b) Failing to implement the plan of care developed by the registered nurse;

(c) Failing to report changes in a person's status from the last assessment made by the registered nurse;

(d) Jeopardizing the safety of a person under the CNA's care;

(e) Leaving or failing to complete a nursing assistant assignment without properly notifying appropriate supervisory personnel;

(f) Failing to report through proper channels information or facts known regarding the incompetent, unethical, unsafe, or illegal practice of any health care provider;

(g) Failing to respect the dignity and rights of the person receiving nursing services, regardless of social or economic status, age, race, religion, sex, sexual orientation, national origin, nature of health needs, other physical attributes, or disability;

(h) Failing to report actual or suspected incidents of abuse, neglect, or mistreatment;

(i) Engaging in or attempting to engage in sexual misconduct with a client in any setting;

(j) Engaging in sexual misconduct in the workplace; or

(k) Failing to maintain professional boundaries.

(4) Conduct related to communication:

(a) Failing to accurately document nursing assistant activities and tasks;

(b) Failing to document nursing assistant activities and task implementation in a timely manner. This includes failing to document a late entry within a reasonable time period;

(c) Entering inaccurate, incomplete, falsified or altered documentation into a health record or into agency records. This includes but is not limited to:

(A) Documenting the provision of services that were not provided;

(B) Failing to document information pertinent to the person's care;

(C) Filling in someone else's charting omissions, or signing someone else's name;

(D) Falsifying data;

(E) Altering or changing words or characters within an existing document to mislead the reader; or

(F) Adding documentation to a health record or agency record without recording the date and time of the event being recorded. This includes late entry documentation that does not demonstrate the date and time of the initial event being documented, the date and time the late entry is being placed into the record, and the signature of the nursing assistant placing the documentation into the record.

(d) Destroying an agency record, a person's health record, or any document prior to the destruction date indicated for the type of recorded data or document;

(e) Directing another individual to falsify, alter or destroy an agency record, a person's health record, or any document prior to the destruction date indicated for type of recorded data or type of document;

(f) Failing to communicate information regarding a person's status to the supervising nurse or other appropriate member of the healthcare team in an on-going and timely manner and as appropriate to the context of care; or

(g) Failing to communicate information regarding the person's status to individuals who are authorized to receive the information and need to know.

(5) Conduct related to interactions with the client's family:

(a) Failing to respect the person's family and the person's relationship with their family;

(b) Using one's title/position as a nursing assistant to exploit a person's family for personal gain or for any other reason;

(c) Stealing money, property, services or supplies from the family;

(d) Soliciting or borrowing money, materials or property from the family; or

(e) Engaging in unacceptable behavior towards or in the presence of the client's family. Such behavior includes but is not limited to using derogatory names, derogatory or threatening gestures, or profane language.

(6) Conduct related to relationships with co-workers and health care team members:

(a) Engaging in violent, abusive or threatening behavior towards a co-worker; or

(b) Engaging in violent, abusive or threatening behavior that relates to the performance of safe care to a person.

(7) Conduct related to safe performance of authorized duties:

(a) Performing authorized duties when unable/unfit to perform nursing assistant activities or tasks due to:

(A) Physical impairment as evidenced by documented deterioration of functioning in the work setting or by the assessment of a LIP qualified to diagnose physical condition/status; or

(B) Psychological or mental impairment as evidenced by documented deterioration of functioning in the work setting or by the assessment of a LIP qualified to diagnose mental condition/status.

(b) Performing authorized duties when physical or mental ability to perform is impaired by use of a prescription or non-prescription drug, alcohol, or a mind-altering substance; or

(c) Using a prescription or non-prescription drug, alcohol, or a mind-altering substance to an extent or in a manner dangerous or injurious to the nursing assistant or others, or to an extent that such use impairs the ability to perform the authorized duties safely.

(8) Conduct related to other federal or state statutes/rule violations:

(a) Aiding, abetting or assisting an individual to violate or circumvent any law, rule or regulation intended to guide the conduct of the nursing assistant or other healthcare provider;

(b) Violating the rights of privacy, confidentiality of information, or knowledge concerning the person, unless required by law to disclose such information;

(c) Discriminating against a person on the basis of age, race, religion, gender, sexual preference, national origin or disability;

(d) Abusing a person;

(e) Neglecting a person;

(f) Failing to report actual or suspected incidents of abuse through the proper channels in the workplace and to the appropriate state agencies;

(g) Failing to report actual or suspected incidents of abuse to the appropriate state agency;

(h) Engaging in other unacceptable behavior towards or in the presence of the client. Such behavior includes but is not limited to using derogatory names, derogatory or threatening gestures, or profane language;

(i) Possessing, obtaining, attempting to obtain, furnishing or administering prescription or controlled drugs to any person, including self, except as directed by a LIP authorized by law to prescribe drugs;

(j) Unauthorized removal or attempted removal of any drugs, supplies, property, or money from any person or setting;

(k) Unauthorized removal of records, client information, or facility property from the workplace;

(l) Using one's role or title as a nursing assistant to solicit or borrow money, materials, property or possessions from a client or the client's family for personal gain or sale;

(m) Violating a person's rights of privacy and confidentiality of information by accessing information without proper authorization to do so or without a demonstrated need to know;

(n) Failure to report to the Board the CNA's arrest for a felony crime within ten days of the arrest; or

(o) Failure to report to the Board the CNA's conviction of a misdemeanor or a felony crime within ten days of the conviction.

(9) Conduct related to certification violations:

(a) Resorting to fraud, misrepresentation, or deceit during the application process for licensure or certification, while taking the examination for licensure or certification, while obtaining initial licensure or certification or renewal of licensure or certification;

(b) Functioning as a certified nursing assistant without current certification as a nursing assistant;

(c) Functioning as a certified medication assistant without current certification as a medication assistant;

(d) Representing oneself as a CNA without current, valid CNA certification;

(e) Allowing another person to use one's nursing assistant certificate for any purpose;

(f) Using another licensee's nursing license or nursing assistant certificate for any purpose;

(g) Impersonating any applicant or acting as a proxy for the applicant in any nursing assistant examination;

(h) Disclosing contents of the competency examination or soliciting, accepting or compiling information regarding the contents of the examination before, during or after its administration; or

(i) Altering a certificate of completion of training or nursing assistant certification issued by the Board.

(10) Conduct related to the certification holder's relationship with the Board:

(a) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to waiver of confidentiality, except attorney-client privilege.

(b) Failing to answer truthfully and completely any question asked by the Board on an application for certification, renewal of certification, during the course of an investigation, or any other question asked by the Board;

(c) Failing to provide the Board with any documents requested by the Board; or

(d) Violating the terms and conditions of a Board order.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 9-2002(Temp), f. & cert. ef. 3-5-02 thru 8-1-02; BN 16-2002, f. & cert. ef. 7-17-02; BN 12-2009, f. & cert. ef. 12-17-09; BN 4-2010(Temp), f. & cert. ef. 4-19-10 thru 10-15-10; BN 15-2010, f. & cert. ef. 9-30-10; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0100
Conduct Unbecoming a Certified Medication Aide

A certified medication aide is subject to discipline as a CNA as described in these rules. In addition, a CMA is subject to discipline for conduct unbecoming a medication aide. Such conduct includes but is not limited to:

(1) Failing to administer medications as ordered by a LIP;

(2) Failing to document medications as administered, medications withheld or refused and the reason a medication was withheld or refused.

(3) Altering or falsifying medication administration record;

(4) Altering or falsifying CNA or CMA certificate;

(5) Diverting drugs for use by self or others;

(6) Accepting a verbal order or telephone order for medication from a LIP, except as allowed in authorized duties;

(7) Performing acts beyond the authorized duties for which the individual is certified;

(8) Working as a CMA without CMA Certification;

(9) Performing client care tasks other than authorized in these rules;

(10) Representing oneself as a CMA without current CMA certification; or

(11) Failing to conform to the standards and authorized duties in these rules.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 3-2004, f. 1-29-04, cert. ef. 2-12-04; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

851-063-0110
Criminal Conviction History/Falsification of Application — Denial of Certification — Grounds for Discipline

(1) The Board has determined that the following crimes bear a demonstrable relationship to the role of a CNA and will issue a Notice to Deny Certification to an applicant for certification, renewal of certification or for reactivation of certification as a nursing assistant, following the provisions of the Administrative Procedure Act in contested case hearings, to persons who have been convicted as an adult, or found responsible except for mental illness, or adjudicated as a juvenile for the following crimes as set forth in Oregon law or comparable law in other jurisdictions:

(a) Aggravated Murder, as in ORS 163.095 and 115;

(b) First Degree Manslaughter, as in ORS 163.118;

(c) Second Degree Manslaughter, as in ORS 163.125;

(d) First Degree Assault, as in ORS 163.185;

(e) Second Degree Assault, as in ORS 163.175;

(f) First Degree Criminal Mistreatment, as in ORS 163.205;

(g) Second Degree Criminal Mistreatment, as in ORS 163.200;

(h) First Degree Kidnapping, as in ORS 163.235;

(i) First Degree Rape, as in ORS 163.375;

(j) Second Degree Rape, as in ORS 163.365;

(k) Third Degree Rape, as in ORS 163.355;

(l) First Degree Sodomy, as in ORS 163.405;

(m) Second Degree Sodomy, as in ORS 163.395;

(n) Third Degree Sodomy, as in ORS 163.385;

(o) First Degree Unlawful Sexual Penetration, as in ORS 163.411;

(p) Second Degree Unlawful Sexual Penetration, as in ORS 163.408;

(q) First Degree Sexual Abuse, as in ORS 163.427;

(r) Second Degree Sexual Abuse, as in ORS 163.425;

(s) Contributing to the Sexual Delinquency of a Minor, as in ORS 163.435;

(t) Sexual Misconduct, as in ORS 163.445;

(u) Child Abandonment, as in ORS 163.535.

(2) Any individual who applies for certification or renewal of certification as a nursing assistant or holds current certification, who has a history of arrests and convictions over an extended period of time, will be issued a Notice to Deny Certification following the provisions of the Administrative Procedure Act in contested case hearings.

(3) All other applicants or individuals with current nursing assistant certification, with conviction histories, other than those listed above, including crimes which are drug and alcohol related, will be considered on an individual basis.

(4) Any individual who applies for certification as a nursing assistant or holds current certification, and supplies false or incomplete information to the Board on an application for certification regarding the individual's criminal conviction record, may be issued a Notice to Deny Certification under the provisions of the Oregon Administrative Procedure Act in contested case hearings.

Stat. Auth.: ORS 678.442
Stats. Implemented: ORS 678.442
Hist.: BN 6-1999, f. & cert. ef. 7-8-99; BN 7-2014, f. 12-3-14, cert. ef. 1-1-15

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Rule Caption: To add definition and align with language in Division 56
Adm. Order No.: BN 8-2014
Filed with Sec. of State: 12-5-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 851-050-0000, 851-050-0142
Subject: 1. Define the term "structured continuing education" credit; and

2. Update the renewal standards for APRN prescriptive authority from 100 CE annually to "maintenance of national certification" or 45 structured contact hours of CE (15 in pharmacotherapeutic content) and to be in alignment with Division 56 recommended changes; and

3. Add the American Association of Nurse Anesthetists (AANA) as an approved accreditation organization; and

4. Update the name of the name of the American Association of Nurse Practitioners (AANP).

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

851-050-0000
Definitions

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

(2) "Asynchronous learning" means learning experiences, usually delivered through online technology where the interactions between the faculty and students is not constrained by time or place.

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

(4) "Clinical Practice Experience" means the supervised provision of direct patient care in a clinical setting that complements course work and ensures acquisition of advanced practice nursing skills.

(5) "Clinical Preceptor" means health care provider qualified by education and clinical competency to provide direct supervision of the clinical practice experience of students in an Oregon nurse practitioner program.

(6) "Collaboration" means working with another health care provider to jointly provide client care.

(7) "Consultation" means discussion with another health care provider for the purpose of obtaining information or advice in order to provide client care.

(8) "Counseling" means a mutual exchange of information through which advice, recommendations, instruction, or education is provided to the client.

(9) "Delinquent Renewal" means the renewal of a nurse practitioner certificate previously held in Oregon which is expired.

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

(11) "Direct Supervision" means the clinical preceptor or faculty member physically present at the practice site who retains the responsibili-

ty for patient care while overseeing the student and if necessary, redirecting or intervening in patient care and is able to intervene if necessary.

(12) "Distance learning" means using multiple media for students to access the curriculum without the need to be physically present at the education site.

(13) "Evaluation" means the determination of the effectiveness of the intervention(s) on the client's health status.

(14) "Holistic Health Care" means an approach to diagnosis and treatment of clients, which considers the status of the whole person (physical, emotional, social, spiritual, and environmental).

(15) "Initial certification" means the first certification granted by the Board. This may follow the applicant's completion of a nurse practitioner program or be granted to an applicant in Oregon who has been recognized by and has practiced as a nurse practitioner in another state or jurisdiction.

(16) "Interprofessional educator" means a professional faculty member licensed, certified, or otherwise recognized in a field other than nursing.

(17) "Intervention" means measures to promote health, to protect against disease, to treat illness in its earliest stages, and to manage acute and chronic conditions and/or illness. Interventions may include, but are not limited to: issuance of orders, direct nursing care, prescribing or administering medications or other therapies, and consultation or referral.

(18) "Major curriculum change" means a change that results in a refocus of purpose and objectives; or a substantive change in program structure or method of clinical or instructional delivery, or clinical hours and content.

(19) "Management" means the provision and/or coordination of the care that the client receives related to physical and psycho-social health-illness status;

(20) "National Board Certification" means current certification as an advanced Nurse Practitioner in a role and population focus through testing accredited by the National Commission on Certifying Agencies or the American Boards of Nursing Specialties, as approved by the Board.

(21) "Non-Oregon Based Graduate Program" means an academic program accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students for licensure as an advanced practice registered nurse (Clinical Nurse Specialist, Certified Registered Nurse Anesthetist, Nurse Practitioner) and does not have a physical location in Oregon.

(22) "Nurse Practitioner Educator" refers to a licensed Nurse Practitioner faculty member, who has responsibility for developing and implementing the curriculum, policies, and practices associated with student advising and evaluation, mentoring and collaborating with clinical preceptors and other health care professionals.

(23) "Nurse Practitioner Program Administrator" refers to a licensed Nurse Practitioner appointed by the Dean or Director of the Nursing school who is assigned the responsibility and accountability for the nursing educational program within an accredited academic institution, including those functions aligned with program and curricular design and resource acquisition and allocation.

(24) "Nurse Practitioner" (NP) means an advanced practice registered nurse who is certified by the Board to independently assume responsibility and accountability for the care of clients. The title nurse practitioner and population foci of practice shall not be used unless the individual is certified by the Board.

(25) "Nurse Practitioner Orders" means written or verbal instructions or directions by the nurse practitioner for interventions, diagnostic tests, evaluations, drugs, or treatment modalities. Nurse practitioners may establish protocols and standing orders.

(26) "Oregon Based Nurse Practitioner Program" means Board approved academic program meeting NP state certification criteria that is physically located in Oregon and accredited by a nursing organization recognized by the United States Department of Education or the Council of Higher Education Accreditation that offers a graduate degree or graduate level certificate to qualified students.

(27) "Practice requirement" in an expanded specialty role means independent clinical practice in the specialty role of certification providing health care or other such activities, which have a clinical focus and are at an advanced nursing level. These activities include, but are not limited to, teaching, consulting, supervision and research related to the specialty area of certification.

(28) "Provision of Care" means holistic health care, which is continuous and comprehensive. Health care includes:

(a) Health promotion;

(b) Prevention of disease and disability;

(c) Health maintenance;

(d) Rehabilitation;

(e) Identification of health problems;

(f) Management of health problems;

(g) Referral.

(29) "Referral" means directing the client to other resources for the purpose of assessment or intervention.

(30) "State Certification" means certification to practice as a Nurse Practitioner authorized by the Oregon State Board of Nursing.

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

Stat. Auth.: ORS 678.375, 678.380, 678.385, 678.390

Stats. Implemented: ORS 678.375, 678.380, 678.385

Hist.: NB 3-1987, f. & ef. 3-12-87; NB 3-1990, f. & cert. ef. 4-2-90; NB 7-1996, f. & cert. ef. 10-29-96; BN 5-2000, f. & cert. ef. 4-24-00; BN 6-2001, f. & cert. ef. 4-24-01; BN 10-2003, f. & cert. ef. 10-2-03; BN 8-2004, f. 5-4-04, cert. ef. 5-12-04; BN 13-2006, f. & cert. ef. 10-5-06; BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 14-2012(Temp), f. & cert. ef 11-15-12 thru 5-1-13; BN 3-2013, f. 2-28-13, cert. ef. 4-1-13; BN 10-2013, f. 12-3-13, cert. ef. 1-1-14; BN 8-2014, f. 12-5-14, cert. ef. 1-1-15

851-050-0142

Standards for Continuing Education for Nurse Practitioners

Continuing education hours shall be documented on the renewal form which is subject to audit.

(1) Continuing education must be obtained in the following ways:

(a) Proof of active, unencumbered national certification for specialty role as required by applicable licensure, attesting to completion of continuing education required for maintaining national certification; or

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

(2) Structured learning activities shall meet the following criteria for the purpose of renewal:

(a) Accreditation by one of the following organizations:

(A) American Academy of Family Physicians (AAFP);

(B) American Association of Nurse Practitioners (AANP);

(C) American Academy of Physician Assistants (AAPA);

(D) American Association of Nurse Anesthetists (AANA);

(E) American College of Nurse-Midwives (ACNM);

(F) American Psychiatric Association (APA);

(G) American Psychiatric Nurses Association (APNA);

(H) American Psychological Association (APA);

(I) Emergency Nurses Association (ENA);

(J) National Association of Nurse Practitioners in Women's Health (NPWH);

(K) National Association of Pediatric Nurse Practitioners (NAPNAP);

(L) Accreditation Council for Continuing Medical Education (ACCME) (includes CME);

(M) Accreditation Council for Pharmacy Education (ACPE) (includes CPE);

(N) American Nurses Credentialing Center (ANCC) or

(b) Accreditation by a state Board of Nursing or state Nurses Association. Or

(c) National board certification in a Board recognized Nurse Practitioner population focus meeting the criteria of 851-050-0008.

Stat. Auth.: ORS 678.380

Stats. Implemented: ORS 678.380

Hist.: BN 9-2009, f. 12-17-09, cert. ef. 1-1-10; BN 8-2014, f. 12-5-14, cert. ef. 1-1-15

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Rule Caption: Incorporation of CRNAs and changes to prescriptive authority language based on statue changes

Adm. Order No.: BN 9-2014

Filed with Sec. of State: 12-5-2014

Certified to be Effective: 1-1-15

Notice Publication Date: 11-1-2014

Rules Amended: 851-056-0000, 851-056-0004, 851-056-0006, 851-056-0008, 851-056-0010, 851-056-0012, 851-056-0014, 851-056-0016, 851-056-0018, 851-056-0020, 851-056-0022, 851-056-0026

Subject: 1. Reflect the changes in statute 678. 282 authorizing certified registered nurse anesthetist's prescriptive authority; and

2. Define the term Advanced Practice Registered Nurse (APRN) and incorporate the term throughout the document; and

3. Update the renewal standards for APRN prescriptive authority from 100 CE annually to "maintenance of national certification" or

45 structured contact hours of CE (15 in pharmacotherapeutic content).

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

851-056-0000
Definitions

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

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

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

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

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

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

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

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

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

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

(11) "Dispense" or "dispensing" means the labeling and distribution of a medication to the clinical nurse specialist's or nurse practitioner's client which is prepackaged by a manufacturer registered with the State Board of Pharmacy, or repackaged by a pharmacist licensed with the State Board of Pharmacy.

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

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

(14) "Functional impairment" means:

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

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

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

(15) "Legend Drug" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

851-056-0004
Prescriptive Authority Scope of Practice

(1) Prescribing, procuring or authorizing use of legend drugs, controlled substances, therapeutic devices, and other measures, and dispensing drugs consistent with the individual's scope of specialty practice, and competency.

(2) Standing orders, protocols, or written prescriptions may also be given for over-the-counter medications as clinically necessary.

Stat. Auth.: ORS 678.150, 678.285
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0006
Application Requirements for Prescriptive Authority in Oregon

(1) Current, unencumbered registered nurse license in the State of Oregon.

(2) Currently has or is eligible for an unencumbered nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist certificate in the State of Oregon.

(3) Submission of application and fees required by the Board. Fees are nonrefundable. An application not completed after one calendar year will be considered void.

(4) Evidence of successful completion of 45 contact hours of pharmacology at the APRN level as defined in OAR 851-056-0008 including content related to the specialty scope of practice which shall be met through:

(a) Completion within two years prior to the application date; or

(b) Evidence of completion of a 30 hour discrete pharmacology course congruent with the specialty role sought with:

(A) An additional 15 CE hours in pharmacological management congruent with the area of clinical specialty completed in the two years prior to the application date; or

(B) Current prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility; or

(c) Evidence of completion of a clinical nurse specialist, certified registered nurse anesthetist or nurse practitioner program within two years prior to application date, which included a 45 hour pharmacology course and subsequent clinical practicum in pharmacologic management of individual patients prior to graduation.

(5) Evidence of successful completion of required clinical education in patient management. An applicant may be considered to meet this requirement through:

(a) Completion of a directly supervised clinical practicum of no less than 150 hours which includes differential diagnosis and applied pharmacological management of patients congruent with the specialty role sought for academic or continuing education credit; or

(b) Evidence of unencumbered prescriptive authority in another state or U.S. jurisdiction, including a U.S. federal institution or facility with a minimum of 150 hours utilizing applied pharmacological management of patients congruent with their specialty role within the past two years; or

(c) Validation of prescribing competencies by a licensed independent prescribing practitioner (NP, CNS, CRNA, MD, DO) that demonstrates 150 hours of the applicants clinical expertise to include differential diagnosis and the applied pharmacological management of patients congruent with their specialty role. Applicants must complete the OSBN APRN Pharmacological Management Evaluation Form.

(6) Evidence of successful completion of accredited graduate level nursing courses documented by CE or academic credit. Such courses must include physical assessment, pathophysiology, and clinical management sufficient to prepare the applicant for safe prescribing with individual patients. Courses may be accredited or approved by any of the appropriate entities specified in OAR 851-050-0142. Integrated courses taken before January 1, 1996 may be considered if content otherwise meet all requirements for equivalency.

(7) Applicants for initial certification as a nurse practitioner shall meet all requirements for prescriptive authority. Clinical nurse specialists and certified registered nurse anesthetists may obtain and renew certification with the Board without prescriptive authority.

(8) Initial applicants seeking prescriptive authority who do not meet Oregon's pharmacology requirements shall complete a pharmacology course from a list approved by the Board, equal to a minimum of 45 contact hours.

(9) Nurse practitioners who were certified in Oregon prior to July 1, 1997, and who did not have prescriptive authority as of that date, are not required to obtain or renew with prescriptive authority.

Stat. Auth.: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 7-2008, f. & cert. ef. 11-26-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0008
Pharmacology Course Requirements

(1) 45 contact hours may be obtained as part of a discrete offering within the formal advanced educational program or through structured continuing education programs approved by any of the appropriate entities specified in OAR 851-050-0142.

(2) Accredited graduate level pharmacology course content shall include:

(a) Applicable federal/state laws;

(b) Prescription writing;

(c) Pharmacokinetic, pharmacodynamic, pharmacotherapeutic, and pharmacogenomic principles;

(d) Use of prescriptive pharmacological agents in the prevention of illness and restoration and maintenance of health;

(e) Informational resources; and

(f) Clinical application related to specific scope of practice.

(A) Specific tests are used to determine successful completion of the course.

(B) The target audience includes the APRN.

(C) Learner objectives include the specialty scope of advanced practice for which the applicant seeks certification.

(D) Written verification of participation and successful completion of the course is provided by the course sponsor.

Stat. Auth.: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.372 & 678.380
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0010
Prescription Requirements

(1) A written prescription shall include the date, printed name, legal signature, specialty category/title, business address, and telephone number of the prescribing APRN, in addition to the required patient and drug information.

(2) An electronically transmitted prescription as defined in OAR 855-006-0015 of the Pharmacy Act shall include the name and immediate contact information of the prescriber and be electronically encrypted or in some manner protected by up-to-date technology from unauthorized access, alteration or use. Controlled substances have additional restrictions as defined by the DEA which shall be followed.

(3) A tamper resistant prescription shall meet criteria as defined in OAR 855-006-0015 of the Pharmacy Act.

(4) Prescriptions may be written for over the counter drugs, durable medical equipment (DME) and devices.

(5) Prescriptions shall be signed by the prescriber with the abbreviated specialty title of the nurse practitioner, the title CRNA, or the title CNS.

(6) The APRN shall comply with all applicable laws and rules in prescribing, administering, and distributing drugs, including compliance with the labeling requirements of ORS Chapter 689.

(7) An APRN shall only prescribe controlled substances in conjunction with their own valid and current DEA registration number appropriate to the classification level of the controlled substance.

(8) Clinical nurse specialists and nurse practitioners with prescriptive authority are authorized to prescribe legend and controlled substances in Schedule II-V. Additionally, they may prescribe:

(a) Over-the-counter drugs;

(b) Appliances and devices;

(c) Orphan drugs;

(d) Limited access drugs;

(e) Antibiotics to partner(s) of patients diagnosed with a sexually transmitted infection without first examining the partner of the patient, consistent with Department of Human Services guidelines regarding Expedited Partner Therapy; and

(f) Off label.

(9) Certified registered nurse anesthetists with prescriptive authority may prescribe to established patients:

(a) Legend and controlled substances in Schedule II-V; and

(b) For a supply of not more than 10 days with no refills.

(10) All prescribed, dispensed, and distributed drugs shall have Food and Drug Administration (FDA) approval except the following:

(a) Compounded drugs;

(b) Drugs provided through a United States IRB approved clinical trial;

(c) Drugs prescribed under limited access programs;

(d) Drugs which are still in common usage and predate the FDA approval process.

Stat. Auth.: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2011, f. & cert. ef. 10-6-11; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0012
Standards for APRNs with Prescriptive Authority

Evaluation of appropriate prescribing by the Board is constructed based on the following premises:

(1) APRNs may prescribe the drugs appropriate for patients within their scope of practice as defined by OAR 851-050-0005; or OAR 851-054-0020 and 0021; and OAR 851-052-0010.

(2) APRNs shall be held independently accountable for their prescribing decisions;

(3) All drugs prescribed shall have Food and Drug Administration (FDA) approval unless mentioned as an exception in OAR 851-056-0010.

Stat. Auth.: ORS 678.385 & 678.285
Stats. Implemented: ORS 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 2-2007, f. & cert. ef. 3-13-07; BN 4-2007, f. & cert. ef. 5-2-07; BN 6-2007, f. & cert. ef. 6-26-07; BN 9-2007, f. & cert. ef. 10-1-07; BN 12-2007, f. & cert. ef. 11-21-07; BN 1-2008, f. & cert. ef. 2-25-08; BN 5-2008, f. & cert. ef. 6-24-08; BN 3-2011, f. & cert. ef. 10-6-11; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0014
Renewal of Prescriptive Authority

Prescriptive authority may be renewed by the Board provided there is satisfactory compliance with the following:

(1) Evidence that all requirements for renewal of the Oregon nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist certificate have been met and the certificate has been renewed; and

(2) Evidence that there are no encumbrances on the certificate which would affect prescription writing; and

(3)(a) Evidence of active national certification for specialty role as required by applicable licensure, attesting to completion of continuing education required for maintaining national certification; or

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

(4) Evidence of a minimum of 150 hours utilizing applied pharmacological management of patients congruent with their specialty role within the two years preceding renewal; or

(a) Completion of a 45 contact hour pharmacology course within the two years preceding renewal which meets Board requirements; or

(b) Graduation from a clinical nurse specialist, certified registered nurse anesthetist or nurse practitioner program within the two years preceding renewal.

(5) APRNs who have the authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances shall submit evidence of the most current DEA Certificate to the Board office. Prescriptive authority renewal must be accompanied by evidence of DEA certification, if held.

(6) APRNs who do not hold DEA certification must verify this to the Board in writing at the time of renewal.

(7) Submission of an application and fees required by the Board. Fees are nonrefundable.

(8) Applicants who fail to renew their prescriptive authority on or before the biennial birthdate deadline shall be delinquent and pay a delinquent fee. Successful renewal requires that all other criteria for eligibility are met. Practice with expired prescriptive authority is subject to a civil penalty and potential discipline.

Stat. Auth.: ORS 678.101, 678.150 & 678.285
Stats. Implemented: ORS 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0016
Conduct Derogatory to the Standards for Prescriptive or Dispensing Authority

(1) The Board may deny, suspend or revoke the authority to write prescriptions and/or dispense drugs for the causes identified in ORS 678.111(1) or with proof that the authority has been abused.

(2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to nursing standards and is defined as:

(a) Prescribing, dispensing or distributing drugs which are not FDA approved unless done in accordance with the Boards policies and regulations on exceptions.

(b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;

(c) Prescribing, dispensing, or distributing drugs to an individual who is not the APRN's client unless written under Expedited Partner Therapy guidelines from the Department of Human Services; or under the Oregon Health Authority Programs to Treat Allergic Response OR Hypoglycemia and Opiate Overdose in ORS 433.800–433.830.

(d) Prescribing, dispensing or distributing drugs to an individual not within the scope of practice or type of client population served by state certification and licensure as an APRN;

(e) Prescribing, dispensing, or distributing drugs for personal use;

(f) Prescribing, dispensing, administering, or distributing drugs while functionally impaired;

(g) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards or practice;

(h) Prescribing, dispensing, or distributing drugs which are specifically restricted under federal law;

(i) Failure to properly assess and document client assessment when prescribing, dispensing, administering, or distributing drugs;

(j) Selling, purchasing, trading, or offering to sell, purchase or trade any drug sample;

(k) Dispensing medications without dispensing authority granted by the Board or other dispensing authority issued by the State of Oregon; and

(l) Charging a client or any third party payer in a grossly negligent manner.

Stat. Auth: ORS 678.111, 678.113, 678.150 & 678.285
Stats. Implemented: ORS 678.350, 678.370, 678.372, 678.375, 678.380 & 678.385
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 3-2011, f. & cert. ef. 10-6-11; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0018
Distributing Drug Samples

(1) Any APRN who has prescription writing authority may receive prepackaged complimentary samples of drugs and distribute these samples to clients.

(2) Drug samples which are controlled substances must be maintained in accordance with OAR 851-056-0026 and any applicable state and federal requirements.

(3) All sample distribution shall be clearly documented in the patient's chart and the patient shall be provided with information needed for safe use.

(4) Drug samples distributed by a certified registered nurse anesthetist are limited per ORS 678. 285.

Stat. Auth: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.372 & 678.380
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0020
Dispensing Authority for APRNs

(1) An "applicant" for dispensing authority must be an unencumbered Oregon state certified nurse practitioner or clinical nurse specialist with prescriptive authority in good standing with the Oregon State Board of Nursing.

(2) Applicants shall submit an application and information as required by the Board.

(3) The applicant shall show evidence of completion of the following dispensing program:

(a) Documented review of content regarding safe dispensing listed below:

(A) Board of Nursing handbook "Advance Practice Registered Nurse Prescriptive and Dispensing Authority in Oregon";

(B) The Drug Enforcement Administration Pharmacist's Manual (2010);

(C) OAR 851 Division 56;

(D) ORS Chapter 689 and OAR chapter 855;

(E) U.S. Consumer Product Safety Commission publication "Poison Prevention Packaging: "A Guide for Healthcare Professionals" and;

(F) The Institute for Safe Medication Practices (ISMP) "List of Error-Prone Abbreviations, Symbols, and Dose Designations" (2013); and

(G) Information on available electronic or hard copy prescription drug references which provide information to professionals authorized to dispense prescription medications.

(b) Successful completion of the self-examination as provided by the Board on these materials.

(4) The staff of the Board shall provide written notice to the Oregon Board of Pharmacy upon receipt and again upon approval of such application.

(5) Applicants must provide complete and accurate information requested by the Board. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, or revocation of dispensing authority.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 678.390
Stats. Implemented: ORS 678.670, 678.375, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 13-2009, f. 12-17-09, cert. ef. 1-1-10; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0022
Renewal of Dispensing Authority

Dispensing authority may be renewed with each renewal of prescriptive authority upon submission of application, and documentation that the nurse practitioner or clinical nurse specialist and their patients continue to meet criteria. Failure to complete application material as requested or failure to meet criteria in this rule shall be grounds for denial, suspension, inactivation or revocation of dispensing authority.

Stat. Auth.: ORS 678.390
Stats. Implemented: ORS 678.670, 678.675, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 7-2008, f. & cert. ef. 11-26-08; BN 12-2013, f. 12-3-13, cert. ef. 1-1-14; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

851-056-0026
Rules Relating to Controlled Substances

(1) In the administration, distribution, storage, prescribing, and dispensing of controlled substances, APRNs shall comply with all applicable requirements in the Code of Federal Regulations (CFR), Title 21, and state law, including but not limited to, ORS Chapter 430 and 475 and OAR chapter 415 and 855.

(2) Nurse practitioners and clinical nurse specialists shall not dispense a controlled substance without current dispensing authority. Distribution of prepackaged, complimentary drug samples is not considered dispensing (ORS 689.005(9)).

(3) APRNs who have authority from the Drug Enforcement Administration (DEA) to prescribe controlled substances must verify evidence of such with their prescriptive authority renewal application. A nurse with prescriptive authority may choose to decline DEA certification and must verify so in writing.

(4) Storage and inventory of controlled substances:

(a) Samples or quantities of controlled substances shall be stored in a securely locked cabinet on the premises of the APRNs practice location.

(b) APRNs who receive samples or quantities of controlled substances shall be responsible for the security, inventory, and disposal of these drugs.

(c) APRNs shall maintain inventory records of controlled substances that they receive or distribute for a period of three years. The records shall include:

(A) Drug name, amount received, date received, drug expiration date;

(B) Drug name, amount distributed, date distributed, to whom distributed;

(C) Drug name and the date and place where it was returned for destruction.

(d) Controlled substances that are expired, deteriorated, or unwanted shall be returned to a DEA registered disposal site or disposal system or law enforcement authorities. This does not include controlled substances which are properly wasted at the facility where they were to be administered. In this context, "properly wasted" means that on-site destruction of a controlled substance in conformance with applicable state and federal law. APRNs shall not personally destroy controlled substances.

(e) Controlled substances must be transported in a secured, locked container.

(f) Client records shall state the distribution of controlled substance samples.

(g) Theft of controlled substances shall be immediately reported upon discovery to the DEA and to any other required authorities.

(h) APRNs who receive controlled substances shall cooperate with the Board in their inspection of records and physical inventory of controlled substances. Inventory of all controlled substances shall be taken by the prescriber responsible for their receipt and storage every year on the same date as the biennial inventory required by 21 CFR 1304.13.

(i) If requested by the Board, any APRN who receives controlled substances shall submit a copy of inventory records from the preceding two years for review.

(5) Prescribing controlled substances:

(a) APRNs shall only prescribe the controlled substances from Schedules II-V, as authorized by the Oregon State Board of Nursing. APRNs shall only prescribe at the level provided for on their DEA certificate.

(b) Schedule II controlled substances shall not be prescribed for the purpose of weight reduction or control. Schedule III-IV controlled substances may be prescribed for weight reduction in accordance with FDA product guidelines.

(c) APRNs shall not prescribe dispense, or order controlled substances, including Methadone.

(6) Intractable or chronic pain management:

(a) APRNs may prescribe or administer controlled substances to a person in the course of their treatment for a diagnosed condition causing pain, defined in OAR 851-056-0000(18).

(b) The diagnosis and treatment of intractable or chronic pain requires documentation of the following:

(A) A recent diagnosis of the condition (if acute or unstable), or past diagnosis (if chronic and stable) causing pain, by one or more licensed practitioners specializing in the treatment of the body area, system, or organ perceived as the source of pain; and

(B) A written material risks notice specific to the patient's condition and treatment; and

(C) A consultation and review of the pain treatment plan where clinically indicated if the patient shows limited or no improvement.

(c) APRNs must have a complete discussion with the patient or person authorized to make health care decisions for the patient regarding the diagnosis, as well as the risk, benefits, alternatives, side effects, and potential for addiction and withdrawal of the controlled substance, along with any other applicable precautions. These discussions must be documented in the patient record. Documentation must include a plan for period review of patient response and follow-up.

(d) APRNs shall document patient use of controlled substances for chronic or intractable pain, including history and assessment to rule out substance abuse. Evidence of patient addiction or abuse requires referral and/or transfer of care for further diagnosis and treatment.

Stat. Auth.: ORS 678.150 & 678.285
Stats. Implemented: ORS 678.111, 678.370, 678.372, 678.375, 678.380, 678.385 & 678.390
Hist.: BN 10-2006, f. & cert. ef. 10-5-06; BN 5-2008, f. & cert. ef. 6-24-08; BN 9-2014, f. 12-5-14, cert. ef. 1-1-15

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Board of Optometry
Chapter 852

Rule Caption: Revisions governing optometry for clarity, changes in standards of practice and agency budget.
Adm. Order No.: OPT 2-2014
Filed with Sec. of State: 11-28-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Adopted: 852-010-0024
Rules Amended: 852-005-0005, 852-010-0005, 852-010-0015, 852-010-0020, 852-010-0023, 852-010-0051, 852-010-0080, 852-020-0029, 852-020-0031, 852-020-0035, 852-020-0060, 852-050-0001, 852-050-0005, 852-050-0006, 852-050-0012, 852-050-0013, 852-050-0014, 852-050-0016, 852-050-0018, 852-050-0021, 852-050-0025, 852-060-0025, 852-060-0027, 852-070-0010, 852-070-0016, 852-070-0020, 852-070-0025, 852-070-0030, 852-070-0035, 852-070-0055, 852-080-0040
Subject: Overall: Adopt revised 2013-15 agency budget; streamlining of regulatory processes; clarification of unprofessional conduct; delete requirement for in-person continuing education.

Division 5:

0005: Corrects rule language to match Board-approved 2013–15 budget.

Division 10:

0005: Sets framework for Board elections, per statute.

0015: Removes specific fee and refers to fee list at 852-010-0080.

0020: Makes reporting entity name change to "National Practitioner Data Bank."

0023: Removes specific fee and refers to fee list at 852-010-0080.

0024: Adds provisions for expedited licensure for active-duty military spouses and domestic partners as required in ORS 342.195.

0051: Clarifies recordkeeping requirements and transfer upon permanent disability; clarifies requirement for written request or release form.

0080: Adds requirement for phone number of record for licensees to requirement of address of record; clarifies that examination fee is only for those administered by the Board.

Division 20:

0029: Allows use of stamped signature.

0031: Defines when a prescription is deemed to be officially signed and allows delegation of release for subsequent copies.

0035: Clarifies that all drugs dispensed must follow Oregon Board of Pharmacy rules.

0060: Prohibits optometric physicians from entering into specific agreements; defines "direct supervision" and provisions for delegation of the duties of an optometrist.

Division 50

0001: Adds requirement for reporting a telephone number of record and provisions to request exemption from disclosure. Removes specific fee and refers to fee list at 852-010-0080.

0005: Clarifies pharmaceutical certification.

0006: Clarifies timeliness of renewals sent to the Board's mailing address, and responsibility of licensee. Removes specific fees and refers to fee list at 852-010-0080.

0012: Allows optometric physicians to convert active licenses to inactive status between renewals at no charge. Clarifies timeliness of renewals sent to the Board's mailing address. Clarifies address to be printed on license. Removes outdated provision of charging reactivation fee only within one year. Removes specific fee and refers to fee list at 852-010-0080.

0013: Clarifies no license renewal fees will be assessed for active-duty military.

0014: Clarifies reinstatement following license surrender and status of investigations and discipline. Requires request to be made in writing. Removes specific fee and refers to fee list at 852-010-0080.

0016: Removes specific fee and refers to fee list at 852-010-0080.

0018: Requires telephone number of record and makes provisions to hold confidential from disclosure. Allows mailing addresses when different from practice locations. Removes specific fee and refers to fee list at 852-010-0080.

0021: Allows optometric physicians to use portable multiple practice location license in nonprofit services.

0025: Removes requirement to provide information on a prescribed form; clarifies use of sources for criminal background checks. Removes requirement for recommendations of an employer; allows Board to request additional information.

Division 60:

0025: Clarifies requirement to report adverse actions within 10 calendar days. Adds failing to report suspected misconduct as required by statute

0027: Clarifies unprofessional conduct to include: any conduct or practice contrary to recognized standards, misrepresentation to patients, the Board or an agent of the Board; willful deception; violations of ORS 676.110(5) regarding use of titles; clarifies improper delegation of duties; adds mind-altering substances to list of abused substances; records requirement failures; violating patient privacy or confidentiality; obstruction and harassment; failure to cooperate under terms of confidentiality agreements; limiting ability of person to file a complaint or answer questions of the Board; failure to timely report own or suspected misconduct.

Division 70

0010: Add statutory language on purpose of continuing education. Removes limit on non-live CE hours allowed. Allows cultural competency continuing education to be credited.

0016: Clarifies language.

0020: Removes obsolete provision regarding communication skills, now included under cultural competency.

0025: Changes term "eligible" to "approved."

0030: Clarifies when new licensees are required to submit continuing education.

0035: Removes specific fee and refers to fee list at 852-010-0080.

0055: Clarifies that Board review of continuing education proposals take at least 30 days; licensees may not submit CE that has not yet been approved.

Division 80

0040: Removes obsolete provisions for TPA certification. Removes specific fee and refers to fee list at 852-010-0080. Clarifies requirements for certifications. Clarifies that only initial licensing requires CPR certification with a hands-on component.

Rules Coordinator: Nancy DeSouza—(503) 399-0662, ext. 23

852-005-0005
Budget

The Oregon Board of Optometry hereby adopts by reference the Oregon Board of Optometry 2011-2013 Biennium Budget of $698,511 covering the period from July 1, 2013 through June 30, 2015. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of $698,511 for the effective operation of the Board. The Board will not exceed the approved 2013-2015 Biennium budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) & (2). Copies of the budget are available from the Board's office and are also posted on the Board's website.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 182.462(1) & (2)
Hist.: OPT 1-1999, f. 6-4-99, cert. ef. 7-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0005
Board Meeting

(1) The Board must hold regular meetings at least once each year at such time and place as the Board may designate. Notice of the time and place of regularly scheduled, special and emergency meetings will be given to the individuals on the Board's distribution list.

(2) A majority of the total number of the Board constitutes a quorum for the transaction of business. However, an affirmative vote of the majority of the total number of Board members is necessary to make a Board decision.

(3) The President is authorized to take action between Board meetings, such as reactivation of licenses, interpretation of policy or procedure, or other such items, subject to ratification by the Board. The Board may delegate such authority to the Executive Director. All such actions must be noted in the agenda for the next meeting of the Board and be presented for ratification in the order of business at that meeting.

(4) The Vice-President of the Board may carry out the functions of the president when the president is unable to perform the required duties.

(5) The Board shall elect from its membership the President and Vice-President annually at its first regularly scheduled meeting of the calendar year.

Stat. Auth.: ORS 683, 676
Stats. Implemented: ORS 683.270, 676.306
Hist.: OE 2, f. 12-5-57; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0015
Application for Examination and Licensure

(1) Each applicant must meet educational qualifications and must comply with the requirements of ORS 683.040 before the applicant will be accepted for examination and licensure.

(2) Applications for licensure as an optometric physician in Oregon must be directed to the office of the Board.

(3) The application is complete upon receipt by the Board of:

(a) A signed application form;

(b) A copy of the official final transcript from an accredited college of optometry indicating receipt of the doctor of optometry degree;

(c) A copy of the record establishing satisfactory completion of a course in pharmacology as it applies to optometry from an institution approved under ORS 683.040(2) when applicable;

(d) Verification of the passage of the examination of the National Board of Examiners in Optometry (NBEO);

(e) Receipt by the Board's office of the application fee as listed in OAR 852-010-0080;

(f) Written confirmation sent directly from the licensing entity of each other state in which the candidate has ever been licensed that the candidate for licensure has not been sanctioned for violating the laws, rules and standards of ethics of that jurisdiction;

(g) Documentation of completion of the required continuing optometric education;

(h) Documentation of current CPR certification, as required in OAR 852-080-0040;

(i) Proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(j) Proof of passage of the Oregon optometric law and administrative rules examination; and

(k) Satisfactory results of a criminal records background check as defined in OAR 852-050-0025.

(4) Any application received from an optometrist who has been sanctioned by another optometric licensing jurisdiction is individually reviewed and considered by the Board.

Stat. Auth.: ORS 683,182
Stats. Implemented: ORS 683.140, 683.060, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1994, f. & cert. ef. 7-22-94; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0020
Rules for Examination and Licensure

(1) Pursuant to ORS 683.060(2), the Board will require a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination. NBEO standards for passing the NBEO examination are acceptable to the Board.

(2) The applicant for examination and licensure must:

(a) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(b) Submit documentation of continuing education hours as required in OAR 852 Division 70;

(c) Pass, by a score of 80 of better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months before date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination.

(3) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.060, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 8, f. 4-23-71, ef. 5-25-71; OE 2-1979, f. & ef. 10-29-79; OE 2-1984, f. & ef. 7-14-84; OE 1-1985, f. & ef. 7-9-85; OP 1-1987, f. & ef. 4-30-87; OP l2-1988(Temp), f. & cert. ef. 8-30-89; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1993(Temp), f. & cert. ef. 5-17-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 6-1998, f. 12-28-98, cert. ef. 1-1-99; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0023
Rules for Endorsement Examination and Licensure

Pursuant to ORS 683.220 the Board may grant to an applicant a license by endorsement for the practice of optometry if the applicant:

(1) Holds a license for the practice of optometry obtained by examination in another state in the United States;

(2) Has been continuously engaged in the practice of optometry for not less than two years immediately preceding the application to the Board;

(3) Has educational qualifications the Board considers equivalent to the educational requirements necessary for licensing by the Board at the time the applicant commenced the practice of optometry. The educational requirements include a passing score on Parts I, II, III, (PAM and Clinical Skills) and TMOD (Treatment and Management of Ocular Disease) of the National Board of Examiners in Optometry (NBEO) examination or its equivalent, as determined by the Board. NBEO standards for passing the NBEO examination are acceptable to the Board;

(4) Submits documentation satisfactory to the Board of continuing optometric education hours equivalent to the requirements established by OAR 852-070;

(5) Provides written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank for adverse actions on each person making an application for licensure by endorsement;

(6) Pays the licensure by endorsement application fee as listed in OAR 852-010-0080; and

(7) Passes, by a score of 80 or better, a Board-approved written examination relating to Oregon optometric law and administrative rules within the 12 months previous to date of Oregon licensure. Because the Administrative Rule and Law examination is not clinical in nature, there is no waiting period before an examination retake. If the examination is not available through the National Board of Examiners in Optometry, the Board will set location(s), date(s) time(s) and fees for administration of the examination;

(8) Provides proof of meeting the requirements of OAR 852 Division 80 – Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI);

(9) Receive satisfactory results of a criminal records background check as defined in OAR 852-050-0025;

(10) Any applicant whose conduct constitutes cheating or subverting of the process of the evaluation of professional competency by the Board or by an examiner may be dismissed from the examination and denied licensure.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.220, 683.270 & 182.466
Hist.: OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0024
Military Spouse and Domestic Partner Licensure

(1) Regardless of pathway to licensure, if the applicant is the spouse or legal domestic partner of an active service military member who is the subject of a military transfer to Oregon, the Board may issue a temporary license for up to 90 calendar days pending receipt of required good standing status confirmations, if the applicant:

(a) Meets all other requirements for licensure as stated in OAR 852-010-0015;

(b) Attests to being in good standing, with no restrictions or limitations upon, actions taken against, or investigation or disciplinary action pending against his or her license in any jurisdiction where the applicant is or has ever been licensed;

(c) The Board's review of the other jurisdictions' licensing websites and the National Practitioner Data Bank confirm no disciplinary action; and

(d) The military spouse or domestic partner submits a copy of the marriage certificate or domestic partnership registration with the name of the applicant and the name of the active duty member of the Armed Forces of the United States and proof of assignment to a duty station located in Oregon by official active duty military order for the spouse or domestic partner named in the marriage certificate or domestic partnership registration.

(2) Failure of the applicant to provide confirmation(s) required within 90 days results in automatic expiration of the temporary license. Applicant may not be reissued a temporary license.

(3) A regular license will be issued upon receipt of required status confirmation(s).

Stat. Auth.: ORS 683.040, 683.060, 683.270 & HB 2037 (2013)
Stats. Implemented: ORS 683.040, 683.060, 683.270 & HB 2037 (2013)
Hist.: OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0051
Records

(1) Optometric physicians must keep complete and accurate records for each patient, including, but not limited to, case histories, examinations, diagnostic and therapeutic services, prescriptions, instructions for home therapies, referral recommendations and any other information required to make the record complete. Patient records must be sufficiently detailed and legible so that an appropriate provider could continue care without requiring additional information and without detriment to the patient. It is unprofessional conduct to keep incomplete or inaccurate records for a patient.

(2) Retention Schedule: A patient's records must be kept in an accessible print or electronic format. The records must be controlled by an Oregon-licensed optometric physician and kept for a minimum of seven years from the date of the last office visit or pertinent clinical notation on the record. If a patient is a minor, the records must be kept seven years or until the patient is 21 years of age, whichever is longer.

(3) When changing practice locations, closing a practice location or retiring, an optometric physician must retain patient records for the required amount of time or transfer the custody of patient records to a doctor of optometry licensed and practicing optometry in Oregon. Transfer of patient records pursuant to this section of this rule must be reported to the Board in writing within 14 days of transfer, but not later than the effective date of the change in practice location, closure of the practice location or retirement. It is unprofessional conduct for a doctor of optometry not to

retain and release patient records or fail to transfer the custody of patient records as required in this rule.

(4) Upon the death or permanent disability of an optometric physician, the administrator, executor, personal representative, guardian, conservator or receiver of the former optometrist must notify the Board in writing of the management arrangement for the custody and transfer of patient records. This individual must ensure the security of and access to patient records by the patient or other authorized party, and must report arrangements for permanent custody of patient records to the Board in writing within 90 days. Transfer of patient records to another Oregon-licensed optometric physician must occur within one year of the death or permanent disability of the optometric physician.

(5) Optometric physicians must provide copies of records or detailed summaries of records within 14 calendar days of the written request of the patient or by a person holding a valid release from the patient (a recommended sample release form is provided in ORS 192.566). The patient may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution.

(6) Optometric records do not include personal office notes of the optometric physician or personal communications between referring or consulting physicians.

(7) Optometric physicians must preserve a patient's records from unauthorized disclosure and may release them only as authorized by federal and state laws and rules.

(8) Optometric physicians may establish reasonable charges to patients for copies of their records and for faxing prescriptions by long distance phone services, or for any unusual mailing or handling costs per ORS 192.521

(9) Optometric physicians must release copies of patient prescriptions without additional charges and may not withhold release of patient records or additional copies of prescriptions for lack of payment for prior services or goods.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140 & 683.270, 182.466
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1995, f. 10-31-95, cert. ef. 11-1-95; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-010-0080
Schedule of Fees

The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

(1) Active license:

(a) Annual renewal — $323, of which $298 is for the active optometry license and $25 is the Prescription Drug Monitoring Fund fee collected by the licensing body on behalf of the Oregon Health Authority.

(b) Additional copy of Portable Multiple Practice Location license – $25 each.

(c) Failure to meet renewal date: Late renewal fee — $50 first failure, $75 second failure, $100 any subsequent failure in a seven-year period.

(d) Lapse in CPR certification during licensing period — $50.

(e) Failure to notify the Board of practice locations or address or phone number of record — $50 first failure, $100 second failure, $200 any subsequent failure(s) in a seven-year period.

(3) Inactive License:

(a) Annual renewal — $98.

(b) Late renewal fee — $15.

(c) Failure to notify the Board of address or phone number of record — $50 first failure, $100 second failure, $200 subsequent failure(s) in any seven-year period.

(4) Application for Licensure:

(a) Application for Examination and Licensure — $200.

(b) Application for Endorsement Examination and Licensure — $300.

(c) Application for TPA Certification — $75.

(d) Law and Administrative Rule Examination administered by the Board — $75.

(5) Other fees:

(a) Written official license verification — $20.

(b) List of licensees (electronic or printed) — $25 each Active/Inactive.

(c) Reactivation of license — $100.

(d) Reinstatement of license — $100.

(e) Law and Administrative Rules booklet — $25 (available online at no charge).

(f) Decorative Wall Certificate of Registration (optional, personalized and signed by Board) — $30.

(6) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, or other person or entity has not supplied the correct information is not considered an error.

Stat. Auth.: ORS 683 & 182 & 431
Stats. Implemented: ORS 683.270, 182.466 & 431.972
Hist.: OPT 1-2001, f. 6-26-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 2-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-020-0029
Prescription Content

(1) Prescription specifications must be reasonably based on the patient's vision and eye health concerns and must include all information required to ensure the patient receives the designated ophthalmic products.

(2) Spectacle prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) Optometric physician's name, license number, practice location address, telephone number and facsimile (fax) number and handwritten, stamped or electronic signature. If using another doctor's printed or electronic prescription form, the prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(e) Sphere, Cylinder, Axis and/or ADD;

(f) Any special features, which may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish; and

(g) A reasonable and clinically-prudent expiration date.

(3) Contact lens prescriptions must include the following information:

(a) Patient's name;

(b) Examination date;

(c) Prescription issuance date (the date on which the patient receives a copy of the prescription);

(d) A reasonable and clinically-prudent expiration date;

(e) Optometric physician's s name, license number, practice location address, telephone number and facsimile (fax) number, and handwritten, stamped or electronic signature. If using another doctor's printed or electronic prescription form, the prescribing doctor must legibly print his or her own name and license number on prescription form before signing;

(f) Sphere, Cylinder, Axis and/or ADD;

(g) Lens base curve or series;

(h) Lens diameter, if applicable;

(i) Lens material and/or brand name;

(j) Any special features that may include but are not limited to: type of bifocal, trifocal or progressive lens style, prism, material, tints, coatings or edge polish;

(k) The maximum number of refills, if specified by the optometric physician. If specified, the contact lens prescription becomes invalid upon the patient's ordering of the maximum number of refills, unless extended by the optometrist. The quantity of lenses or refills specified in the prescription must be sufficient to last through the prescription's expiration date. If a lesser quantity of lenses or refills is specified in the prescription, the prescriber must have a legitimate medical reason for doing so, and the Federal Trade Commission requirements on writing a prescription for less than one year must be met; and

(l) Any limitations, including wearing schedule and follow-up care.

(4) Contact lens prescriptions must be written in a manner that allows the patient to have the prescription filled by an office or outlet of their choice.

(5) A seller may not alter a contact lens prescription. Notwithstanding the preceding sentence, if the same contact lens is manufactured by the same company and sold under multiple labels to individual providers, the seller may fill the prescription with an equivalent contact lens manufactured by that company under another label.

(6) Therapeutic pharmaceutical prescriptions must conform to the administrative rules of the Oregon Board of Pharmacy regarding prescription format.

Stat. Auth.: ORS 182 & 682
Stats. Implemented: ORS 182.466, 683.010(2), 683.030(3) & 683.335
Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-020-0031
Prescription Release

(1) An optometric physician must immediately give the signed written prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination, even if the patient does not request the prescription.

(2) Upon direct communication from the patient or anyone designated to act on behalf of the patient, an optometric physician must release or verify the patient's prescription to a third party.

(3) The prescription is deemed to be officially signed when first issued to the patient. If the examining optometric physician wishes to delegate signature authority for subsequent copies of a valid spectacle or contact lens prescription, exact copies may be dispensed by a designee following the doctor's written policy for ensuring prescription validity. Under no circumstances may an optometric physician delegate authority to alter the prescription, its expiration date or the number of refills for contact lenses.

(4) If a patient has not completed a contact lens fitting, the prescription released need only meet the spectacle prescription requirements.

(5) As used in this section, the term "direct communication" includes communication in person, by telephone, facsimile (fax), mail or electronic mail.

(6) An optometric physician may not:

(a) Require purchase of contact lenses or spectacles from any party as a condition of providing a copy of the prescription or verification of the prescription;

(b) Require payment in addition to or as a part of the fee for an eye examination, fitting, and evaluation as a condition of providing a copy of a prescription or verification of a prescription; or

(c) Require the patient to sign a waiver or release as a condition of releasing or verifying a prescription.

Stat. Auth.: ORS 683; ORS 182
Stats. Implemented: ORS 683.010, 683.335 & 182.466
Hist.: OPT 1-2004, f. & cert. ef. 3-8-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-020-0035
Prescribing

(1) An optometric physician may use, prescribe, dispense or administer controlled substances in Schedules III-V only to a person with whom the doctor has a bona fide physician-patient relationship.

(2) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to himself/herself.

(3) An optometric physician may not use, prescribe, dispense or administer Schedule III-V controlled substances to an immediate family member except in emergency situations. "Immediate family member" means spouse, domestic partner, child, stepchild, sibling, parent, in-law or other individual for whom an optometric physician's personal or emotional involvement may render the doctor unable to exercise detached professional judgment in reaching diagnostic or therapeutic decisions.

(4) It is unprofessional conduct for an optometric physician to use, prescribe, dispense or administer controlled substances in Schedules III-V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(5) All drugs dispensed by an optometric physician must follow all applicable Oregon Board of Pharmacy rules governing dispensing. All dispensed drugs must be labeled with the following information:

(a) Name, address and telephone number of the optometric physician;

(b) Date;

(c) Name of patient for which the drug is dispensed;

(d) Name of the drug, strength, the quantity dispensed. When a generic name is used, the label must also contain the name of the manufacturer or distributor;

(e) Direction for use;

(f) Required precautionary information;

(g) Such other and further accessory cautionary information as required for patient safety; and

(h) An expiration date after which the patient should not use the drug. Expiration dates on drugs dispensed must be the same as that on the original container unless, in the optometric physician's professional judgment, a shorter expiration date is warranted. Any drug bearing an expiration date may not be dispensed beyond the said expiration date of the drug.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k), 182.466 & 689.225
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-020-0060
Optometric Physician Responsibility, Supervision, and Delegation

(1) The optometric physician carries the sole responsibility for the patient's care. Delegation of duties does not discharge an optometric physician's responsibility for the accuracy and completeness of the work delegated.

(2) An optometric physician may delegate tasks that are not prohibited to well-trained technicians who are under the direct supervision of an optometric physician or medical doctor actively practicing at that location.

(3) No optometric physician may enter into a contract, lease agreement or other agreement that requires the optometric physician to delegate the allowed tasks of an optometrist to a technician who is not under direct supervision.

(4) Direct supervision as used in ORS 683.030 means the technician's activities are overseen and approved by an optometric physician or medical doctor at the practice site who retains the responsibility for patient care and with an appropriate intervention protocol in place. The delegating optometrist must have authority to remove that technician from patient contact at any time.

(5) An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, or final determination of any prescription or treatment plans.

(6) An optometric physician may not delegate final tonometry for a patient who has glaucoma.

(7) Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.010(2), 683.030(3) & 182.466
Hist.: OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 1-2004, f. & cert. ef. 3-8-04; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0001
License Required

(1) Unless otherwise exempted by Oregon law, all persons practicing optometry in the state of Oregon must possess a valid, unrevoked, active status Oregon license.

(2) Doctors of optometry who are not practicing in Oregon may hold an inactive status license.

(3) Those granted an inactive status license by the Board are exempt from ORS 683.100 and OAR 852-50-0016, which require the licensee to report each Oregon practice location to the Board:

(a) Inactive licensees are required to maintain a current mailing address and phone number of record with the Board. Upon written request, the Board will hold the phone number of record of an inactive licensee confidential if it is a personal number not associated with a business entity; and

(b) Inactive licensees failing to notify the Board in writing of any changes to their address or phone number of record before the change are subject to the fee listed in OAR 852-010-0080.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270
Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0005
License and Certificate of Registration

(1) Upon becoming authorized to practice Optometry in Oregon, the licensee will receive:

(a) One original license, printed with and valid only at the address of the reported primary practice location. This current original license must be displayed in plain sight at the primary practice location where it can be viewed by any patient; and

(b) One Portable Multiple Practice Location license, printed with the reported primary practice location address, which may be used to practice at an unlimited number of additional reported practice locations. A Board-issued Portable Multiple Practice Location license must be displayed in plain sight at each non-primary practice location in an area where it can be viewed by any patient. Optometric physicians who wish not to transport this portable license among locations may purchase additional copies of the Portable Multiple Practice Location license from the Board.

(2) The licensee's status (active or inactive, and pharmaceutical certification) is printed by the Board on each license.

(3) The licensee must notify the Board of each practice location before commencing work at that location.

(4) While practicing at any location, a current license must be displayed in plain sight at all times in an area where it can be viewed by any patient.

(5) Photocopies of licenses are void and may not be displayed.

(6) The original license and all Portable Multiple Practice Location licenses expire and must be renewed during the annual license renewal period.

(7) Any optometric physician actively licensed to practice in Oregon may purchase an optional decorative wall certificate of registration personalized and signed by the Board.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OE 11, f. 5-19-72, ef. 6-1-72; OE 14, f. 2-20-73, ef. 3-1-73; OE 2-1980, f. 12-23-80, ef. 12-29-80; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 2-1994, f. & cert. ef. 7-22-94; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 4-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0006
Annual Renewal of Active License

(1) Active licensees must annually renew their license to practice optometry:

(a) Annual license-year renewal periods are established by the Board based upon birth dates of licensees;

(b) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(2) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked to the Board's mailing address on or before the due date.

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Payment for the correct license renewal fee(s);

(c) Documentation of completion of the required continuing optometric education; and

(d) Documentation of current CPR certification, as required in OAR 852-80-0040.

(4) The Board, as a courtesy, mails license year renewal notices to the licensee's current reported address of record. However, it is the licensee's responsibility to ensure timely renewal; failure to receive notice does not relieve the licensee of the responsibility to timely renew

(5) A licensee who is not more than 30 days late in renewing the license may renew upon payment to the Board of the required late fee. If a licensee is more than 30 days late, the license is automatically suspended upon 30-day notice sent to the licensee via certified mail, as required by ORS 683.120(2).

(6) If a licensee is more than 60 days late in renewing the license, the licensee may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement.

(7) Of the annual license renewal fee listed in OAR 852-010-0080, the Board is required by ORS 431.972 to collect an additional annual fee from each optometry licensee for the Electronic Prescription Drug Monitoring Fund, which is remitted to the Oregon Health Authority.

(8) In any seven-year period, any licensee whose complete license renewal and fee is not received or postmarked by the first day of the month of license expiration is subject to a late payment fee listed in OAR 852-010-0080-, which must be received before the license will be issued.

(9) Any licensee whose Board-required CPR certification lapsed at any time during the licensing period is subject to a lapsed CPR fee as listed in OAR 852-010-0080, which must be received before the license will be issued.

Stat. Auth.: ORS 683 & 182 & 431
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270, 182.466 & 431.972
Hist.: OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1988, f. & cert. ef. 6-28-88; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 3-2005, f. 6-29-05, cert. ef. 7-1-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 3-2006, f. 3-20-06, cert. ef. 7-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 3-2007, f. & cert. ef. 12-7-08; OPT 2-2009, f. & cert. ef. 12-11-09; OPT 5-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0012
Inactive Status License

(1) Eligible licensees may be granted an inactive status license upon signed written request. If renewal is not due, the license will be converted from active to inactive at no charge. If renewal is due, the licensee will pay the inactive renewal fee.

(2) To remain in inactive status, a licensee must renew annually. Annual license-year renewal periods are established by the Board based upon birth dates of licensees.

(3) Complete license renewal applications are due on the first day of the month of license expiration (month of licensee's birth date) and must be received in the Board's office or be postmarked to the Board's mailing address on or before the due date.

(4) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee; and

(b) Payment for the correct license renewal fee(s).

(5) As a courtesy, the Board sends a license year renewal notice to the inactive status licensee's current reported address of record. However, it is the licensee's responsibility to ensure timely renewal; failure to receive notice does not relieve the licensee of the responsibility to timely renew.

(6) A licensee who is not more than 30 days late in renewing the license may renew the license upon payment to the Board of the required fee plus a late fee. If a licensee is more than 30 days late, the license is automatically suspended upon 30-day notice sent to the licensee by first-class mail.

(7) A licensee who is more than 60 days late in renewing the license may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement.

(8) An inactive status licensee whose license renewal fee is postmarked after the first day of the month of license expiration is subject to a late payment fee as listed in OAR 852-010-0080, which must be received before the license will be issued.

(9) Reactivation: To reactivate a license to practice optometry in Oregon, an inactive status licensee must complete the following requirements:

(a) Submit a signed Reactivation Request form;

(b) Pay the reactivation fee listed in OAR 852-010-0080 and the difference between the inactive and active status license renewal fees;

(c) Submit proof of continuing education hours equivalent to Oregon requirements for the previous licensing period;

(d) Submit documentation of current CPR certification, as required in OAR 852-80-0040;

(e) Submit proof of meeting the requirements of OAR 852 division 80 — Pharmaceutical Agents, for licensure with the non-topical certification (AT) or non-topical certification with injections (ATI), unless this information has been previously provided to the Board;

(f) Provide the Board's office with the address of the intended primary practice location in the state of Oregon, if known, or the mailing address to be printed on the license;

(g) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(h) Pass any required criminal background check; and

(i) Pass the Oregon optometric law and administrative rules examination if the applicant last held an active status license in Oregon more than two years before the date the Board confirms receipt of the completed application.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 2-1997, f. & cert. ef. 10-1-97; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 6-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0013
Uniformed Services

(1) No license renewal fees will be assessed while the licensee is on active duty with the Uniformed Services of the United States:

(a) As a courtesy, the Board will send annual renewal notices to the licensee's current reported address of record. To avoid being placed into

lapsed license status, the licensee must return a completed and signed renewal form with proof of active duty status to the Board within stated timelines;

(b) Licensees under this rule who are moved into lapsed status by the Board may be reinstated at no cost by meeting the requirements of this rule; and

(c) Nothing in this rule may be construed to waive any other reinstatement or reactivation requirements for Oregon licensure.

(2) Written notification to the Board is required within 60 days of the date of discharge in order to change the license to its former status without fee or penalty. If notification is received by the Board more than 60 days from the date of discharge, but within the license renewal period in which the discharge becomes effective, the license may be changed to its former status by paying all fees and penalties appropriate for a license of that status.

(3) If a licensed optometric physician fails to notify the Board in writing of the change of status within 60 days from the date of discharge, or within the license renewal period in which the discharge becomes effective, whichever is the longer period of time, that person must take an examination and pay the examination fee as required by ORS 683.060.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0014
Reinstatement of License

(1) A person who has been previously licensed by the Board may have the license reinstated to its former status if the person:

(a) Voluntarily surrendered the license to the Board and, at the time of surrender , was in good standing and not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board or

(b) The license was suspended due to nonpayment of the license renewal fee or late fee and, at the time of suspension, the licensee was not surrendering in lieu of discipline or under notice for proposed disciplinary action, or subject to a final order of the Board.

(2) To reinstate an Oregon Optometry license an optometric physician must:

(a) Submit a signed written request;

(b) Provide written confirmation sent directly from the licensing entity of each other state in which the applicant has ever been licensed that the applicant for licensure has not been sanctioned for violating the laws, rules or standards of ethics of that jurisdiction. In addition, the Board will query the National Practitioner Data Bank for adverse actions on each person making an application for licensure;

(c) Pass any required criminal background check;

(d) Pay delinquent fees as determined by the Board;

(e) Pay the reinstatement fee as listed in OAR 852-010-0080; and

(f) Submit documentation of current CPR certification, as required in OAR 852-80-0040;

(g) The requirements in (2)(b) and (2)(e) above may be waived by the Board if the license is not more than 60 days expired.

(3) Reinstatement of a license to active status also requires:

(a) Submission of a completed Reactivation Application form;

(b) Passage of the Oregon optometric law and administrative rules examination if it has been more than two years since the person held an active status license in Oregon; and

(c) Submission of proof of continuing education equivalent to Oregon requirements for the previous license renewal period.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.120, 683.270 & 182.466
Hist.: OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2001, f. 12-13-01, cert. ef. 1-1-02; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0016
Notice of Place of Practice

(1) Each active licensee must notify the Board in writing of each place of practice before engaging in practice at that location. If the licensee is practicing in a mobile facility or with a portable unit, the licensee must report the Base of Operations and specific locations of such practice to the Board in compliance with this rule.

(a) Within 14 days of termination of practice at any location, licensee must notify the Board in writing, including information on the custody of any patient records generated by the licensee at that location.

(b) Written notification from a licensee to the Board must be signed, and may be made by mail, fax or scanned e-mail attachment. Standard e-mail notification from the licensee's professional or personal e-mail will be accepted with an electronic signature that is composed of the licensee's full legal name and optometry license number, followed by the last four digits of the licensee's Social Security number.

(2) Failure to notify the Board in writing of practice location(s) and any address change(s) in accordance with (1) above subjects the licensee to fees listed in OAR 852-010-0080. .

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.070, 683.100, 683.120 & 683.270
Hist.: OP 2-1992, f. & cert. ef. 10-21-92; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 3-1998, f. 6-10-98, cert. ef. 7-1-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 1-2014, f. & cert. ef. 1-3-14; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0018
Official Address and Telephone Number of Record

(1) Each actively licensed optometric physician must notify the Board in writing of the licensee's primary practice location, which is recorded by the Board as the official address of record. All correspondence from the Board will be sent to the official address of record unless the licensee requests in writing that an alternate mailing address be used. Active licensees who do not have a primary practice location may provide the Board with a mailing address.

(2) Each inactive licensee must notify the Board in writing of a mailing address.

(3) Post office boxes are not acceptable as a mailing address unless a street address is included with it and it is able to receive certified mail and return receipts. (4) Each licensee (active or inactive) must provide a telephone number of record to the Board, which by default is disclosable to the public. Upon written request, the Board will hold the telephone number of record of a licensee confidential if it is a personal number not associated with a business.

(4) Each licensee (active or inactive) must provide a telephone number of record to the Board, which by default is disclosable to the public. Upon written request, the Board will hold the telephone number of record of a licensee confidential if it is a personal number not associated with a business.

(5) Failure to notify the Board in writing of a change in the licensee's official address or telephone phone number of record may subject the licensee to disciplinary action and a fee as listed in OAR 852-010-0080.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.070, 683.100, 683.120, 683.270 & 182.466
Hist.: OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0021
Nonprofit Services

An actively licensed doctor of optometry in Oregon who volunteers to provide professional services to a charitable nonprofit corporation may request the additional practice location license required for that location from the Board at no charge.

(1) Nonprofit corporation means a charitable corporation as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Optometry as providing optometric services by volunteer licensed doctors of optometry to populations with limited access to eye care at no charge or at a substantially reduced charge.

(2) "Voluntary basis" means working of one's own free will and without payment for services.

(3) Any entity that owns or operates a nonprofit charitable clinic that provides eye care services must name an actively licensed Oregon optometric physician as its vision services director who is subject to the provisions of ORS 683 and OAR 852. This director is responsible for the patient records on eye care services for the clinic.

(4) Any licensed optometric physician who works at a nonprofit clinic described in (1) above must:

(a) Display a portable multiple practice location license, and

(b) Comply with all other provisions of ORS 683 and OAR 852, including reporting start and end dates of providing services at any practice location.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k) & 182.466
Hist.: OPT 2-2005, f. & cert. ef. 4-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-050-0025
State Criminal Records Check and Fitness Determination

(1) The purpose of these rules is to provide for the reasonable screening of applicants and licensees to determine if they have a history of crim-

inal behavior such that they are not fit to be granted or to hold a license that has been issued by the Board.

(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.

(3) The Board may require criminal history of applicants for an initial licensure or renewal, licensees applying to reinstate or reactivate a lapsed license, or licensees under investigation to determine the fitness of an applicant or licensee. This information must be provided upon request as prescribed by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check, and to other sources deemed necessary to ensure public protection

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit, the licensee's license may not be renewed, reactivated, or reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license. Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime; and

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction.

(F) Any other information the Board deems relevant or necessary.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary such as but not limited to: proof of identity, residential history, names used while living at each residence, or additional criminal, judicial or other background information.

(8) Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(9) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and that is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(10) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon request from the applicant or licensee.

(11) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

Stat. Auth.: ORS 683, 182, 181, 676
Stat. Implemented: ORS 683.140; 683.270; 182.466; 181.534; 676.303
Hist.: OPT 7-2011, f. 6-24-11, cert. ef. 7-1-11; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-060-0025
Disciplinary Action

(1) When disciplining an optometric physician or any other person, the Oregon Board of Optometry may do any of the following:

(a) Deny an initial license;

(b) Suspend, refuse to renew or revoke a license;

(c) Impose probation on any licensee;

(d) Limit the practice of any licensee; and

(e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty, the assessment of a civil penalty not to exceed $10,000 for each violation, or both.

(2) The Board may discipline any optometric physician or person, where appropriate, for the following causes:

(a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometric physician. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had, is conclusive evidence of such conviction;

(b) Practicing optometry without a license;

(c) Securing a license by practicing fraud or deceit upon the Board;

(d) Unprofessional conduct;

(e) Gross ignorance or inefficiency in the practice of optometry;

(f) Failing to comply with the requirements of continuing education;

(g) Obtaining any fee by fraud or misrepresentation;

(h) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;

(i) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;

(j) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;

(k) Permitting another person to use the optometrist's license;

(l) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;

(m) Advertising professional methods or professional superiority;

(n) Violating the federal Controlled Substances Act;

(o) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;

(p) Failing to report to the Board within 10 calendar days any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;

(q) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action;

(r) Any violation of the provisions of ORS 683.010 to 683.335; or

(s) Practicing optometry in a location not reported to the Board.

(t) Failing to report the suspected prohibited or unprofessional conduct of another health care licensee to the appropriate board within 10 working days as required in ORS 676.150 and ORS 683.340.

(3) The Board must report all disciplinary action taken by the Board to the National Practitioner Data Bank.

Stat. Auth.: ORS 683, 182
Stats. Implemented: ORS 683.140, 683.180, 683.270 & 182.466
Hist.: OE 2, f. 12-5-57; OE 14, f. 2-20-73, ef. 3-1-73; OE 1-1979, f. & ef. 3-8-79; OE 2-1982, f. & ef. 3-18-82; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1992, f. & cert. ef. 10-21-92; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 1-2003, f. 6-12-03, cert. ef. 7-1-03; Renumbered from 852-010-0025, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-060-0027
Definition of Unprofessional Conduct

Unprofessional conduct within the meaning of ORS 683.140(1)(c) includes, but is not limited to:

(1) Any conduct or practice contrary to recognized standards of ethics of the optometric profession.

(2) Fraud, misrepresentation or dishonesty, including but not limited to:

(a) Advertising optometric services, treatments, or advice in which untruthful, improbable, misleading or deceitful statements are made.

(b) Misrepresenting any facts to a patient concerning treatments or fees.

(c) Making a false statement to the Board or to an agent of the Board.

(d) Willfully deceiving or attempting to deceive the Board, an employee of the Board, or an agent of the Board in any application or renewal, or in reference to any matter under investigation by the Board. This includes but is not limited to the omission, alteration or destruction of any records in order to obstruct or delay an investigation by the Board, or to omit, alter or falsify any information in patient or business records to avoid potential disciplinary action.

(3) Advertising professional methods or professional superiority, including using the term "board certified" without defining which board has provided the certification. [Note: As a licensing and regulatory agency, the Oregon Board of Optometry does not "board certify" optometric physicians.]

(4) Violations of ORS 676.110(5) (use of titles), which states, in part, that any person practicing optometry who uses the title "doctor," or any contraction thereof, "clinic," "institute," "specialist," or any other assumed name or title in connection with the profession, in all advertisements, professional notices, or any written or printed matter must add the word "optometrist" or the words "doctor of optometry" or "optometric physician."

(5) Aiding an unlicensed person in the practice of optometry.

(6) Permitting another person to use the optometrist's license

(7) Failure to train and directly supervise persons to whom optometric services have been appropriately delegated.

(8) Prescribing, dispensing or administering controlled substances outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(9) Habitual, excessive or unlawful use of intoxicants, drugs or controlled or mind-altering substances.

(10) Failing to keep complete and accurate records for a patient.

(11) Failing to retain patient records in an accessible print or electronic format.

(12) Failing to immediately give the prescription to the patient at the time the doctor would provide spectacles or contact lenses without additional examination.

(13) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose information.

(14) Failing make appropriate transfer of the custody of patient records.

(15) Obstruction and harassment, including but not limited to:

(a) The use of threats or harassment or to delay or to obstruct any person in providing evidence in any investigation, disciplinary action, or other legal action instituted by the Board.

(b) Conduct determined by the Board to be harassment of any complainant by the licensee or any member of the licensee's staff or practice, regardless of complaint case closure status.

(c) The use of threats, harassment, or any other conduct that obstructs or delays a member of the Board, a member of the Board's staff or a duly appointed agent of the Board in carrying out their functions under the Board's rules.

(d) The discharge of an employee based primarily on the employee's attempt to comply with or aid in the compliance of the Board's rules, or with the Board's enforcement activities.

(16) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to waiver of confidentiality privileges except attorney-client privilege.

(17) Making an agreement with a patient or person, or any person or entity representing patients or persons, or providing any form of consideration that would prohibit, restrict, discourage or otherwise limit a person's ability to file a complaint with the Oregon Board of Optometry; to truthfully and fully answer any questions posed by an agent or representative of the Board; or to participate as a witness in a Board proceeding.

(18) Failing to respond in writing to a Board request for information as required.

(19) Failing to provide the Board with requested patient records.

(20) Failing to appear before the Board at a time and place designated by the Board for such appearance.

(21) Failing to comply with a Board order.

(22) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(23) Failing to give timely written notification to the Board of any disciplinary action or sanction related to the practice of optometry by any licensing agency of any state.

(24) Failing to give written notification to the Board of any felony or misdemeanor convictions within 10 days of the conviction.

(25) Failure to timely report own or other licensee's suspected prohibited or unprofessional conduct, arrests or convictions as required by ORS 676.150, ORS 683.335, and ORS 683.340.(26) Conduct that could be construed as moral turpitude.

(26) Conduct that could be construed as moral turpitude.

(27) Sexual misconduct, including but not limited to:

(a) Sexual abuse: Includes conduct that constitutes a violation of any provision of ORS 163.305 through 163.479, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil or administrative litigation, or admitted or stipulated by the professional;

(b) Sexual Violation: Includes professional-patient sex, whether initiated by the patient or not, and engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, including, but not limited to: sexual intercourse; genital-to-genital contact; oral-to-genital contact; oral-to-anal contact; oral-to-oral contact except CPR; touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment or where the patient has refused or has withdrawn consent; encouraging the patient to masturbate in the presence of the professional or masturbation by the professional while the patient is present; and

(c) Sexual Impropriety: Includes any behavior, gestures, or expressions that are seductive or sexually demeaning to a patient of normal sensibilities; inappropriate procedures, including, but not limited to, disrobing or draping practices that reflect a lack of respect for the patient's privacy; inappropriate comments about or to the patient, including, but not limited to, making sexual comments about a patient's body or underclothing, making sexualized or sexually demeaning comments to a patient, inappropriate comments on the patient's or professional's sexual orientation, making comments about potential sexual performance during an examination or consultation; requesting the details of sexual history unless medically necessary; questioning or discussing sexual likes or dislikes; initiation by the professional of conversation regarding the sexual problems, preferences or fantasies of the professional or the patient; or kissing of a sexual nature.

Stat. Auth.: ORS 683, 182

Stats. Implemented: ORS 683.140, 683.270 & 182.466

Hist.: OP 1-1987, f. & ef. 4-30-87; OP 1-1991, f. & cert. ef. 4-12-91; OP 2-1992, f. & cert. ef. 10-21-92; OP 1-1993, f. & cert. ef. 2-10-93; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-2000, f. 4-28-00, cert. ef. 5-1-00; OPT 3-2000, f. 6-26-00, cert. ef. 7-1-00; OPT 2-2002, f. & cert. ef. 12-18-02; OPT 1-2005, f. & cert. ef. 2-23-05; Renumbered from 852-010-0027, OPT 4-2005, f. & cert. ef. 12-8-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0010

Requirement of Continuing Optometric Education (CE)

The Oregon Board of Optometry is committed to ensuring the continuing education of its licensees for the protection, safety and wellbeing of the public. Continuing education is required to maintain and advance the professional skills and abilities of licensees and to educate optometric physicians in the application and use of new techniques, scientific and clinical advances and the achievements of research to ensure expansive and comprehensive care to the public.

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward approved excess CE hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease (TMOD).

(3) Optometric physicians must complete one hour of approved credit for an optometric ethics or Oregon law course every other license year, regardless of credits carried forward under (1) of this section. Licensees may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry.

(4) One hour of approved cultural competency continuing education may be used toward satisfying the required number of non-TMOD hours each license year.

(5) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(6) The required hours of continuing education used to meet the CE requirement each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted for credit in the same license renewal period, credit will be given for only one.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.270, 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1978, f. & ef. 1-25-78; OE 1-1984, f. & ef. 1-13-84; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f. 12-29-99, cert. ef. 1-1-00; OPT 1-2001, f. 6-18-01, cert. ef. 7-1-01; OPT 2-2003, f. 9-15-03, cert. ef. 1-1-04; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0016
Continuing Optometric Education Not Required for Inactive Licenses

(1) Those licensees who have been granted inactive status by the Board are not required to complete the continuing optometric education requirement in OAR 852-070-0010.

(2) If an inactive licensee applies to change to active status, the licensee must comply with OAR 852-070-0010 for the continuing education license year previous to the year in which active status is granted by the Board.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0020
Application for Credit

Each continuing education offering must be approved by the Board in order for an optometric physician to obtain credit. Upon application the Board may:

(1) Grant credit, to the extent determined by it, for any course, or individual or group study deemed suitable to carry out the purposes of ORS 683.210. To be granted credit, any course offering must be open to all optometric physicians licensed in Oregon.

(2) Grant credit, to the extent determined by it, for publication of articles and papers of scientific and educational interest published in recognized scientific publications.

(3) Grant credit, to the extent determined by it, for courses that relate to the maintenance or advancement of professional skills and abilities. Courses that relate primarily to practice management or jurisprudence will not be granted credit.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210 & 683.270
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1979, f. & ef. 10-29-79; OE 2-1983, f. & ef. 2-22-83; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 1-1989, f. 1-13-89, cert. ef. 1-16-89; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0025
Credit for Conducting Course or Presenting Material

Any optometric physician who prepares and presents a continuing education course approved for credit by the Board is entitled to three hours of continuing education credit for each credit hour of the initial presentation of the course. No credit will be given for repeat presentations unless application for credit has been filed in advance with the Board and appropriate evidence submitted that additional study or research was necessary for such additional presentation. The Board may then grant, to the extent deemed suitable by it, credit for the additional presentation.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0030
CE Requirements for Applicants and First-Time Renewals

(1) Applicants must meet the requirements for continuing education for initial licensure based on when they graduated from optometry school:

(a) Applicants who submit completed applications and are licensed less than one year after graduation from optometry school are not required to submit continuing education for initial licensure.

(b) Applicants receiving initial licensure one year or more after graduation from optometry school must submit required continuing education to receive initial licensure.

(2) All active status licensees must submit continuing education for their first license renewal that falls one year or more after graduation from optometry school.

Stat. Auth.: ORS 182 & 683
Stats. Implemented: ORS 683.210 & 182.466
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 2-1984, f. & ef. 7-14-84; OP 1-1987, f. & ef. 4-30-87; OP 2-1994, f. & cert. ef. 7-22-94; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2005, f. & cert. ef. 2-23-05; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0035
Responsibility to Notify Board

(1) Each active licensee must notify the Board of Optometry in writing of completion of the required hours of approved continuing education credits as part of the license renewal.

(2) Notification for at least the total number of required hours must be submitted at one time.

(3) If sufficient proof of continuing education is not received by the Board by the license year renewal period deadline, the license will not be renewed until the continuing education deficiency is made up in a manner acceptable to and approved by the Board.

(4) Licensees must submit original certificates of attendance or other proof of attendance acceptable to the Board.

(5) Any licensee who has completed the required continuing optometric education course work by the license year renewal period but fails to meet the submission deadline is subject to a late fee as listed in OAR 852-010-0080.

Stat. Auth.: ORS 683
Stats. Implemented: ORS 683.210
Hist.: OE 16, f. 2-11-74, ef. 3-11-74; OE 1-1984, f. & ef. 1-13-84; OP 1-1987, f. & ef. 4-30-87; OP 3-1993, f. & cert. ef. 10-27-93; OPT 2-1998, f. 6-10-98, cert. ef. 6-15-98; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-070-0055
Continuing Optometric Education Provided by Outside Entities

(1) All continuing optometric education provided by other organizations (non-COPE) must be submitted to the Board for approval before credit will be granted. Persons submitting courses for credit review must allow at least 30 days for the review. Renewing active status licensees may not count a course toward meeting the continuing education requirement before it is approved by the Board.

(2) Approval or denial of the continuing optometric education will be based on course:

(a) Relevance to modern optometric practice;

(b) Provision of skills or information which can translate to improved patient care;

(c) Content being recognized and accepted as sound scientific thought;

(d) Provision of heightened content standards needed by optometric physicians; and

(e) Presenter(s) credentials, as evidenced by a submitted curriculum vitae and an academic degree or combination of academic achievement and special expertise acceptable to the Board.

(3) The Board may accept continuing optometric education courses that have been approved by other organizations. This acceptance will be in accordance with the standards set by the Board.

(4) Courses acceptable to the Board for continuing education credit must be at least one half-hour in length, must be proctored for attendance, and the sponsor must provide original source documentation of successful completion to the attendee. Additional credits must be in half-hour increments.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.140, 683.210 & 182.466
Hist.: OP 1-1996, f. 6-27-96, cert. ef. 7-1-96; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2009, f. 6-10-09, cert. ef. 7-1-09; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

852-080-0040
Certification to Use Pharmaceutical Agents

(1) Inactive Status Topical TPA Certification (T): Any inactive status optometric physician licensed in Oregon who seeks TPA certification must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed a 100-hour TPA course approved by the Board;

(b) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for topical TPA certification; and

(c) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents."

(2) Active Status Nontopical TPA Certification (AT): Before using nontopical therapeutic pharmaceutical agents as listed in this rule, any active status optometric physician in Oregon seeking AT certification must submit a completed application and:

(a) Meet Topical TPA Certification;

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification:

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(B) Documentation of CPR certification is due with the licensee's annual license renewal as required in OAR 852-050-0006; and

(C) Any licensee whose CPR certification lapses at any time in the licensing year is subject to a late CPR fee as listed in OAR 852-010-0080.

(3) Inactive Status Nontopical TPA Certification (AT): Any inactive status optometric physician licensed in Oregon who seeks AT certification must submit a completed application and:

(a) Meet all criteria for Topical TPA Certification in OAR 852-080-0040(1);

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(c) Pay a the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(e) Acquire Board-approved CPR certification designed for professional healthcare providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(4) Active Status Nontopical TPA Certification with Injections (ATI): Before using nontopical therapeutic pharmaceutical agents as listed in this rule, any active status optometric physician in Oregon seeking ATI certification must submit an application and:

(a) Pass a Board-approved Nontopical TPA course of at least 23 hours or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire and maintain Board-approved CPR certification designed for professional health care providers. The CPR certification standard is the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial CPR course must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification;

(A) After the initial CPR certification, the Board will accept a Board-approved BLS Healthcare Providers Online Renewal course for license renewal. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires;

(B) Documentation of CPR certification is due with the licensee's annual license renewal as indicated in OAR 852-050-0006;

(C) Any licensee whose CPR certification lapses at any time in the licensing year is subject to a late CPR fee as listed in OAR 852-010-0080.

(5) Inactive Status Nontopical TPA Certification with Injections (ATI): Any inactive status optometric physician licensed in Oregon who seeks ATI certification must submit an application and:

(a) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) year 2002 or subsequent examination;

(b) Pass a Nontopical TPA injection workshop of at least seven hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(c) Pay the TPA examination and licensure fee as listed in OAR 852-010-0080 for nontopical TPA certification;

(d) Obtain a license from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents with Injections"; and

(e) Acquire Board-Approved CPR certification designed for professional healthcare providers. The CPR certification must be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This initial certification must be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. A CPR certification card with an expiration date must be received from the CPR provider as documentation of CPR certification. The Board considers the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires. Inactive status licensees are not required to maintain CPR certification after initial TPA certification.

Stat. Auth.: ORS 683 & 182
Stats. Implemented: ORS 683.270 & 182.466
Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 2-1999, f.12-29-99, cert. ef.1-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 3-2003, f. 9-15-03, cert. ef. 10-1-03; OPT 3-2004, f. 9-24-04, cert. ef. 10-1-04; OPT 2-2005, f. & cert. ef. 4-8-05; OPT 2-2006, f. 3-20-06, cert. ef. 4-1-06; OPT 4-2006, f. & cert. ef. 8-2-06; OPT 1-2007, f. 5-21-07, cert. ef. 7-1-07; OPT 1-2013, f. & cert. ef. 1-3-13; OPT 2-2014, f. 11-28-14, cert. ef. 1-1-15

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Board of Pharmacy
Chapter 855

Rule Caption: Amends Division 044 Charitable Pharmacy records rules.
Adm. Order No.: BP 9-2014
Filed with Sec. of State: 12-4-2014
Certified to be Effective: 12-4-14
Notice Publication Date: 11-1-2014
Rules Amended: 855-044-0070
Subject: Amendments made to the Division 044 Charitable Pharmacy rules establish a waiver clause in the records section.
Rules Coordinator: Karen MacLean—(971) 673-0001

855-044-0070
Records

(1) A charitable pharmacy must maintain a donation record of all drugs received that includes:

(a) Donor's name and address;

(b) Drug manufacturer, lot number, name and strength;

(c) Drug quantity;

(d) Expiration date of the drug;

(e) Date donated; and

(f) The unique identifier.

(2) A charitable pharmacy must maintain a distribution and dispensing record that includes:

(a) Drug name and strength;

(b) Quantity distributed;

(c) Name of manufacturer;

(d) Lot number and expiration date;

(e) Date of distribution or dispensing;

(f) Name and address of recipient.

(3) A charitable pharmacy must maintain a record of all drugs that are destroyed.

(4) In addition to the above records, a charitable pharmacy must cross-reference the donation record and the distribution and dispensing record with the appropriate donor and recipient forms.

(5) A charitable pharmacy must make an annual report to the Board by completing a form provided by the Board and submitting it with their application for renewal of registration.

(6) All records required by these rules must be retained for three years and made available to the Board upon request.

(7) Upon written request the Board may waive any of the requirements of this rule if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.774
Hist.: BP 6-2010, f. & cert. ef. 6-29-10; BP 9-2014, f. & cert. ef. 12-4-14

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Changes the educational requirements for psychologist and psychologist associate licensure.
Adm. Order No.: BPE 4-2014
Filed with Sec. of State: 11-17-2014
Certified to be Effective: 11-17-14
Notice Publication Date: 9-1-2014
Rules Amended: 858-010-0010, 858-010-0015
Subject: This amendment changes the educational requirements for psychologist licensure by modifying the definition of approved doctoral program in psychology. The Board will phase out its acceptance of doctoral degrees in psychology from programs at regionally accredited or provincially/territorially chartered institutions but which are not accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA). Degrees from programs at regionally accredited institutions will qualify only if 1) the applicant enrolled in his or her program prior to July 22, 2014 and applies by July 22, 2019; or 2) the program submitted an application to the APA or CPA for accreditation prior to the date the applicant's degree was conferred, and has been granted a site visit by the APA or CPA. The amendment adds a requirement of one continuous year in-residence at the master's program as a qualification for licensure as a psychologist associate. There are some clarifying language changes as well.
Rules Coordinator: LaRee Felton—(503) 373-1196

858-010-0010
Education Requirements — Psychologist

To meet the education requirement of ORS 675.030(1), applicants for licensure must possess a doctoral degree in psychology from an approved doctoral program in psychology, as set forth below:

(1) A program accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA) as of the date the degree was conferred; or

(2) A program at an institution of higher learning that was accredited by a regional accrediting agency as of the date the degree was conferred, if the program submitted an application to the APA or CPA for accreditation prior to the date the degree was conferred and has been granted a site visit by the APA or CPA. The program must not have withdrawn its APA or CPA accreditation application or have been denied accreditation as of the date the licensure applicant enrolled in the program; or

(3) Effective through July 22, 2019: A program at an institution of higher learning that was accredited by a regional accrediting agency as of the date the degree was conferred, if the applicant can verify their enrollment in the program prior to July 22, 2014; or

(4) A foreign program that has been evaluated by a credentialing body recognized by the Board. Submission of foreign degree evaluation and cost of the foreign degree qualification determination are the responsibility of the applicant.

(5) An applicant who possesses a degree under section (3) or (4) must show that his or her doctoral program in psychology meets all of the following requirements:

(a) A minimum of three academic years of full-time graduate study.

(b) A minimum of one continuous year in-residence at the institution from which the degree is granted.

(A) One continuous year means two consecutive semesters or three consecutive quarters.

(B) In-residence means physical presence, in person, at an educational institution or training facility in a manner that facilitates acculturation into the profession, the full participation and integration of the individual in the educational and training experience, and includes faculty and student interaction.

(C) The doctoral program may include distance education, but a minimum of one continuous year of the program shall be in-residence. Programs that use physical presence, including face-to-face contact for durations of less than one continuous year, (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution do not meet the in-residence requirement.

(D) Effective through August 12, 2015, applicants who can verify that they enrolled in their program prior to August 12, 2011 may apply under the "old rule" definition of in-residence. Under this provision, one continuous year means a minimum of 500 hours of student-faculty contact involving face-to-face individual or group educational meetings. Such educational meetings must include both faculty-student and student-student interaction, be conducted by the psychology faculty of the institution at least 90 percent of the time, be documented by the applicant and the institution, and relate substantially to the program components specified. Items such as receptions, meals, group socials and library tours may not count towards the minimum 500 hours of educational meetings. Applicants applying under this provision shall submit full documentation that they have met this requirement, which must include a detailed description of the content of the 500 hours of educational meetings and be verified by the administration of the doctoral program.

(c) The program, wherever it may be administratively housed, must be clearly identified and labeled as a program in psychology. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

(d) The psychology program must stand as a recognizable, coherent organizational entity within the institution.

(e) There must be a clear authority and primary responsibility for the core and specialty areas, whether or not the program cuts across administrative lines.

(f) The program must be an integrated, organized sequence of study.

(g) There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities and a psychologist responsible for the program.

(h) The program must have an identifiable body of students who are matriculated in that program for a degree.

(i) The program must include a coordinated, sequential and supervised practicum appropriate to the practice of psychology as described in OAR 858-010-0012.

(j) The program must include a coordinated, sequential and supervised internship, field or laboratory training appropriate to the practice of psychology as described in OAR 858-010-0013.

(k) The curriculum of the program must:

(A) Encompass a minimum of three academic years of full time graduate study, including a minimum of one continuous year in residence at the educational institution granting the doctoral degree;

(B) Require an original dissertation or equivalent that was psychological in nature that meets the requirement for an approved doctoral program; and

(C) Include at least 30 semester hours or 45 quarter hours of credit in graded (not "pass-no pass") courses.

(l) The core program shall include a minimum of three graduate semester hours or 4.5 or more graduate quarter hours (when an academic term is other than a semester, credit hours will be evaluated on the basis of 15 hours of classroom instruction per semester hour) in each of the following substantive content areas:

(A) Scientific and professional ethics and standards;

(B) Research design and methodology;

(C) Statistics;

(D) Psychometric theory;

(E) Biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, physical ergonomics, or psychopharmacology;

(F) Cognitive-affective bases of behavior such as learning, thinking, motivation, emotion, memory, cognitive information processing, or social cognition;

(G) Social bases of behavior such as social psychology, group processes, organizational and systems theory; and

(H) Individual differences in behavior such as personality theory, human development, personnel psychology or abnormal psychology.

(m) All professional education programs in psychology must include course requirements in developed practice areas/specialties.

(n) The program must demonstrate that it provides training relevant to the development of competence to practice in a diverse and multicultural society.

(o) Demonstration of competence in clinical psychology shall be met by a minimum of 18 graduate semester hours or 27 graduate quarter hours in the following areas: personality and intellectual assessment, diagnosis, therapeutic intervention, and evaluating the efficacy of intervention.

(p) If the program does not meet the core and/or clinical coursework requirements of (l) and (o), the applicant for licensure may remedy a deficiency of up to 6 semester hours or 9 quarter hours by completing graduate level coursework in the deficient content area(s) at a regionally accredited institution.

(6) Provide syllabi or other documentation regarding course content upon the Board's request.

Stat. Auth.: ORS 675.030

Stats. Implemented: ORS 675.030(1)(b)(c)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1992, f. & cert. ef. 1-16-92; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 1-2012(Temp), f. & cert. ef. 2-15-12 thru 8-12-12; BPE 2-2012, f. & cert. ef. 6-8-12; BPE 3-2012(Temp), f. & cert. ef. 10-15-12 thru 4-13-13; BPE 1-2013, f. & cert. ef. 2-5-13; BPE 2-2013, f. & cert. ef. 7-15-13; BPE 3-2013, f. & cert. ef. 9-30-13; BPE 4-2014, f. & cert. ef. 11-17-14

858-010-0015

Education Requirements — Psychologist Associate

(1) To meet the education requirement of ORS 675.065(4)(c), an applicant must possess a master's degree in psychology from a program at an institution of higher learning that was accredited by a regional accrediting agency at the graduate level as of the date the degree was awarded, or for Canadian universities, an institution of higher education that was provincially or territorially chartered.

(2) The master's program must include at least 45 quarter hours or 30 semester hours of graduate credit, 30 quarter hours or 20 semester hours of which must be in graded (not "pass–no pass") courses. Hours must be from at least five of the basic areas of psychology including:

(a) Experimental psychology; Learning theory; Physiological psychology; Motivation; Perception; Comparative psychology; Statistical methods; Design of research; Developmental psychology; Individual differences; Social psychology; Organizational psychology; Personality theory; Abnormal psychology; and

(b) A minimum of one graduate level course in ethics; and

(c) A minimum of one graduate level course in psychological tests and measurements.

(3) If the master's program does not meet the coursework requirements of (2), the applicant for licensure may remedy a deficiency of up to one course or 3 semester hours or 4.5 quarter hours by completing graduate level coursework in the deficient content area at a regionally accredited institution.

(4) Effective July 26, 2016: The master's program must have included a minimum of one continuous year in-residence at the institution from which the degree is granted.

(a) One continuous year means two consecutive semesters or three consecutive quarters.

(b) In-residence means physical presence, in person, at an educational institution or training facility in a manner that facilitates acculturation into the profession, the full participation and integration of the individual in the educational and training experience, and includes faculty and student interaction.

(c) The master's program may include distance education, but a minimum of one continuous year of the program shall be in-residence. Programs that use physical presence, including face-to-face contact for durations of less than one continuous year, (e.g., multiple long weekends and/or summer intensive sessions) or that use video teleconferencing or other electronic means as a substitute for physical presence at the institution do not meet the in-residence requirement.

Stat. Auth.: ORS 675.065

Stats. Implemented: ORS 675.065(1)(4)(c)

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1979, f. & ef. 9-5-79; PE 1-1989(Temp), f. & cert. ef. 2-24-89; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1989(Temp), f. & cert. ef. 9-7-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 1-1993(Temp), f. & cert. ef. 2-12-93; PE 3-1993, f. & cert. ef. 4-13-93; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1995, f. & cert. ef. 2-16-95; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-2001(Temp), f. & cert. ef. 8-31-01 thru 2-27-02; BPE 1-2002(Temp), f. 1-28-02, cert. ef. 1-31-02 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 2-2012, f. & cert. ef. 6-8-12; BPE 3-2012(Temp), f. & cert. ef. 10-15-12 thru 4-13-13; BPE 1-2013, f. & cert. ef. 2-5-13; BPE 4-2014, f. & cert. ef. 11-17-14

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Rule Caption: One-time license renewal fee reduction for psychologists and psychologist associates pursuant to ORS 291.055(3).

Adm. Order No.: BPE 5-2014

Filed with Sec. of State: 11-17-2014

Certified to be Effective: 11-17-14

Notice Publication Date: 9-1-2014

Rules Amended: 858-030-0005

Subject: This amendment temporarily reduces license renewal fees for psychologists and psychologist associates. It modifies fees as follows: active status will be reduced from $750 to $255; semi-active status will be reduced from $375 to $127.50; and inactive status will be reduced from $100 to $34. The reduction is effective from January 1, 2015 through December 31, 2016 such that all licensees in a biennial birth month renewal schedule will receive a one-time reduction. On January 1, 2017, fees will return to the prior level.

Rules Coordinator: LaRee Felton—(503) 373-1196

858-030-0005

Application, Examination and Licensing Fees

(1) Application: $300.

(2) Jurisprudence Examination: $150.

(3) License Fees:

(a) The license renewal fee for an active psychologist and psychologist associate shall be calculated on an annual amount of $375 and paid on a biennial amount of $750. Effective for renewals due January 1, 2015 through December 31, 2016, the active license fee shall be temporarily reduced for licensees who renew by the stated due date to an annual amount of $127.50 and paid on a biennial amount of $255.

(b) The license renewal fee for a semi-active psychologist and psychologist associate shall be calculated on an annual amount of $187.50 and paid on a biennial amount of $375. Effective for renewals due January 1, 2015 through December 31, 2016, the semi-active license fee shall be temporarily reduced for licensees who renew by the stated due date to an annual amount of $63.75 and paid on a biennial amount of $127.50.

(c) The license renewal fee for an inactive psychologist and psychologist associate shall be calculated on an annual amount of $50 and paid on a biennial amount of $100. Effective for renewals due January 1, 2015 through December 31, 2016, the inactive license fee shall be temporarily reduced for licensees who renew by the stated due date to an annual amount of $17 and paid on a biennial amount of $34.

(d) Effective for the renewal periods beginning January 1, 2010, the Board will phase in the implementation of a two year license on a birth month renewal schedule.

(e) The Board shall impose a delinquency fee of $200 for licenses renewed within thirty days after the stated due date.

(f) The Board shall have discretion to waive the delinquency fee in hardship cases.

(4) Limited Permit: $100.

(5) Miscellaneous Fees. Most materials and information are available through the Board website at www.oregon.gov/obpe or may be purchased in accordance with ORS 192.440(2).

(a) Certified verification of licensure: $5.

(b) Certified transfer of application information: $20.

(c) Student loan deferment letter: $5.

(d) Duplicating request: $2.50 for the first five copies; $.25 for each copy thereafter.

(e) Laws and administrative rules: $5.

(f) Electronic file of mailing labels: $35.

(g) Application packet, including laws and administrative rules: $10.

(h) Duplicate wall display certificate of licensure: $12.

(i) Certified duplicate license: $10.

(j) Cumulative disciplinary report: $7.50.

Stat. Auth.: ORS 675.110 & 675.115

Stats. Implemented: ORS 675.110 & 675.115

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 7, f. 10-21-74, ef. 11-11-74; PE 9, f. 2-3-75, ef. 2-25-75; PE 1-1978, f. & ef. 9-5-78; PE 1-1979, f. & ef. 9-5-79; PE 2-1980, f. & ef. 9-23-80; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 1-1983, f. & ef. 11-1-83; PE 2-1989, f. & cert. ef. 5-24-89; PE 3-1992, f. & cert. ef. 7-14-92; PE 2-1993(Temp), f. &

cert. ef. 3-18-93; PE 4-1993, f. & cert. ef. 7-19-93; Renumbered from 858-010-0060; PE 5-1993, f. & cert. ef. 10-6-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 1-1999(Temp), f. & cert. ef. 3-2-99 thru 7-1-99; BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2000, f. 9-7-00, cert. ef. 10-15-00; BPE 2-2001(Temp), f. 8-31-01, cet. ef. 10-12-01 thru 2-27-02; BPE 3-2001(Temp), f. & cert. ef. 10-12-01 thru 2-27-02; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2009(Temp), f. 9-29-09, cert. ef. 10-1-09 thru 12-31-09; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 3-2013, f. & cert. ef. 9-30-13; BPE 5-2014, f. & cert. ef. 11-17-14

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Rule Caption: Clarifies post-doctoral supervised work experience requirements.
Adm. Order No.: BPE 6-2014
Filed with Sec. of State: 11-17-2014
Certified to be Effective: 11-17-14
Notice Publication Date: 9-1-2014
Rules Amended: 858-010-0036
Subject: This amendment makes clarifications to the post-doctoral supervised work experience requirements for licensure as a psychologist. The change specifies that the 24 month time limit on the psychologist licensure requirement statutory exemption under ORS 675.090(2)(a) does not restart or reset. The amendment also reorganizes some content for clarity and makes other helpful language changes.
Rules Coordinator: LaRee Felton—(503) 373-1196

858-010-0036
Post-Doctoral Supervised Work Experience

(1) Policy. One year of post-doctoral supervised work experience is required for licensure. The required work experience must take place after the doctorate degree is conferred.

(a) One year of supervised work experience is defined as 1,500 hours of psychological services performed over a period not less than twelve months.

(b) Psychological services are defined as direct psychological services to an individual or group; diagnosis and assessment; completing documentation related to services provided; client needs meetings and consultation; psychological testing; research related to client services; report writing; and receiving formal training including workshops and conferences.

(c) For the purposes of licensure, psychological services do not include business development; credentialing activities; marketing; purchasing; creating forms; administrative billing or other business management activities.

(d) A person with a doctoral degree in psychology who is employed at an "exempt site" pursuant to ORS 675.090(f) may practice psychology without a license for no more than 24 months from the time they begin practicing at an exempt site. The 24-month time limit does restart if the person ceases practicing and then begins again, and does not reset if the person begins working at a different exempt site.

(2) The following shall be used by the Board to define supervised work experience.

(a) Unless exempted from ORS 675.010 to 675.150, in order to obtain postdoctoral supervised work experience in Oregon, the candidate for licensure must be in a Board approved Resident Supervision Contract.

(b) Work experience completed in Oregon must be performed under the supervision of an Oregon licensed psychologist who has been licensed for at least two years in Oregon or in a jurisdiction with licensing standards comparable to Oregon.

(c) To receive supervised work experience credit from other jurisdictions, the experience must be a formal arrangement under the supervision of a psychologist who has been licensed for at least two years in a jurisdiction with licensing standards comparable to Oregon.

(d) The supervisor is not required to be working on-site with the resident.

(e) Frequency:

(A) If a resident works 1–20 hours in a week, the resident must at least one hour of individual face-to-face supervision during that week.

(B) If a resident works more than 20 hours in a week, the resident must receive at least two hours of supervision during that week. One hour must be individual and one hour may be group supervision. Group supervision must be:

(i) A formal and on-going group of at least three mental health professionals;

(ii) Facilitated by a licensed psychologist; and

(iii) Approved by the resident's supervisor.

(C) On a non-routine basis, in the absence of the primary supervisor, individual one-on-one supervision hours may be delayed up to 14 days to accommodate vacations, illness, travel or inclement weather.

(D) Non-routine individual supervision may occur by electronic means when geographical distance, weather or emergency prohibit a face-to-face meeting.

(E) If a resident's work in a particular week does not comply with these requirements, then it may not be counted towards the supervised work experience requirement.

(3) Candidates for licensure shall be eligible to enter into a Resident Supervision Contract as described in subsection (2)(a) of this rule.

(a) Resident status shall begin the date the Board approves the Resident Supervision Contract.

(b) Duration. The resident status is a transitional step toward licensure and is not intended as a means to avoid licensure. A Resident Supervision Contract shall be effective for a period not to exceed two years from the date of Board approval. The Board may extend the contract beyond two years for good cause upon a written request from the resident and the supervisor prior to the expiration of the contract. Failure to receive a courtesy reminder notice from the Board shall not relieve the resident of the responsibility to timely request an extension.

(c) Termination of a Resident Supervision Contract will be granted by the Board at the written request of the supervisor or the resident. The termination shall be effective at the time the Board approves the request in writing, or on the date indicated by the supervisor in the final residency evaluation, whichever is later.

(d) If the supervisor is to be paid for supervision payment must be in the form of a per-hour fee.

(e) Supervision of more than three residents concurrently shall require prior approval by the Board.

(4) Resident's Responsibilities. The resident's conduct must conform to the following standards:

(a) Title. The resident must be designated at all times by the title "psychologist resident." All signed materials, letterhead, business cards, telephone directory listings, internet postings, brochures, insurance billing and any other public or private representation must include the individual's title as "psychologist resident" and the supervisor's name and designation "supervisor."

(b) Scope of Practice. The resident will only offer services in those areas that the supervisor is competent.

(c) Nature of Supervision. The resident must obtain frequent and regular supervision meetings throughout the duration of the Resident Supervision Contract. The resident must provide the supervisor with a periodic evaluation of all cases and psychological activities in which the resident is engaged. The resident's practice must comply with Oregon laws and administrative rules.

(d) Confidentiality. The resident must advise all clients orally and in their informed consent policy that the supervisor may have access to all information and material relevant to the client's case.

(e) Promptly communicate to the Board any significant interruption or expected termination of the Resident Supervision Contract.

(f) The resident must discuss with their supervisor the Supervisor Evaluation Report at the conclusion or termination of the Resident Supervision Contract.

(5) The supervisor's responsibilities are:

(a) Review, supervise and evaluate representative and problem cases with attention to diagnostic evaluation, treatment planning, ongoing case management, emergency intervention, recordkeeping and termination;

(b) Countersign all psychological reports and professional correspondence produced by the resident; and ensure that letterhead, business cards, telephone directory listings, internet postings, brochures, insurance billing and any other public or private representation includes the appropriate title of "psychologist resident" or "psychologist associate resident" and the supervisor's name and designation as "supervisor."

(c) Review with the resident, Oregon laws and administrative rules related to the practice of psychology, including the current APA "Ethical Principles of Psychologists and Code of Conduct," professional relationships and referrals, protection of records, billing practices, recordkeeping and report writing;

(d) Assist the psychologist resident in developing a plan to prepare for the national written exam and the Oregon jurisprudence examination;

(e) Promptly communicate to the Board any professional or ethical concerns regarding the resident's conduct or performance;

(f) Notify the Board within fourteen days and explain any significant interruption or expected termination of the Resident Supervision Contract;

(g) Ensure that the resident has access to supervision by telephone to discuss urgent matters, if the supervisor is unavailable during a period not to exceed fourteen days;

(h) Create and maintain for at least three years a record of hours of supervision and notes for each supervision session contemporaneously as supervision occurs, and provide it to the Board within fourteen days of request;

(i) Provide the Board with an interim Resident Evaluation Report upon request; and

(j) Provide the Board with a final Resident Evaluation Report at the conclusion or termination of the Resident Supervision Contract.

(6) Associate Supervisor. Any supervision of the resident by a person other than the primary supervisor must be identified in the Resident Contract and approved by the Board.

(a) The associate supervisor is responsible for providing supervision as described in section (5) of this rule in the event that the primary supervisor is unavailable for any reason; and

(b) The associate supervisor is responsible for reporting professional or ethical concerns regarding the resident's conduct or performance to the primary supervisor and the Board.

Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110
Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110
Hist.: PE 1-1988, f. & cert. ef. 7-25-88; PE 1-1990, f. & cert. ef. 2-16-90; PE 1-1991, f. & cert. ef. 4-3-91; PE 2-1991, f. 8-15-91, cert. ef. 8-16-91; PE 4-1993, f. & cert. ef. 7-19-93; PE 1-1996, f. & cert. ef. 6-25-96; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 2-2011, f. & cert. ef. 5-31-11; BPE 3-2011, f. & cert. ef. 9-27-11; BPE 2-2012, f. & cert. ef. 6-8-12; BPE 3-2013, f. & cert. ef. 9-30-13; BPE 1-2014, f. & cert. ef. 3-24-14; BPE 6-2014, f. & cert. ef. 11-17-14

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amending leave rules to conform with federal and state law and clarify key definitions.
Adm. Order No.: BLI 14-2014(Temp)
Filed with Sec. of State: 11-20-2014
Certified to be Effective: 11-20-14 thru 5-15-15
Notice Publication Date:
Rules Amended: 839-009-0210, 839-009-0340
Subject: Amending leave rules to conform with federal and state law and clarify key definitions.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-009-0210
Definitions: OFLA

(1) "Alternate duty" means work assigned to an employee that may consist of:

(a) The employee's same duties worked on a different schedule; or

(b) Different duties worked on the same or different schedule.

(2) "Child," for the purpose[s] of parental leave only (not for the purposes of serious health condition leave, sick child leave or leave for the death of a family member under ORS 659A.159(1)(e)), means a biological, adopted, foster or stepchild, the child of an employee's same-gender domestic partner or a child with whom the employee is or was in a relationship of in loco parentis. The child must be:

(a) Under the age of 18; or

(b) An adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4).

(3) "Covered employer" means any employer employing 25 or more persons in the state of Oregon for each working day during each of 20 or more calendar work weeks in the year in which the leave is to be taken or in the year immediately preceding the year in which the leave is to be taken.

(4) "Domestic partner" means an individual joined in a domestic partnership.

(5) "Domestic partnership" for the purposes of ORS chapter 659A means two individuals of the same sex who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with ORS 432.173 and rules adopted by the State Registrar of the Center for Health Statistics.

(6) "Eligible employee" means an employee employed in the state of Oregon on the date OFLA leave begins. For eligibility of employees reemployed following a period of uniformed service, see subsections (c) and (d) of this section.

(a) For the purpose of taking parental leave, an employee must be employed by a covered employer for at least 180 calendar days immediately preceding the date on which OFLA leave begins.

(b) For purposes of taking all other types of OFLA leave, including pregnancy disability leave, an employee must have worked for a covered employer for an average of at least 25 hours per week during the 180 calendar days immediately preceding the date OFLA leave begins.

(A) In determining that an employee has been employed for the preceding 180 calendar days, the employer must count the number of days an employee is maintained on the payroll, including all time paid or unpaid. If an employee continues to be employed by a successor in interest to the original employer, the number of days worked are counted as continuous employment by a single employer.

(B) In determining 25 hours average per week, the employer must count actual hours worked using guidelines set out pursuant to the federal Fair Labor Standards Act. (See 29 CFR §785).

(c) The federal Uniformed Services Employment and Reemployment Act, 38 USC §43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. U.S. Department of Labor regulation 20 CFR §1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute. Under USERRA, a reemployed service member would be eligible for leave under OFLA if the number of days and the number of hours of work for which the service member was employed by the civilian employer, together with the number of days and number of hours of work for which the service member would have been employed by the civilian employer during the period of uniformed service, meet OFLA's eligibility requirements. In the event that a service member is denied OFLA leave for failing to satisfy the OFLA days and hours of work requirement due to absence from employment necessitated by uniformed service, the service member may have a cause of action under USERRA but not under OFLA.

NOTE: USERRA also applies to leave under the federal Family and Medical Leave Act of 1993, 29 USC §2601-2654 (FMLA).

(d) ORS 659A.082–659A.088 provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. In determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. If a reemployed service member was eligible for leave under OFLA prior to the date uniformed service began, OFLA's eligibility requirements are considered met.

(e) For the purpose of qualifying as an eligible employee, the employee need not work solely in the state of Oregon.

(7) "Family member" for purposes of serious health condition leave, sick child leave or leave for the death of a family member means the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of in loco parentis. It also includes the biological, adopted, foster or stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave, sick child leave, or leave under ORS 659.159(1)(e) is taken.

(8) "FMLA" is the federal Family and Medical Leave Act, 29 USC §2601.

(9) "Foreseeable leave" means leave taken for a purpose set out in ORS 659A.159 that is not "unforeseeable leave" as defined in OAR 839-009-0210(22).

(10) "Foster child" means a child, not adopted, but being reared as a result of legal process, by a person other than the child's biological parent.

(11) "Gender" means an individual's assigned sex at birth, gender identity, or gender expression.

(12) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, speech, or lifestyle, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(13) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(14) "Health care provider" means:

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

(A) A physician licensed to practice medicine under ORS 677.110, including a doctor of osteopathy;

(B) A podiatrist licensed under ORS 677.825;

(C) A dentist licensed under ORS 679.090;

(D) A psychologist licensed under ORS 675.030;

(E) An optometrist licensed under ORS 683.070;

(F) A naturopath licensed under ORS 685.080;

(G) A registered nurse licensed under ORS 678.050;

(H) A nurse practitioner certified under ORS 678.375;

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

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

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

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

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

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

(15) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(16) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(17) "OFLA" is the Oregon Family Leave Act, ORS 659A.150 to 659A.186.

(18) "OFLA leave" means a leave of absence for purposes described in ORS 659A.159 and OAR 839-009-0230(1) through (5). Except that "OFLA leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, unless the employee has refused a suitable offer of light duty or modified employment under ORS 659A.043(3)(a)(D) or 659A.046(3)(d). See ORS 659A.162, OAR 839-006-0131(2) and 839-006-0136(4).

(19) "OFLA leave year," for calculating the OFLA leave year entitlement, means a calendar year (January to December), a fixed 12-month period such as a fiscal year, a 12-month period measured forward from the date of the employee's first OFLA leave, or a 12-month period measured backward from the date the employee uses any OFLA leave. The option selected must be applied to all employees. In the absence of an employer policy or collective bargaining agreement defining how an OFLA leave year will be measured, a calendar year will be used.

(20) "Serious health condition" means an illness, injury, impairment or physical or mental condition of an employee or family member:

(a) That requires inpatient care in a medical care facility such as a hospital, hospice or residential facility such as a nursing home. When a family member resides in a long-term residential care facility, leave applies only to:

(A) Transition periods spent moving the family member from one home or facility to another, including time to make arrangements for such transitions;

(B) Transportation or other assistance required for a family member to obtain care from a physician; or

(C) Serious health conditions as described in (b) through (h) of section (20) of this rule.

(b) That the treating health care provider judges to pose an imminent danger of death, or that is terminal in prognosis with a reasonable possibility of death in the near future;

(c) That requires constant or continuing care such as home care administered by a health care professional;

(d) That involves a period of incapacity. Incapacity is the inability to perform at least one essential job function, or to attend school or perform regular daily activities for more than three consecutive calendar days and any subsequent required treatment or recovery period relating to the same condition. This incapacity must involve:

(A) Two or more treatments by a health care provider; or

(B) One treatment plus a regimen of continuing care.

(e) That results in a period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity, such as asthma, diabetes or epilepsy;

(f) That involves permanent or long-term incapacity due to a condition for which treatment may not be effective, such as Alzheimer's disease, a severe stroke or terminal stages of a disease. The employee or family member must be under the continuing care of a health care provider, but need not be receiving active treatment;

(g) That involves multiple treatments for restorative surgery or for a condition such as chemotherapy for cancer, physical therapy for arthritis, or dialysis for kidney disease that if not treated would likely result in incapacity of more than three days; or

(h) That involves any period of disability of a female due to pregnancy or childbirth or period of absence for prenatal care.

(21) "Spouse"includes:

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

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

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

(22) "Unforeseeable leave" means leave taken as a result of:

(a) An unexpected serious health condition of an employee or family member of an employee; or

(b) An unexpected illness, injury or condition of a child of the employee that requires home care;

(c) A premature birth or a placement for adoption or foster care the exact date of which cannot be previously determined with certainty; or

(d) The death of a family member.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.150 - 659A.186, 659A.043, 659A.046

Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 35-2006, f. 10-3-06, cert. ef. 10-4-06; BLI 44-2007, f. 12-31-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 16-2013, f. & cert. ef. 12-31-13; BLI 14-2014(Temp), f. & cert. ef. 11-20-14 thru 5-15-15

839-009-0340

Definitions: Leave under ORS 659A.270–659A.285

(1) "Covered employer" means an employer who employs 6 or more individuals in the state of Oregon for each working day during each of 20 or more calendar workweeks in the year in which an eligible employee takes leave under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking or in the year immediately preceding the year in which an eligible employee takes the leave.

(2) "Eligible employee" means an employee who is employed in the state of Oregon on the date leave begins under ORS 659A.270 to 659A.285 for victims of domestic violence, harassment, sexual assault or stalking and is a victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking.

(3) "Dependent" includes an adult dependent child substantially limited by a physical or mental impairment as defined by ORS 659A.104(1)(a), (3), and (4) or any adult of whom the employee has guardianship.

(4) "Health care professional" means a physician or other health care practitioner who is licensed, certified or otherwise authorized by law to provide health care services.

(5) "Immediate family" means spouse, domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of domestic partner, sibling, child, stepchild, grandparent, grandchild, or a person with whom the victim of domestic violence, harassment, sexual assault or stalking is or was in a relationship of in loco parentis or any person who had the same primary residence as the victim at the time of the domestic violence, harassment, sexual assault or stalking.

(6) "In loco parentis" means in the place of a parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

(7) "Intermittent leave" means leave taken in multiple blocks of time and/or requiring an altered or reduced work schedule.

(8) "Law enforcement officer" means all police, corrections, and parole and probation officers who are included in the Public Safety Standards and Training Act as described in ORS 181.610 and 181.651.

(9) "Minor child" has the same meaning as "child" as defined in OAR 839-009-0210(2) and (2)(a).

(10) "Parent or guardian" means a custodial parent, non-custodial parent, step parent, adoptive parent, foster parent, biological parent, child of an employee's same-gender domestic partner or an employee who is or was in relationship of in loco parentis with a minor child or a dependent.

(11) "Protective order" means an order authorized by ORS 30.866, 107.095(1)(c), 107.700 to 107.735, 124.005 to 124.040 or 163.730 to 163.750 or any other order that restrains an individual from contact with an eligible employee or the employee's minor child or dependent.

(12) "Public employer" for purposes of and these rules means the State of Oregon.

(13) "Reasonable leave" means any amount of leave that does not cause an undue hardship on a covered employer's business.

(14) "Spouse" has the meaning given in OAR 839-009-0210 (21).

(15) "Victim of domestic violence" means:

(a) An individual who has been threatened with abuse or who is a victim of abuse, as defined in ORS 107.705; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of domestic violence committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the domestic violence be considered a victim for the purposes of these rules.

(16) "Victim of harassment" means:

(a) An individual against whom harassment has been committed as described in Oregon's criminal code at ORS 166.065; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of harassment committed against the victim as defined in subsection (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the harassment be considered a victim for the purposes of these rules.

(17) "Victim services provider" means a prosecutor-based victim assistance program or a nonprofit program offering safety planning, counseling, support or advocacy related to domestic violence, harassment, sexual assault or stalking.

(18) "Victim of sexual assault" means:

(a) An individual against whom a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a sexual assault committed against the victim as defined in (a), including a member of the victim's immediate family.

(c) In no event will the alleged perpetrator of the sexual offense be considered a victim for the purposes of these rules.

(19) "Victim of stalking" means:

(a) An individual against whom stalking has been threatened or committed as described in ORS 163.732; or

(b) Any other person who has suffered financial, social, psychological or physical harm as a result of a stalking committed against the victim as defined in (a), including a member of the victim's immediate family; or

(c) An individual who has obtained a court's stalking protective order or a temporary court's stalking protective order under ORS 30.866.

(d) In no event will the alleged perpetrator of the stalking be considered a victim for the purposes of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.270 - 659A.285

Hist.: BLI 32-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 8-2011, f. 10-13-11, cert. ef. 10-14-11; BLI 14-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 3-2012, f. & cert. ef. 2-8-12; BLI 16-2013, f. & cert. ef. 12-31-13; BLI 14-2014(Temp), f. & cert. ef. 11-20-14 thru 5-15-15

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Rule Caption: Amends the prevailing rates of wage for the period beginning January 1, 2015
Adm. Order No.: BLI 15-2014
Filed with Sec. of State: 12-9-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 839-025-0700
Subject: The amended rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2015.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-025-0700
Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2015, are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2015, and the effective dates of the applicable special wage determination and rates amendments:

(2) Copies of *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2015, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at www.oregon.gov/boli or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (971) 673-0839.

Stat. Auth.: ORS 279C.815, 651.060

Stats. Implemented: ORS.279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99: BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05; BLI 18-2005, f. 9-19-05, cert. ef. 9-20-05; BLI 19-2005, f. 9-23-05, cert. ef. 10-1-05; BLI 26-2005, f. 12-23-05, cert. ef. 1-1-06; BLI 1-2006, f. 1-24-06, cert. ef. 1-25-06; BLI 2-2006, f. & cert. ef. 2-9-06; BLI 4-2006, f. 2-23-06, cert. ef. 2-24-06; BLI 14-2006, f. 3-30-06, cert. ef. 4-1-06; BLI 20-2006, f. & cert. ef. 6-16-06; BLI 21-2006, f. 6-16-06 cert. ef. 7-1-06; BLI 23-2006, f. 6-27-06 cert. ef. 6-29-06; BLI 25-2006, f. & cert. ef. 7-11-06; BLI 26-2006, f. & cert. ef. 7-13-06; BLI 28-2006, f. 7-21-06, cert. ef. 7-24-06; BLI 29-2006, f. 8-8-06, cert. ef. 8-9-06; BLI 32-2006, f. & cert. ef. 9-13-06; BLI 33-2006, f. 9-28-06, cert. ef. 10-1-06; BLI 36-2006, f. & cert. ef. 10-4-06; BLI 37-2006, f. & cert. ef. 10-19-06; BLI 40-2006, f. 11-17-06, cert. ef. 11-20-06; BLI 43-2006, f. 12-7-06, cert. ef. 12-8-06; BLI 45-2006, f. 12-26-06, cert. ef. 1-1-07; BLI 5-2007, f. 1-30-07, cert. ef. 1-31-07; BLI 6-2007, f. & cert. ef. 3-5-07; BLI 7-2007, f. 3-28-07, cert. ef. 3-30-07; BLI 8-2007, f. 3-29-07, cert. ef. 4-1-07; BLI 9-2007, f. & cert. ef. 4-2-07; BLI 10-2007, f. & cert. ef. 4-30-07; BLI 12-2007, f. & cert. ef. 5-31-07; BLI 13-2007, f. 6-8-07, cert. ef. 6-11-07; BLI 14-2007, f. 6-27-07, cert. ef. 6-28-07; BLI 15-2007, f. & cert. ef. 6-28-07; BLI 16-2007, f. 6-29-07, cert. ef. 7-1-07; BLI 18-2007, f. 7-10-07, cert. ef. 7-12-07; BLI 21-2007, f. 8-3-07, cert. ef. 8-8-07; BLI 22-2007, cert. & ef. 8-30-07; BLI 23-2007, f. 8-31-07, cert. ef. 9-4-07; BLI 24-2007, f. 9-11-07, cert. ef. 9-12-07; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07 cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07 cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07 cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09, BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef 1-19-10; BLI 4-2010, f. & cert. ef 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12; BLI 10-2012, f. 9-26-12, cert. ef. 10-1-12; BLI 13-2012, f. 12-28-12, cert. ef. 1-1-13; BLI 1-2013, f. & cert. ef. 3-25-13; BLI 2-2013, f. & cert. ef. 9-20-13; BLI 3-2013, f. 9-30-13, cert. ef. 10-1-13; BLI 5-2013, f. 12-16-13, cert. ef. 1-1-14; BLI 3-2014, f. & cert.

ef. 4-2-14; BLI 8-2014, f. 6-13-14, cert. ef. 7-1-14; BLI 11-2014, f. 9-24-14, cert. ef. 10-1-14; BLI 15-2014, f. 12-9-14, cert. ef. 1-1-15

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Citizens' Initiative Review Commission
Chapter 710

Rule Caption: Citizen Initiative Review Elector Stipend and Travel Reimbursement
Adm. Order No.: CIRC 3-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-30-14
Notice Publication Date: 10-1-2014
Rules Adopted: 710-010-0000
Subject: The Citizens Initiative Review Commission sets a daily stipend for Citizen Initiative Review electors and sets travel reimbursement policy.
Rules Coordinator: Sarah Giles—(503) 725-5248

710-010-0000
Citizen Initiative Review Elector Stipend and Travel Reimbursement

According to the duties defined in ORS 250.139(5)(a), the Commission shall compensate each elector for each day served on a panel in an amount in the range of $75 - $200 per day, as set by the Commission. According to duties defined in 250.139(5)(b), the Commission shall reimburse each elector who serves on a panel for travel expenses in accordance with travel reimbursement policies (mileage, airfare, public transportation costs) as determined annually by the Oregon Department of Administrative Services.

Stat. Auth.: ORS 250.139(5)(a) & (b) & (6)(a)
Stats. Implemented: ORS 250.139(5)(a) & (b) & (6)(a)
Hist.: CIRC 2-2014(Temp), f. 6-19-14, cert. ef. 7-1-14 thru 11-30-14; CIRC 3-2014, f. 11-25-14, cert. ef. 11-30-14

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Department of Consumer and Business Services, Workers' Compensation Board
Chapter 438

Rule Caption: Eliminates requirement of notice by "mail" for hearing request acknowledgment and expedited claim hearing notice.
Adm. Order No.: WCB 2-2014
Filed with Sec. of State: 12-10-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 438-006-0020, 438-013-0025
Subject: As part of its comprehensive review of OAR Chapter 438 rules, the Board invited public comment, which ultimately resulted in the appointment of an Advisory Committee on Technology. Among other recommendations, the Technology Committee suggested that OAR 438-006-0020 be amended to allow the Hearings Division to acknowledge receipt of a request for hearing by electronic means, in addition to acknowledgment "by mail," as currently required under that rule. After considering this suggestion, along with the further development of its website portal in handling other electronic communications, the Board proposed to amend OAR 438-006-0020 to eliminate the requirement that the Hearings Division acknowledge receipt of a request for hearing "by mail." The Board proposed this amendment to permit the Hearings Division to acknowledge receipt of a request for hearing by mail, website portal, or other means. In addition, in conjunction with this proposed change, the Board proposed to amend OAR 438-013-0025, which concerns notice of hearing date for expedited service claims, to change references from "mail" and "mailing" to "distribute" and "distributing." This proposed amendment would eliminate the requirement that all hearing notices be mailed and permit such notice by mail, website portal, or other means.
Rules Coordinator: Karen Burton—(503) 934-0123

438-006-0020
Acknowledgment; Notice of Conference and Hearing in Ordinary Hearing Process

The Hearings Division shall[, by mail,] acknowledge receipt of a request for hearing. Such acknowledgment may include notice of date for an informal prehearing conference pursuant to OAR 438-006-0062 or notice of hearing date. The hearing shall be scheduled for a date that is within 90 days of the request for hearing and not less than 60 days after distribution of a notice of hearing date subject to the exceptions prescribed in ORS 656.283(4)(b)

Stat. Auth.: ORS 656.726(5)(a) & (b)
Stats. Implemented: ORS 656.283(3), (4)(a) & (b)
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 6-1990(Temp), f. 4-24-90, cert. ef. 4-25-90; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14; WCB 2-2014, f. 12-10-14, cert. ef. 1-1-15

438-013-0025
Notice of Hearing Date

The Hearings Division shall distribute a notice of hearing date to all parties and to all other individuals who represent the parties. The hearing shall be scheduled for a date that is not less than 15 days from the distribution of the notice of hearing nor more than 30 days from the date of receipt of the request for hearing by the Hearings Division.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(5)
Stats. Implemented: ORS 656.291
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-2014, f. 12-10-14, cert. ef. 1-1-15

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

Rule Caption: Workers' compensation rules governing annual reporting requirements for Oregon self-insured employers
Adm. Order No.: WCD 13-2014
Filed with Sec. of State: 11-26-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 436-050-0003, 436-050-0175
Subject: The agency has amended OAR chapter 436, division 050, "Employer/Insurer Coverage Responsibility," to modify self-insured employers' reporting requirements affecting claims with incurred losses. Currently, reports must aggregate claims with incurred costs of $13,500 or less, providing aggregate totals for total paid, outstanding reserves, total incurred losses, and number of claims, while claims exceeding $13,500 must be detailed individually.

The reporting threshold for individual claims is increased to $15,500, effective Jan. 1, 2015.
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-050-0003
Applicability of Rules

(1) These rules are effective Jan. 1, 2015, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.
(b) ORS 656.029 — Independent contractor status.
(c) ORS 656.126 — Coverage while temporarily in or out of state.
(d) ORS 656.407 — Qualifications of insured employers.
(e) ORS 656.419 — Workers' compensation insurance policies.
(f) ORS 656.423 — Cancellation of coverage by employer.
(g) ORS 656.427 — Cancellation of workers' compensation insurance policy or surety bond liability by insurer.
(h) ORS 656.430 — Certification of self-insured employer.
(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.
(j) ORS 656.443 — Procedure upon default by employer.
(k) ORS 656.447 — Sanctions against insurer for failure to comply with orders, rules, or obligations under workers' compensation insurance policies.
(l) ORS 656.455 — Records location and inspection.
(m) ORS 656.745 — Civil penalties.
(n) ORS 656.850 and 656.855 — Worker leasing companies.
(o) ORS 731.475 — Insurer's in-state location.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855 & 731.475
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-

86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 1-2013(Temp), f. & cert. ef. 1-23-13 thru 7-21-13; WCD 5-2013, f. 7-3-13, cert. ef. 7-22-13; WCD 8-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 10-2014, f. 8-15-14, cert. ef. 9-15-14; WCD 13-2014, f. 11-26-14, cert. ef. 1-1-15

436-050-0175
Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer must file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true and accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Notwithstanding section (l) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(3) The financial statements and reports filed by a self-insured employer group must demonstrate the group's acceptable financial viability based on criteria under OAR 436-050-0260 including, but not limited to, satisfactory financial ratios and net worth.

(4) By March 1 of each year, self-insured employer groups must file with the director:

(a) A statement certifying the amount of the group's combined net worth under OAR 436-050-0260(3)(a), as of the date of the statement; and

(b) A copy of the fidelity bond furnished to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities. If the fidelity bond or policy covers more than one year, is still in effect, and a copy was provided to the director in the prior year, the group's annual filing may state that fact in lieu of providing an additional copy.

(5) By March 1 of each year, self-insured employer groups consisting of private employer members must file with the director:

(a) A statement certifying that each employer member of the group meets the individual net worth requirement under OAR 436-050-0260(3)(b), as of the employer member's most recent fiscal year end; and

(b) A list of the group's current board members and their professional affiliations.

(6) The self-insured employer must report claim loss data described in Bulletin 209 by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year. Reports must include:

(i) Contract medical expenses;

(ii) Total maximum medical reimbursement amount;

(iii) Number of claims for which the maximum medical reimbursement amount is claimed;

(iv) For claims with incurred losses of $15,500 or less, total paid, outstanding reserves, and total incurred losses;

(v) Number of claims with incurred losses of $15,500 or less; and

(vi) For each claim with incurred losses exceeding $15,500, worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims and must be valued as of January 1 of the current year. The report must include:

(i) The worker's name, listed in alphabetical order;

(ii) Date of injury;

(iii) Claim number;

(iv) Total paid;

(v) Outstanding reserves; and

(vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.

(b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data.

(c) Each self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185 must, in addition to the above, provide the director by March 1 of each year, the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The director may require a qualified self-insured employer group exempted from the security deposit requirements to provide an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(d).

(7) Notwithstanding sections (1) through (5) of this rule, the director may require a self-insured employer group to submit financial statements, reports, or information more frequently for reasons including, but not limited to, changes in the group's financial status or viability, private employer members' individual net worth, group membership, private employer groups' board membership, or incurred claims costs.

(8) Notwithstanding section (6) of this rule, the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report for reasons including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, or incurred claims costs.

(9) If a self-insured employer fails to comply with the requirements of sections (1) through (8) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase its deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties of up to $250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification for self-insurance.

(10) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.407 & 656.430
Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 9-2012, f. 12-7-12, cert. ef. 1-1-13; WCD 8-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 10-2014, f. 8-15-14, cert. ef. 9-15-14; WCD 13-2014, f. 11-26-14, cert. ef. 1-1-15

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Department of Corrections
Chapter 291

Rule Caption: Inmate Communication and Grievance Review and Appeal System
Adm. Order No.: DOC 22-2014
Filed with Sec. of State: 11-19-2014
Certified to be Effective: 11-19-14
Notice Publication Date: 8-1-2014
Rules Amended: 291-109-0120, 291-109-0140, 291-109-0150, 291-109-0160, 291-109-0170, 291-109-0180
Rules Renumbered: 291-109-0200 to 291-109-0175

Subject: These rule amendments are necessary to provide clarification to the process for inmates to file a grievance with the Department of Corrections.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-109-0120
Inmate-Staff Communications (General Principles)

(1) Proper and effective communication between inmates and staff is essential to the safe, secure, and orderly operation of Department of Corrections facilities and to the successful completion of the inmate's corrections plans.

(a) Inmates and staff communicate with each other not only with their choice of words (oral or written), but also non-verbally through their manner, tone, and approach (commonly referred to as "body language").

(b) Inmates and staff are jointly responsible for ensuring their choice of words, manner, tone and approach are appropriate to properly and effectively convey their intended information and ideas to one another.

(2) Inmates shall communicate with staff in a civil and respectful tone and manner.

(3) Staff shall communicate with inmates in a professional manner that fosters respect and confidence. Staff orders directed to inmates should be clear and concise.

(4) Staff should make every effort to respond to an inmate communication form within seven days of receipt.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0140
Grievance Review System

(1) General Requirements:

(a) If an inmate is unable to resolve an issue through informal communications, the department encourages the inmate to seek resolution of the issue by submitting a written grievance using the department's approved inmate grievance form (CD 117) in accordance with these rules. As with informal communications, inmates should use a civil and respectful tone and manner in their written grievances to attempt to resolve the issue or concern.

(b) An inmate grievance must include a complete description of the incident, action, or application of the rule being grieved, including date and approximate time.

(A) Only supporting documentation that directly relates to the issue being grieved, such as program failures, inmate communications, etc., should be attached and submitted with the grievance.

(B) Inmate grievances and supporting attachments that directly relate to the issue being grieved meet the standard for photocopying detailed in the rule on Legal Affairs, OAR 291-139-0040 (Supplies, Photocopying, Mailing, and Notary Services). However, library coordinators may limit photocopying of irrelevant or excessive amounts of supporting attachments.

(c) An inmate who attempts to grieve an issue by use of an inmate communication form or any written communication other than the department's approved inmate grievance form shall have his/her communication returned to him/her with instruction that the inmate resubmit the grievance on the department's approved inmate grievance form.

(d) An inmate grievance may request review of just one matter, action or incident per inmate grievance form.

(2) An inmate may file a single grievance concerning any of the following matters:

(a) The misapplication of any administrative directive or operational procedure;

(b) The lack of an administrative directive or operational procedure;

(c) Any unprofessional behavior or action which may be directed toward an inmate by an employee, contractor, or volunteer of the Department of Corrections or the Oregon Corrections Enterprises;

(d) Any oversight or error affecting an inmate;

(e) A program failure as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0020, unless the program failure is a direct result of a misconduct report where the inmate was found in violation;

(f) The loss or destruction of property as designated in the DOC rule on Personal Property (Inmate), OAR 291-117-0130(3);

(g) Sexual contact, solicitation or coercion between a DOC or OCE employee, contractor, volunteer of the department or OCE and an inmate; or

(h) Sexual abuse of an inmate by another inmate if the victim does not consent, is coerced into such act by overt of implied threats of violence, or is unable to consent or refuse.

(3) An inmate cannot grieve the following:

(a) Grievances relating to actions or decisions not within the jurisdiction of the department (for example, actions by the Board of Parole and Post-Prison Supervision).

(b) Incidents or actions for which there exists a separate internal department appeal or review process as identified by an OAR for which an inmate may take part in; for example, rejection or confiscation of mail, visiting, discrimination complaints, removal from an alternative incarceration program; classification issues, etc. (A use of force review, as described in OAR 291-013-0140, is not a separate appeal or review process for purposes of this rule.

(c) Daily fails as defined in the DOC rule on Performance Recognition and Award System (Inmate), OAR 291-077-0033;

(d) Conduct orders, investigations leading to a conduct order, or conduct order sanction(s);

(e) Misconduct reports, investigations leading to or arising from misconduct reports, or disciplinary hearings, findings and sanctions;

(f) Incident(s) or problem(s) to which an inmate was not a party;

(g) Claims or issues for which the inmate has filed a Notice of Tort with the Oregon Department of Administrative Services, Risk Management Division;

(h) Claims or issues the inmate has pursued or is pursuing in pending litigation in state or federal courts; or

(i) Group grievances representing other inmates, or acts where an inmate is a spokesperson for other inmates.

(4) An inmate may submit only his/her signature on a single grievance form.

(5) An inmate may not file more than one grievance regarding a single incident or issue unless more than one DOC or OCE employee, volunteer, or contractor is directly involved in the incident. A separate grievance must be filed for each individual.

(6) An inmate may file a grievance regarding the same issue as a previously filed grievance provided there is another incident and new information is available about the issue.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0150
How and When a Grievance is Filed

(1) Inmate grievances must be submitted to the functional unit grievance coordinator on the department's approved inmate grievance form (CD117). Instructions for filing a grievance are found on form CD117a (Inmate Grievance Instructions).

(2) To obtain a grievance review, the functional unit grievance coordinator must receive an inmate's grievance within 30 calendar days of the date of the incident giving rise to the grievance.

(a) An inmate may file a grievance past the 30 days of the incident if the inmate can demonstrate why the grievance could not be filed within the timelines established by rule; i.e., physical incapacity, etc.

(b) Untimely grievances that fail to make that showing shall be returned to the inmate with a statement of the rule.

(3) The grievance coordinator shall date stamp and log the grievance form upon receipt.

(4) If an inmate cannot complete the grievance form due to language, physical, or competency and capacity barriers, another person may complete the form. However, the inmate submitting the grievance must sign the grievance form. Translation services or other assistance for submission of a grievance form for non-English speaking inmates or inmates that have difficulty with reading and writing will be made available upon request.

(5) Functional unit managers or designees shall ensure the approved inmate grievance forms are readily available to inmates in DOC correctional facilities.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(3), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0160
Processing of Inmate Grievances

(1) Upon receiving an inmate grievance at the institution where the incident or issue occurred, the grievance coordinator will assign the griev-

ance a number, date stamp, and record its receipt in an inmate grievance log.

(a) After the inmate grievance has been logged, the grievance coordinator will send a grievance receipt to the inmate.

(b) The grievance coordinator will coordinate with the appropriate staff or, if deemed more suitable, the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the staff or manager respondent for reply.

(c) The respondent will complete the form and submit it to his/her manager for review and signature. The response shall be returned to the grievance coordinator for processing within 21 calendar days.

(2) After recording, the grievance coordinator will send the inmate grievance and employee's, contractor's, or volunteer's response to the inmate and retain copies for the file.

(a) The grievance coordinator will complete processing of the grievance within 45 days from the date the grievance was received from the inmate, unless further investigation is necessary.

(b) If the grievance is not processed within this timeframe, the grievance coordinator will make an effort to notify the inmate of the status of the grievance. If the inmate does not receive a response within the allotted time frame, he/she may contact the grievance coordinator.

(3) Grievance responses may be consolidated.

(4) If at any time the grievance coordinator determines the inmate has pursued his/her issue through state or federal courts, or has filed a notice of tort claim, the grievance process will cease and the grievance will be returned to the inmate. The grievance coordinator will retain a copy of the inmate's grievance and document the date and reason for return of the grievance.

(5) A grievance that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. If a grievance is returned to the inmate because it does not comply with these rules, the inmate may elect to resubmit the grievance to the grievance coordinator within 14 calendar days from the date the grievance was sent back to the inmate if the procedural errors can be corrected.

(6) Once an inmate is released from the custody of the Department of Corrections, any pending grievances or pending appeal responses will be completed and held on file unless other arrangements have been made with the grievance coordinator. No further appeals will be accepted for processing once the inmate is released from the custody of the Department of Corrections.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(4), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0170
Grievance Appeals

(1) Appeals of the Initial Grievance (First Appeal Process):

(a) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and staff response(s).

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt, and the grievance appeal will be forwarded to the functional unit manager having authority to review and resolve the issue.

(b) Appeal Timelines: The grievance coordinator must receive an appeal within 14 calendar days from the date that the grievance response was sent to the inmate from the grievance coordinator.

(c) A grievance appeal that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. If a grievance appeal is returned to the inmate because it does not comply with these rules, the inmate may elect to resubmit the grievance appeal to the grievance coordinator within 14 calendar days from the date the grievance appeal was sent back to the inmate if the procedural error can be corrected,

(d) The functional unit manager shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the functional unit manager. The functional unit manager will return the grievance appeal and the response back to the grievance coordinator.

(2) Appeal of the Functional Unit Manager Decision (FINAL Appeal Process):

(a) An inmate may appeal the functional unit manager's decision using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments, staff responses and documentation related to the first grievance appeal.

(A) The scope of the original grievance cannot be expanded. No additional information may be submitted unless the information was unavailable to the inmate at the time the original grievance or first-level appeal was filed and the information is directly related to the alleged issue being grieved.

(B) After the appeal has been date stamped and logged, the inmate will be issued a return receipt. The grievance appeal will be forwarded to the Assistant Director having authority to review and resolve the issue.

(b) The Assistant Director or designee shall review the final grievance appeal. If the Assistant Director determines additional facts should have been gathered or additional witnesses interviewed, the grievance appeal will be referred back to the functional unit grievance coordinator. Upon completion of the investigation, the Assistant Director shall complete the review.

(c) Final Appeal Timelines: The grievance coordinator must receive the final appeal within 14 calendar days from the date that the first grievance appeal response was sent to the inmate from the grievance coordinator.

(A) An inmate may file a grievance appeal past the 14 day timeline if the inmate can demonstrate why the grievance appeal could not be filed within the timelines established by rule, i.e., physical incapacity, etc.

(B) Untimely grievances that fail to make that showing shall be returned to the inmate with a statement of the rule.

(d) A grievance appeal that has been returned to the inmate by the grievance coordinator for procedural reasons cannot be appealed. If a grievance appeal is returned to the inmate because it does not comply with these rules, the inmate may elect to resubmit the grievance appeal to the grievance coordinator within 14 calendar days from the date the grievance appeal was sent back to the inmate if the procedural errors can be corrected.

(e)The Assistant Director or designee shall respond to the inmate's grievance appeal within 30 calendar days from the date the appeal was received by the Assistant Director.

(f) The Assistant Director's or designee's decision on an inmate's grievance appeal is final, and is not subject to further review.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(5), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0175
Grievance Regarding Allegations of Sexual Abuse

(1) For purposes of this rule sexual abuse is defined as sexual abuse of an inmate by another inmate and sexual abuse of an inmate by a staff member.

(a) Sexual abuse of an inmate by another inmate includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object or other instrument; and

(D) Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

(b) Sexual abuse of an inmate by a DOC or OCE employee, contractor, or volunteer of the department or OCE includes any of the following acts, with or without consent of the inmate, detainee, or resident:

(A) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

(B) Contact between the mouth and the penis, vulva, or anus;

(C) Contact between the mouth and any body part where a DOC or OCE employee, contractor, or volunteer of the department or OCE has the intent to abuse, arouse or gratify sexual desire;

(D) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where a DOC or OCE employee, contractor, or volunteer of the department or OCE has the intent to abuse, arouse, or gratify sexual desire;

(E) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks

that is unrelated to the official duties or where a DOC or OCE employee, contractor, or volunteer of the department or OCE has the intent to abuse, arouse or gratify sexual desire;

(F) Any attempt, threat, or request by a DOC or OCE employee, contractor, or volunteer of the department or OCE to engage in the activities descried by paragraphs (A) – (E) of this section;

(G) Any display by a DOC or OCE employee , contractor, or volunteer of the department or OCE of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and

(H) Voyeurism by a DOC or OCE employee, contactor, or volunteer of the department or OCE. Voyeurism by a staff member, contractor or volunteer means an invasion of privacy of an inmate by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

(3) Grievances alleging sexual abuse must be submitted to the functional unit grievance coordinator on the departments approved inmate grievance form (CD117). The grievance should have the words "sexual abuse grievance" clearly written on the top of the grievance form.

(4) There is no time limit on when an inmate may submit a grievance regarding an allegation of sexual abuse.

(5) Third parties, including fellow inmates, staff members, family members, attorneys, and outside advocates, shall be permitted to assist inmates in filing requests for administrative remedies relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of inmates.

(a) If a third party files such a request on behalf of an inmate, the facility may require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and may also require the alleged victim to personally pursue any subsequent steps in the administrative remedy process.

(b) If the inmate declines to have the request processed on his or her behalf, the agency shall document the inmate's decision.

(6) The grievance coordinator may not refer a grievance alleging sexual abuse to a staff member who is the subject of the grievance. The grievance coordinator will coordinate with the appropriate manager by sending the grievance and a grievance response form (CD 117b) to the manager respondent for reply.

(7) An inmate may appeal the initial grievance response using the grievance appeal form (CD 117c). The appeal must be submitted to the grievance coordinator together with the original grievance, attachments and manager's response.

(8) The department shall issue a final decision on the merits of any portion of a grievance alleging sexual abuse within 90 days of the initial filing of the grievance.

(a) Computation of the 90-day time period shall not include time consumed by inmates in preparing any administrative appeal.

(b) The department may claim an extension of time to respond, of up to 70 days, if the normal time period for response is insufficient to make an appropriate decision. The department shall notify the inmate in writing of any such extension and provide a date by which a decision will be made.

(c) At any level of the administrative process, including the final level, if the inmate does not receive a response within the time allotted for reply, including any properly noticed extension, the inmate may consider the absence of a response to be a denial of the allegations made by the inmate at that level.

(9) An inmate who alleges that he or she is subject to a substantial risk of imminent sexual abuse may provide the grievance directly to the officer-in-charge (OIC) or the OIC's designee.

(a) After receiving an emergency grievance alleging an inmate is subject to a substantial risk of imminent sexual abuse, the OIC or the OIC's designee shall immediately review and take immediate corrective action as necessary to mitigate the risk of sexual assault.

(b) The OIC or the OIC's designee shall provide the emergency grievance and the initial response to the inmate and the grievance coordinator within 48 hours of the submission of the grievance.

(c) The grievance coordinator will issue to the inmate a final response to the emergency grievance within five days of the submission of the emergency grievance,

(d) The initial and final responses shall document the department's determination whether the inmate is in substantial risk of imminent sexual abuse and any action, if necessary, taken in response to the emergency grievance.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Impl.: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14; DOC 3-2014(Temp), f. & cert. ef. 1-17-14 thru 7-16-14; DOC 7-2014, f. & cert. ef. 3-3-14; Renumbered from 291-109-0200, DOC 22-2014, f. & cert. ef. 11-19-14

291-109-0180
Abuse of Grievance Review System

(1) An inmate shall submit no more than two initial inmate grievances in any one week or six in any calendar month. This will not apply to grievances regarding allegations of sexual abuse. A week is defined as Sunday through Saturday.

(a) Initial grievances submitted in excess of two grievances in any one-week or six in any calendar month will be denied and returned to the inmate, noting that he/she has abused the grievance review system.

(b) Grieving multiple staff involved in one incident counts as filing one grievance.

(2) If a life, health or safety situation arises whereby there is valid reason to submit more than two grievances in one week or six in a calendar month, the inmate must clearly state in writing the reason for submission of the grievance above the number allowed. If the grievance coordinator determines that these reasons are not clear, concise or valid for submission of an additional grievance, the grievance will be returned to the inmate denied.

(3) Actions taken against an inmate who has abused the grievance review system under these rules are not grievable.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 3-2003, f. 2-13-03, cert. ef. 3-1-03; Renumbered from 291-109-0140(6), DOC 13-2006, f. 10-18-06, cert. ef. 11-1-06; DOC 3-2011, f. 2-23-11, cert. ef. 3-1-11; DOC 16-2013(Temp), f. & cert. ef. 12-13-13 thru 6-11-14; DOC 3-2014(Temp), f. & cert. ef. 1-17-14 thru 7-16-14; DOC 7-2014, f. & cert. ef. 3-3-14; DOC 22-2014, f. & cert. ef. 11-19-14

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Rule Caption: Possession and Storage of Personal Firearms for Corrections Officers at Department of Corrections Facilities
Adm. Order No.: DOC 23-2014
Filed with Sec. of State: 12-3-2014
Certified to be Effective: 12-3-14
Notice Publication Date: 7-1-2014
Rules Adopted: 291-016-0120
Rules Amended: 291-016-0020
Rules Repealed: 291-016-0120(T), 291-016-0020(T)
Subject: HB 4035 from the 2014 legislative session directs the Oregon Department of Corrections to allow corrections officers employed by the department to possess and store a personal firearm in the officer's personal vehicle when the vehicle is parked in a department parking lot, if the department has not provided secure storage for the firearms, and the officer is present at the department in an official capacity.

These rule modifications are necessary to establish procedures and employee responsibilities for corrections officer to possess and securely store personal firearms at department prisons and non-prison facilities.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-016-0020
Definitions

(1) Concealed Handgun License (CHL): A current and valid Oregon Concealed Handgun License issued by the employee's county of residence in accordance with ORS 166.291 and 166.292

(2) Contractor: Any person under contractual arrangement to provide services to the Department of Corrections.

(3) Corrections Officer: As defined in ORS 181.610, a department staff member in the correctional officer classification series who is charged with, and primarily performs the duty of custody, control or supervision of inmates.

(4) Employee: Any person employed full time, part time or under temporary appointment by the department.

(5) Facility: The building and grounds area operated by a functional unit which physically houses inmates.

(6) Facility Access: The designated location in a facility which is the only authorized entrance (except as authorized by the functional unit manager or designee) and exit for persons desiring access into or out of the perimeter of the facility.

(7) Facility Visitor: Any person authorized access inside the secure perimeter of a facility who is not a department employee, contractor, volunteer, other agency liaison or who is not an inmate visitor at the facility.

(8) Functional Unit: Any organizational component within the Department of Corrections responsible for the delivery of program services or coordination of program operations. In a correctional facility, the functional unit manager is the superintendent.

(9) Functional Unit Facility: A term used to declare any Department of Corrections facility in which a functional unit person performs his/her duties or services.

(10) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, an Assistant Director or an administrator and has responsibility for the delivery of program services or coordination of program operations.

(11) Functional Unit Person: Any employee, contractor, approved carded volunteer, or other agency liaison assigned to work or provide services at a functional unit facility.

(12) Identification Card (ID Card): A picture identification card authorized by the Department of Corrections and issued to a department employee, contractor, volunteer or other agency liaison.

(13) Inmate Visitor: A person approved by the functional unit manager or designee to visit an inmate who resides in a facility.

(14) Oregon Corrections Enterprises: A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(15) Oregon Corrections Enterprises (OCE) Employee: Any person employed full-time, part-time, or under temporary appointment by the Oregon Corrections Enterprises. For the purposes of this rule only, employee shall also include any person under contractual arrangement to provide services to the agency; any person employed by private or public sector agencies who is serving under agency-sanctioned special assignment to provide services or support to agency programs.

(16) Other Agency Liaison: Employees from other state and local agencies that have ongoing business need serving inmates and employees of the department. These employees include, but are not limited to, county parole and probation officers and state police detectives.

(17) Personal Firearm: A handgun possessed by an individual corrections officer employed by the Department of Corrections. "Handgun" includes any pistol or revolver using a fixed cartridge containing a propellant charge, primer and projectile, and designed to be aimed or fired otherwise than from the shoulder.

(18) Reception Center (Inmate): The designated location(s) in a facility which is designed for transport officials to deliver or pick up an inmate housed in a functional unit.

(19) Reception Center (Public): The designated location(s) in a facility designed to control access for persons to enter the general inmate population area(s).

(20) Secure Perimeter: A manufactured structure (usually a fence or wall) that encloses a portion of the grounds and buildings and is designed to control entry or exit within the enclosure. The manufactured structure may use electronic detection for intrusion, doors and/or gates for entry and exit, lighting for visibility, and other physical restrictions such as razor ribbon, no climb fencing, and buried concrete curbing.

(21) Volunteer: An approved person who donates time, knowledge, skills, and effort to enhance the mission, activities, and programs of the department. A carded volunteer has completed a volunteer application, volunteer training, facility orientation, and functional unit orientation, and has been approved by a functional unit manager or his/her designee.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: CD 26-1992, f. 12-11-92, cert. ef. 1-2-93; DOC 24-1999(Temp), f. 7 cert ef. 12-22-99 thru 6-19-00; DOC 12-2000, f. & cert. ef. 6-19-00; DOC 10-2006, f. & cert. ef. 10-9-06; DOC 14-2014(Temp), f. 6-5-14, cert. ef. 6-6-14 thru 12-3-14; DOC 17-2014(Temp), f. & cert. ef. 7-2-14 thru 12-3-14; DOC 23-2014, f. & cert. ef. 12-3-14

291-016-0120
Corrections Officers' Possession and Storage of Personal Firearms at Department of Corrections Facilities

(1) In accordance with ORS 166.360 to 166.380 (2014 Or Laws, Ch 88) and this rule, a corrections officer employed by the department may possess and store a personal firearm in the officer's personal vehicle when the vehicle is parked in a department parking lot at a Department of Corrections facility only if the officer:

(a) Is present in the officer's official capacity at a public building occupied by the department;

(b) Has a valid concealed handgun license issued pursuant to ORS 166.291 and 166.292; and

(c) Has secured the personal firearm in a closed and locked trunk, glove compartment, center console or other container, and the key is not inserted into the lock, if the trunk, glove compartment, center console or other container locks with a key.

(2) Use of Department Storage Facilities Required Where Provided: If the department has provided a secure and locked location for eligible corrections officers to store their personal firearms at a Department of Corrections facility, the corrections officer must promptly store the officer's personal firearm in the storage location designated by the department, and not in the officer's personal vehicle.

(3) Ammunition: Corrections officers who bring personal firearms to a Department of Corrections facility in accordance with these rules may possess and store with their personal firearm only that amount of ammunition that the personal firearm is designed to hold plus two additional magazines or speed loaders.

(4) Under no circumstance may a corrections officer carry a personal firearm within the secure perimeter of the correctional facility, unless authorized by the correctional facility's confidential procedure in order to securely store the officer's personal firearm.

(5) Personal firearms shall not be carried or used during the performance of official duties.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Hist.: DOC 14-2014(Temp), f. 6-5-14, cert. ef. 6-6-14 thru 12-3-14; DOC 17-2014(Temp), f. & cert. ef. 7-2-14 thru 12-3-14; DOC 23-2014, f. & cert. ef. 12-3-14

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Department of Energy
Chapter 330

Rule Caption: Updating Residential Energy Tax Credit rules, including tax credit rate chart and other program aspects
Adm. Order No.: DOE 8-2014
Filed with Sec. of State: 11-18-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 330-070-0076, 330-070-0078
Rules Amended: 330-070-0010, 330-070-0013, 330-070-0020, 330-070-0021, 330-070-0022, 330-070-0025, 330-070-0026, 330-070-0027, 330-070-0029, 330-070-0040, 330-070-0045, 330-070-0059, 330-070-0060, 330-070-0062, 330-070-0063, 330-070-0064, 330-070-0070, 330-070-0073, 330-070-0089
Rules Repealed: 330-070-0091, 330-070-0073(T)
Subject: These permanent rule amendments for the Residential Energy Tax Credit program assist and improve program administration. The rules update requirements for duct sealing to a prescriptive measure and lower the incentive, lower the solar photovoltaic incentive rate, rework the incentive calculation for wood and pellet stoves, require dwellings installing a wood or pellet stove have an approved carbon monoxide detector alarm device, allow open-loop geothermal systems, modify the tax credit chart and consolidate eligible costs into one section for all devices. Also, the rules add eligibility for storage gas water heaters and direct vent natural gas or propane fireplaces as energy efficient appliances. For solar photovoltaic projects, the rules require use of PowerClerk for all solar photovoltaic applications submitted by a tax credit technician after June 1, 2015, and allow third-party installers to submit more than one reservation application a week and may request up to 50 potential tax credits each week with limits. Lastly, the rules include housekeeping amendments to correct terminology, simplify language and update statutory references.
Rules Coordinator: Elizabeth Ross—(503) 373-8534

330-070-0010
Purpose

(1) The department will grant or deny tax credits in accordance with ORS 469B.100 through 469B.118 and ORS 316.116 which allow tax credits for Alternative Energy Devices (AEDs).

(2) These rules establish the criteria and standards for issuance of tax credits for AEDs. None of these rules replace any building code requirements.

(3) All decisions made by the department regarding AED eligibility, approval of tax-credit technician status, complaints regarding performance of tax-credit technicians, revocation of tax-credit technician status and

other matters relating to the administration of this program after the effective date of these rules will be made consistent with the criteria and standards contained in these rules.

(4) The amendments to these rules apply to AEDs purchased on or after January 1, 2015.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-1990; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0013
Definitions

For the purposes of Oregon Administrative Rules, Chapter 330, Division 70 the following definitions apply unless the context requires otherwise:

(1) "Active Solar Heating" — A solar system that uses air or water that is moved by pumps or fans to collect, store and distribute the sun's energy to a dwelling or part of a dwelling.

(2) "AHRI" — Air-Conditioning, Heating, and Refrigeration Institute.

(3) "Alternative Energy Device" (AED) — A device or system that reduces the amount of conventional energy used by a dwelling.

(4) "Alternative Fuel" — Any fuel other than gasoline or diesel oil such as electricity, natural gas, ethanol, methanol, propane, and any other fuel approved by the Director.

(5) "Alternative Fuel Device" — A facility for mixing, storing, compressing or dispensing fuels for alternative fuel vehicles, and any other necessary and reasonable equipment. Does not include the purchase of an alternative fuel vehicle.

(6) "Annual Fuel Utilization Efficiency" (AFUE) — An efficiency descriptor of the ratio of annual output energy to annual input energy as developed in accordance with the requirements of the U.S. Department of Energy 10 CFR Part 430.

(7) "Applicant" — An individual, estate or trust subject to tax under ORS Chapter 316, who applies for a residential energy tax credit under this division of rules.

(8) "ASHRAE" — American Society of Heating, Refrigerating and Air-Conditioning Engineers.

(9) "Auxiliary" — For ductless heat pump installations means adding to a previously underconditioned space which has been converted to be part of the residential dwelling.

(10) "Btu" — British Thermal Unit. A unit of energy. One Btu is the amount of heat required to raise the temperature of one pound of water by one degree Fahrenheit.

(11) "Coefficient of Performance" (COP) — Is the measurement of how efficiently a heating or cooling system (particularly a heat pump in its heating mode) will operate at a given outdoor temperature condition. The ratio calculated by dividing the usable output energy by the electrical input energy. Both energy values must be expressed in equivalent units.

(12) "Consumer Disclosure" — A department approved form completed by the Tax Credit Technician and provided to the buyer of AEDs, except for energy-efficient appliances and alternative fuel devices, including estimated energy savings of the AED, required conservation items, required maintenance and freeze protection information.

(13) "Department" — The Oregon Department of Energy.

(14) "Direct Vent Gas Fireplace" — Direct vent sealed combustion natural gas or propane fireplace that takes combustion air directly from outside through a dedicated air inlet and vents combustion products directly outside.

(15) "Domestic Water Heating" — Has the meaning provided in ORS 469B.100. Domestic water heating does not include space heating systems.

(16) "Ductless Mini-split Heat Pump" — An air-source heat pump consisting of an outdoor unit connected directly to one or more indoor units and conditioned air is delivered directly to the room or zone of a home rather than through a central furnace.

(17) "Dwelling" — Has the meaning provided in ORS 469B.100.

(a) Dwelling includes, but is not limited to, a single-family residence or an individual unit within multiple unit residential housing.

(b) Dwelling does not include a mobile home or recreational vehicle as defined in ORS 446.003.

(18) "Energy Efficiency Ratio" (EER) — Energy Efficiency Ratio is a measure of how efficiently a cooling system will operate when the outdoor temperature is at a specific level (usually 95º F). EER is calculated by dividing the cooling capacity in Btu per hour (Btu/hr) by the power input in watts at any given set of rating conditions, expressed in Btu/hr per watt.

(19) "Energy-Efficient Appliance" — Has the meaning provided in ORS 469B.100, which includes emerging technologies that exceed code or standards as specified in ORS 469B.100 and these rules.

(20) "Energy Factor" (EF) — Energy Factor is a metric used to compare relative efficiencies of water heaters. The higher the EF is, the more efficient the water heater. EF is determined by the USDOE test procedure, Code of Federal Regulations, Title 10, Section 430.

(21) "Energy Recovery Ventilator" (ERV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream that is also capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32 degrees F when operating at the lowest fan speed.

(22) "EUI (H/ERV)" — The Energy Use Index for an HRV or ERV, used to determine its electric efficiency, and calculated by dividing a model's power consumption, in watts, by the net supply air delivered, in cubic feet per minute (cfm), while the unit is operating in the lowest speed for which performance data is provided in the Home Ventilating Institute (HVI) Directory.

(23) "Fireplace Efficiency (FE)" — A measure of a natural gas or propane fireplace's energy efficiency performance over an entire heating season and is expressed as a percentage. The higher the rating, the more efficient the unit. The testing method used to establish Fireplace Efficiency is CAN/CSA-P.4.1-09 (R2014).

(24) "First Year Energy Savings" — First year energy yield as defined in ORS 469B.100. Energy savings is calculated under average conditions by an AED in 12 consecutive months of typical operation.

(25) "Fuel Cell Stack" — The portion of a fuel cell system where the electrochemical reactions take place, generally consisting of an anode, an electrolyte, and a cathode and supporting systems bringing fuel to the stack and carrying away the electricity, electrochemical products and thermal energy generated.

(26) "Fuel Cell System" — A system for producing electricity electrochemically and non-reversibly, using a hydrogen rich fuel and oxygen, and producing an electric current, water, and thermal energy.

(27) "Geothermal System" — A heating and air-conditioning system, earth-coupled heat pump, geothermal heat pump or ground loop AED.

(28) "Heat Recovery Ventilator" (HRV) — A device or system designed and installed to provide balanced fresh air ventilation for homes with the ability to transfer energy from the outgoing air stream to the incoming air stream.

(29) "Heating Season Performance Factor" (HSPF) — The measurement of how efficiently a heat pump will operate in a heat mode over an entire normal heating season. HSPF is measured according to test procedures defined by AHRI in its Standard 210/240 as well as ASHRAE Standard 116 and the USDOE Test Procedure in 10 CFR; Part 430, Appendix M.

(30) "Ineligible Costs" — Costs not allowed for determining the tax credit, including, but not limited to, finance charges, maintenance costs, service contracts, or extended warranty.

(31) "kWh" — Kilowatt-hour is a unit of electrical energy as a product of power used (in kilowatts) and the time (in hours); 1 kWh = 3413 Btu for purposes of department calculations.

(32) "Latent Recovery Moisture Transfer" (LRMT) — In an HRV or ERV, moisture recovered to the ventilation supply air stream divided by moisture being exhausted, corrected for cross leakage, if any. LRMT = 0 would indicate that no exhausting moisture is recovered for the incoming supply air stream. LRMT = 1 would indicate that all exhausting moisture is recovered for the incoming supply air stream.

(33) "MM or M" — Million.

(34) "OG" — Operating guidelines developed by the Solar Rating and Certification Corporation (SRCC) including system performance or component characteristics defined by SRCC in its directory.

(35) "Operational Date" — The date when final inspection is completed by a local jurisdiction for an AED and the AED is fully operational.

(36) "Owner-Built" — An AED that is assembled and installed on an owner's property and with an owner's labor only.

(37) "Passive" — A solar AED that relies on heated liquid or air rising to collect, store and move heat without assistance from any mechanical devices.

(38) "Passive Solar Space Heating" — A system or building design that collects and stores solar energy received directly through south facing windows. The system/design is without powered moving parts and includes provisions to collect, store and distribute the sun's energy using only convection, radiation and conduction of energy.

(39) "Pass-through Amount" — The sum, equal to the present value of the credit, paid to an eligible AED owner in exchange for the right to claim the tax credit. The present value of the tax credit will be determined periodically by the Director.

(40) "Pass-through Partner" — An individual, estate or trust subject to tax under ORS Chapter 316 that pays the pass-through amount to an applicant and receives the tax credit in place of the applicant.

(41) "Pass-through Verification" — A determination based on information collected by the department that the approved pass-through amount has been provided, that the applicant has relinquished any claim to the tax credit and has assigned the credit to the pass-through partner.

(42) "Photovoltaic System" — A complete solar electric power system capable of delivering power to either the main or sub-panel in a dwelling. Necessary components include solar electric modules, inverter, mounting system, and disconnection equipment.

(43) "PowerClerk" — An online incentive application processing tool used in processing residential photovoltaic system applications.

(44) "Premium Efficiency Biomass Combustion Device" — Any device that burns wood, compressed wood or other non-gaseous or non-liquid solid fuels of 100 percent organic origin for aesthetic or space-heating purposes.

(45) "Purchase Date" — The date when the first down payment is made by the applicant on a contract or invoice for an AED. The applicant must provide confirmation of the purchase date to the department.

(46) "Sealed Duct System" — A forced air duct system that has been repaired or constructed for premium efficiency. For purposes of the tax credit, sealed duct systems are considered energy-efficient appliances.

(47) "Sensible Recovery Efficiency" (SRE) — In an HRV or ERV, the measurable (sensible) energy recovered to the ventilation supply air stream minus supply fan and preheat coil energy use divided by the total sensible energy being exhausted plus exhaust fan energy. This measure of efficiency accounts for the effects of cross leakage between air streams, purchased energy for fan controls, and defrost system energy use.

(48) "Solar Domestic Water Heating System" — Any configuration of plumbing equipment and components to collect, convey, store and convert the sun's energy for the purpose of heating water.

(49) "Solar Electric AC Module" — A solar photovoltaic module coupled with a utility interactive inverter (i.e. micro inverter). The combined system must be Underwriters Laboratory (UL) listed and meet all current Institute of Electronic and Electrical Engineers (IEEE) 929 requirements.

(50) "Solar Labor Costs" — Labor necessary for the installation of a solar powered AED.

(51) "Solar Material Costs" — Includes all parts necessary for the installation of a solar powered AED.

(52) "Solar Site Assessment Worksheet" — A form or report issued or approved by the department, and completed, signed and dated by a tax-credit technician demonstrating the Total Solar Resource Fraction (TSRF) at the site of the solar thermal collector(s) or PV array. The worksheet must represent the point on the array with the lowest TSRF, depict whether any plant life near the array is made up of evergreen or deciduous trees and estimate the effects of 20 years future plant growth.

(53) "SRCC" — Solar Rating and Certification Corporation.

(54) "Standard Test Conditions" (STC) — As applicable to photovoltaic panels, 25 degrees Celsius cell temperature and 1000 watts per square meter (W/m2).

(55) "Storage Gas Water Heater" — A storage type unit, which heats and stores waters within the appliance at a thermostatically controlled temperature for delivery on demand.

(56) "System Certification" — Certification that an AED as described in an application for tax credit meets all criteria for the tax credit.

(57) "System Cost" — Costs allowed for determining the tax credit, include material cost, labor cost, and costs for design and acquisition.

(58) "Tax-Credit Technician" (TCT) — means a person who has received a "contractor system certification" as used in ORS 469B.106(5). A technician who has been approved by the department to implement the tax credit program. A tax-credit technician is responsible for assuring that AEDs are installed in accordance with the department's rules and must verify system installation quality and performance.

(59) "Third-party" — means the owner, or the owner's representative, of the alternative energy device for the duration of the third-party agreement.

(60) "Third-party alternative energy device installation" — has the definition given in ORS 469B.100.

(61) "Total Solar Resource Fraction" (TSRF) — The fraction of usable solar energy that is received by the solar panel/collector throughout the year, which accounts for impacts due to external shading, collector tilt and collector orientation.

(62) "Uncertified Woodstove" — A solid fuel burning device that burns wood, coal or other nongaseous or non-liquid fuels for aesthetic, space-heating or water heating purposes that has not been certified as meeting emission performance standards set by the U.S. Environmental Protection Agency.

(63) "Used Equipment" — Any product or any piece of equipment not under a current manufacturer's warranty or which has been acquired by a previous owner or user.

(64) "Wastewater Heat Recovery Device" — A device designed to recover thermal energy from household wastewater streams for the purpose of returning a portion of this energy to the dwelling's domestic hot water system.

(65) "Wind AED" — A qualifying wind energy conversion system that uses wind to produce mechanical or electrical power or energy, including turbines, towers and their associated components needed to form a complete system.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88, Renumbered from 330-070-0023; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0020
Eligibility

(1) To qualify for a credit, a person must meet all of the following:

(a) Be subject to Oregon personal income tax.

(b) Purchase an AED, complete construction, install an AED in an Oregon dwelling, and obtain a certification in accordance with OAR 330-070-0010 through 330-070-0097.

(c) Be the owner or contract buyer of an Oregon dwelling served by the AED, or be a tenant of the dwelling owner:

(A) Use the dwelling as a primary or secondary residence; or

(B) Rent or lease the dwelling to a tenant who uses the dwelling or dwellings as a primary or secondary residence.

(2) Notwithstanding (1)(b), a residential property owner may qualify for a credit for an AED that is a third-party alternative energy device installation by meeting the following additional requirements:

(a) Installations must include a minimum 10-year agreement between the residential property owner and the third-party owner of the AED. The agreement must cover maintenance of the AED and either the use of the AED or the power generated by the AED for the entire length of the agreement.

(b) The third-party must comply with OAR 330-070-0029.

(c) The applicant must provide system cost information for third-party AED installations. System cost can be demonstrated by providing either a copy of an invoice for the purchase of the AED by the third-party owner, or a declaration from the third-party owner of representative market value for an AED that includes the costs of supply and installation. Such a declaration must include a list of primary system components and their pricing, itemizing material pricing separately from installation pricing.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106
Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0021
Eligible Devices

(1) To be eligible for a tax credit, an AED must meet all of the following:

(a) Be a complete system that is currently operating and meets these rules.

(b) Be a system that is built, installed, and operated in an Oregon dwelling in accordance with ORS 469B.100 through 469B.118, the AED manufacturer's instructions and all applicable codes and standards.

(c) Be a system with manufacturers' warranties against defects in products and materials, including remanufactured equipment.

(d) Be a system that complies with general and specific standards in these rules as they apply to AED systems and listed in OAR 330-070-0059 through OAR 330-070-0097.

(e) Be a single system, which must be fully functional without the assistance of or component sharing with another system. Regardless of the number of components, a system must be controlled and able to distribute its result separate of any other system. Two or more units that share controls, a ductwork distribution system or hydronic distribution system will be considered a single system. This subsection does not apply to category two alternative energy devices.

(2) The following devices are not eligible for an AED tax credit, including those listed in ORS 469B.112:

(a) Standard efficiency furnaces;

(b) Standard back-up heating systems;

(c) Wood stoves or wood furnaces, or any part of a heating system that burns wood except a qualifying premium efficiency biomass combustion device;

(d) Heat pump water heaters that are part of a geothermal heat pump space heating system;

(e) Structures that cover or enclose a swimming pool and are not attached to the dwelling;

(f) Swimming pools and hot tubs used to store heat;

(g) Photovoltaic systems installed on recreational vehicles;

(h) Additions to existing spa and hot tub systems;

(i) Above-ground, uninsulated swimming pools, spas and hot tubs;

(j) Conversions of systems from one type to another. An example is a conversion of a draindown solar hot water system to a drainback solar hot water system;

(k) Used equipment, not including remanufactured equipment that meets program standards;

(l) Repairs and maintenance of systems having received prior certification for an AED tax credit;

(m) Hydro systems;

(n) Wind systems that are used to heat or cool buildings, or to heat domestic, swimming pool or hot tub water;

(o) Systems or projects that received certification under the Energy Incentives Program or the Business Energy Tax Credit program;

(p) Air Conditioning Systems;

(q) Boilers;

(r) Dishwashers;

(s) Refrigerators and Freezers;

(t) Clothes Washers and Dryers; and

(u) Photovoltaic systems participating in the pilot Feed-In Tariff program under ORS 757.365.

Stat. Auth.: ORS 469.040; 469B.100; 469B.103; 469B.106

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0022
Amount of Tax Credit

(1) The amount of the AED tax credit is based on the first-year energy savings of an eligible AED. The department has determined first-year energy savings estimates for eligible AEDs and associated tax credit amounts, which are listed in the RETC Rate Chart. The energy savings basis for a solar tax credit may be adjusted by the department to account for less than optimal solar access.

(2) The amount of the AED tax credit must not exceed the lesser of:

(a) For AEDs used for space heating, cooling, electrical energy or domestic water heating, $1,500 or the first-year energy savings of the AED in kWh multiplied by 60 cents. The amount of the credit may not exceed 100 percent of the cost of the system components and their installation. Only one tax credit for ground source heat pump systems will be issued per year per residence.

(b) For AEDs used for swimming pool, spa or hot tub heating, the first-year energy savings of the AED in kWh multiplied by 15 cents, up to 50 percent of the eligible cost of the AED or $1,500.

(c) For each alternative fuel device, 25 percent of the eligible cost of the alternative fuel device or $750.

(d) For fuel cell systems, $3.00 per watt of the installed capacity or $6,000, and not to exceed 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed $1,500.

(e) For wind AEDs, the first-year energy savings of the AED in kWh multiplied by $2.00, not to exceed the lesser of $6,000 or 50 percent of the cost of the system. One tax credit may be issued per year, per residence, and the maximum credit claimed per year will not exceed $1,500, over a four year period.

(f) For premium efficiency biomass combustion devices, the average heating need times the stove efficiency improvement times 60 cents, up to $1,500. The department will use the EPA default efficiency as of January 1, 2015 when calculating the stove efficiency improvement for:

(A) Wood or pellet stoves without full efficiency testing listed on the EPA list of EPA Certified Wood Heaters,

(B) Wood or pellet stoves without full efficiency testing with the testing data submitted and approved by EPA, or

(C) Pellet stoves on the List of EPA Exempt Wood Heating Appliances that submitted testing certificates to the department.

(3) For photovoltaic systems:

(a) On or after January 1, 2012 and before January 1, 2014, the credit allowed under this section is equal to $2.10 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(b) On or after January 1, 2014 and before January 1, 2015, the credit allowed under this section is equal to $1.90 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(c) On or after January 1, 2015, the credit allowed under this section is equal to $1.70 per watt of the installed capacity measured in watts of direct current at industry standard test conditions; the tax credit is claimed according to OAR 330-070-0024.

(d) A maximum of one credit valued at $6,000 is allowed per residence, per AED. The maximum amount of credit allowed per year, beginning in the year in which the AED was installed, is $1,500 per year over a four-year period. The total credit may not exceed 50 percent of the cost of the system as defined in OAR 330-070-0022(4). All photovoltaic systems installed at a dwelling within a 5 year period will be considered a single device.

(4) The amount of the tax credit may not exceed the system cost of the AED to the applicant. The sum of any rebates or cash payments, including public purpose organization or federal grants or credits and the residential energy tax credit may not exceed system costs.

(5) For purposes of the tax credit, the cost of the AED must:

(a) Comply with OAR 330-070-0060 through 330-070-0097, as those rules apply;

(b) Be the system cost of acquiring the system.

(A) AEDs using an alternative energy source for only a part of their energy output or savings will have system cost prorated. System cost must be based on that part of the AED's energy output or savings that is due to the alternative source;

(B) The department may find an AED to be too large for a dwelling. In such case the system cost must be prorated. System cost must be based on the largest useful size of an AED for the dwelling. The department will determine largest useful size based on the energy needs of the building; and

(C) The amount of credit for the original system and any addition may not exceed $1,500 per year.

(6) For purposes of the tax credit, the eligible system cost of the AED is only those costs necessary for the system to yield energy savings or produce renewable energy such as:

(a) The cost to purchase the AED.

(b) The cost of materials directly associated with installation or construction of the AED.

(c) For solar thermal systems, the cost of solar collectors; thermal storage devices; monitors, meters and controls; photovoltaic devices used to supply electricity to parts of the system; installation charges; fees paid

for design or building; and ductwork, piping, fans, pumps and controls that move heat from solar collectors to storage and to heat buildings.

(d) For solar photovoltaic systems, solar labor costs and solar material costs including photovoltaic modules; inverters; storage systems and regulators; monitors, meters, and controls; wiring and framing materials; trackers; mounting or racking structures only, no structures beyond those needed for mounting or racking purposes; shipping; and for owner-built system inspections by a tax-credit technician, up to $400; permits and fees.

(e) For wind systems, the cost of wind turbine generators; DC/AC converters, inverters and synchronous inverters; energy storage (batteries or other methods); tower, foundation and guys; electric transformers and lines and supports; safety equipment; up to $500 of wind permitting cost; windmills; pumps, linkage, pump heads, and vacuum chambers; and obtaining a project site specific computer model wind speed estimate from a nationally recognized service as approved by the department, not to exceed $100.

(7) Eligible system cost do not include:

(a) Unpaid labor (including the applicant's labor);

(b) Operating and maintenance costs;

(c) Land costs;

(d) Legal and court costs;

(e) Patent search fees;

(f) Fees for use permits or variances;

(g) Loan interest;

(h) Vendor rebates, discounts and refunds;

(i) Service contracts;

(j) Cost of moving a used AED from one site to another;

(k) Cost of repair or resale of a system;

(l) Any part of the purchase price which is optional, such as an extended warranty; or

(m) Support structures beyond the mounting or racking hardware necessary for securing equipment.

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

Stat. Auth.: ORS 469.040; 469B.103; 316.116

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0025

Application for System Certification

(1) Applicants for a tax credit must obtain a system certification from the department.

(2) All applications for a system certification must meet all of the following:

(a) Provide all requested information and include a statement that the system and technician or owner-builder will meet all federal, state and local requirements.

(b) Include the applicant's social security number for use as an identification number in maintaining internal records. The applicant's social security number may be shared with the Department of Revenue to establish the identity of an individual in order to administer state tax law.

(c) State:

(A) The system cost of the AED;

(B) The location of the AED; and

(C) That the applicant has received an operating manual for the AED, except that no operating manual is required for sunspaces or direct gain space heating systems.

(d) Include an agreement by the tax-credit technician to make any changes required by the department for the system to comply with ORS 469B.100 through 469B.118 and 316.116.

(e) Be signed by the applicant and tax-credit technician, if any. Alternatively, a form of electronic signature acceptable to the department may be provided.

(f) Include no false or misleading information about an AED.

(g) For third-party installations, include a valid reference number as issued to the third-party by the department under OAR 330-070-0029.

(h) The contractor's certification that the AED was installed in accordance with manufacturer's installation specifications and all applicable codes and standards.

(3) System certification applications for solar water heating AEDs must contain:

(a) All the data required in section (2);

(b) The number of collectors;

(c) The manufacturer and/or supplier;

(d) The collector dimensions and/or the net area of the collectors;

(e) The amount of heat storage;

(f) The system type;

(g) A declaration of SRCC Standard 300 certification status or equivalence, as determined by the department;

(h) The system model;

(i) A description of the orientation and tilt of the collector;

(j) A solar site assessment worksheet for the collector location;

(k) A Consumer Disclosure signed by the applicant and technician or supplier, if any; and

(l) Other data the department requires to determine eligibility.

(4) System certification applications for active solar space heating AEDs must contain:

(a) All the data required in sections (2) and (3) of this rule;

(b) A heat loss estimate for the home;

(c) The type and amount of thermal storage;

(d) A solar site assessment worksheet for the collector location; and

(e) Other data the department requires to determine eligibility.

(5) System certification applications for passive solar space heating AEDs must contain:

(a) All the data required in section (2) above;

(b) A copy of the building permit plans;

(c) A copy of the window specifications used;

(d) The type and amount of thermal storage;

(e) A solar site assessment worksheet taken at the center of the solar glazing; and

(f) Other data the department requires to determine eligibility.

(6) System certification applications for photovoltaic AEDs must contain:

(a) The data required in section (2);

(b) Retail customer pricing information for:

(A) Total project labor, and

(B) Total project materials;

(c) The number of modules;

(d) The brand name of the module(s);

(e) The rated DC output in watts of the module(s) under Standard Test Conditions (STC);

(f) A description of the storage provided if storage is a part of the system;

(g) Storage brand and model;

(h) Storage capacity in kWh;

(i) The brand name of the inverter if an inverter is part of the system;

(j) The capacity of the inverter;

(k) The Total Solar Resource Fraction (TSRF);

(l) Other data the department requires to determine eligibility;

(m) The permit number and date of final inspection from the applicant's local jurisdiction; and

(n) All applications submitted by a tax-credit technician (TCT) after June 1, 2015, must be submitted through PowerClerk.

(7) System certification applications for geothermal systems must contain:

(a) All the data required in section (2) of this rule;

(b) For all systems connected to a well, data on the well including:

(A) Depth;

(B) Diameter (cased);

(C) Temperature;

(D) Static water level below grade;

(E) A copy of the well driller's log, if available; and

(F) Other data the department requires to determine eligibility.

(c) For systems connected to a heat pump:

(A) Brand name and model number of the heat pump;

(B) Rated output at the entering water temperature;

(C) Estimated system COP rated by AHRI under ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees Fahrenheit; and

(D) Any other data the department requires to determine eligibility.

(d) For geothermal systems:

(A) All the information in subsection (7)(b) of this rule;

(B) Brand name, rated output, estimated COP;

(C) Length and depth of the loop;

(D) Materials and spacing used;

(E) Type of heat transfer fluid; and

(F) Other data the department requires to determine eligibility.

(8) System certification applications for energy-efficient appliances must contain:

(a) All the data required in section (2) of this rule;

(b) The brand name, make, model number, capacity and/or size of the appliance;

(c) A signed copy of the sales agreement, which must include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of appliance; and

(C) Verification of actual price paid for appliance.

(d) Certification of new equipment warranty

(e) For air source ducted heat pumps systems and furnace systems a description of the distribution system; and

(f) Other data the department requires to determine eligibility.

(9) System certification applications for alternative fuel devices must contain:

(a) Taxpayer's name;

(b) Taxpayer identification or social security number;

(c) Installation location by street address;

(d) The name of the licensed and bonded company employing the technician;

(e) The employing company's business location;

(f) The brand name, make, model number, or component list of the alternative fuel device;

(g) A signed copy of the sales agreement, which will include all of the following:

(A) Verification of applicant's name and address;

(B) Verification of model of, or components used for alternative fuel device; and

(C) Verification of actual price paid for the alternative fuel device.

(h) Certification of new equipment warranty; and

(i) Other data the department requires to determine eligibility.

(10) System certification applications for fuel cells must contain:

(a) All of the data required in section (2) of this rule;

(b) The rated fuel cell stack peak capacity, in kW;

(c) The rated fuel cell system peak capacity, in kW (this rating includes peak capacity enhancing devices such as batteries and other storage devices or systems);

(d) Whether or not the system is grid connected;

(e) The fuel used by the system;

(f) The type of fuel stack (PEM, PAFC, SOFC, etc.);

(g) An estimate of the average load, in kW, expected to be placed on the system;

(h) The thermal energy production rate, in Btu/hour, at peak capacity and at the average load specified in (10)(f) above;

(i) Whether or not the system has provisions for thermal heat recovery, and if so, where the thermal energy is designed to be used (domestic hot water, space heating, etc.); and

(j) Other data the department requires to determine eligibility.

(11) System certification applications for premium efficiency biomass combustion devices must contain:

(a) The manufacturer, model, capacity, serial number of the device;

(b) The device characteristics, defined as catalytic, non-catalytic, or pellet stove or boiler;

(c) Vendor name and address;

(d) Price paid for the device, any parts or installation;

(e) Efficiency information, as described in OAR 330-070-0073;

(f) For replacement of uncertified woodstoves, the applicant must additionally provide:

(A) A signed certification from the applicant verifying that the wood burning device being replaced has been rendered unusable, can no longer be used as a heating device, and will be retired permanently from service; and

(B) Documentation, in the form of a disposal receipt from a metal recycler, landfill or licensed contractor, verifying that the wood burning device being replaced is an uncertified woodstove and has been rendered unusable; and

(g) Other data the department requires to determine eligibility.

(12) A system certification may be transferred by an applicant who does not qualify for tax relief to the first eligible buyer of the dwelling.

(13) For a third-party financed system, the application must provide copies of an energy purchase or lease agreement and full service maintenance agreement.

Stat. Auth.: ORS 469.040; 469B.103

Stats. Implemented: ORS 469B.100–469B.118; 316.116; 317.115

Hist.: DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1988(Temp), f. & cert. ef. 1-13-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0026
Tax-Credit Technician

(1) Technicians may apply for the department's tax-credit technician (TCT) status for a technology listed in section (2) of this section. Tax-credit technician status is intended to assist consumers with the state tax credit program, ensure that the systems are installed according to department rules, and verify system installation quality and performance. Technician status is valid for two years and must be renewed to remain in effect.

(2) A tax-credit technician status applies only to the following products:

(a) Solar water heating systems;

(b) Geothermal systems; and

(c) Photovoltaic systems.

(3) The tax-credit technician's status is based on the following:

(a) Knowledge and understanding of the tax credit program requirements and expectations;

(b) Ability to provide systems that are designed and installed consistent with the manufacturer's warranty; and

(c) Employment by a company with a Construction Contractors Board (CCB) license.

(4) Those who do not maintain the competencies in section (3) are subject to revocation of the status.

(5) Tax-credit technician status entitles a technician to:

(a) Inform the AED system owner that he or she has attended the department's online training and is familiar with the rules and requirements of the Residential Energy Tax Credit Program.

(b) Verify that installation of tax-credit qualified equipment and systems meets department standards for performance and longevity.

(6) Tax-credit technician status requires that the technicians must follow department requirements including:

(a) Solar technicians must show at least one of the following, a valid and current:

(A) North American Board of Certified Energy Practitioners (NABCEP) certification,

(B) Limited Renewable Energy Technician (LRT) license for solar electric,

(C) Solar Thermal License (STL) for solar thermal,

(D) Successful passage of the NABCEP Entry-Level Exam for the appropriate AED, or

(E) Other certification approved by the Director to maintain their tax-credit solar technician status with the department.

(b) First-time geothermal technician applicants must show proof of successful completion of International Ground Source Heat Pump Association training (IGSHPA) or IGSHPA certified manufacturer's installer training program or other training approved by the Director.

(c) Solar and geothermal tax-credit technician applicants must complete the department's online training at least once every three years unless otherwise specified in department rule.

(d) Technicians must verify the AED owner has a user manual for the equipment/system.

(e) Technicians must provide the AED owner with a completed application and a copy of the final, itemized and dated invoice for the system that is marked "inspected and paid for," And they must verify the owner has a written full warranty for the system that lasts no less than 24 months after the system is installed.

(f) Technicians must maintain tax-credit technician status by completing the following technology-specific requirements during the period between awarding initial status and the renewal period or between renewal periods:

(A) For solar technology:

(i) Technicians must:

(I) Submit and have approved two (2) Residential or Energy Incentives Program applications for systems in a technology in which the tax-credit technician is listed and complete four (4) hours of related technical continuing education;

(II) Submit and have approved one (1) Residential or Energy Incentives Program application for a system in a technology in which the

tax-credit technician is listed and complete six (6) hours of related technical continuing education; or

(III) Complete eight (8) hours of related technical education.

(ii) Technicians must provide information on the number of job hours directly associated with the installation of RETC qualified photovoltaic systems within the prior two years. Job estimates should be submitted in hours.

(iii) Technicians are subject to the renewal period on the second year from the year of initial status or renewal year.

(iv) The two month renewal period begins every year on June 1st and ends prior to August 1st.

(v) Proof of related technical continuing education must be provided during the renewal period.

(vi) Failure to complete requalification during the renewal period will result in the revocation of TCT status for one year. TCT status may be reinstated during the following year's renewal period.

(B) For geothermal systems, technicians must submit and have approved a minimum of one (1) tax credit application or provide proof of having completed at least two hours of relevant installer training, community college HVAC course, or other training approved by the Director.

(7) Tax credits for installation of geothermal systems, solar electric and solar thermal systems must be verified by a tax-credit technician.

(8) A tax-credit technician must notify the department within 30 days if changes are made in any of the information in the TCT application.

(9) Tax-credit technicians inspect owner-built systems to verify that the system appears to be installed in a workman-like manner. As part of an owner-built inspection, a tax-credit technician is not required to provide a warranty or guarantee of the owner-built system.

Stat. Auth.: ORS 469.040; 469B.103
Stats. Implemented: ORS 469B.100–469B.118; 316.116
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0027
Application Review Process

(1) The department must review applications for AED tax credit approval. AEDs must comply with OAR 330-070-0010 through 330-070-0097. Specific rules for each type of AED are provided in OAR 330-070-0059 through 330-070-0097.

(2) The department will return applications that are not complete and will identify the additional information needed.

(3) The department may require more details to complete its review of an application.

(a) If the department requests additional data and does not receive it within 30 days, the department may deny the application.

(b) During review, the department may ask for proof that the AED complies the rules. The department may also suggest changes to allow the AED and application to comply with these rules.

(4) To obtain the information needed to evaluate an application or to verify eligibility and first year energy savings, the department may, with the owner's consent, inspect an installed AED:

(a) The department may deny a system certification or request Department of Revenue (DOR) to initiate proceedings for the forfeiture of a tax credit if an owner refuses to allow the department to inspect the AED;

(b) The department may require corrections necessary to bring the AED or tax credit application into compliance with the rules to be made within 30 days;

(c) If such changes are not made within this time limit, the department may reject the application; and

(d) The department may use the results of utility, Energy Trust of Oregon or jurisdictional inspections in lieu of its own inspection.

(5) The department may reject any application if the AED does not comply with ORS 469B.100 through 469B.118, 316.116 and OAR 330-070-0010 through 330-070-0097. The department will provide an explanation for all rejected applications in writing. Approved requests for lesser cost than claimed by the applicant will also include a written explanation of the basis for the determination.

(6) If the department rejects an application for system certification or approves a certification for lesser cost than claimed by the applicant, an applicant may appeal the rejection. The appeal must be filed within 60 days of the mailing of the rejection notice by the department, in accordance with ORS 183.310 through 183.500.

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.160
Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 2-1987, f. & ef. 5-13-87; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0029
Third-Party Alternative Energy Device Installations

(1) A third-party who intends to complete a third-party alternative energy device installation must obtain a reservation before commencing installation.

(2) The third-party must apply to reserve potential tax credits by submitting a completed reservation request to the department. A reservation request may only be submitted after the owner of the residential property has entered into a contract for a third-party alternative energy device installation. The reservation request must contain the information required by the department on its form or within PowerClerk.

(3) The department may require the third-party to provide a copy of the signed contract at any time after the submission of a reservation request. Failure to provide requested documents within 30 calendar days may result in the loss of reservations made by the third-party.

(4) A third-party may reserve no more than 25 potential tax credits in each reservation request application. The following limits on reservation requests also apply:

(a) A third-party may request the reservation of up to 50 potential tax credits each week.

(b) A third-party may request no more than 900 reservations between January 1 and September 30 and may request no more than 1,300 total reservations in a calendar year.

(c) The department will not accept reservation request applications once the annual limit in Oregon Laws 2011, chapter 730, section 75 has been reached.

(5) The department will reserve the requested potential tax credits from the amount allowed by Oregon Laws 2011, chapter 730, section 75 and will provide the third-party with a reference number for each potential tax credit. The owner of the residential property at which the alternative energy device is installed must include the reference number on their tax credit application.

(6) A third-party may release a reservation by submitting a written request or notification within PowerClerk, including the reference number, to the department. If reservations are released in the same tax year they are reserved the department will re-allocate the potential tax credits to new reservation requests in the order the requests are received. Reservations of potential tax credits may not be transferred, except to a purchaser or owner of the residential site address where the AED is located.

(7) The department will continually monitor the rate of allocation of tax credits to ensure that the total amount of tax credits do not exceed the amounts specified in Oregon Laws 2011, chapter 730, section 75. The department will allocate potential tax credits according to these rules and in the order in which requests are received. The department will return any excess reservation requests. A third-party may not commence installation until a reservation reference number is issued by the department.

(8) The department will issue tax credits based on the year the potential tax credit is reserved if the installation is completed, as verified by an approved final inspection issued by the local jurisdiction, before April 1 of the following tax year. Tax credits for installations completed after April 1 of the tax year following reservation will be issued for the tax year in which the installation is completed.

(9) Reservation of potential tax credits does not guarantee approval of tax credit applications.

Stat. Auth.: ORS 469.040; 469B.103
Stats. Implemented: ORS 469B.100-469B.118; 316.116
Hist.: DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0040
Other Rules and Regulations

(1) AEDs must comply with all state, federal and local laws and rules that apply.

(2) The policy of the department is:

(a) To accept the findings of local, state and federal agencies which license or permit projects to be built or run;

(b) To avoid influencing any of those agencies to approve or deny a license or a permit; and

(c) To provide facts from tax credit files to such agencies when asked.

(3) Each applicant must:

(a) Obtain each local, state, and federal permit and license that applies to a project;

(b) Agree to comply with the express terms and conditions of each permit and license; and

(c) Agree to comply with all state rules and laws that apply to the project.

(4) System certification and tax-credit technician status are based on the applicant's promise that each needed local, state and federal license and permit has been or will be obtained. Failure to obtain those approvals will cause the department certification or status approval to be revoked.

(5) If any license or permit named in these rules does not apply to the project, the licensing or permitting agency must certify that the license or permit is not required. This does not apply to residential DHW, pool, spa and hot tub systems.

(6) AED technicians must install all systems in compliance with the system manufacturer's published specifications.

(7) The department will assign an energy savings for all solar domestic water heating systems. For systems approved by the department that are not SRCC certified, the department will assign an energy savings based on requirements determined comparable to SRCC ratings.

Stat. Auth.: ORS 469.086

Stats. Implemented: ORS 316.116

Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0045
Enforcement

(1) Actions that are cause for revocation of a residential alternate energy tax credit:

(a) A system certification may be revoked pursuant to ORS 469B.118 if the Director finds any of the following:

(A) The applicant obtained the system certification as a result of misrepresentation.

(B) The AED has not been installed or operated in substantial compliance with the plans, specifications or procedures specified in the application or certificate, such as:

(i) Failure to follow applicable standards;

(ii) Failure to comply with required codes or obtain required permits or inspections;

(iii) Return of the AED to the seller or installer for a refund; or

(iv) Sale or removal of the device so that it no longer operates on the property of the applicant.

(C) The applicant refuses to allow the department to inspect the AED after a reasonable written request by the department. A reasonable request must allow applicant to choose a day within three weeks of the request from the department.

(b) Following revocation, the applicant will forfeit the tax credit, and the Oregon Department of Revenue will proceed to collect any taxes not paid by the taxpayer because of this credit.

(2) A technician's tax credit status may be revoked pursuant to ORS 469B.118 if the Director finds that:

(a) The system or tax-credit technician status was obtained by fraud or misrepresentation by the technician. The Director may find that fraud or misrepresentation occurred if false statements were made regarding the technician's licenses held, products or warranties carried by the tax-credit technician's employing company, the company's range of product cost, personnel employed in the business, or any other item in the application for technician tax credit status as defined in OAR 330-070-0026.

(b) The technician's performance regarding sales or installation of the alternative energy device for which the technician is issued a tax credit certificate under ORS 469B.106 does not meet industry standards. The Director may find that the technician's performance does not meet industry standards under any one or more of the following conditions:

(A) The technician or employing company is not registered with the Construction Contractors Board or does not carry the required level of insurance, licensure or bonding.

(B) The technician or employing company fails to obtain the required state, federal or local permits required to install the AED as defined in OAR 330-070-0040.

(C) The technician fails to install the AED system in compliance with standards adopted under OAR 330-070-0060 through 330-070-0097.

(D) The technician fails to install the AED system to comply with manufacturers' published specifications.

(E) The technician or employing company fail to honor contract provisions when there is no legitimate excuse for nonperformance of the obligation.

(F) The technician or employing company fail to honor a warranty that they are contractually obligated to perform.

(G) The technician or employing company fail to make corrections to remedy failure to comply with paragraphs (A) through (F) of this subsection, as requested by the department, within 30 days of written notification from the department of the problem, unless a time extension is granted by the department.

(H) A tax credit for an AED sold or installed under the tax-credit technician status is ordered revoked under subsection (2)(a) of this rule.

(I) Information indicates that the AEDs installed under the tax-credit technician status or the employing company do not meet eligibility requirements.

(c) The technician or employing company has misrepresented to the customer either the tax credit program or the nature or quality of the alternative energy device. The Director may find that the technician or employing company has misrepresented the tax credit program or the AED under any of the following conditions:

(A) The technician or employing company has provided false or misleading information to the customer regarding the availability of the tax credit, amount and nature of the tax credit, procedures for tax credit application, eligibility standards for credit, or any other misleading information about the program implemented under ORS 469B.100 through 469B.118.

(B) The technician or employing company has misrepresented the nature of the performance of the AED or claimed savings in excess of those on an energy savings chart without providing accurate calculations to the customer and to the department to substantiate the energy savings. For geothermal systems, the technician or employing company has claimed savings higher than other units of similar efficiency.

(C) The technician or employing company has misrepresented the cost of a system. For example, the technician or employing company omits costs in the contract for features necessary for basic installation and/or operation of the system and/or costs to comply with the AED eligibility under ORS 469B.100 through 469B.118.

(D) The technician or employing company has misrepresented a competitor's product or service.

(E) The technician or employing company fails to make corrections requested in writing to the department to remedy violations of (A)-(D) of this subsection within 30 days, unless more time is allowed by the department.

(F) The technician or employing company fails to remedy the construction and/or warranty claim as directed by order of the Construction Contractors Board.

Stat. Auth.: ORS 469

Stats. Implemented: ORS 469.180

Hist.: DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0059
Solar Pool and Spa AEDs

(1) Installations must be installed according to manufacturer's instructions; and comply with all applicable state, county, or local codes and regulations.

(2) Consumers who purchase a solar pool or spa heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to monitor the system performance;

(b) Description and recommended frequency of homeowner maintenance;

(c) Diagram of the system noting location of valves and monitoring devices; and

(d) What to do and who to call in an emergency and when the system needs professional maintenance and repairs.

(3) Pool heating system designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Any building insulation disturbed due to the system installation must be restored to previous condition.

(d) Pool collectors must come with a minimum 10-year manufacturer's full warranty (to ensure that equipment designed for temporary installation is not used).

(e) System must have a method to show that it is operating correctly. This equipment must be a permanent part of the system, not require any special tools, and be in an easily accessible location.

(f) Collectors must be mounted in a manner to enable seasonal drainage by gravity for proper freeze protection.

(g) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(h) Pool collectors must be certified by the SRCC, Florida Solar Energy Center (FSEC) or other certification body approved by the Department.

(4) Spa heating system designs and installations must comply with the following additional requirements:

(a) System design must be approved by the department. Approval is based on complete system design documentation and calculation of annual energy savings.

(b) Controls must be capable of maintaining safe spa temperatures.

(c) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(5) The addition of more energy producing capacity to an existing solar pool heating system may be eligible for an AED tax credit if:

(a) The system addition increases first year energy savings; and

(b) The system addition is built, installed and operated in accord with OAR 330-070-0010 through 330-070-0097.

(6) The department will calculate first year energy savings of a system addition by subtracting the estimated savings of the original AED from the increased first year energy savings with the addition.

(a) The department will not recalculate the original AED's estimated energy savings, even if the AED produces less than estimated.

(b) Any AED that received an AED tax credit in a prior year will be assumed to remain in place, for purposes of calculating a tax credit for a system addition.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0060
Solar Domestic Water Heating AEDs

(1) Installations of solar domestic water heating systems must comply with all applicable state, county or local codes and regulations and be verified by a tax-credit technician.

(2) Consumers who purchase a solar water heating system must receive written operating and maintenance instructions. These instructions must at a minimum include:

(a) Clear instructions on how to determine if the system is functioning properly; and

(b) How to protect the system from overheating due to stagnation during periods when the system is not in use.

(3) System designs and installations must comply with the following additional requirements:

(a) Collectors and piping must be securely mounted to withstand local wind loads.

(b) Piping and pump sizing must consider collector area, total flow rates, pressure drop across collectors, length of run from collectors to pump, and maximum allowable pressure drop for the system.

(c) Pipe insulation must be installed on all solar pipe runs and protected against damage from exposure in outdoor conditions and be rated for design condition temperatures.

(d) Any building insulation disturbed due to the system installation must be restored to previous condition.

(e) For systems using pressurized anti-freeze fluids, a pressure gauge must be installed to indicate pressure in the system.

(f) Piping containing pressurized water in attics 24 hours a day must be of the appropriate material allowed by applicable Oregon plumbing codes.

(4) Systems using tanks, piping, pumps and other components containing water in unheated spaces must be adequately protected from freezing.

(5) Drain-down or manual drain systems are not acceptable freeze protection methods for solar domestic water heating systems.

(6) A method to show that the system is operating correctly must be provided.

(a) For passive systems this must be a thermometer in line between solar storage and backup tank.

(b) For an active system this must be a flow meter in the supply line to the collectors and a thermometer on the outlet port of the solar storage tank.

(7) Annual energy savings will be based on the annual performance simulations provided by the Solar Rating and Certification Corporation (SRCC) modified for conditions required under state law.

(a) The SRCC annual energy savings must be adjusted for site specific conditions as documented by a Solar Site Assessment Worksheet.

(b) The system must have a minimum total solar resource fraction (TSRF) of 75 percent.

(8) All systems must meet the standards established by the SRCC Standard-300 system certification in effect at the time the rules are adopted, or equivalent requirements as determined by the Director.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 7-1984, f. & ef. 12-19-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1995, f. & cert. ef. 1-17-95; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0062
Passive Solar Space Heating AEDs

(1) Installations of passive solar space heating systems must comply with all applicable state, county or local codes and regulations.

(2) The estimated first year energy savings for the system must be the net usable energy produced under average environmental conditions in one year.

(3) Passive solar space heating systems must produce energy savings equal to not less than 20 percent of the annual energy used for space heating in the dwelling to be eligible for a tax credit. Such systems must:

(a) Have sufficient solar access not jeopardized by future buildings or tree growth;

(b) Provide usable heat for the heated space;

(c) Provide adequate thermal storage for solar heat gained;

(d) Prevent overheating of the heated space that requires mechanical space cooling; and

(e) In addition, sunspaces must:

(A) Have no backup heating device; and

(B) Be able to be isolated from the heated space.

(4) Determination of annual performance must be based on one of the following approved methods:

(a) Using the department's prescriptive passive solar heating path to achieve 20 percent savings.

(b) Annual hourly simulation using an approved energy modeling software (e.g.Energy-10).

(c) Monitored data from system before and after installation of AED.

(5) Costs eligible for passive solar space heating systems include:

(a) The cost for thermal storage;

(b) The cost of movable window insulation that is part of a passive system. It must tightly seal on all sides of the window. It must also have an R- value of at least three;

(c) The cost of south-facing windows, if the requirements of section (4) of this rule are met; and

(d) The cost of passive heat distribution components.

(6) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

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

Stat. Auth.: ORS 469
Stats. Implemented: ORS 469.170
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0063
Combined Active Solar Space and Domestic Water Heating AEDs

(1) Installations of active solar space and domestic water heating systems must comply with all applicable state, county and local codes and regulations, and be verified by a tax-credit technician.

(2) The estimated first-year energy savings must be based on the following:

(a) The house design prior to installation of the solar energy equipment, not a base code design or reference design.

(b) An annual solar utilization calculation method approved by the Director that accounts for the operating temperature of the energy storage and collector system and gives no credit for any insulation measures not directly associated with the solar AED.

(c) Typical residential occupancy setpoints and operating behavior. Savings will not be granted for consumer behavior options.

(3) Applicant must provide the following information:

(a) Complete system design documentation with component list and controls sequence;

(b) Documentation showing that the system has a minimum total solar resource fraction (TSRF) of 75 percent;

(c) Annual estimated savings calculations; and

(d) Solar equipment specifications and performance test data.

(4) The department will use data supplied by the applicant to determine if the requirements of OAR 330-070-0022 are met.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0064
Photovolatic AEDs

(1) Installations of photovoltaic systems must be installed according to manufacturer's instructions, comply with all applicable Oregon codes and be verified by a tax-credit technician.

(2) System size will be determined by the sum of all the photovoltaic module DC wattage ratings under standard test conditions (STC). The minimum system size must be 200 Watts DC output under STC.

(3) All modules must have a minimum total solar resource fraction (TSRF) of 75 percent over the entire module. Solar electric AC modules with a TSRF of less than 75 percent will not be counted in the system size.

(4) The department may verify that the modules and inverters are listed on the California Energy Commission (CEC) eligible list as of the date of the application.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 469.040; 469B.103
Stats. Implemented: ORS 469B.100–469B.118; 316.116
Hist.: DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0070
Ground-Source Heat Pump

(1) Geothermal systems must comply with OAR 330-070-0025 and 330-070-0040. Installations must be verified by a tax-credit technician.

(2) System parts must have adequate:

(a) Structural strength;

(b) Resistance to weather and fire;

(c) Ease of upkeep; and

(d) Durability.

(3) Systems must fully protect drinking water as specified in the Oregon Plumbing Specialty Code and be designed for the least impact on ground water.

(4) Direct use geothermal systems must include a summary report from Oregon Institute of Technology or other source approved by the Director which describes the system and indicates that it will deliver sufficient heat and the design meets current good practice guidelines. These systems will be reviewed on a case-by-case basis.

(5) The system COP must be at least 3.3 for all systems including energy used by pumps, except 3.5 for direct expansion (DX) systems including energy used by pumps. COP will be determined by the following methods:

(a) For water source heat pumps, the COP must be determined in accordance with ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees F.

(b) For solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

(6) All other types of ground source heat pumps must be reviewed on their COP.

(7) Geothermal upgrade systems must comply with the following requirements:

(a) All units must be installed on systems that comply with these rules.

(b) All units must be installed on systems that use an operational closed-loop ground coupled heat exchanger.

(c) The compressor upgrade unit must be sized within 15 percent of the unit it is replacing, based on rated cooling capacity in Btus. The department may grant an exception to this limit for an upgrade that is accompanied by a written justification including measured data and appropriate engineering calculations.

(d) All units must be manufactured by a company appearing in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Unitary Directory.

(e) Post-upgrade system COP must be at least 3.3 for closed loop systems and 3.5 for direct expansion (DX) systems, including energy used by pumps. COP must be determined by the following methods:

(A) For water source heat pumps, the COP must be determined in accordance with ANSI/AHRI/ASHRAE/ISO Standard 13256-1, at an entering water temperature of 50 degrees F.

(B) For water source or ground loop heat pumps using ambient surface water as an energy source and for solar assisted heat pumps, the COP must be the measured ratio of the heating season energy output divided by the heating season energy input. Both energy values must be expressed in the same units.

Stat. Auth.: ORS 469.086
Stats. Implemented: ORS 316.116
Hist.: DOE 12(Temp), f. & ef. 10-14-77; DOE 3-1978, f. & ef. 3-7-78; DOE 5-1978, f. & ef. 9-27-78; DOE 6-1979, f. & ef. 11-13-79; DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 6-1983, f. 12-16-83, ef. 1-1-84; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1989, f. & cert. ef. 6-15-89; DOE 2-1989, f. 12-28-89, cert. ef. 1-1-90; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0073
Energy-Efficient Appliances

(1) Energy-efficient appliances must meet or exceed the United States Department of Energy (USDOE) energy efficiency standards, as applicable, the department will designate a nationally recognized test procedure that will apply where USDOE standards do not exist.

(2) Water Heating Appliances.

(a) High-efficiency heat pump water heaters (HPWH) for domestic hot water must meet the "Northern Climate" specifications by the Northwest Energy Efficiency Alliance (NEEA).

(b) Natural gas, propane, or oil-fired residential storage type water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of 0.70 or greater as tested with natural gas fuel.

(c) Whole-home gas fired instantaneous water heaters, as defined by Title 10, Code of Federal Regulations, Chapter 11, Part 430, Subpart B, Appendix E, must have an Energy Factor of at least 0.82 or greater if installed on or after January 1, 2011.

(d) Equipment efficiency requirements are based on either the listing by ENERGY STAR®, the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), or other third-party certified list approved by the Director.

(3) Wastewater Heat Recovery, field performance data submitted to and approved by the department will be the basis for tax credit qualification. The following rules also apply:

(a) The system must meet all plumbing code requirements for vented double-wall heat exchangers;

(b) The system must not interfere with the proper operation of the dwelling's wastewater system; and

(c) Energy recovered must be re-introduced into the dwelling's hot water supply system.

(4) Sealed Duct Systems must meet the following requirements:

(a) Have all work must done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), ACCA Quality Installation or approved by the department as equivalent.

(b) To apply for a sealed duct tax credit, the following information must be submitted on the department approved application form:

(A) Certification that Bonneville Power Association's Prescriptive Duct Sealing Specifications have been completed; and

(B) Itemized invoice identifying costs.

(5) Energy Recovery Ventilators (ERVs) must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Be capable of at least 30 percent Latent Recovery/Moisture Transfer (LRMT) at 32°F when operating on the lowest fan speed;

(c) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(d) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

(6) Heat Recovery Ventilators must:

(a) Be tested, rated and certified through the Home Ventilating Institute (HVI) Division of the Air Movement and Control Association (AMCA) International, Inc., and listed in the HVI directory;

(b) Have a maximum EUI of 1.10 watts/cfm at the lowest fan speed for which performance data is published in the HVI directory; and

(c) Have a minimum Sensible Recovery Efficiency (SRE) of:

(A) 75 percent at 32°F/0°C when operating at the lowest fan speed; and

(B) 67 percent at 32°F/0°C when operating at the highest fan speed.

(7) High Efficiency Air Source Ducted Heat Pump Systems must:

(a) Have all work done by technician with a current or valid certification with Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent;

(b) Be tested and rated in accordance with the USDOE Appendix M test procedure in effect at the time these rules are adopted, and be certified by, and be listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) that is in effect at the time these rules are adopted;

(c) Consist of a matched outdoor unit and indoor unit (air handler and coil or furnace and coil), as tested, rated and listed in the AHRI directory;

(d) Have a minimum USDOE Region IV HSPF rating of 9.0 or greater; and

(e) Systems must be installed and attested to the protocols of tested and serviced as needed to confirm correct refrigerant charge and air flow by a technician authorized by the department and by an approved Performance Tested Comfort System (PTCS), Proctor Engineering CheckMe!, ACCA Quality Installation or approved by the department as equivalent.

(8) High Efficiency Furnace Systems must:

(a) Be rated by and listed in the directory of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) in effect at the time these rules are adopted;

(b) Have a minimum AFUE rating of 0.95 (95 percent);

(c) Use direct ducted outdoor air for combustion; and

(d) Must be listed in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) directory of Certified Energy Rating in effect at the time these rules are adopted as an "e" "electrically efficient" furnace.

(9) High Efficiency Ductless Air Source Heat Pump Systems must:

(a) Include an inverter-driven variable speed compressor;

(b) Be listed in the Air-Conditioning, Heating and Refrigeration Institute (AHRI) Directory of Certified Products;

(c) Deliver at least 50 percent of its AHRI-certified rated heating capacity at 17°F outside temperature;

(d) Have a minimum USDOE Region IV HSPF rating of 9.0 or greater;

(e) Include no integrated electric resistance backup heat;

(f) Be sized and installed per manufacturer specifications; and

(g) Be installed by a technician trained by the equipment manufacturer.

(10) High Efficiency Direct Vent Gas Fireplace Devices that use natural gas or propane must:

(a) Meet CAN/CSA-P.4.1-09 (R2014) Fireplace Efficiency (FE) of 70 percent or greater.

(b) Be direct vented to the outside with sealed combustion.

(c) Have an electronic ignition that is either an intermittent or Pilot on Demand system meeting American National Standards Institute (ANSI) Z21.20-2014.

(11) Any other standards adopted by the department for energy-efficient appliances and alternative fuel devices, their components, or systems as determined by the Director.

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

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 1-1982, f. 1-12-82, ef. 2-1-82; DOE 1-1986, f. & ef. 2-7-86; DOE 4-1987, f. 12-18-87, ef. 1-1-88; DOE 1-1996, f. & cert. ef. 4-1-96; DOE 1-1997, f. 12-15-97, cert. ef. 1-1-98; DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2000, f. 12-29-00, cert. ef. 1-1-01; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 4-2004, f. & cert. ef. 8-2-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2006, f. 12-29-06, cert. ef. 1-1-07; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2013, f. 12-27-13, cert. ef. 1-1-14; DOE 4-2014(Temp), f. & cert. ef. 5-15-14 thru 11-10-14; Administrative correction, 11-24-14; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0076

Premium Efficiency Biomass Combustion Alternative Energy Devices

(1) To qualify for a tax credit, a premium efficiency biomass combustion device must be:

(a) Less than <250,000 Btus per hour heat output.

(b) Installed with a dedicated outside combustion air intake within five feet of the device, which may be a duct, barometric damper or grill.

(c) Efficiency tested, as evidenced by:

(A) A listing in the United States Department Environmental Protection Agency (EPA) List of EPA Certified Wood Stoves with emissions of 3.5 grams of particulate per hour or less designated in that list as a non-catalytic wood stove;

(B) A listing in the List of EPA Certified Wood Stoves with emissions of 2.5 grams of particulate per hour or less if it is designated in that list as a catalytic wood or pellet stove;

(C) Having a certificate of performance for the specific manufacturer and model of wood burning device from a current US EPA certified woodstove testing laboratory, tested in accordance with CSA B415.1 and submitted and approved by EPA. The certificate must show emissions of 3.5 grams of particulate per hour or less designated as a non-catalytic wood stove purchased or emissions of 2.5 grams of particulate per hour or less if it is designated as a catalytic wood or pellet stove; or

(D) A certificate of performance including the grams of smoke per hour, for pellet stoves on the List of EPA Exempt Wood Heating Appliances, for the specific manufacturer and model from a currently US EPA certified stove testing laboratory, tested in accordance with CSA B415.1. The certificate must be submitted to the department. The department will use the EPA default efficiency for pellet stoves as the device efficiency beginning on January 1, 2014.

(2) To qualify for a tax credit when installing a premium efficiency biomass combustion device, the dwelling must have an approved carbon monoxide detector alarm device in compliance with the Regional Technical Forum Residential Weatherization Specifications as of August 30, 2011.

(3) Any other standards adopted by the department for premium efficiency biomass combustion devices as determined by the Director.

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0078

Alternative Fuel Devices

(1) To qualify for a tax credit, an alternative fuel device must be permanently installed to meet all state and local safety codes.

(2) Electric charging stations must be a Level 2, 240 volt AC or similar.

(3) Non-electric alternative fuel fueling stations must be capable of re-fueling an alternative fuel vehicle within 14 hours.

(4) Other standards adopted by the department for alternative fuel devices as determined by the Director.

Stat. Auth.: ORS 469.040 & 469B.103

Stats. Implemented: ORS 469B.100 - 469B.118 & 316.116

Hist.: DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

330-070-0089
Wind Alternative Energy Devices

(1) To qualify for a tax credit:

(a) A minimum annual average wind speed of 10 miles per hour at hub height or lower must be demonstrated at the wind AED site.

(b) A wind AED system manufacturer must make available estimated monthly or annual energy production data (kWh) at various annual average wind speeds for each model or system they produce.

(c) The wind AED system model must meet industry standards as approved by the department.

(d) A wind AED system application must include the nominal rated electric capacity, the power curve and energy production data as a function of the average annual wind speed.

(e) A wind system must have a minimum five-year manufacturer's warranty.

(2) The department reserves the right to deny eligibility for any wind AED for reasons including, but not limited to, poor generator performance, concerns about wind generation system design, the quality of data presented, lack of manufacturing support for maintenance or warranties.

(3) Systems must be designed and located to reduce the potential for hazards and unpleasant living conditions. Systems must be designed and located taking into account:

(a) The proximity of the system to buildings, power lines, antennae or other similar hazards;

(b) The effect of high winds on the system and on any building connected to the system by guy wires;

(c) Whether the system blocks fire lanes, obstructs dwelling access, or otherwise increases fire danger;

(d) Whether the operation of the system significantly increases background noise; and

(e) Whether connecting the system to other buildings by guy wires creates vibration and tension in other buildings.

(4) Materials used will assure that the wind AED has adequate:

(a) Strength;

(b) Resistance to ice, moisture, corrosion and fire;

(c) Durability; and

(d) Low maintenance cost.

(5) No part of a wind AED project may result in toxic substances entering into the environment in amounts that will cause disease or harmful physical effects to humans, animals or plants.

(6) Maximum Design Wind Speed: All parts of a Wind AED project must withstand the highest wind speed expected at its location. All parts must withstand this wind without damage. To meet this requirement, wind AEDs may be shut down during highest expected winds.

(7) Shutdown: All wind AEDs must have a way to stop the rotor from turning. This method must work safely during high winds and routine service.

(8) Overspeed Control: Rotor overspeeds must be prevented by the wind AED's design.

(9) Tower Safety: All parts of a wind AED project must meet accepted engineering standards. Tower design must include consideration of:

(a) Gravity load; and

(b) Peak thrust on the rotor, nacelle, tail and tower over the full wind speed operating range.

(10) Tower Height: A minimum tower height of 70 feet is required. All portions of the rotor disc of the wind AED must be at least 30 feet above any object within a 400 foot radius of the wind AED's base. Future growth of trees for the next 20 years must be taken into consideration.

(11) Electric: All wind AED electrical parts must adhere to all standards and codes in force at the time they are installed.

Stat. Auth.: ORS 469.160 - 469.180
Stats. Implemented:
Hist.: DOE 1-1999, f. 12-21-99, cert. ef. 1-1-00; DOE 2-2001, f. 10-5-01, cert. ef. 10-8-01; DOE 1-2004, f. & cert. ef. 1-21-04; DOE 2-2005, f. 12-30-05, cert. ef. 1-1-06; DOE 4-2007, f. 11-30-07, cert. ef. 12-1-07; DOE 7-2008, f. 10-31-08, cert. ef. 11-1-08; DOE 16-2010, f. & cert. ef. 12-22-10; DOE 11-2011, f. 12-16-11, cert. ef. 1-1-12; DOE 14-2012, f. 12-26-12, cert. ef. 1-1-13; DOE 8-2014, f. 11-18-14, cert. ef. 1-1-15

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Regulations for the Commercial Dungeness Crab Fishery in the Pacific Ocean and Columbia River.
Adm. Order No.: DFW 157-2014(Temp)
Filed with Sec. of State: 11-24-2014
Certified to be Effective: 11-25-14 thru 5-23-15
Notice Publication Date:
Rules Amended: 635-005-0465, 635-005-0485
Subject: On August, 1, 2014 the Oregon Fish and Wildlife Commission adopted rules to lengthen the commercial Dungeness crab fishery's presoak period prior to opening the fishery from 64 hours to 73 hours to facilitate a gear retrieval start time of 9:00 a.m. on Dec 1, 2014. This rule is needed to correct an error in the rules adopted at that time to align them with the intended change to the length of the presoak and start time of the fishery.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-005-0465
Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through December 1, 08:59 AM.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of PointArena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised July 2014) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV — Season Opening Criteria.

(b) Section V — Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI — Procedure for Establishing Fishing Zones. In the event that crab quality tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the Tri-State Protocol.

(3) It is *unlawful* to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the transfer of a permit from one vessel to another is suspended from the earliest season opening date through thirty days after the latest season opening date, except in the event a vessel is unintentionally destroyed due to fire, capsizing, sinking, or other event.

(5) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 11-

14-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-12-12 thru 6-9-13; Administrative correction, 6-27-13; DFW 118-2013, f. 10-11-13, cert. ef. 10-15-13: DFW 129-2013(Temp), f. 11-25-13, cert. ef. 12-1-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 113-2014, f. 8-5-14, cert. ef. 8-15-14; DFW 157-2014(Temp), f. 11-24-14, cert. ef. 11-25-14 thru 5-23-15

635-005-0485
Dungeness Crab Gear Prohibitions

It is *unlawful* for commercial purposes to:

(1) Place, operate, or leave Dungeness crab gear in the Pacific Ocean, Columbia River or in any bay or estuary during the closed season, except: In only the Pacific Ocean and Columbia River, Dungeness crab gear may be placed no more than 73 hours immediately prior to the date the Dungeness crab season opens. In addition, unbaited Dungeness crab gear with open release mechanisms may be left in the Pacific Ocean (not including the Columbia River) for a period not to exceed 14 days following the closure of the Dungeness crab season.

(2) Have Dungeness crab gear deployed in the Pacific Ocean or Columbia River more than 14 days without making a landing of Dungeness crab.

(3) Remove, damage, or otherwise tamper with crab buoy, pot or ring tags except:

(a) When lawfully applying or removing tags on the vessel's buoys, pots or rings; or

(b) When lawfully removing tags on crab gear retrieved under a Post-Season Derelict Gear Permit pursuant to OAR 635-005-0491 and after the gear has been registered by state officials.

(4) Attach one crab pot or ring to another crab pot or ring by a common groundline or any other means that connects Dungeness crab gear together.

(5) Take crabs for commercial purposes by crab pots from any bay or estuary except the Columbia River.

(6) Take or fish for Dungeness crab for commercial purposes in the Columbia River or Pacific Ocean adjacent to the state of Oregon unless a Dungeness crab gear allocation has been issued to the permit required under OAR 635-005-0405(5).

(7) Deploy or fish more Dungeness crab gear than the number of pots and rings in aggregate assigned by the Dungeness Crab Pot Allocation Certificate or to use any vessel other than the vessel designated on the Dungeness Crab Pot Allocation Certificate, except to set gear as allowed under OAR 635-005-0405.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 113-2014, f. 8-5-14, cert. ef. 8-15-14; DFW 157-2014(Temp), f. 11-24-14, cert. ef. 11-25-14 thru 5-23-15

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Rule Caption: Treaty Indian Commercial Fall Sturgeon Set-Line Fishery In The Dalles Pool Extended.
Adm. Order No.: DFW 158-2014(Temp)
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14 thru 12-31-14
Notice Publication Date:
Rules Amended: 635-041-0063
Rules Suspended: 635-041-0063(T)
Subject: This amended rule extends the 2014 Treaty Tribe white sturgeon set-line fishery in The Dalles Pool through 11:59 p.m. Wednesday, December 31, 2014. Fishing for the purpose of commercial sales and subsistence is allowed. Modifications are consistent with joint state action taken November 25, 2014, by the Departments of Fish and Wildlife for the states of Oregon and Washington at a meeting of the Columbia River Compact in cooperation with the Columbia River Treaty Tribes.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0063
Sturgeon Setline Fishery

(1) White sturgeon may be taken by setline for commercial purposes from 6:00 a.m. Monday, October 27 through 11:59 p.m. Wednesday, December 31, 2014 from The Dalles Pool only.

(a) White sturgeon taken must be 43-54 inches in fork length.

(b) White sturgeon taken in The Dalles Pool during open fishing periods may be sold at any time or kept for subsistence use.

(2) Closed areas are set forth under OAR 635-041-0045.

(3) During the white sturgeon setline season it shall be unlawful to:

(a) Operate any fishing gear other than setlines except as provided in OAR 635-041-0060;

(b) Operate any setline having more than 100 hooks;

(c) Use other than single hooks size 9/0 or larger;

(d) Operate any setline on which the buoy or marker does not have the tribal identification number of the individual operating the line clearly marked on it and which is attached in a manner that will not allow it to float visibly on the surface at all times.

(4) Notwithstanding OAR 635-041-0045(6)–(11), it is lawful during the open season to fish for white sturgeon by means of set lines in the Columbia River within areas at and adjacent to the mouths of rivers.

Stat. Auth.: ORS 183.325 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0063; FWC 6-1980, f. & ef. 1-28-80; FWC 12-1980, f. & ef. 2-29-80; FWC 64-1980(Temp), f. & ef. 11-7-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 9-1983(Temp), f. & ef. 3-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 12-1989(Temp), f. & cert. ef. 3-21-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 9-1991, f. & cert. ef. 1-31-91; FWC 37-1991(Temp), f. & cert. ef. 4-3-91; FWC 4-1992, f. 1-30-92, cert. ef. 2-1-92; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 41-1992(Temp), f. 6-30-92, cert. ef. 7-1-92; FWC 107-1992(Temp), f. & cert. ef. 10-9-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 15-1996(Temp), f. & cert. ef. 4-1-96; FWC 25-1996(Temp), f. 5-14-96, cert. ef. 5-15-96; FWC 23-1997(Temp), f. 4-4-97, cert. ef. 4-7-97; FWC 35-1997(Temp), f. & cert. ef. 6-13-97; FWC 40-1997(Temp), f. 6-20-97, cert. ef. 6-23-97; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 50-1998(Temp), f. 6-25-98, cert. ef. 6-26-98 thru 7-24-98; DFW 57-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 22-1999(Temp), f. & cert. ef. 4-1-99 thru 4-23-99; DFW 28-1999(Temp) , f. & cert. ef. 4-23-99 thru 7-31-99; DFW 41-1999(Temp), f. & cert. ef. 6-7-99 thru 7-31-99; DFW 79-1999(Temp), f. 10-8-99, cert. ef. 10-11-99 thru 12-31-99; DFW 14-2000(Temp), f. 3-17-00, cert. ef. 3-20-00 thru 7-31-00; DFW 31-2000(Temp), f. 6-9-00, cert. ef. 6-10-00 thru 7-31-00; DMV 43-2000(Temp), f. 8-7-00, cert. ef. 8-8-00 thru 8-20-00; DFW 66-2000(Temp), f. 9-29-00, cert. ef. 10-2-00 thru 12-31-00; DFW 43-2001(Temp), f. 5-23-01, cert. ef. 5-24-01 thru 11-20-01; DFW 65-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 94-2001(Temp), f. 9-26-01, cert. ef. 9-27-01 thru 12-31-01; DFW 114-2001(Temp), f. & cert. ef. 12-13-01 thru 12-31-01; DFW 51-2002(Temp), f. & cert. ef. 5-22-02 thru 9-1-02; DFW 104-2002(Temp), f. & cert. ef. 9-19-02 thru 12-31-02; DFW 121-2002(Temp), f. 10-24-02, cert. ef. 10-27-02 thru 12-31-02; DFW 49-2003(Temp), f. & cert. ef. 6-5-03 thru 9-1-03; DFW 58-2003(Temp), f. & cert. ef. 7-9-03 thru 12-31-03; DFW 67-2003(Temp), f. 7-18-03, cert. ef. 7-21-03 thru 12-31-03; DFW 104-2003(Temp), f. 10-10-03, cert. ef. 10-11-03 thru 12-31-03; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-19-06; DFW 69-2006(Temp), f. 7-28-06, cert. ef. 7-31-06 thru 12-31-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 60-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 19-2009, f. & cert. ef. 2-26-09; DFW 88-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; Administrative correction 1-25-10; DFW 103-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; DFW 142-2011(Temp), f. 10-6-11, cert. ef. 10-8-11 thru 10-31-11; DFW 150-2011(Temp), f. 10-25-11, cert. ef. 10-26-11 thru 11-30-11; DFW 152-2011(Temp), f. 11-1-11, cert. ef. 11-2-11 thru 12-31-11; DFW 95-2012(Temp), f. 7-27-12, cert. ef. 7-30-12 thru 8-11-12; Administrative correction, 8-27-12; DFW 40-2013(Temp), f. 5-23-13, cert. ef. 5-24-13 thru 6-15-13; Administrative correction, 7-18-13; DFW 152-2014(Temp), f. & cert. ef. 10-23-14 thru 11-29-14; DFW 158-2014(Temp), f. & cert. ef. 11-25-14 thru 12-31-14

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Rule Caption: Amend Rules to Change Name of Travel Management Area
Adm. Order No.: DFW 159-2014(Temp)
Filed with Sec. of State: 12-4-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Amended: 635-065-0760
Subject: Amend rules to change the name of the JWTR, LLC Travel Management Area to Green Diamond Travel Management Area,
Rules Coordinator: Therese Kucera—(503) 947-6033

635-065-0760
Other Restrictions

It is *unlawful*:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the Department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his or her land while on that property.

(6) To refuse inspection, by an employee of the Oregon Department of Fish and Wildlife, or any person authorized to enforce wildlife laws, of any gear used for the purpose of taking wildlife.

(7) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(8) To disturb, damage, remove, alter or possess any official Department signs.

(9) To sell, lend, or borrow any big game tag.

(10) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below.

There are two methods of posting road access information; negative marking in which closed roads are marked by signs, gates, berms, or other similar indicators, or positive marking in which open roads are marked by round green reflectors, orange carsonite posts, or similar indicators. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: Three days prior to opening of general archery season through the close of all bull elk rifles seasons. — Applies to all gated, posted, and/or barrier closed roads within the Saddle Mountain, Scappoose, Trask and Wilson wildlife management units. Cooperators require: day use only on private lands, no ATV use on private and designated state lands, no vehicle may block any road gate.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 and 2 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt. /Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Open roads in the Siuslaw NF lands south of US Hwy 20 and north of State Hwy 126 are designated on the Siuslaw NF Motor Vehicle Use Map. However; additional roads may be posted as closed as part of the Cooperative TMA or for administrative purposes.

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: Three days prior to opening of general Cascade elk season through close of general Cascade elk season. That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Wendling: opening of archery season through the end of the general firearms buck deer season including the youth weekend. Approximately 185 sq. mi in Unit 19 northeast of Springfield; north of Hwy 126, east of Marcola and Brush Creek Rds., and south of the Calapooia River Mainline. Roads open to motor vehicle use will be marked with orange road markers. Access may be closed due to fire danger.

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: High Cascades Ranger District, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 116 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: Three days prior to the opening of controlled buck deer rifle season through the close of antlerless elk rifle season — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: Three days prior to the opening of the archery deer and elk seasons through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: Three days prior to opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 63 square miles in Townships 2, 3, 4, and 5 South, Ranges 25, 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 14 annually except by permit — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Meacham: Three days prior to the opening of the archery deer and elk seasons through May 31. Approximately 41 square miles in Units 49, 52 and 54 in townships 1 and 2 south, township 1 north, ranges 34, 35, and 36 east.

(cc) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(dd) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season and May 1 through June 30 encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(ee) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ff) Clear Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(gg) Trail Creek: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(hh) Indian Creek-Gorham Butte: Three days prior to opening of Rocky Mountain bull elk season through close of Rocky Mountain bull elk second season — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(ii) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(jj) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(kk) Hall Ranch: Three days prior to the opening of Rocky Mountain bull elk first season through April 30 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(ll) Little Catherine Creek: Three days prior to opening of archery season through May 31 — That part of the Catherine Creek Unit as follows: 22 square miles in Townships 3, 4 and 5 South, Ranges 40 and 41 East;

(mm) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(nn) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(oo) Noregaard: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(pp) Shamrock: Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the end of the last antlerless elk rifle season. — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(qq) Chesnimnus: Three days prior to Chesnimnus rifle bull season through end of Chesnimnus rifle bull season — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(rr) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 3 North, and Range 48 East.

(ss) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(tt) Grouse-Lick Creeks: Three days prior to opening of Rocky Mountain bull elk first season through the close of Rocky Mountain bull elk second season — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(uu) Clear Lake Ridge: Three days prior to opening of archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(vv) Mehlorn: Permanent Closure: That part of the Pine Creek and Keating Units as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(ww) Lake Fork-Dutchman: Three days prior to opening of archery season to the end of all elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 42 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(xx) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons and from May 1 to July 1 — That part of the Pine Creek Unit as follows: 20 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(yy) Summit Point: Permanent Closure: That part of the Keating Unit as follows: 14 square miles in Townships 6 and 7 South, Ranges 44 and 45 East.

(zz) Eagle Creek: December 1 — April 15: That part of the Keating Unit as follows: 17 square miles in Townships 7 and 8 South, Range 44 and 45 East;

(aaa) Conroy Cliff: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(bbb) Devine Ridge-Rattlesnake: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(ccc) Dairy Creek: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(ddd) Burnt Cabin: Three days prior to the opening of controlled buck deer rifle season through the close of controlled buck deer rifle season and from three days prior to the controlled

Rocky Mountain bull elk first season through the Rocky Mountain bull elk second season — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(eee) Walker Rim; Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(fff) North Paulina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(ggg) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(hhh) Stott Mt.-North Alsea: One day prior to opening of archery season through the bull elk rifle seasons — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, and no vehicle may block any road or gate. Access may be closed during extreme fire danger;

(iii) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(jjj) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Posted and gated roads north of 46 roads in Chesnimnus Unit are closed;

(kkk) Hells Canyon National Recreation Area: Permanent Closure — Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(lll) PO Saddle Road — Three days prior to opening of archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East.

(mmm) Whiskey Creek — Three days prior to archery season through May 31. However, roads will be open to permit removal of camping equipment during a time period extending through two Sundays following the last antlerless elk season. That part of the Sled Springs unit as follows — 45 square miles in Townships 2 and 3 North, Ranges 43, 44, and 45 East.

(nnn) South Boundary: Permanent Closure — That part of the Ochoco Unit as follows: 47 square miles in Townships 15 and 16 South, Ranges 20, 21, and 22 East.

(ooo) Green Diamond Travel Management Area: Permanent Closure — Applies to all gated, posted, or barrier-closed roads within the Rogue, Keno, Klamath Falls, Sprague, Interstate, Silver Lake, and Fort Rock Units within the land holdings of Green Diamond Resource Company.

(ppp) Prineville Reservoir Wildlife Area: From November 15 or December 1 (as posted at each gate) through April 15 annually — That part of the Ochoco and Maury Units as follows: 5 square miles in Township 16 South, Range 17 East.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04; DFW 125-2004, f. 12-21-04, cert. ef. 6-1-05; DFW 133-2005, f. 12-1-05, cert. ef. 6-1-06; DFW 128-2006, f. 12-7-06, cert. ef. 6-1-07; DFW 118-2007, f. 10-31-07, c ert. ef. 1-1-08; DFW 150-

2008, f. 12-18-08, cert. ef. 1-1-09; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 159-2014(Temp), f. 12-4-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Implementation of the Columbia River Transition Program.
Adm. Order No.: DFW 160-2014
Filed with Sec. of State: 12-8-2014
Certified to be Effective: 12-8-14
Notice Publication Date: 11-1-2014
Rules Adopted: 635-440-0001, 635-440-0005, 635-440-0010, 635-440-0015, 635-440-0020, 635-440-0025, 635-440-0030, 635-440-0035
Subject: These rules relating to Columbia River commercial fisheries reform make up the newly adopted rules division 635-440. A provision of Senate Bill 830 (2013) dealing with Columbia River commercial fisheries reform, established a Columbia River Transition Program. These new rules provide criteria and procedures for the implementation of said program. The Oregon Department of Fish and Wildlife will be the only state agency affected by these rules.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-440-0001
Definitions

For the purposes of administrative rules found in Division 440 the following definitions apply:

(1) "Economic Harm" means the reduction, unrelated to environmental and market variability or personal circumstances, in the annual income of an individual who holds a vessel permit issued pursuant to ORS 508.775 to ORS 508.796 from fishing under the permit that is due to Columbia River fish management and reform adopted by rule of the commission.

(2) "Fund" means the Columbia River Fisheries Transition Fund.

(3) "County Program" means an established Columbia River fisheries transition program by an Oregon county.

(4) "Permit" means a Columbia River vessel permit as defined in ORS 508.775 to 508.796

(5) "Eligible Applicants" means county governments that have established an advisory committee and otherwise met the requirements listed in OAR 635-440-0010 and are prepared to assess applications from persons who apply for Columbia River Fisheries Transition funds from the county.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0005
Purpose

The purpose of these rules is to provide criteria and procedures for implementation and administration of the Columbia River Fisheries Transition Program. Funds will be granted to qualified county programs for:

(1) Compensation to individuals who hold a valid permit and who provide documentation of economic harm;

(2) Financial assistance to individuals who hold a valid permit and who demonstrate a history of recent landings under a permit, to help offset the cost to those individuals of fishing equipment required as a result of fishing gear changes caused by restrictions related to Columbia River fish management and reform adopted by rule of the Commission.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0010
Standards to Determine Grant Award Eligibility

(1) The Department may approve a county program that meets the stated purpose of this rule and contains the elements specified in this section.

(2) Grants are subject to available funding in the Columbia River Transition Fund. A county may qualify for funds if a county has a program that meets the following requirements:

(a) A county must establish a county advisory committee to oversee the county program.

(b) Advisory committee membership shall include at a minimum:

(A) One county commissioner;

(B) Two members who own or manage a permit or who have expertise related to commercial fisheries; and

(C) Two members who are not employed in the commercial fishing industry and who represent the public interest in the equitable administration of public funds.

(c) A county must establish a procedure by which permit owners who have experienced economic harm shall be given funds received under the county program.

(d) A county program must require that an advisory committee must establish compensation rates for economic harm that are based on fair market value.

(e) A county program must establish eligibility requirements for compensation that ensures, that the person did experience legitimate economic harm.

(f) The county will be reimbursed an amount of money, approved by the Oregon Department of Fish and Wildlife, to cover the allowable expenditures necessary to implement the county program during the calendar year. Allowable expenditures are:

(A) Establishing a county advisory committee.

(B) Establishing a procedure by which persons applying for compensation will provide sufficient evidence of economic harm.

(C) Establishing a procedure by which persons applying for financial assistance for economic hardship provide an estimate of the potential cost.

(D) Distributing grant program funds.

(E) Preparation of an annual report to the Department.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0015
Distribution of Funds by County

Funds received by a county program from the Department may only be used to reimburse the following expenses or losses:

(1) Compensation to permit holders for documented economic harm

(2) Compensation to permit holders for gear changes.

(3) Compensation to the county for allowable expenditures necessary to implement the county program during the calendar year.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0020
Grant Application Procedures

(1) Grant application forms will be made available and distributed by the Department on request by a county.

(2) Each county shall submit its proposal for funding on the Department's application form, including attachments as necessary.

(3) Applications for funds for a calendar year shall be submitted to the Department by March 1 of the following year. Late submissions may be accepted at the discretion of the Department.

(4) Grant applications may only be made for the purposes outlined in OAR 635-440-0015.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0025
Grant Application Review

(1) The Department will review county grant applications to evaluate the reasonableness of the amount of money requested. The Department may use formulas it may derive for allocating available funds equitably among grant requests by multiple qualifying county programs.

(2) The Department will review each application for completeness, accuracy, and consistency with these rules. Incomplete applications may be returned for correction or completion. Applications not meeting the standards established in these rules may be denied. If an application is denied, the Department will identify standards necessary for approval of a future grant application.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0030
Grant Awards

After reviewing a county application, the Department will make one of the following decisions for each county's grant request.

(1) Approval of grant award for the full amount requested;

(2) Approval of grant award of partial amount requested.

(3) Deferral of request for further consideration based upon submission of additional information;

(4) Denial of request.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

635-440-0035
Grant Administration

The Department and county shall enter into a grant agreement by January 1 of each year that includes but is not limited to the following:

(1) A detailed description of the county program and a description of the work elements for which grant funding is received. This description shall include description of the criteria to be used for assessing eligibility of permit holders, relevant advisory committee bylaws, and other procedures by which the county will manage the compensation program.

(2) A payment schedule as determined by the Department.

(3) A condition requiring the participating county to prepare an annual report that specifies the actions taken, compensation paid and financial assistance provided under the grant. This report will be due to the Department on June 1 of each year following an awarded grant.

(4) A condition allowing the Department to withhold the relevant payment pending resolution of the identified deficiencies in grant administration or in the event the Department finds a report unsatisfactory.

(5) A condition allowing termination of the grant agreement if a county is consistently unable to meet requirements as identified in the grant or as consistent with law.

(6) A condition requiring counties to maintain any and all records necessary for the Department to audit and review the county program.

(7) A condition specifying that grantees and the Department may amend timelines specified in the grant agreement provided such amendments are in writing and are mutually agreed to.

(8) A condition specifying that unexpended grant funds not used by the county must be returned to the Department for re-deposit in the Transition Fund.

Stat. Auth.: ORS 509.230
Stats. Implemented: ORS 508.775 - 508.796
Hist.: DFW 160-2014, f. & cert. ef. 12-8-14

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Rule Caption: Siletz Tribe Special Gathering Permit for Clams.
Adm. Order No.: DFW 161-2014
Filed with Sec. of State: 12-8-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Adopted: 635-041-0525
Subject: The Oregon Department of Fish and Wildlife (Department) has worked with the Confederated Tribes of the Siletz Indians of Oregon (Siletz Tribe) for many years (since 1980) to provide opportunity for tribal harvest of mussels, rock oysters, and sea anemones through a special gathering permit for ceremonial and subsistence purposes. Under a new Memorandum of Understanding (MOU), the State will annually issue a Special Gathering Permit for Clams to the Siletz Tribe. Tribal members may gather clams any time the Department authorizes non-commercial clam harvest that includes Lincoln County. The MOU stipulates the Siletz Tribal members engage in harvest with no waste, have in possession their Tribal Gathering License while gathering clams, use hands or hand tools, and allow Department employees or enforcement officers to inspect Tribal Gathering License, gear and catch upon request.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-041-0525
Siletz Tribal Clam Harvest

(1) Tribal members are authorized to take clams under the terms and conditions of the Memorandum of Understanding between the Confederated Tribes of the Siletz Indians and the State of Oregon, entered into by both parties in 2014, incorporated herein by reference.

(2) No additional tribal legal or treaty entitlement is created, conveyed or implied, nor is any existing agreement, treaty or court decree modified by the adoption of these rules or the above referenced Memorandum of Understanding.

Stat. Auth.: ORS 497.075
Stats. Implemented: ORS 497.075
Hist.: DFW 161-2014, f. 12-8-14, cert. ef. 1-1-15

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Rule Caption: Amend Rules Relating to Hunter Education Course Length
Adm. Order No.: DFW 162-2014
Filed with Sec. of State: 12-10-2014
Certified to be Effective: 12-10-14
Notice Publication Date: 11-1-2014
Rules Amended: 635-048-0005
Subject: Change current hunter education course length to meet all course delivery methods.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-048-0005
Hunter Education Certificate

(1) Anyone younger than 18 years of age shall have proof of hunter education in their possession when hunting on land other than their own property or that of their parent or legal guardian, except youth participating in the Mentored Youth Program. Proof of hunter education means a certificate or license that includes hunter education number.

(2) For people younger than 18 years of age, hunter education training must include both a classroom (physical or virtual) component and a field day.

Stat. Auth.: ORS 496 & 497
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 497.360
Hist: 3WC 6, f. 2-28-74, ef. 7-1-74, Renumbered from 630-040-0056, Renumbered from 635-025-0005; FWC 73-1986, f. & ef. 11-4-86; FWC 54-1997, f. & cert. ef. 9-3-97; DFW 131-2007, f. 12-20-07, cert. ef. 1-1-08; DFW 162-2014, f. & cert. ef. 12-10-14

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Rule Caption: Management Measures Implemented for 2015 Commercial Groundfish Trawl and Fixed Gear Fisheries
Adm. Order No.: DFW 163-2014(Temp)
Filed with Sec. of State: 12-15-2014
Certified to be Effective: 1-1-15 thru 6-29-15
Notice Publication Date:
Rules Amended: 635-004-0275
Subject: This amended rule incorporates into Oregon Administrative Rules Pacific ocean commercial groundfish regulation changes adopted by the National Marine Fisheries Service (NMFS) for 2015, including but not limited to chafing gear regulations that apply to all commercial midwater gear.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0275
Scope, Inclusion, and Modification of Rules

(1) The commercial groundfish fishery in the Pacific Ocean off Oregon is jointly managed by the state of Oregon and the federal government through the Pacific Fishery Management Council process. The Code of Federal Regulations provides federal requirements for this fishery, including but not limited to the time, place, and manner of taking groundfish. However, additional regulations may be promulgated subsequently by publication in the Federal Register, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations. Therefore, the following publications are incorporated into Oregon Administrative Rule by reference:

(a) Code of Federal Regulations, Part 660, Subparts C, D, E and F (October 1, 2013 ed.);

(b) Federal Register Vol. 78, No. 2, dated January 3, 2013 (78 FR 580).

(2) Persons must consult the federal regulations in addition to division 4 to determine all applicable groundfish fishing requirements. Where federal regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) The Commission may adopt additional or modified regulations that are more conservative than federal regulations, in which case Oregon Administrative Rule takes precedence. See OAR 635-004-0205 through 635-004-0235 and 635-004-0280 through 635-004-0365 for additions or modifications to federal groundfish regulations.

(4) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol.78, No. 232/Tuesday, December 3, 2013, announced inseason actions and management measures effective December 3, 2013, including but not limited to: 1) Changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits for Period 6, 2013 and 2) Changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits for Periods 1–6, 2014.

(5) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol.79, No. 74/Thursday, April 17, 2014, announced in-season adjustments to Pacific Coast Commercial Limited Entry Trawl Fishery regulations effective April 17, 2014, including but not limited to trawl RCA adjustments.

(6) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol.79, No. 92/Tuesday, May 13, 2014, announced coordinate corrections to the Rockfish Conservation Area (RCA) boundary regulations that published in the Federal Register on April 17, 2014; the correcting amendment is effective May 13, 2014.

(7) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol.79, No. 95/Friday, May 16, 2014, announced corrections to the 2014 shorebased trawl allocations for several species in the shorebased trawl allocation table; this correcting amendment is effective May 15, 2014.

(8) Notwithstanding the regulations defined in section (1) of this rule, the National Marine Fisheries Service, by means of Federal Register/Vol.79, No. 143/Friday, July 25, 2014, announced inseason actions effective July 25, 2014, including but not limited to changes to limited entry fixed gear and open access fixed gear sablefish DTL fishery trip limits for periods 4, 5, and 6, 2014.

(9) Notwithstanding the regulations defined in section (1) of this rule or the trawl gear definition in OAR 635-004-0215, the National Marine Fisheries Service, by means of Federal Register/Vol.79, No. 231/Tuesday, December 2, 2014, announced inseason actions and management measures effective January 1, 2015, including but not limited to chafing gear regulations that apply to all midwater trawl gear.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162, 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 78-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 10-27-12; DFW 106-2012(Temp), f. 8-15-12, cert. ef. 9-1-12 thru 12-31-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 96-2013(Temp), f. 8-27-13, cert. ef. 9-1-13 thru 12-31-13; DFW 132-2013(Temp), f. & cert. ef. 12-9-13 thru 6-7-14; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 34-2014(Temp), f. & cert. ef. 4-23-14 thru 9-30-14; DFW 109-2014(Temp), f. & cert. ef. 8-4-14 thru 12-31-14; DFW 163-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Management Measures for 2015 Commercial Groundfish Fisheries.
Adm. Order No.: DFW 164-2014(Temp)
Filed with Sec. of State: 12-15-2014
Certified to be Effective: 1-1-15 thru 1-16-15
Notice Publication Date:
Rules Amended: 635-004-0355, 635-006-0209
Subject: These amended rules establish temporary groundfish management measures for 2015 commercial groundfish fisheries. These rules establish commercial sorting requirements and nearshore bimonthly trip limits for the first part of 2015. Identical permanent rule amendments for the 2015 fisheries will be presented to the Oregon Fish and Wildlife Commission for adoption at its January 9, 2015 hearing.
Rules Coordinator: Therese Kucera—(503) 947-6033

635-004-0355
Trip Limits

(1) The trip limits outlined in this rule are set at the beginning of each calendar year based on commercial harvest caps and projected fishing effort, and are subject to in-season adjustments and closures. Fishers should refer to Nearshore Commercial Fishery Industry Notices on the Marine Resources Program Commercial Fishing Rules and Regulations webpage for the most up-to-date information regarding trip limits and other regulations affecting the Nearshore Commercial Fishery.

(2) Vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit, with or without a Nearshore Endorsement, may land no more than the following cumulative trip limits:

(a) Black rockfish:
(A) 1200 pounds in period 1;
(B) 1200 pounds in period 2;
(C) 1700 pounds in period 3;
(D) 1600 in period 4;
(E) 1200 pounds in period 5; and
(F) 1000 pounds in period 6.
(b) 15 pounds of blue rockfish in each period.

(3) For all other nearshore species, vessels with a Black Rockfish/Blue Rockfish/Nearshore Fishery Permit with Nearshore Endorsement may land no more than the following cumulative trip limits in each period:

(a) 100 pounds of other nearshore rockfish combined;
(b) 1,500 pounds of cabezon; and
(c) 300 pounds of greenling species.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 75-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 79-2012(Temp), f. 6-28-12, cert. ef. 7-1-12 thru 12-27-12; DFW 118-2012(Temp), f. 9-10-12, cert. ef. 9-11-12 thru 12-31-12; DFW 141-2012(Temp), f. 10-31-12, cert. ef. 11-1-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 99-2013(Temp), f. & cert. ef. 9-9-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 101-2014(Temp), f. 7-23-14, cert. ef. 8-1-14 thru 12-31-14; DFW 147-2014(Temp), f. & cert. ef. 10-13-14 thru 12-31-14; DFW 164-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 1-16-15

635-006-0209
Sorting Required

(1) It is *unlawful* to fail to sort into the categories listed in sections (2) and (3) of this rule, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, quota, harvest guideline, harvest cap, size limit, scientific sorting designation, Optimum Yield (OY) or Annual Catch Limit (ACL).

(2) Federal sorting requirements must be met for the following sectors:

(a) Trawl fisheries pursuant to 660.130(d), subpart D of the Code of Federal Regulations;

(b) Limited Entry Fixed Gear groundfish fisheries pursuant to 660.230(c), subpart E of the Code of Federal Regulations; and

(c) Open Access Fixed Gear groundfish fisheries pursuant to 660.330(c), subpart F of the Code of Federal Regulations.

(3) Nearshore species must be sorted into the following categories:
(a) Black rockfish;
(b) Black and Yellow rockfish;
(c) Blue rockfish;
(d) Brown rockfish;
(e) Cabezon;
(f) Calico rockfish;
(g) China rockfish;
(h) Copper rockfish;
(i) Gopher rockfish;
(j) Grass rockfish;
(k) Greenling;
(l) Kelp rockfish;
(m) Olive rockfish;
(n) Quillback rockfish;
(o) Tiger rockfish;
(p) Treefish;
(q) Vermilion rockfish.

(4) Blackspotted rockfish, rougheye rockfish, and shortraker rockfish must be sorted into the following categories:

(a) Blackspotted rockfish and rougheye rockfish; and
(b) Shortraker rockfish.

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 164-2014(Temp), f. 12-15-14, cert. ef. 1-1-15 thru 1-16-15

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

Rule Caption: Update Criminal Records Check and Abuse Check Rules for Department of Human Services Providers
Adm. Order No.: DHSD 2-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 11-1-2014
Rules Amended: 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0275, 407-007-0277, 407-007-0280, 407-007-0290, 407-007-0300, 407-007-0315, 407-007-0330, 407-007-0335, 407-007-0340, 407-007-0350
Subject: The Background Check Unit (BCU) is amending these rules due to the impact of 2013 Oregon Laws, chapter 693. This law requires the electronic capture and submission of fingerprints. BCU is also amending these rules due to the impact of 2014 Oregon Laws,

chapter 104, section 6. This law requires the augmentation of the current Criminal Records Information Management System (CRIMS) to include a registry of certain subject individuals. These rule amendments also correct grammar and clarify language to meet current practice.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0210
Definitions

As used in OAR 407-007-0200 to 407-007-0370 the following definitions apply:

(1) "Abuse" has the meaning given in the administrative rules promulgated by the Department or Authority corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of determining whether an SI has a history as a perpetrator of potentially disqualifying abuse (a potentially disqualifying condition) as described in OAR 407-007-0290(11).

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department or the Authority pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by another state.

(4) "Appointing authority" means an individual designated by the qualified entity (QE) who is responsible for appointing QE designees (QEDs). Examples include but are not limited to human resources staff with the authority to offer and terminate employment, a business owner, a member of the board of directors, a director, or a program administrator.

(5) "Approved" means that an SI, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed in the background check request.

(6) "Approved with restrictions" means an approval in which some restriction is made including but not limited to an SI, an SI's environment, the type or number of clients for whom an SI may provide care, or the information to which an SI has access.

(7) "Authority" means the Oregon Health Authority.

(8) "Background check" means a criminal records check and an abuse check under these rules.

(9) "Background Check Unit (BCU)" means the Background Check Unit conducting background checks for the Department and the Authority.

(10) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(11) "Client" means any individual who receives services, care, or funding for care through the Department, Authority, or qualified entities.

(12) "Closed case" means a background check request that has been closed without a final fitness determination.

(13) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint capture sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(14) "Criminal Information Management System (CRIMS)" means the electronic records system used to process and maintain background check records under these rules.

(15) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(16) "Denied" means that an SI, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, reside, or otherwise hold the position listed on the background check request.

(17) "Department" means the Oregon Department of Human Services.

(18) "Fingerprint capture" means the taking of an SI's fingerprints for a national criminal records check in a manner that meets current Oregon statutes and OSP's capacity for receiving fingerprints.

(19) "Fitness determination" means the decision in a case that is not closed and includes:

(a) The decision regarding a background check request and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a background check request, completed background check, including gathering other information as necessary, and a final review by BCU (a final fitness determination).

(20) "Founded or substantiated" has the meaning given in the Department or Authority's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(21) "Good cause" means a valid and sufficient reason for not complying with established time frames during the background check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a SI's reasonable control.

(22) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(23) "Hired on a preliminary basis" means a condition in which a QE allows an SI to work, volunteer, be trained, or reside in an environment following the submission of a background check request. Hired on a preliminary basis may also be called probationary status.

(24) "Ineligible due to ORS 443.004" means BCU has determined that an SI, subject to ORS 443.004 and either OAR 407-007-0275 or 407-007-0277, has one or more convictions that prohibits the SI from holding the position listed in the background check request.

(25) "Office of Adult Abuse Prevention and Investigations (OAAPI)" means the Office of Adult Abuse Prevention and Investigations, formerly the Office of Investigation and Training, a shared service of the Department and Authority.

(26) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a SI, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(27) "Position" means the position listed in the background check request which determines whether the individual is a SI under these rules, Department program rules, or Authority program rules.

(28) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(29) "QE designee (QED)" means an individual appointed by the QE's appointing authority to handle background checks on behalf of the QE.

(30) "QE Initiator (QEI)" means an approved SI who BCU has granted access to CRIMS for one QE for the purpose of entering background check request data.

(31) "Subject individual (SI)" means an individual on whom BCU conducts a criminal records check and an abuse check, and from whom BCU may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department or Authority and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705); or

(ii) Services within a residential facility (defined in ORS 443.400).

(D) Any individual who works in a facility and provides care or has access to clients, client information, or client funds secured by any residential care or assisted living facility through the services of a personnel services or staffing agency.

(E) Any individual who works in a facility and provides care, or has access to clients, client information, or client funds secured by any nursing facility through the services of a personnel services or staffing agency.

(F) Except as excluded in section (31)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(G) An individual working or volunteering for a private licensed child caring agency; an In-Home Safety and Reunification Services (ISRS) program, a Strengthening, Preserving and Reunifying Families (SPRF) provider, or system of care contractor providing child welfare services pursuant to ORS chapter 418.

(H) A homecare worker as defined in ORS 410.600, a personal support worker as defined in ORS 410.600, a personal care services provider, or an independent provider employed by a Department or Authority client who provides care to the client if the Department or Authority helps pay for the services.

(I) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Office of Child Care of the Oregon Department of Education. This includes all individuals listed in OAR 461-165-0180(4).

(J) An appointing authority, QED, or QEI associated with any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(K) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(L) A student enrolled in a Board of Nursing approved nursing assistant training program in which the instruction and training occurs solely in a nursing facility.

(M) Except for those excluded under OAR 407-007-0210(31)(b)(B), a student or intern who provides care or has access to clients, client information, or client funds within or on behalf of a QE.

(N) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(O) An employee providing care to clients of the Department's Aging and People with Disabilities (APD) programs who works for an in-home care agency as defined by ORS 443.305 which has a contract with the Department's APD programs.

(P) Any individual who is required to complete a background check pursuant to Department or Authority program rules or a contract with the Department or Authority, if the requirement is within the Department or Authority's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a background check must be specified in the contract. The exceptions in section (31)(b) do not apply to these SIs.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) A student or intern in a clinical placement at a clinical training setting subject to administrative rules implemented under ORS 413.435.

(C) Department, Authority, or QE clients. The only circumstance in which BCU shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (31)(a)(A)-(E) and (31)(a)(G)-(P) of this rule, or if the facility is dually licensed for different populations of vulnerable individuals.

(D) Individuals working in child care facilities certified or registered by OED.

(E) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department or Authority.

(F) Individuals employed by a business that provides appliance or structural repair for clients and the general public and who are temporarily providing these services in a licensed or certified QE. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department or Authority for care provided by an employee of the business.

(G) Individuals employed by a private business in which a client of the Department or Authority is working as part of a Department- or Authority-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department or Authority for care provided by the employee.

(H) Employees, contractors, students, interns, and volunteers working in hospitals, ambulatory surgical centers, outpatient renal dialysis facilities, and freestanding birthing centers, as defined in ORS 442.015, and special inpatient care facilities as defined by the Authority in administrative rule.

(I) Volunteers, who are not under the direction and control of a licensed, certified, registered, or otherwise regulated QE.

(J) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(K) Individuals working in restaurants or at public swimming pools.

(L) Hemodialysis technicians.

(M) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Authority's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Authority program rules to conduct criminal records checks in accordance with these rules.

(N) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(O) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

(P) Emergency medical technicians and first responders certified by the Authority's Emergency Medical Services and Trauma Systems program.

(Q) Employees, contractors, temporary workers, or volunteers of continuing care retirement communities registered under OAR chapter 411, division 67.

(R) Individuals hired by or on behalf of a resident in a QE to provide care privately to the resident.

(S) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority, where the clients served permanently reside in another state.

(32) "Weighing test" means a process in which BCU considers available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027, 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2010(Temp), f. & cert. ef. 8-12-10 thru 2-7-11; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0220

Background Check Required

(1) BCU shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(2) If a national criminal records check is necessary, OSP shall provide BCU results of national criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) BCU shall conduct abuse checks using available abuse investigation reports and associated documents.

(4) Unless an SI meets a criterion under (7) of this rule, an SI must have a background check in the following circumstances:

(a) An individual who becomes an SI on or after the effective date of these rules.

(b) The SI changes employers to a different QE.

(c) Except as provided in section (7) of this rule, the individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a background check.

(d) The individual, whether previously considered an SI or not, changes Department or Authority-issued licenses, certifications, or registrations, and the license, certification, or registration requires a background check under these rules.

(e) For a student enrolled in a long term care facility nursing assistant training program for employment at the facility, a new background check is required when the student becomes an employee at the facility. A new background check is not required by the Department or the Authority at graduation from the training program or at the granting of certification by the Board of Nursing unless the Department, the Authority, or the QE have reason to believe that a background check is justified.

(f) A background check is required by federal or state laws or regulations, other Department or Authority administrative rules, or by contract with the Department or Authority.

(g) When BCU or the QE has reason to believe that a background check is justified. Examples include but are not limited to:

(A) Any indication of possible criminal or abusive behavior by an SI.

(B) A lapse in working or volunteering in a position under the direction and control of the QE but the SI is still considered in the position. For example, an extended period of leave by an SI. The QE determines the need for a background check.

(C) Quality assurance monitoring by the Department or Authority of a previously conducted criminal records check or abuse check.

(5) If the SI is subject to a background check due to involvement with the foster or adoptive placement of a child and:

(a) Is subject to the Interstate Compact on Placement of Children (ORS 417.200 and OAR 413-040-0200 to 413-040-0330), the background check must comply with Interstate Compact requirements.

(b) Is subject to the Inter-County Adoption Act of 2000 (42 USC 14901 et seq.), the background check must comply with federal requirements and ORS 417.262.

(6) If QEs, Department program rules, or Authority program rules require an SI to report any new arrests, charges, or convictions, the QE may determine if personnel action is required if the SI does not report. Personnel action may include a new background check.

(7) A background check is not required under the following circumstances:

(a) A homecare worker or personal support worker, as defined in ORS 410.600, has a Department background check notice of final fitness determination dated within the recheck period according to Department program rules showing that the homecare worker or personal support worker has been approved or approved with restrictions, and listing a worksite of "various," "various clients," "statewide," or similar wording.

(b) A personal care services provider, Lifespan Respite or other respite care provider, or an independent provider paid with Department or Authority funds who changes or adds clients within the same QE, Department, or Authority district, and the prior, documented criminal records check or abuse check conducted within the previous 24 months through the Department or Authority has been approved without restrictions.

(c) The SI is a child care provider as described in OAR 461-165-0180 who changes or adds clients and who has been approved without restrictions within the required recheck period according to Department program rules.

(d) The SI remains with a QE in the same position listed on the background check request while the QE merges with another QE, is sold to another QE, or changes names. The changes may be noted in documentation attached to the notice of fitness determination but do not warrant a background check.

(e) The SI is on the background check registry maintained under OAR 407-007-0600 to 407-007-0640,

(8) Background checks are completed on SIs who otherwise meet the qualifications of the position listed on the background check request. A background check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0230
Qualified Entity

(1) A QE and its appointing authority must be approved in writing by the Department or Authority pursuant to these rules in order to appoint a QED. Documentation of a current and valid license, certification, contract, or letter of approval from the Department or Authority are considered proof of approval. Unless specifically indicated otherwise in these rules, all QEs and appointing authorities discussed in these rules are considered approved.

(2) A QE shall ensure the completion of background checks for all SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE.

(3) BCU may allow a QE's appointing authority or QED to appoint one or more QEIs based on the needs of the QE and the volume of SIs under the QE.

(4) A QE's appointing authority shall appoint QEDs as needed to remain in compliance with these rules and shall communicate any changes regarding QEDs or QEIs to BCU.

(5) If for any reason a QE no longer has any QEDs, the QE or appointing authority shall ensure that the confidentiality and security of background check records by immediately providing all background check related documents to BCU or to another QE as determined by BCU.

(6) BCU shall provide QEs with periodic training and on-going technical assistance.

(7) Any decisions made by BCU in regard to these rules are final and may not be overturned by any QE.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0240
QE Designees and QE Initiators

(1) All requirements in this section must be completed within 90 calendar days. To receive BCU approval, a QED must meet the following requirements:

(a) A QED must be one of the following:

(A) Employed by the agency for which the QED will handle criminal records check information.

(B) Contracted with the QE to perform as a QED.

(C) Employed by another similar QE or a parent QE. For example, an assisted living facility QED may act as QED for another assisted living facility.

(b) A QED must be an approved SI with a record in CRIMS within the past three years for at least one of the QEs for which the QED will manage background checks.

(c) A QED must have:

(A) Competency in computer skills for accessing CRIMS online and managing background check records in CRIMS;

(B) Work-related access to the internet; and

(C) A work-related email account.

(d) A QED must complete a certification program and successfully pass any BCU required testing.

(e) An appointing authority must appoint a QED. The applicant QED must complete and submit required documents and information to BCU for processing and registration.

(2) BCU shall deny the individual's status as a QED if the individual does not meet QED requirements. Once denied, the individual may no longer perform the duties of a QED. There are no exceptions for individuals who fail to meet QED requirements.

(3) An approved QED shall have the following responsibilities:

(a) Demonstrate understanding of and adherence to these rules in all actions pertaining to the background check process.

(b) Act as the Department's designee in any action pursuant to these rules and the background check process. A QED may not advocate for an SI during any part of the background check process, including contesting a fitness determination.

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. A QED may not view criminal offender information. A QED may not view abuse inves-

tigation reports and associated abuse investigation exhibits or documents as part of the background check process.

(d) A QED shall verify the SI's identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity. The QE may verify identity at any time during the hiring or placement process up to the submission of the background check request.

(A) If conducting a background check on the SI for the first time or at rehire of the SI, a QED shall verify identity or ensure identity is verified by using methods which include but are not limited to reviewing the SI's current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information included in the background check request, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an SI is being rechecked for the same QE without any break in placement, service, or employment, review of government-issued photo identification may not be necessary. The QED shall verify the SI's name, current address, and any aliases or previous names, or ensure this information is verified.

(e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the submission of the background check request to BCU.

(f) Ensure that the result of the preliminary fitness determination granting the QE to hire the SI on a preliminary basis, or prohibiting the QE from hiring the SI on a preliminary basis, is followed.

(g) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(h) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until BCU reinstates hired on a preliminary basis or the completion of a final fitness determination allowing the SI to resume the position.

(i) Ensure that the SI has directions to complete a fingerprint capture.

(j) Notify BCU of any changes regarding an SI who still has a background check in process, including but not limited to address or employment status changes.

(k) Monitor the status of background check applications and investigate any delays in processing.

(l) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(m) Notify BCU immediately if arrested, charged, or convicted of any crime, or if found responsible for abuse by the Department or Authority.

(4) A QED may make preliminary fitness determinations:

(a) A QED shall review the SI's completed background check request to ensure completeness of the information, verify identity, and to determine if the SI has any disclosed criminal history.

(b) A QED shall adhere to OAR 407-007-0315(4) when making a preliminary fitness determination.

(c) If the SI has adverse criminal history within the five year period from the date the SI manually or electronically signed the background check request, the QED may request in writing that BCU make a preliminary fitness determination requiring a weighing test.

(5) BCU may change QED status in the following circumstances which include but are not limited to:

(a) When the position with the QE ends or when the QE terminates the appointment. The QE shall notify BCU immediately upon the end of the position or termination of the appointment and BCU shall inactivate QED status.

(b) If a QED fails to comply with responsibilities or fails to continue to meet the requirements for QED status, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If BCU takes the action to suspend or revoke the appointment, it must immediately notify the QE in writing.

(c) If a QED fails to recertify, BCU shall revoke QED status.

(6) Any changes to QED status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. A QED losing employment or position has the same hearing rights as other SIs under these rules.

(7) If a QED leaves employment or position with the QE for any reason, BCU shall inactivate QED status. If the individual finds employment with another QE, BCU shall determine the requirement for reactivation of QED status.

(8) BCU shall review and recertify appointments of QEDs, up to and including a new application, background check, and additional training under the following circumstances:

(a) Every three years; or

(b) At any time BCU has reason to believe the individual no longer meets QED requirements including but not limited to indication of criminal or abusive behavior or noncompliance with these rules.

(9) With BCU approval, QEs may appoint QEIs to enter background check request into CRIMS. QEIs must:

(a) Be currently approved SIs for the QE;

(b) Possess competency in computer skills for accessing CRIMS online and entering background check records into CRIMS;

(c) Maintain internet access and working email accounts to access CRIMS; and

(d) Meet other criteria as determined by BCU and the QE.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0250
Background Check Process

(1) A QE and SI shall use CRIMS to request a background check which shall include the following information regarding an SI:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Position for which the SI is completing the background check request;

(f) Worksite location or locations where the SI will be working;

(g) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by BCU.

(h) Disclosure of other information to be considered in the event of a weighing test.

(2) The background check request shall include the following notices to the SI:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(c) A notice that BCU shall conduct an abuse check on the SI. Unless required by program rule, an SI is not required to disclose any history of potentially disqualifying abuse, but may provide BCU with mitigating or other information.

(3) Using identifying information submitted in a background check request, BCU shall conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(4) BCU shall conduct an Oregon criminal records check. Using information submitted on the background check request, BCU may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(5) BCU shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) BCU may conduct a fingerprint-based national criminal records check.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180(4).

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by BCU indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license or out-of-state identification card.

(D) BCU or the QE has reason to question the identity of the SI or the information on the criminal record found in LEDS.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department or Authority rules, or by contract with the Department or Authority.

(F) Any SI applying to be or renewing the position with regard to child adoption or children in foster care licensed by the Department or private licensed child caring agencies. Renewing SIs do not need a fingerprint-based criminal records check if BCU has a record of a previous fingerprint-based criminal records checks that is within BCU's retention schedule. Applicable SI positions include:

(i) A relative caregiver, foster parent, or adoptive parent in Oregon;

(ii) An adult household member in an adoptive or child foster home 18 years of age and over;

(iii) A household member in an adoptive or child foster home under 18 years of age if there is reason to believe that the household member may pose a risk to children placed in the home; or

(iv) A respite care provider in an adoptive or child foster home.

(G) BCU has reason to believe that fingerprints are needed to make a final fitness determination.

(b) BCU must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint capture when requested by BCU. BCU shall send the request to the QE and the QED shall notify the SI.

(A) BCU shall give the SI notice regarding the Social Security number as set forth in section (2)(a) of this rule.

(B) The SI shall submit the fingerprint capture within 21 calendar days of the request.

(i) BCU may close the application, making it a closed case, if the fingerprint capture is not received by BCU or OSP within 21 calendar days. When a case is closed, the SI may not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) BCU may extend the time allowed due to processing requirements or for good cause provided by the SI or QE.

(C) BCU may require new fingerprint capture and its submission if previous fingerprint captures results in a rejection by OSP or the FBI.

(7) BCU may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When BCU has reason to believe that out-of-state criminal records may exist and a national criminal records check cannot be accomplished.

(b) When BCU has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, BCU has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a background check and fitness determination, BCU may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(9) BCU may conduct a background check in situations of imminent danger.

(a) If the Department or Authority determines there is indication of criminal or abusive behavior that could more likely than not pose an immediate risk to vulnerable individuals, BCU shall conduct a new criminal records check on an SI without the completion of a new background check request.

(b) If BCU determines that a fitness determination based on the new background check would be adverse to the SI, BCU shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before completion of the fitness determination.

(10) All criminal records checks conducted under this rule shall be documented.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0275
Convictions Under ORS 443.004 Resulting in Ineligibility for Aging and People with Disabilities Program and Developmental Disabilities Program SIs

(1) Section (2) of this rule applies to an SI who:

(a) Works with clients of the Developmental Disabilities (DD) program.

(b) Works with clients of the Department's Aging & People with Disabilities programs and who

(A) An individual who is paid directly or indirectly with public funds who has or will have contact with recipients of services within:

(i) An adult foster home (defined in ORS 443.705); or

(ii) A residential facility (defined in ORS 443.400).

(B) Any direct care staff secured by any residential care or assisted living facility through the services of a personnel services or staffing agency and the direct care staff works in the facility.

(C) A homecare worker as defined in ORS 410.600, a personal support worker as defined in ORS 410.600, a personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(D) An employee providing care to Department APD program clients who works for an in-home care agency as defined by ORS 443.305 which has a contract with the Department APD programs.

(E) An individual in a position specified as being subject in relevant Oregon statutes or Oregon Administrative Rules.

(2) If BCU determines that an individual subject to this rule has a conviction listed in ORS 443.004, BCU shall make the determination of "ineligible due to ORS 443.004." A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

(3) Individual subject to this rule who are employees and hired prior to July 28, 2009 are exempt from section (2) of this rule provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(4) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 407-007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

Stat. Auth.: ORS 181.534 & 409.050
Stats. Implemented: ORS 181.534 & 443.004
Hist.: DHSD 3-2010(Temp), f. & cert. ef. 5-5-10 thru 10-31-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0277
Convictions Under ORS 443.004 Resulting in Ineligibility for Mental Health or Alcohol and Drug Program SIs

(1) This rule applies to subject individuals who are mental health or substance abuse treatment providers defined under ORS 443.004(8).

(2) If BCU determines that an individual is subject to this rule and has a conviction listed in ORS 443.004(5), BCU shall make the determination of "ineligible due to ORS 443.004." A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

(3) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 943-007-0335 or 943-007-0501.

Stat. Auth.: ORS 181.534 & 409.050
Stats. Implemented: ORS 181.534 & 443.004
Hist.: DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0280
Potentially Disqualifying Convictions

A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(1) The crimes listed in this section are permanent review crimes which require that a fitness determination with a weighing test be completed regardless of date of conviction.

(a) ORS 162.155, Escape II.

(b) ORS 162.165, Escape I.

(c) ORS 162.285, Tampering with a witness.

(d) ORS 162.325, Hindering prosecution.

(e) ORS 163.005, Criminal homicide.
(f) ORS 163.095, Aggravated murder.
(g) ORS 163.115, Murder.
(h) ORS 163.118, Manslaughter I.
(i) ORS 163.125, Manslaughter II.
(j) ORS 163.145, Criminally negligent homicide.
(k) ORS 163.149, Aggravated vehicular homicide.
(l) ORS 163.160, Assault IV.
(m) ORS 163.165, Assault III.
(n) ORS 163.175, Assault II.
(o) ORS 163.185, Assault I.
(p) ORS 163.187, Strangulation.
(q) ORS 163.190, Menacing.
(r) ORS 163.200, Criminal mistreatment II.
(s) ORS 163.205, Criminal mistreatment I.
(t) ORS 163.207, Female genital mutilation.
(u) ORS 163.208, Assault of public safety officer.
(v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I.
(w) ORS 163.225, Kidnapping II.
(x) ORS 163.235, Kidnapping I.
(y) ORS 163.245, Custodial interference II.
(z) ORS 163.257, Custodial interference I.
(aa) ORS 163.263, Subjecting another person to involuntary servitude in the second degree.
(bb) ORS 163.264, Subjecting another person to involuntary servitude in the first degree.
(cc) ORS 163.266, Trafficking in persons.
(dd) ORS 163.275, Coercion.
(ee) ORS 163.355, Rape III.
(ff) ORS 163.365, Rape II.
(gg) ORS 163.375, Rape I.
(hh) ORS 163.385, Sodomy III.
(ii) ORS 163.395, Sodomy II.
(jj) ORS 163.405, Sodomy I.
(kk) ORS 163.408, Unlawful sexual penetration II.
(ll) ORS 163.411, Unlawful sexual penetration I.
(mm) ORS 163.415, Sexual abuse III.
(nn) ORS 163.425, Sexual abuse II.
(oo) ORS 163.427, Sexual abuse I.
(pp) ORS 163.432, Online sexual corruption of a child in the second degree.
(qq) ORS 163.433, Online sexual corruption of a child in the first degree.
(rr) ORS 163.435, Contributing to the sexual delinquency of a minor.
(ss) ORS 163.445, Sexual misconduct.
(tt) ORS 163.452, Custodial sexual misconduct I.
(uu) ORS 163.454, Custodial sexual misconduct II.
(vv) ORS 163.465, Public indecency.
(ww) ORS 163.467, Private indecency.
(xx) ORS 163.476, Unlawfully being in a location where children regularly congregate.
(yy) ORS163.479, Unlawful contact with a child.
(zz) ORS 163.515, Bigamy.
(aaa) ORS 163.525, Incest.
(bbb) ORS 163.535, Abandonment of a child.
(ccc) ORS 163.537, Buying or selling a person under 18 years of age.
(ddd) ORS 163.545, Child neglect II.
(eee) ORS 163.547, Child neglect I.
(fff) ORS 163.555, Criminal nonsupport.
(ggg) ORS 163.575, Endangering the welfare of a minor.
(hhh) ORS 163.670, Using child in display of sexually explicit conduct.
(iii) ORS 163.680, Paying for viewing a child's sexually explicit conduct.
(jjj) ORS 163.684, Encouraging child sexual abuse I.
(kkk) ORS 163.686, Encouraging child sexual abuse II.
(lll) ORS 163.687, Encouraging child sexual abuse III.
(mmm) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I.
(nnn) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II.
(ooo) ORS 163.693, Failure to report child pornography.
(ppp) ORS 163.700, Invasion of personal privacy.
(qqq) ORS 163.732, Stalking.
(rrr) ORS 163.750, Violating court's stalking protective order.
(sss) ORS 164.055, Theft I.
(ttt) ORS 164.057, Aggravated theft I.
(uuu) ORS 164.075, Theft by extortion.
(vvv) ORS 164.085, Theft by deception.
(www) ORS 164.098, Organized retail theft.
(xxx) ORS 164.125, Theft of services.
(yyy) ORS 164.135, Unauthorized use of a vehicle.
(zzz) ORS 164.170, Laundering a monetary instrument.
(aaaa) ORS 164.215, Burglary II.
(bbbb) ORS 164.225, Burglary I.
(cccc) ORS 164.315, Arson II.
(dddd) ORS 164.325, Arson I.
(eeee) ORS 164.365, Criminal mischief I.
(ffff) ORS 164.377, Computer crime.
(gggg) ORS 164.395, Robbery III.
(hhhh) ORS 164.405, Robbery II.
(iiii) ORS 164.415, Robbery I.
(jjjj) ORS 165.013, Forgery I.
(kkkk) ORS 165.022, Criminal possession of a forged instrument I.
(llll) ORS 165.032, Criminal possession of a forgery device.
(mmmm) ORS 165.055, Fraudulent use of a credit card.
(nnnn) ORS 165.065, Negotiating a bad check.
(oooo) ORS 165.581, Cellular counterfeiting I.
(pppp) ORS 165.800, Identity theft.
(qqqq) ORS 165.803, Aggravated identity theft.
(rrrr) ORS 165.810, Unlawful possession of a personal identification device.
(ssss) ORS 166.005, Treason.
(tttt) ORS 166.070 Aggravated harassment.
(uuuu) ORS 166.085, Abuse of corpse II.
(vvvv) ORS 166.087, Abuse of corpse I.
(wwww) ORS 166.155, Intimidation II.
(xxxx) ORS 166.165, Intimidation I.
(yyyy) ORS 166.220, Unlawful use of weapon.
(zzzz) ORS 166.270, Possession of weapons by certain felons.
(aaaaa) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers.
(bbbbb) ORS 166.275, Possession of weapons by inmates of institutions.
(ccccc) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school.
(ddddd) ORS 166.382, Possession of destructive device prohibited.
(eeeee) ORS 166.384, Unlawful manufacture of destructive device.
(fffff) ORS 166.429, Firearms used in felony.
(ggggg) ORS 166.450, Obliteration or change of identification number on firearms.
(hhhhh) ORS 166.720, Racketeering activity unlawful.
(iiiii) ORS 167.012, Promoting prostitution.
(jjjjj) ORS 167.017, Compelling prostitution.
(kkkkk) ORS 167.054, Furnishing sexually explicit material to a child.
(lllll) ORS 167.057, Luring a minor.
(mmmmm) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show.
(nnnnn) ORS 167.075, Exhibiting an obscene performance to a minor.
(ooooo) ORS 167.080, Displaying obscene materials to minors.
(ppppp) ORS 167.212, Tampering with drug records.
(qqqqq) ORS 167.262, Adult using minor in commission of controlled substance offense.
(rrrrr) ORS 167.315, Animal abuse II.
(sssss) ORS 167.320, Animal abuse I.
(ttttt) ORS 167.322, Aggravated animal abuse I.
(uuuuu) ORS 167.333, Sexual assault of animal.
(vvvvv) ORS 167.339, Assaulting law enforcement animal.
(wwwww) ORS 181.594, Sex crimes including transporting child pornography into the state.
(xxxxx) ORS 181.599, Failure to report as sex offender.
(yyyyy) ORS 433.010, Spreading disease (willfully) prohibited.
(zzzzz) ORS 475.525, Sale of drug paraphernalia prohibited.
(aaaaaa) ORS 475.752, Prohibited acts generally (regarding drug crimes; formerly ORS 475.840, 2005-2011; formerly ORS 475.992, 1977-2005).
(bbbbbb) ORS 475.805, Providing hypodermic device to minor prohibited.

(cccccc) ORS 475.840, Prohibited acts generally (regarding drug crimes formerly ORS 475.992; renumbered to ORS 475.752 in 2011).

(dddddd) ORS 475.846, Unlawful manufacture of heroin.

(eeeeee) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school.

(ffffff) ORS 475.850, Unlawful delivery of heroin.

(gggggg) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school.

(hhhhhh) ORS 475.854, Unlawful possession of heroin.

(iiiiii) ORS 475.856, Unlawful manufacture of marijuana.

(jjjjjj) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school.

(kkkkkk) ORS 475.860, Unlawful delivery of marijuana.

(llllll) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school.

(mmmmmm) ORS 475.864, Unlawful possession of marijuana.

(nnnnnn) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine.

(oooooo) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.

(pppppp) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine.

(qqqqqq) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.

(rrrrrr) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine.

(ssssss) ORS 475.876, Unlawful manufacture of cocaine.

(tttttt) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school.

(uuuuuu) ORS 475.880, Unlawful delivery of cocaine.

(vvvvvv) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school.

(wwwwww) ORS 475.884, Unlawful possession of cocaine.

(xxxxxx) ORS 475.886, Unlawful manufacture of methamphetamine.

(yyyyyy) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school.

(zzzzzz) ORS 475.890, Unlawful delivery of methamphetamine.

(aaaaaaa) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school.

(bbbbbbb) ORS 475.894, Unlawful possession of methamphetamine.

(ccccccc) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school.

(ddddddd) ORS 475.906, Penalties for distribution to minors.

(eeeeeee) ORS 475.908, Causing another person to ingest a controlled substance.

(fffffff) ORS 475.910, Application of controlled substance to the body of another person.

(ggggggg) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of Pharmacy).

(hhhhhhh) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance.

(iiiiiii) ORS 475.990, Commercial drug offense.

(jjjjjjj) ORS 677.080, Prohibited acts (regarding the practice of medicine).

(kkkkkkk) ORS 685.990, Penalties (pertaining to naturopathic medicine).

(lllllll) ORS 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners).

(mmmmmmm) Any federal crime.

(nnnnnnn) Any U.S. military crime.

(oooooooo) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule.

(pppppppp) Any other felony in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.

(qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.

(rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to 161.155.

(sssssss) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) of this rule, as determined by BCU.

(ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) of this rule, as determined by BCU.

(2) The crimes listed in this section are ten-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within ten years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.

(a) ORS 033.045, Contempt of court.

(b) ORS 109.311, Prohibited fees-adoption.

(c) ORS 133.076, Failure to appear on criminal citation.

(d) ORS 133.310(3), Violation of restraining order.

(e) ORS 135.290, Punishment by contempt of court (violation of release agreement).

(f) ORS 162.015, Bribe giving.

(g) ORS 162.025, Bribe receiving.

(h) ORS 162.065, Perjury.

(i) ORS 162.075, False swearing.

(j) ORS 162.117, Public investment fraud.

(k) ORS 162.145, Escape III.

(.) ORS 162.175, Unauthorized departure.

(m) ORS 162.185, Supplying contraband.

(n) ORS 162.195, Failure to appear II.

(o) ORS 162.205, Failure to appear I.

(p) ORS 162.247, Interfering with a peace officer.

(q) ORS 162.257, Interfering with a firefighter or emergency medical technician.

(r) ORS 162.265, Bribing a witness.

(s) ORS 162.275, Bribe receiving by a witness.

(t) ORS 162.295, Tampering with physical evidence.

(u) ORS 162.305, Tampering with public records.

(v) ORS 162.315, Resisting arrest.

(w) ORS 162.335, Compounding.

(x) ORS 162.355, Simulating legal process.

(y) ORS 162.365, Criminal impersonation.

(z) ORS 162.367, Criminal impersonation of peace officer.

(aa) ORS 162.369, Possession of false law enforcement identification card.

(bb) ORS 162.375, Initiating a false report.

(cc) ORS 162.385, Giving false information to police officer for a citation.

(dd) ORS 162.405, Official misconduct II.

(ee) ORS 162.415, Official misconduct I.

(ff) ORS 162.425, Misuse of confidential information.

(gg) ORS 163.195, Recklessly endangering another person.

(hh) ORS 163.196, Aggravated driving while suspended or revoked.

(ii) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II.

(jj) ORS 164.043, Theft III.

(kk) ORS 164.045, Theft II.

(ll) ORS 164.095, Theft by receiving.

(mm) ORS 164.138, Criminal possession of a rented or leased motor vehicle.

(nn) ORS 164.140, Criminal possession of rented or leased personal property.

(oo) ORS 164.162, Mail theft or receipt of stolen mail.

(pp) ORS 164.235, Possession of a burglary tool or theft device.

(qq) ORS 164.255, Criminal trespass I.

(rr) ORS 164.265, Criminal trespass while in possession of firearm.

(ss) ORS 164.272, Unlawful entry into motor vehicle.

(tt) ORS 164.354, Criminal mischief II.

(uu) ORS 165.007, Forgery II.

(vv) ORS 165.017, Criminal possession of a forged instrument II.

(ww) ORS 165.037, Criminal simulation.

(xx) ORS 165.042, Fraudulently obtaining a signature.

(yy) ORS 165.070, Possessing fraudulent communications device.

(zz) ORS 165.074, Unlawful factoring of credit card transaction.

(aaa) ORS 165.080, Falsifying business records.

(bbb) ORS 165.085, Sports bribery.

(ccc) ORS 165.090, Sports bribe receiving.

(ddd) ORS 165.095, Misapplication of entrusted property.

(eee) ORS 165.100, Issuing a false financial statement.

(fff) ORS 165.102, Obtaining execution of documents by deception.
(ggg) ORS 165.540, Obtaining contents of communication.
(hhh) ORS 165.543, Interception of communications.
(iii) ORS 165.570, Improper use of 9-1-1 emergency reporting system.
(jjj) ORS 165.572, Interference with making a report.
(kkk) ORS 165.577, Cellular counterfeiting III.
(lll) ORS 165.579, Cellular counterfeiting II.
(mmm) ORS 165.692, Making false claim for health care payment.
(nnn) ORS 166.015, Riot.
(ooo) ORS 166.023, Disorderly conduct I.
(ppp) ORS 166.025, Disorderly conduct II.
(qqq) ORS 166.065, Harassment.
(rrr) ORS 166.076, Abuse of a memorial to the dead.
(sss) ORS 166.090, Telephonic harassment.
(ttt) ORS 166.116, Interfering with public transportation.
(uuu) ORS 166.180, Negligently wounding another.
(vvv) ORS 166.190, Pointing firearm at another.
(www) ORS 166.240, Carrying of concealed weapon.
(xxx) ORS 166.250, Unlawful possession of firearms.
(yyy) ORS 166.470, Limitations and conditions for sales of firearms.
(zzz) ORS 166.480, Sale or gift of explosives to children.
(aaaa) ORS 166.649, Throwing an object off an overpass II.
(bbbb) ORS 166.651, Throwing an object off an overpass I.
(cccc) ORS 166.660, Unlawful paramilitary activity.
(dddd) ORS 167.007, Prostitution.
(eeee) ORS 167.008 Patronizing a prostitute.
(ffff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes.
(gggg) ORS 167.122, Unlawful gambling in the second degree.
(hhhh) ORS 167.127, Unlawful gambling in the first degree.
(iiii) ORS 167.167, Cheating.
(jjjj) ORS 167.222, Frequenting a place where controlled substances are used.
(kkkk) ORS 167.325, Animal neglect II.
(llll) ORS 167.330, Animal neglect I.
(mmmm) ORS 167.337, Interfering with law enforcement animal.
(nnnn) ORS 167.340, Animal abandonment.
(oooo) ORS 167.352, Interfering with assistance, search and rescue or therapy animal.
(pppp) ORS 167.355, Involvement in animal fighting.
(qqqq) ORS 167.365, Dogfighting.
(rrrr) ORS 167.370, Participation in dogfighting.
(ssss) ORS 167.428, Cockfighting.
(tttt) ORS 167.431, Participation in cockfighting.
(uuuu) ORS 167.808(5)(b), Unlawful possession of inhalants, misdemeanor.
(vvvv) ORS 167.820, Concealing the birth of an infant.
(wwww) ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program).
(xxxx) ORS 314.075, Evading requirements of law prohibited (tax evasion).
(yyyy) ORS 411.630, Unlawfully obtaining public assistance.
(zzzz) ORS 411.640, Unlawfully receiving public assistance.
(aaaaa) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance).
(bbbbb) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits.
(ccccc) ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program.
(ddddd) ORS 412.099, Sharing assistance prohibited.
(eeeee) ORS 417.990, Penalty for placement of children in violation of compact.
(fffff) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property.
(ggggg) ORS 475.912, Unlawful delivery of imitation controlled substance.
(hhhhh) ORS 475.916, Prohibited acts involving records and fraud.
(iiiii) ORS 475.918, Falsifying drug test results.
(jjjjj) ORS 475.950, Failure to report precursor substances transaction.
(kkkkk) ORS 475.955, Failure to report missing precursor substances.
(lllll) ORS 475.960, Illegally selling drug equipment.
(mmmmm) ORS 475.965, Providing false information on precursor substances report.
(nnnnn) ORS 803.230, Forging, altering or unlawfully producing or using title or registration.
(ooooo) ORS 807.620, Giving false information to police officer.
(ppppp) ORS 811.060, Vehicular assault of bicyclist or pedestrian.
(qqqqq) ORS 811.140, Reckless driving.
(rrrrr) ORS 811.540, Fleeing or attempting to elude police officer.
(sssss) ORS 811.700, Failure to perform duties of driver when property is damaged.
(ttttt) ORS 811.705, Failure to perform duties of driver to injured persons.
(uuuuu) ORS 819.300, Possession of a stolen vehicle.
(vvvvv) ORS 830.475, Failure to perform the duties of an operator (boat).
(wwwww) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.
(xxxxx) Any other misdemeanor in Oregon Revised Statutes or a local Oregon jurisdiction not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.
(yyyyy) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it may not be considered potentially disqualifying under this section.
(zzzzz) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to 161.155.
(aaaaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule, as determined by BCU.
(bbbbbb) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) of this rule, as determined by BCU.
(3) The crimes listed in this section are five-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within five years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.
(a) ORS 162.085, Unsworn falsification.
(b) ORS 162.235, Obstructing governmental or judicial administration.
(c) ORS 164.245, Criminal trespass II.
(d) ORS 164.335, Reckless burning.
(e) ORS 164.345, Criminal mischief III.
(f) ORS 165.813, Unlawful possession of fictitious identification.
(g) ORS 166.075, Abuse of venerated objects.
(h) ORS 166.095, Misconduct with emergency telephone calls.
(i) ORS 811.182, Criminal driving while suspended or revoked.
(j) ORS 813.010, Driving under the influence of intoxicants (DUII).
(k) ORS 830.315, Reckless operation of a boat.
(l) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance.
(m) ORS 830.730, False information to peace officer or Oregon State Marine Board.
(n) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to 161.155.
(o) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) of this rule, as determined by BCU.
(p) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) of this rule, as determined by BCU.
(4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.
(5) An SI may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.
(6) An SI may not be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.
Stat. Auth.: ORS 181.537 & 409.050

Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0290
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions, if they exist on the date the Department receives the background check request:

(1) The SI makes a false statement to the QE, Department, or Authority, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program for any crime in any jurisdiction.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years from the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date the background check request was signed or the date BCU conducted a criminal records check due to imminent danger.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(11) Potentially disqualifying abuse as determined from abuse investigation reports which have an outcome of founded, substantiated, or valid and in which the SI is determined to have been responsible for the abuse.

(a) For SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division, potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report or outcome;

(B) Child protective services history reviewed pursuant to the federal Adam Walsh Act requirements, determined by BCU ADs to be potentially disqualifying; and

(C) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAAPI and APD programs based on severity.

(b) For staff, volunteers, or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor providing child welfare services pursuant to ORS chapter 418:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report or outcome; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAPPI and APD based on severity.

(c) For child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I):

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report, date of outcome, and considered potentially disqualifying pursuant to OAR 461-165-0420; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the OAAPI and APD programs based on severity.

(d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to the BCU by OAAPI and APD programs based on severity.

(12) Child protective services investigations open or pending through the Department or OAAPI as of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger. This potentially disqualifying condition only applies to:

(a) SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division;

(b) Staff, volunteers or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor, providing child welfare services pursuant to ORS chapter 418; or

(c) Child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I).

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0300
Weighing Test

When making a fitness determination, BCU shall consider any of the following factors if an SI has potentially disqualifying convictions or conditions as disclosed by the SI or which is otherwise known:

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying convictions or conditions.

(c) Facts that support the convictions or potentially disqualifying conditions.

(d) Passage of time since commission of the potentially disqualifying convictions or conditions.

(e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying convictions or conditions.

(2) If applicable, circumstances regarding the nature of potentially disqualifying abuse including but not limited to:

(a) The nature and type of abuse; and

(b) Other information gathered during the scope of the abuse investigation.

(c) The date of the abuse incident and abuse investigation.

(d) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration taken into account regarding completeness, objectivity, and sufficiency.

(e) Due process provided to the SI after the abuse investigation.

(f) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the SI's compliance.

(3) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is rele-

vant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions including but not limited to patterns of criminal activity or behavior.

(g) Information from the Department's or Authority's protective services, abuse, or other investigations in which the investigator documented behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals.

(h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(i) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(4) BCU shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0315
Hired on a Preliminary Basis

(1) A preliminary fitness determination is required to determine if an SI may work, volunteer, or otherwise perform in the position listed on the background check request prior to a final fitness determination. An SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.

(2) An SI may be hired on a preliminary basis only during the period of time prior to a final fitness determination and into the position listed on the background check request.

(3) The SI must provide information required for a background check request and the QED must review the information.

(4) The QED shall make one of the following determinations:

(a) If the SI makes no disclosures of criminal history, the QED may hire the SI on a preliminary basis in accordance with relevant program rules or QE policies.

(b) If the SI discloses any criminal history and all of the history occurred outside the five year period from the date the SI manually or electronically signed the background check request, the QED may hire the SI on a preliminary basis in accordance with relevant program rules or QE policies.

(c) If the SI indicates any criminal history occurring within the five year period from the date the SI manually or electronically signed the background check request:

(A) The QED may allow the SI to be hired on a preliminary basis if the disclosed criminal history has the outcome of "dismissed," "no complaint filed," "expunged," or other outcome that BCU determines is not adverse.

(B) The QED may not allow the SI to be hired on a preliminary basis if the disclosed criminal history has an outcome of "pending outcome," "diversion or conditional discharge," "convicted," "on probation," "juvenile adjudication," "unknown," or other outcome that BCU determines is adverse.

(5) The QED shall submit the background check request to BCU immediately upon verification of the SI's identity, the SI's completion of the background check request, and the QED's completion of the preliminary fitness determination.

(6) If requested by the QED, BCU may conduct a preliminary fitness determination with a weighing test. The SI may be hired on a preliminary basis only if, based on information available at the time, BCU determines that more likely than not, the SI poses no potential threat to vulnerable individuals.

(7) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(a) Being hired on a preliminary basis or probationary status is not allowed under program rules.

(b) The SI has disclosed criminal history occurring within the past five years that has an outcome of "pending outcome," "diversion or conditional discharge," "convicted," "on probation," "juvenile adjudication," "unknown" or other outcome BCU determines to be adverse and BCU has not completed a preliminary fitness determination resulting in the QE being allowed to hire the SI on a preliminary basis.

(c) The QE or BCU determines that:

(A) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;

(B) The SI's most recent background check under these rules or other Department or Authority criminal records check rules or abuse check rules resulted in a denial; or

(C) The SI is currently involved in contesting a background check under these or other Department or Authority criminal records check rules or abuse check rules.

(D) BCU has reason to believe hiring on a preliminary basis is not appropriate based on circumstances or compliance with the background check process of the SI, QED, or QE.

(d) An outcome of no hiring on a preliminary basis may only be overturned by the BCU.

(8) An SI hired on a preliminary basis shall be actively supervised at all times.

(a) The individual providing active supervision at all times shall do the following:

(A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (8)(b)(B) of this rule;

(B) Know where the SI is and what the SI is doing; and

(C) Periodically observe the actions of the SI.

(b) The individual providing the active supervision may be either:

(A) An SI who has been approved without restrictions pursuant to these rules or previous Department or Authority criminal records check rules; or

(B) The adult client, an adult client's adult relation, the client's legal representative, or a child's parent or guardian. Active supervision by these individuals is appropriate in situations where care is given directly to clients usually in a home such as but not limited to in-home care, home health, or care by home care workers, personal care assistants, or child care providers.

(i) The adult client may actively supervise a homecare worker, personal care services provider, independent provider, or an employee of an in-home care agency or home health agency if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the Department, the Authority, the QED, or the private-pay client receiving services through an in-home care or home health agency.

(ii) A child client's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(9) An SI approved without restrictions within the previous 24 months through a documented criminal records check or abuse check pursuant to these rules or prior Department or Authority criminal records check rules or abuse check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity or potentially disqualifying abuse within the previous 24 months.

(c) If, as determined by the QE or BCU, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(10) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or BCU may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions or any out of state arrests or convictions.

(c) The QE or BCU determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

(11) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request prior to a final fitness determination.

(12) Preliminary fitness determinations must be documented in writing, including any details regarding a weighing test, if required.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0330

Contesting a Fitness Determination

(1) A final fitness determination of denied or restricted approval is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination unless already granted contested case hearing rights under OAR 407-007-0335.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to BCU, by appealing to the entity providing the information. These challenges are not subject to BCU's appeal process.

(5) An SI has the right to represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(a) An SI who is appealing an adverse outcome regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action.

(c) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.

(d) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(e) BCU may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) BCU may conduct additional criminal records checks or abuse checks during the contested case hearing process to update or verify the SI's potentially disqualifying convictions or conditions and factors to consider in the weighing test. If needed, BCU shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by the Office of the Attorney General.

(a) BCU shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The notice of contested case and prehearing summary and other documents may be mailed by regular first class mail or provided electronically.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(e) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) BCU may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to a contested case hearing

(12) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days.

(c) BCU shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days of the order.

(13) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by BCU within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(b) If timely written exceptions to the proposed and final order are received by BCU, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(14) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(15) BCU may provide the QED with the results of the appeal.

Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0335
Decision and Hearing Rights for Potentially Disqualifying Abuse

(1) This rule applies only to:

(a) Background checks in which an SI has potentially disqualifying abuse under OAR 407-007-0290(11)(d) with no other potentially disqualifying convictions or conditions; and

(b) After a weighing test under OAR 407-007-0300, BCU determines that more likely than not, the SI poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(2) BCU shall provide the SI a Notice of Intent to Deny in writing.

(a) BCU shall indicate on the Notice of Intent to Deny the date the final fitness determination was made and the date of the intended action if the SI fails to request an expedited hearing.

(b) BCU shall mail the Notice of Intent to Deny to the SI using the mailing address provided by the SI by the next business day after the date of the final fitness determination.

(c) BCU shall include an Expedited Hearing Request form with the Notice of Intent to Deny.

(3) An SI may contest a Notice of Intent to Deny by requesting an expedited hearing. The expedited hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(4) To request an expedited hearing, the SI must submit a completed and signed Expedited Hearing Request form. The request for an expedited hearing must be received by the Department within 10 calendar days after the date of the Notice of Intent to Deny.

(a) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.

(b) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(5) An SI has the right to represent him or herself or have legal representation during the expedited hearing process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative if the SI has provided BCU with such information.

(a) An SI who is appealing a Notice of Intent to Deny regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) If the SI fails to request an expedited hearing under this rule within the allowed time, BCU shall issue a Notice of Denial to the SI and to the QE. The SI shall have no further hearing rights under OAR 407-007-0330.

(7) If the SI requests an expedited hearing in a timely manner, the SI shall remain in the same status made in a preliminary fitness determination under OAR 407-007-0315 until the date of a final order or the Notice of Denial.

(8) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(c) BCU may make an informal disposition based on the administrative review. BCU shall issue a final order and a notice of fitness determination.

(9) The Department shall be represented by a hearing representative in expedited hearings. The Department may also be represented by the Office of the Attorney General.

(a) BCU shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The claimant is entitled to reasonable notice of all hearing documents either through personal service, electronically, regular mail, or certified mail.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(10) The expedited hearing shall be conducted by the OAH by telephone within 10 business days from the receipt of the completed and signed Expedited Hearing Request form.

(a) The expedited hearing is not open to the public.

(b) The administrative law judge shall make a new fitness determination based on evidence and the record.

(c) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(11) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw an expedited hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within four calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review.

(c) If the QE terminates employment or position of the SI for reasons unrelated to the potentially disqualifying abuse, BCU may close the application.

(d) BCU shall dismiss a hearing request when the SI fails to appear at the time specified for the expedited hearing. The order is effective on the date scheduled for the hearing.

(12) After an expedited hearing, the administrative law judge shall issue a final order within three business days.

(a) If the final order maintains BCU's intent to deny, BCU shall issue a Notice of Denial by the next business day after the date of the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

(b) If the final order reverses BCU's intent to deny to an approval or a restricted approval, BCU shall issue a Notice of Fitness Determination by the next business day after the date of the final order unless BCU formally stays the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

(13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004
Hist.: DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0340
Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the Department and Authority shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports are confidential and may only be shared within BCU if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by BCU unless:

(a) If an SI requests the results of a fingerprint-based criminal records check received by BCU, the SI shall be provided a copy of the results.

(b) The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

(3) The results of an abuse check are confidential and may not be disseminated by the Department or the Authority except in compliance with confidentiality statutes and guidelines of the Department or the Authority. An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without an order of discovery limiting further disclosure of the information during the contested case hearing process.

(4) All completed background check requests, other criminal records information, and other records collected or developed during the background check or contested case process shall be kept confidential and disseminated only on a need-to-know basis.

(5) The Department and Authority shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(6) Documents retained by a QE may only be viewed by an approved QED or licensing staff authorized by the Department or Authority as part of monitoring compliance with licensing and program administrative rules.

(7) Documents retained by a QE may be requested and reviewed by the Department and the OSP for the purposes of determining and ensuring compliance with these rules.

(8) If an error is discovered on a notice of fitness determination, BCU may correct it by issuing an amended notice of fitness determination.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

407-007-0350
Immunity from Liability

(1) The Department, the Authority and the QE, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, and Authority, and the QE, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of a fitness determination or closed case if they in good faith comply with:

(a) ORS 181.537 and 409.027; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14

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Rule Caption: Background Check Registry
Adm. Order No.: DHSD 3-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 11-1-2014
Rules Adopted: 407-007-0600, 407-007-0610, 407-007-0620, 407-007-0630, 407-007-0640
Subject: These rules implement 2014 Oregon Laws, Chapter 104, Section 6. The Background Check Unit, serving the Department of Human Services (Department) and the Oregon Health Authority (Authority), is augmenting its Criminal Records Information Management System (CRIMS) to include a searchable registry of individuals with completed background checks who are eligible to work as homecare workers, or eligible to work in certain facilities. Placement on the registry allows an individual to be hired by a facility or work as a homecare worker without a new background check. An individual maintains placement on the registry by having rechecks every two years.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0600
Purpose

(1) The purpose of these rules, OAR 407-007-0600 to 407-007-0640, is to provide for procedures and standards for the Background Check Registry pursuant to 2014 Oregon Laws Chapter 104.

(2) These rules apply to subject individuals (SIs), as defined in OAR 407-007-0210, who work or seek to work in facilities and positions subject to these rules.

Stat. Auth.: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 413.036, 443.725 & 443.735
Stats. Implemented: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060 & 443.004
Hist.: DHSD 3-2014, f. & cert. ef. 12-1-14

407-007-0610
Definitions

In addition to the definitions in OAR 407-007-0210, the following definitions apply to OAR 407-007-0600 to 407-007-0640:

(1) "Background check" means a criminal records check and an abuse check pursuant to OAR 407-007-0210 to 407-007-0370 and any additional checks as required per federal code or Oregon statute.

(2) "Background Check Registry (Registry)" means a comprehensive listing of subject individuals who meet the requirements of these rules.

(3) "Criminal Records Information Management System (CRIMS) user" means an individual who has been approved to use CRIMS.

(4) "Facility" means:

(a) A long term care facility in Oregon as defined in ORS 442.015 including skilled nursing facilities and intermediate care facilities.

(b) A residential care facility as defined in ORS 443.400 including but not limited to assisted living facilities and intermediate care facilities.

(c) An adult foster home as defined in ORS 443.705. This definition does not apply to adult foster homes licensed by the Department to provide care and services to adults with intellectual or developmental disabilities, or to adult foster homes licensed by the Oregon Health Authority (Authority) to provide care to adults with mental illness.

(5) "Homecare worker" has the same meaning given in ORS 410.600, including but not limited to personal support workers and personal care attendants.

(6) "Permanent hire date" means:

(a) For an employee, temporary worker or contractor of a facility, the date the qualified entity (QE) considers the SI to be permanently hired, after the background check approval date and when the SI is no longer considered provisional or working under active supervision pursuant to OAR 407-007-0315.

(b) For a volunteer of a facility, the date the QE considers the SI to be approved to volunteer for the QE, after the background check approval date.

(c) For a homecare worker, the date the Department of Human Services (Department) or Authority enrolls the SI as a homecare worker and the homecare worker enrollment number is approved and active. For medical assistance programs this date is called the "enrollment" contract active dates.

(7) "Position" means the position listed in the background check request which determines whether the individual is an SI under OAR 407-007-0210.

(8) "Qualified entity (QE)" means:

(a) A facility;

(b) An Area Agency on Aging (AAA) office or a Department or Oregon county Aging and People with Disabilities program branch which enrolls homecare workers;

(c) An agency, program or county office in Oregon serving individuals with intellectual or developmental disabilities which hires, enrolls, or contracts personal support workers;

(d) An agency, program or county office in Oregon serving individuals with mental illness which assists an individual to complete personal support worker enrollment; or

(e) The Department's Children's Intensive In-home Services program.

Stat. Auth.: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 413.036, 443.725 & 443.735
Stats. Implemented: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060 & 443.004
Hist.: DHSD 3-2014, f. & cert. ef. 12-1-14

407-007-0620
Background Check Registry

(1) The background check registry includes SIs who work or seek to work as:

(a) An employee, contractor, temporary worker, or volunteer in a facility; or

(b) A homecare worker, including the position of personal support worker.

(2) The registry includes SIs who have a record of a background check with an outcome of approved or approved with restrictions in CRIMS dated on or after January 1, 2015 with no subsequent background check with an outcome other than approved or approved with restrictions.

(3) The registry shall include information regarding the SI including but not limited to:

(a) Name and other identifying information.

(b) Date of background check approval.

(c) Current position.

(d) QE for each current position.

(e) Permanent hire date with each QE.

(f) Permanent hire date in the position at each QE.

(g) Last day of work for each position at each QE.

(4) An SI shall complete a new background check:

(a) At least every two years.

(b) If the Department requires a new background check due to a change in position by the SI.

(c) If the Department has reason to believe a new background check is needed.

(5) BCU shall immediately remove an SI from the registry if a subsequent background check results in any outcome other than approved.

Stat. Auth.: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 413.036, 443.725 & 443.735

Stats. Implemented: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060 & 443.004

Hist.: DHSD 3-2014, f. & cert. ef. 12-1-14

407-007-0630

Reporting Requirements for Qualified Entities

(1) CRIMS users for facilities and homecare workers may access the registry online through CRIMS.

(2) If an SI is not found in a search of the registry, CRIMS users may enter a background check request in CRIMS to determine if the SI may be placed on the registry to work.

(3) QEs shall provide BCU with the following information regarding an SI on the registry including but not limited to:

(a) Permanent hire date of SI for each position.

(b) Initiation of a new background check due to report of any potentially disqualifying convictions or conditions (see OAR 407-007-0280 to 407-007-0290).

(c) Change of position with the QE.

(d) The SI's last day of work once the SI leaves a position.

Stat. Auth.: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 413.036, 443.725 & 443.735

Hist.: DHSD 3-2014, f. & cert. ef. 12-1-14

407-007-0640

Access and Release of Information

(1) BCU shall maintain the registry through CRIMS. CRIMS users for facilities and homecare workers may access the registry online through CRIMS.

(2) An SI may request in writing that BCU provide documentation of information included in the registry about the SI.

Stat. Auth.: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 413.036, 443.725 & 443.735

Stats. Implemented: Or Laws 2014, ch 104; ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060 & 443.004

Hist.: DHSD 3-2014, f. & cert. ef. 12-1-14

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

Rule Caption: Adult Protective Services
Adm. Order No.: APD 37-2014
Filed with Sec. of State: 11-24-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 10-1-2014
Rules Amended: 411-020-0000, 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0025, 411-020-0030, 411-020-0040, 411-020-0060, 411-020-0080, 411-020-0085, 411-020-0090, 411-020-0100, 411-020-0110, 411-020-0120, 411-020-0123, 411-020-0130
Subject: The Department of Human Services (Department) is permanently updating the rules for Adult Protective Services in OAR chapter 411, division 20 to:

- Amend the definitions of "neglect," "sexual abuse" and add the definition for "basic care" to implement HB 4151. These definitions will be applied in investigations of alleged abuse to older adults and persons with physical disabilities in the community as well as licensed care facilities. Other definitions had minor wording, grammar, and formatting adjustments. A few new definitions were added to reflect terminology changes within the Department.

- Add to the list of mandatory abuse reporters because it was expanded by legislation in 2013 to add attorneys, dentists, optometrists, chiropractors and members of the legislative assembly. In addition, the rules now state that certain attorney communications are protected as confidential.

- Amend the triage times for Adult Protective Services (APS) to commence an investigation of alleged abuse to be the same for all licensed care facility types.

- Clarify that reported victims, reported perpetrators, and key witnesses shall be interviewed in person with certain exceptions.

- Add the time frame to complete community abuse investigations as well as what information can be shared about the conclusion.

- Make minor wording, formatting, punctuation and grammar adjustments to the rules.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-020-0000

Purpose and Scope of Program

(1) RESPONSIBILITY. The Department of Human Services (Department), Aging and People with Disabilities program area (APD) has the responsibility to provide Adult Protective Services (APS) to older adults and to adults with physical disabilities whose situation is within APD's jurisdiction to investigate.

(2) INTENT. The intent of the APS Program is to provide protection and intervention for older adults and adults with physical disabilities who are unable to protect themselves from harm and neglect.

(3) SCOPE OF SERVICES. The scope of services includes:

(a) Receiving reports of abuse, neglect, or self-neglect;

(b) Providing and documenting risk assessment of reported victims;

(c) Conducting and documenting investigations of reported wrongdoing; and

(d) Providing appropriate resources for victim safety.

(4) AVAILABILITY. Adult protective services are available from the Department to any adult resident of a licensed care facility, to nursing facility residents regardless of age, and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) INTERVENTION MODEL.

(a) As a human services agency, the Department embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in adult protective services is the obligation to balance the duty to protect older adults and adults with physical disabilities with the duty to protect their rights to self-determination.

(b) The Department relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with abuse and neglect, and encourages active participation and sharing of appropriate information by APS staff on multidisciplinary teams.

(c) The Department supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050–124.095, 410.020, 410.040, 410.070, 411.116, 441.630–441.695, 443.450, 443.500, & 443.767

Hist.: PWC 750(Temp), f. 8-18-75, ef. 8-21-75; PWC 769, f. 10-20-75, ef. 10-25-75; AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0000 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0002

Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 020:

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes, but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) NEGLECT. Neglect including:

(A) Failure to provide the basic care, or services necessary to maintain the health and safety of an adult:

(i) Failure may be active or passive.

(ii) Failure creating a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

(iii) The expectation for care may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to, where an individual has a fiduciary responsibility to assure the continuation of necessary care or services.

(B) An adult who in good faith is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes, but is not limited to, the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes, but is not limited to, anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult reasonably believes that the threat conveyed maybe carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe, threatening, pervasive or inappropriate exposure of an adult to sexually explicit material or language;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility evaluates the behavior and develops care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area poses a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated before the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an individual who is 18 years of age or older.

(3) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(4) "APD" means "Aging and People with Disabilities".

(5) "APS" means adult protective services as described in these rules.

(6) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(8) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(9) "Basic Care" means care essential to maintain the health and safety needs of an adult, but is not limited to, assistance with medication administration, medical needs, nutrition and supervision for safety as well as activities of daily living including assistance with bathing, dressing, hygiene, eating, mobility and toileting.

(10) "Community-Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(11) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(12) "Conservatorship" means a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(13) "Consumer" means the person applying for or eligible for Medicaid home or community-based services.

(14) "Department" means the Department of Human Services (DHS).

(15) "Evidence" means material gathered, examined, or produced during an adult protective services investigation. Evidence includes, but is not limited to, witness statements, documentation, photographs, and relevant physical evidence.

(16) "Financial Institution" has the meaning given that term in ORS 192.583.

(17) "Financial Records" has the meaning given that term in ORS 192.583.

(18) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

(19) "Health Care Provider" has the meaning given that term in ORS 192.556.

(20) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(21) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(22) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, be able to reasonably choose from among those options, and communicate that choice.

(23) "Law Enforcement Agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any district attorney; or

(e) The Oregon Department of Justice.

(24) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(25) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(26) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, psychiatrist, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health service;

(C) Employee of the Department of Human Services, community developmental disabilities program, or Area Agency on Aging;

(D) Employee of the Oregon Health Authority, county health department, or community mental health program;

(E) Employee of a nursing facility or an individual who contracts to provide services to a nursing facility;

(F) Peace officer;

(G) Member of the Clergy;

(H) Regulated social worker, licensed professional counselor, or licensed marriage and family therapist;

(I) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(J) Senior center employee;

(K) Information and referral or outreach worker;

(L) Firefighter or emergency medical services provider;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee;

(O) Attorney;

(P) Dentist;

(Q) Optometrist;

(R) Member of the Legislative Assembly, and

(S) For nursing facilities, all of the above, plus legal counsel, guardian, or family member of the resident.

(27) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(28) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(29) "Older Adult" means any individual 65 years of age or older.

(30) "Physical Disability" means any physical condition or cognitive condition such as brain injury or dementia that significantly interferes with an adult's ability to protect themself from harm or neglect. (See OAR 411-020-0015, Eligibility).

(31) "Protected Health Information" has the meaning given that term in ORS 192.556.

(32) "Relevant" means tending to prove or disprove the allegation at hand.

(33) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(34) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(35) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system, and other relevant factors are also evaluated to determine the impact on the individual's ability to become or remain safe.

(36) "Risk of Serious Harm" means that without intervention, the individual is likely to incur substantial injury or loss.

(37) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(38) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(39) "Services" as used in the definition of abuse includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, housekeeping, and transportation as well as assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(40) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(41) "These Rules" mean the rules in OAR chapter 411, division 020.

(42) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(43) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(44) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050–124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 OL Ch. 70

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0010

Authority and Responsibility

The Department is granted statutory authority and responsibility to protect older adults and adults with physical disabilities from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services:

(a) ORS 410.020 authorizes the Department to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) These rules detail the steps in the adult protective services process.

(2) ADULT FOSTER HOMES.

(a) ORS 443.767 requires the Department to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that may result in injury, abuse, or neglect of a resident and may place the resident's health or safety in imminent danger.

(b) OAR 411-050-0665 details the steps for filing, investigating, and documenting complaints in Adult Foster Homes.

(3) RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES.

(a) ORS 443.435 allows the Department access to a facility to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and 443.991(2) and the rules in OAR chapter 411, division 054.

(b) OAR 411-054-0105 details methods for conducting inspections and investigations in residential care and assisted living facilities.

(4) NURSING FACILITIES.

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650 to 441.695 addresses the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating, and documenting investigations in nursing facilities and the corrective action procedure for substantiated complaints.

(5) ROOM AND BOARD FACILITIES.

(a) ORS 443.500 allows the Department access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances, and regulations. If the Department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, the Department may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in room and board facilities.

(6) ELDER ABUSE.

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) These rules detail the procedures for reporting, investigating, and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0015
Eligibility Criteria

(1) Adult protective services as described in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older;

(b) Adults aged 18 and older who have a physical disability as defined in these rules; and

(c) Anyone living in a licensed care facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to individuals who are enrolled in or previously determined eligible for services from the Department under ORS 430.735 to 430.765 and OAR 407-045-0250 to 407-045-0360 are referred for screening to the county developmental disabilities program. Reported abuse to individuals receiving services from the Oregon Health Authority under ORS 430.735 to 430.765 and OAR 943-045-0250 to 943-045-0360 are referred for screening to the community mental health program.

(3) Eligibility for adult protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 410.070 & 411.116
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0015 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0020
Reporting of Abuse and Neglect

(1) Mandatory reporters must report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.630) to the Department, local office, or a local law enforcement agency. A psychiatrist , psychologist, attorney, or member of the clergy does not have to report privileged information covered under ORS 40.225 to 40.295. An attorney is not required to make a report of information communicated to the attorney in the course of representing a client if disclosure of the information would be detrimental to the client.

(2) Reporting of instances involving abuse or neglect of older adults and adults with physical disabilities is highly encouraged for non-mandatory reporters. Anyone participating in the making of a report of elder abuse on reasonable grounds and good faith shall have immunity from any civil liability. The same immunity applies to participating in any judicial proceeding resulting from the report.

(3) The identity of the individual reporting the suspected abuse shall be confidential and may be disclosed only with the consent of that individual, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

Stat. Auth.: ORS 410.070, 411.116, 441.635, 443.500 & 443.767
Stats. Implemented: ORS 124.055 – 124.075, 124.090, 410.070, 411.116, 441.635 – 441.655, 441.671 – 441.675, 443.765
Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0025
Multidisciplinary Team (MDT)

(1) The local office must participate in their county MDT to coordinate and collaborate on allegations of abuse and self-neglect of older adults and adults with physical disabilities. Adult protective services, when provided by the local office in conjunction with their participation on their county MDT, shall be provided as described in OAR 411-020-0040.

(2) All confidential information protected by federal and state law that is shared or obtained by the MDT members in the exercise of their duties on the MDT is confidential and may not be further disclosed except by law, authorization by the adult, or by court order.

(3) The local office must annually provide the MDT with the number of substantiated allegations of abuse of adults investigated by APS and the number of APS cases referred to law enforcement in the county.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070 & 411.116, sec. 8, Ch. 837, OL 2009
Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0030
Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain individuals and information obtained as a result of an APS intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential, except for disclosure of the conclusion under OAR 411-020-0100(6), and may be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names may be released without the consent of the individual named except as provided in section (5) of this rule.

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings shall be made available to the general public upon request. For these types of complaints, information regarding the identity of the complainant, the reported victim, all witnesses, and the protected health information of any party shall remain confidential, unless release is specifically authorized by the affected individual or otherwise dictated by judicial process.

(4) The Department shall make the protective services report and underlying investigatory materials available to the protection and advocacy system designated by ORS 192.517 when the reported victim is an individual with a disability or mental illness as identified by ORS 192.517.

(5) Where the Department deems it appropriate, for the purpose of furthering a protective service, when it is necessary to prevent or treat abuse, or when deemed to be in the best interest of a reported victim, the names of the reported victim, witnesses (other than the complainant except as expressly permitted below), any investigative report, and any records compiled during an investigation, may be made available to:

(a) Any law enforcement agency, to which the name of the complainant may also be made available;

(b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the individual who practices there;

(c) A public agency that licenses or certifies an individual that has abused or is alleged to have abused an older adult;

(d) The Long Term Care Ombudsman;

(e) Any governmental or private non-profit agency providing adult protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090, including any federal law enforcement agency that has jurisdiction to investigate or prosecute for abuse defined in these rules, including, but not limited to, the Federal Bureau of Investigation (FBI), the Federal Trade Commission, or the Federal Offices of Inspector General;

(f) An MDT as described in OAR 411-020-0025;

(g) A court, pursuant to court order, to which the name of the complainant may also be made available as required by the court order; or

(h) An administrative law judge in an administrative proceeding when necessary to provide protective services, investigate, prevent, or treat abuse of an older adult or when in the best interest of an older adult.

(6) Recipients of information disclosed under section (4) of this rule must maintain the confidentiality of the information as required by Oregon statute unless superseded by other state or federal law.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.070, 410.150, 411.116, 441.630 – 441.695, 443.769, & 2012 OL Ch. 70
Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0040
Services Provided

(1) Local offices must follow procedural guidelines consistent with Department policies guiding APS response activities. Although the role of APS is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, and licensing agencies are desirable.

(2) The Department shall establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations must be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070 & 411.116
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94, Renumbered from 411-020-0005; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0060
Screening

(1) All calls or contacts involving the possibility of abuse or neglect must be directed to APS screening.

(2) Screening is the skilled interviewing process used to gather and assess information in order to determine eligibility for adult protective services. This activity includes a determination of whether the complaint meets the definition of abuse as contained in administrative rules.

(3) If the complaint meets the definition of abuse, screening activities may include, but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint; or

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition of abuse but requires intervention, response shall include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition of abuse or require intervention, but may be addressed by specialized information or assistance, a referral to APS consultation may be appropriate.

(6) If the complaint involves a consumer who is currently receiving case management or eligibility services, the worker assigned to the consumer must be notified. If the complaint involves a commercial adult foster home, the local licenser must be notified.

(7) Each local office must develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier must be assigned and shared with the complainant at the time of screening so that the complainant may re-contact the office and determine the disposition of the report.

(8) Each local office must establish an after hours reporting system.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070, 411.116, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0080
Triage

(1) Triage is the APS process of determining the nature and severity of risk to individuals and the immediacy of response required.

(2) The local office shall provide for a prompt and timely initial response to all APS referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by the Department are as follows:

(a) COMMUNITY CASES (Non-facility, elder abuse, and APS).

(A) IMMEDIATELY: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The individual is in the process of being harmed due to criminal activity, medical emergency, fire, or is a clear and present danger to self or others;

(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT: Initiate investigation within two hours when the reported victim is identified as being in imminent danger;

(C) BY THE END OF THE NEXT WORKING DAY: Initiate investigation by the end of the next working day when the individual is identified as being in a hazardous situation that is one that may lead to increased harm or risk; or

(D) WITHIN FIVE WORKING DAYS: When screening determines the situation is problematic, one that is chronic or ongoing, or is a general complaint that an immediate response is unlikely to change the reported victim's risk level, an investigation must be initiated within five working days.

(b) ASSISTED LIVING, RESIDENTIAL CARE, ADULT FOSTER HOME AND NURSING FACILITY CASES.

(A) WITHIN TWO HOURS:

(i) If the resident's health or safety is in imminent danger; or

(ii) The resident has recently died, been hospitalized, or been treated in an emergency department as a result of suspected abuse or neglect.

(B) BEFORE THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0085
Law Enforcement Notification

(1) The Department or local office shall immediately notify law enforcement if any of the following conditions exist and proceed collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:

(a) Reasonable cause to believe a crime has been committed;

(b) Access to the reportedly abused individual is denied and legal assistance is needed in gaining access;

(c) The situation presents a credible danger to the Department worker or others and police escort is advisable;

(d) Forensic photographic or other evidence is needed; or

(e) Those required under OAR 411-020-0123 or 411-020-0126.

(2) Written notice, regardless of any verbal notice given, shall be provided to law enforcement for all instances when the Department finds there is reasonable cause to believe a crime has been committed.

(3) When the local office notifies a law enforcement agency of suspected crime committed against a reported victim, the local office must track the progress as reported from the law enforcement agency on the investigation and the district attorney's office on the prosecution of the crime.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765 & 443.767
Stats. Implemented: ORS 124.065 – 124.070, 410.070, 411.116, 441.645 – 441.650, 443.500 & 443.767
Hist.: SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0090
Assessment

(1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information, and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of harm

in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.

(2) Assessment in APS cases shall be conducted in person with the reported victim, usually in the reported victim's home or the facility where the reported victim lives.

(3) The assessment may include:

(a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, and domestic violence providers, and other relevant individuals, in keeping with Department confidentiality guidelines.

(b) The use of accepted screening tools as well as the worker's professional judgment to determine the reported victim's safety and functional abilities.

(4) If there is evidence the reported victim's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results shall be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.

(5) Upon completion of the initial APS assessment, the complaint shall be continued for investigation where there is a reported perpetrator, or shall proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim shall be offered resource information, and the case shall be documented and closed.

(6) Results of the APS assessment of the reported victim's cognitive and functional abilities shall be recorded in the Department-approved system. A summary of the relevant portions shall be included in the APS report.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070, 411.116, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0100
Community Investigation, Documentation and Notification

(1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.

(2) An investigation shall be completed and documented when a perpetrator is reported to have abused or neglected a victim.

(3) Investigations are to be objective, professional, and complete.

(4) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct unannounced interviews with the parties described in section (a) above to gather all relevant available evidence. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals listening to the interview must be advised of the confidential nature of the investigation;

(c) The reported victim and reported perpetrator must be interviewed in person unless a deviation under OAR 411-020-0040(3) is required for the safety of any party to the investigation, an in-person interview is unable to be obtained, or at the request of law enforcement. Whenever reasonable, key witnesses shall be interviewed in person.

(d) Obtain and review any available and relevant documentary or physical evidence;

(e) Create additional investigatory aids, such as maps or drawings that may aid in proving or disproving the allegation;

(f) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(g) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(h) Conclude whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determine that the evidence is inconclusive.

(5) The local office must document and close the investigation on or before 120 days from receipt of the initial complaint unless delayed by a concurrent criminal investigation. A reasonable delay may be permitted in the event of a concurrent criminal investigation.

(a) Documentation of community assessments and investigations must include, but is not limited to:

(A) A description of documents and records reviewed;

(B) Identification and summary of witness statements obtained;

(C) A summary of the findings;

(D) Conclusions; and

(E) Any plans of action that are recommended or taken.

(b) Data in the report must include:

(A) Dates and location of the complaint;

(B) Date investigation commenced and by whom;

(C) Characteristics of the reported victim including identified language, race and ethnicity;

(D) Relationship of the reported victim to the complainant, witnesses, and reported perpetrator;

(E) Type of reported mistreatment or abuse;

(F) Conclusion; and

(G) Outcome.

(c) Reports must be written and closed on a Department-approved system (e.g., Oregon ACCESS).

(6) When a community complaint investigation has been completed, the complainant, the reported victim, and the reported perpetrator may be informed (verbally, unless notification in writing is requested) that:

(a) There was an allegation of abuse or self-neglect and type of abuse or self-neglect being investigated;

(b) Appropriate action is being taken;

(c) No abuse was found (unsubstantiated);

(d) Abuse was found (substantiated); or

(e) The investigation was 'inconclusive'.

(7) The Department or the law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 – 441.650, 441.660, 443.500, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0110
Community Intervention

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed the victim at risk.

(2) Intervention may include, but is not limited to:

(a) Arranging for emergency services such as law enforcement and emergency medical care as needed;

(b) Providing education and counseling to the individual at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical, and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed; or

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis response. Longer term intervention may be made available through APS risk management or through non-APS case management.

(4) An individual who can make an informed choice may refuse assistance or intervention. In this case, the worker shall provide the individual with appropriate resource information and a way to re-contact APS if a threat of harm recurs or reaches a level unacceptable to the individual.

(5) If the individual at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention, if available must include medical assessment to determine whether capacity may be improved or restored.

(6) If the individual at risk is unable to consent to assessment or treatment, consideration must be given to involuntary intervention, including as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases, the intervention initiated must be:

(a) The least restrictive available;

(b) Respectful of the values of the individual at risk; and

(c) Sought only when it has been determined that there is no surrogate decision maker in place, or that such individual is not acting responsibly in that role.

(7) If the individual lacks appropriate information, the worker must provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the individual, and balanced, in order to support the individual's right to make an informed choice.

(8) When the assessment or investigation is complete, the case shall be either:

(a) Documented and referred to APS risk management for further monitoring and intervention if the situation meets the criteria in OAR 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The individual at risk, having the ability to do so, decides not to have further adult protective services.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070, 411.116, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0120
Facility Investigation, Documentation and Notification

(1) Investigations shall be objective, professional, and complete.

(2) In completing the investigation, the APS worker must:

(a) Identify the reported victim, the reported perpetrator, and any parties reported to have information relevant to proving or disproving the allegation;

(b) Conduct interviews with the parties described in section (a) above to gather all relevant available evidence. Interviews shall be unannounced whenever possible. All interviews must be private unless the individual being interviewed requests the presence of someone else. Any individuals listening to the interview must be advised of the confidential nature of the investigation;

(c) Obtain and review any available and relevant documentary or physical evidence;

(d) Create additional investigatory aids, such as maps or drawings, that may aid in proving or disproving the allegation;

(e) Maintain a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;

(f) Determine the facts of the case based on a fair and objective review of the available relevant evidence; and

(g) Conclude whether the preponderance (majority) of the evidence indicates the incident occurred and whether wrongdoing was substantiated or unsubstantiated, or determine that the evidence is inconclusive. The determination as to whether substantiated wrongdoing meets the definitions of abuse shall be determined by the Office of Licensing and Regulatory Oversight.

(3) In conducting facility abuse investigations, the Department protocols governing activities of investigations further include:

(a) Notifying the Department's Office of Licensing and Regulatory Oversight (OLRO) if:

(A) A situation exists in a nursing facility that meets criteria for NFSU to complete the investigation. Where NFSU shall conduct the investigation, the local office must provide coordination to assure victim safety; or

(B) A situation exists in a residential care facility or an assisted living facility that may cause NFSU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant, a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying individuals or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility; and

(d) Arranging for immediate protection. The worker must direct the provider to correct any substantiated problem immediately.

(4) The local office must submit completed investigation reports written on the Department's Facility Report Writing System to the Office of Licensing and Regulatory Oversight within 60 days of the receipt of the complaint. A reasonable delay may be permitted in the event of a concurrent criminal investigation.

(a) Facility investigations must be written at the local office on the Department's Facility Report Writing System. Documentation of facility investigations for each allegation must include:

(A) A statement of the allegation;

(B) A summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact; and

(E) A conclusion.

(b) When wrongdoing is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(c) The local office must retain hard copies of facility investigation reports for a period of 10 years after last activity.

(5) When a facility investigation has been completed, notification to the complainant and other appropriate parties must be done according to procedures as specified in the relevant facility licensing rules and policy.

(6) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(7) The Department may collect standardized statewide data on all types of adult protective services including, but not limited to, information on the number of cases, types of incidents, individual characteristics, and outcomes.

(8) The Department or a law enforcement agency may photograph, or cause to have photographed, any reported victim for the purposes of preserving evidence of the reported victim's condition observed at the time of the investigation. The photographs shall be considered records and subject to confidentiality rules.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 124.065 - 124.070, 124.080, 410.070, 411.116, 441.645 – 441.650, 441.660, 443.500, 443.767
Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 411-020-0050, SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0123
Accessing Protected Health Information, including Records

Protected health information from a health care provider may be obtained in the course of an APS investigation either from a mandatory reporter performing that reporter's duties required by Oregon statute or as follows:

(1) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider may disclose, in accordance with 45 CFR 164.512(j), protected health information to APS to prevent or lessen a serious and imminent threat to the health or safety of a person or the public if the health care provider, in good faith, believes the disclosure is necessary to prevent or lessen the threat. APS may request protected health information in the course of a self-neglect assessment or abuse investigation under this provision to prevent or lessen a serious and imminent threat.

(2) COMMUNITY ABUSE INVESTIGATION. In the course of an APS investigation into abuse in a community-based setting where the process under section (1) does not apply or is declined by the health care provider:

(a) CONSENT BY REPORTED VICTIM. APS may obtain a reported victim's protected health information for an APS investigation with that reported victim's consent.

(b) DECLINED CONSENT. If a reported victim can make an informed choice and declines to consent to APS obtaining protected health information, APS may not obtain the reported victim's protected health information beyond the information a mandatory reporter is required to disclose.

(c) REPORTED VICTIM INCAPABLE OF CONSENT. If a reported victim is an older adult and does not have the ability to make an informed choice to consent to APS obtaining the reported victim's protected health information, and the reported victim does not have a fiduciary or legal representative that consents to APS accessing the reported victim's protected health information, or when the fiduciary or legal representative is a reported perpetrator and refuses to consent to APS accessing the reported victim's protected health information, then the following procedure must be followed in order for APS to obtain the protected health information:

(A) APS must request that the appropriate law enforcement agency submit a written request to the health care provider to allow the law enforcement agency to inspect and copy, or otherwise obtain, the protected health information.

(B) APS shall inform the law enforcement agency that the written request must state that an investigation into abuse is being conducted under ORS 124.070 (elder abuse) or ORS 441.650 (nursing facility resident abuse).

(3) HEALTH CARE PROVIDER NOTICE. In investigations where APS is seeking disclosure of protected health information by a health care provider under sections (1) or (2) of this rule, APS shall inform the health care provider, either directly or through the law enforcement agency requesting the information, that the health care provider is required, in

accordance with 45 CFR 164.512(c)(2), to promptly inform the individual to whom the protected health information pertains that information has been or shall be disclosed, unless:

(a) The health care provider, in the exercise of their professional judgment, believes that informing the individual may place the individual at risk of serious harm; or

(b) The health care provider is planning to inform a personal representative of the individual and the health care provider reasonably believes the personal representative is responsible for the abuse, neglect, or other injury, and informing such person is not in the best interests of the individual as determined by the health care provider in the exercise of their professional judgment.

(4) LICENSED CARE FACILITY INVESTIGATIONS. In the course of an APS investigation into abuse in a licensed care facility:

(a) OBTAINING RESIDENT RECORDS MAINTAINED BY A LICENSED CARE FACILITY. Licensed care facilities must provide APS access to all resident and facility records, including protected health information, maintained by the facility as required by their respective Oregon Administrative Rules.

(b) DISCLOSURE BY HEALTH CARE PROVIDER. A health care provider, such as a hospital, a medical office, or a provider other than a licensed care facility, may disclose, in accordance with 45 CFR 164.512(d), a reported victim's protected health information to APS as a health oversight agency for purposes of oversight of that facility, including oversight through investigation of complaints of abuse of residents in such facility. APS shall inform the health care provider of its authority as a health oversight agency and that such disclosures are permitted in accordance with 45 CFR 164.512(d).

(c) HEALTH CARE PROVIDER REFUSAL TO DISCLOSE. If a health care provider refuses to disclose protected health information to APS as a health oversight agency, APS may follow the procedure set forth in section (2)(c) of this rule if the reported victim is an older adult.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765 & 443.767
Stats. Implemented: ORS 124.050 – 124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767 & 2012 OL Ch. 70
Hist.: SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

411-020-0130
APS Risk Management

(1) APS risk management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial self-neglect assessment or abuse investigation has been completed.

(2) Referral to APS risk management is appropriate when:

(a) Assessment indicates that the reported victim continues to be vulnerable and at risk of serious harm;

(b) Continued reassessment and intervention may reduce the risk of harm; and

(c) There is no other source of case management available to the reported victim.

(3) APS risk management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the reported victim;

(b) Regular active contact with the reported victim to reassess the risk of harm and the effectiveness of interventions; and

(c) Documentation of assessments and interventions.

(4) APS risk management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by a supervisor or designee must be required to continue an APS risk management case beyond one year.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, 443.767
Stats. Implemented: ORS 410.070, 411.116, 443.767
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15

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Department of Human Services, Home Care Commission
Chapter 418

Rule Caption: Adoption of initial rules for the Oregon Home Care Commission
Adm. Order No.: HCC 1-2014
Filed with Sec. of State: 11-26-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 11-1-2014
Rules Adopted: 418-010-0010, 418-010-0020, 418-010-0030, 418-010-0040, 418-020-0010, 418-020-0020, 418-020-0030, 418-020-0040, 418-020-0050, 418-020-0060, 418-030-0000, 418-030-0010, 418-030-0020
Subject: The Oregon Home Care Commission is permanently adopting initial rules for Oregon Home Care Commission in OAR chapter 418 to establish rules that will ensure high quality homecare services to those using the Commission's services.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

418-010-0010
Purpose

(1) In accordance with Article XV, Section 11 of the Oregon State Constitution, the Commission ensures the high quality of homecare services by working cooperatively with area agencies and state and local agencies to accomplish the following:

(a) Establish qualifications for homecare and personal support workers with the advice and consent of the Department of Human Services (DHS) and Oregon Health Authority (OHA);

(b) Provide training opportunities for homecare and personal support workers; and seniors and individuals experiencing disabilities who employ homecare or personal support workers;

(c) Maintain a Registry of qualified homecare and personal support workers;

(d) Provide routine, emergency, and substitute referrals of homecare and personal support workers;

(e) Enter into contracts with public and private organizations and individuals for the purpose to obtain or develop training materials and curriculum or other services as may be needed by the Commission;

(f) Serve as employer of record for collective bargaining with homecare and personal support workers;

(g) Select workers' compensation coverage on behalf of a senior or individual experiencing disability who hires a homecare or personal support worker through a publicly funded program; and

(h) Train and certify homecare or personal support workers who desire to become certified community health workers or personal health navigators and meet eligibility criteria and ensure Coordinated Care Organizations honor employment terms and conditions of Community Health Workers and Personal Health Navigator established by the Commission.

(2) The rules in Oregon Administrative Rules (OAR) Chapter 418 establish procedures for the Commission to fulfill its mission to ensure high quality, comprehensive homecare services are provided for seniors and individuals with disabilities who receive services from homecare and personal support workers who they hire and are paid with public funds.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.602
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0020
Rulemaking

The Commission adopts the Attorney General Model Rules applicable to rulemaking, effective on November 1, 2014, with the exception of 137-001-0080.

Stat. Auth.: ORS 183.341, 410.602
Stats. Implemented: ORS 183.341, 410.602
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0030
Notice of Proposed Rulemaking and Adoption of Temporary Rules

(1) Except as provided in ORS 183.335(7), (12), or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Commission shall give notice of the intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To Individuals in the interested parties lists described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter at least 28 days before the effective date of the rule;

(c) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(d) To other individuals, agencies, or organizations the Commission is required to provide an opportunity to comment pursuant to state statute or federal law or as a requirement of receiving federal funding, at least 28 days before the effective date of the rule;

(e) To the Associated Press and the Capitol Press Room at least 28 days before the effective date of the rule; and

(f) In addition to the above, the Commission may send notice of intended action to other individuals, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Commission shall maintain an interested parties list for each OAR chapter of rules for which the Commission has administrative responsibility, and an interested parties list for subtopics or programs within those chapters. An individual, group, or entity that desires to be placed on such a list to receive notices regarding proposed permanent adoption, amendment, or repeal of a rule must make such a request in writing or by electronic mail to the rules coordinator for the chapter. The request must include either a mailing address or an electronic mail address to which notices may be sent, if requested.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Commission recognizes state shuttle as mail and may use this means to notify other state agencies. An email notification under section (1) of this rule may consist of any of the following:

(a) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(c) An email with specific instructions within the body of the email, usually including an electronic Universal Resource Locator (URL) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(d) The Commission may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule shall include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(e) The Commission shall honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Commission adopts or suspends a temporary rule, the Commission shall notify:

(a) Legislators specified in ORS 183.335(15);

(b) Individuals on the interested parties list described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter;

(c) Other individuals, agencies, or organizations the Commission is required to notify pursuant to state statute or federal law or as a requirement of receiving federal funding;

(d) The Associated Press and the Capitol Press Room;

(e) In addition to the above, the Commission may send notice to other persons, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking; and

(f) In lieu of providing a copy of the rule or rules as proposed with the notice of intended action or notice concerning the adoption of a temporary rule, the Commission may state how and where a copy may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 183.330, 183.335, 183.341, 410.602
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0040
Delegation of Rulemaking Authority

Any member or employee of the Commission who is identified on a completed Delegation of Authority form signed by the Executive Director or Chair of the Commission and filed with the Secretary of State, Administrative Rules Unit, is vested with the authority to adopt, amend, repeal, or suspend administrative rules as provided on that form until such delegation is revoked by the Executive Director or Chair of the Commission, or the person leaves employment with the Commission.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 183.325, 410.602
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0010
Definitions

(1) "Active" means an active homecare or personal support worker who has a current provider number; has worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker; has a current credential and has met orientation requirements of program for which the worker is enrolled.

(2) "Area Agency on Aging" means the designated entity with which DHS contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to seniors and individuals with a disability for a designated planning and service area.

(3) "Background Check" means a criminal records check and appropriate abuse check conducted in accordance with OAR Chapter 407, Division 7.

(4) "Case Manager" means an employee of a service delivery office who is responsible for determining service eligibility, offering services choices to eligible individuals, developing a plan of authorized services, and monitoring the effectiveness of services and supports. This term includes services coordinator and personal agent.

(5) "Collective Bargaining Agreement" or "CBA" means the Collective Bargaining Agreement between the Oregon Home Care Commission and the Service Employees International Union, Local 503.

(6) "Commission" means the Oregon Home Care Commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595 to 410.625.

(7) "Commissioner" means one of the nine members of the Home Care Commission appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members are either seniors or individuals with disabilities who are receiving or who have received homecare services. One member is appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor's Commission on Senior Services;

(b) Department of Human Services;

(c) Oregon Disabilities Commission; and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(8) "Community Health Worker" means an individual, as defined in ORS 414.025, who assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness.

(9) "Consumer" or "Consumer-Employer" means an individual eligible for in-home and community based services.

(10) "Consumer-Employer Training Services" means activities to empower and inform consumer-employers or representatives of consumer-employers regarding their rights, role, and responsibilities as employers of homecare or personal support workers, as described in OAR Chapter 411, Division 35. The consumer-employer training services programs are known as STEPS to Success with Homecare Workers and STEPS to Success with Personal Support Workers.

(11) "Consumer Representative" means an individual assigned by a consumer or designated by a consumer's legal representative to act as the consumer's decision maker in matters pertaining to planning and implementing an in-home service plan or individual support plan.

(12) "Continuing Education" means specific minimum education requirements, defined by the Commission, which workers must complete to be referred on the Registry.

(13) "Credential" means time-limited approval by DHS or OHA for an individual to provide services as a homecare or personal support worker, which includes a begin date, designated by a service delivery office, no earlier than the individual's most recent background check and an end date no later than 24 months from the homecare or personal support worker's most recent background check.

(14) "Cultural Competence" is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals to enable effective work in cross-cultural situations.

(15) "DHS" means the Oregon Department of Human Services.

(16) "Enrollment and Application Packet" means the program-specific documents an individual must complete to be approved to provide services as a homecare worker or personal support worker.

(17) "Employment Agreement" means an agreement between a consumer-employer or consumer representative and a homecare or personal support worker, which defines workplace rules and expectations.

(18) "Enhanced Homecare Worker" means a homecare worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require medically driven services and supports as defined and assessed by DHS.

(19) "Enhanced Personal Support Worker" means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require advanced medical- or behavioral-

driven services and supports as defined and assessed by DHS by a functional needs assessment tool.

(20) "Exceptional Personal Support Worker" means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require extensive medical- or behavioral-driven services and supports, beyond the enhanced services provided by an enhanced personal support worker, as assessed by a functional needs assessment tool; and whose service needs also require staff to be awake more than twenty hours in a twenty-four hour period.

(21) "Functional Needs Assessment" means a comprehensive assessment tool that documents physical, mental and social functioning and risk factors; choices and preferences; service and support needs; and strengths and goals.

(22) "Grievance" means a formal allegation of acts, omissions, applications, or interpretations that are believed to be violations of the terms or conditions of the Collective Bargaining Agreement.

(23) "Homecare Worker" means a provider, as described in OAR Chapter 411, Division 31, who is directly employed by a consumer to provide either hourly or live-in services for the consumer. The term homecare worker includes:

(a) Providers in the:

(A) Consumer-Employed Provider Program;

(B) Spousal Pay Program;

(C) State Plan Personal Care Program for seniors and individuals with physical disabilities; and

(D) The Oregon Project Independence Program.

(b) The term "homecare worker" does not include workers employed by an in-home agency.

(24) "Independent Choices Program" means the program described in OAR Chapter 411, Division 30, which is a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services, which are identified in the participant's service plan and prior approved by DHS or an Area Agency on Aging.

(25) "Individual" means an older adult or an adult with a disability applying for or eligible for services. The term "individual" is synonymous with "client" and "consumer".

(26) "Individual Support Plan" or "ISP" means the plan defined in OAR Chapter 411, Division 375, which includes written details of the supports, activities, and resources required for an individual with intellectual or developmental disabilities to achieve and maintain personal goals and health and safety.

(27) "Live-In Services" means those services, as defined in OAR Chapter 411, Division 030, which are provided for a senior or an individual with a physical disability who requires 24-hour availability for activities of daily living and self-management tasks.

(28) "OHA" means the Oregon Health Authority.

(29) "Oregon Intervention System" or "OIS" means a system of training to people who work with designated individuals to provide elements of positive behavioral support and non-aversive behavioral intervention.

(30) "Orientation" means an introduction to in-home programs and basic expectations for homecare or personal support workers, which is arranged through a service delivery office, in accordance with these rules.

(31) "Personal Health Navigator" means an individual, as defined in ORS 414.025, who provides information, assistance, tools and support to enable a consumer to make the best health care decisions in the consumer's particular circumstances and in light of the consumer's needs, lifestyle, combination of conditions, and desired outcomes.

(32) "Personal Support Worker" means a person, as defined in ORS 410.600:

(a) Who is hired by an individual with a developmental disability or mental illness or a parent or guardian of an individual with a developmental disability or mental illness;

(b) Who receives monies from DHS or OHA for the purpose of providing services for the individual with a developmental disability or mental illness; or

(c) Who provides services through the Independent Choices Program for a senior or an individual with a physical disability; and

(d) Whose compensation is provided in whole or in part through DHS or OHA, a support services brokerage or other public agency; and who provides services in the home or community.

(e) All other personal support workers, including provider organizations and supervisors, and those who perform solely volunteer personal services-related tasks are excluded from this definition.

(33) "Professional Development Recognition" means the recognition by the Commission of homecare and personal support workers who are continuing their education and have met Commission training requirements for recognition.

(34) "Program" means a program governed by Oregon Administrative Rules and administered by DHS or OHA, which authorizes home and community services to be provided through public funding.

(35) "Provider" means a homecare or personal support worker who is eligible to be hired by a consumer-employer or a consumer representative to provide in-home or community services authorized in the consumer's service plan.

(36) "Provider Number" means an identifying number issued to each homecare and personal support worker who is enrolled as a provider through DHS or OHA.

(37) "Registry" means the Commission's online listing of homecare and personal support workers who are available for work. The primary function of the Registry is to provide consumer choice by generating a list of homecare or personal support workers whose qualifications most closely match requirements entered in an individual consumer-employer profile.

(38) "Relief Worker" means a homecare or personal support worker who provides services in place of a homecare or personal support worker who is unavailable. This term is synonymous with "substitute worker".

(39) "Respite Worker" means a homecare or personal support worker who provides services in place of a family caregiver or other member of a consumer's natural support system who typically provides unpaid services. The term respite may also refer to a substitute for a live-in homecare worker.

(40) "Restricted Provider Number" means a number assigned by DHS to a homecare or personal support worker who is only approved to provide services for a specific consumer.

(41) "Service Delivery Office" means a DHS or OHA office, Area Agency on Aging, Community Developmental Disability Program, Support Services Brokerage or Community Mental Health Program office that is responsible for case management and authorization of publicly funded services provided by homecare or personal support workers.

(42) "Service Plan" means a written plan of authorized in-home and community services, developed in accordance with DHS or OHA rules and policies or an Individual Support Plan.

(43) "State Plan Personal Care Services" means the assistance with personal care and supportive services described in OAR Chapter 411, Division 34, provided for an individual by a homecare or personal support worker.

(44) "Stipend" means a predetermined amount of money granted to a homecare or personal support worker to attend Commission training, in accordance with Commission requirements.

(45) "Substitute Worker" means "Relief Worker".

(46) "Worker" means a "Homecare Worker" or "Personal Support Worker".

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.600, 410.603, 410.605, 410.606, 410.608, 410.612
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0020
Qualifications for Homecare and Personal Support Workers

(1) Homecare Worker Minimum Qualifications:

(a) Submit completed application and enrollment packet to a service delivery office;

(b) Pass a DHS background check and cooperate with a recheck every two years or when requested;

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;

(d) Meet in-home program specific guidelines;

(e) Be 18 years of age or older. Age exceptions may be made by DHS on a case-by-case basis for family members at least 16 years of age; and

(f) Within 30 days of receiving a provider number, attend an orientation that utilizes materials provided or approved by the Commission.

(A) When completion of an orientation is not available at a local service delivery office within 30 days, orientation must be completed within 90 days of enrollment.

(B) If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number will be inactivated and any authorization for service payment will be discontinued, in accordance with OAR chapter 411, division 31.

(C) Homecare workers must attend a live-in service orientation before being hired to provide live-in services.

(2) Personal Support Worker Minimum Qualifications:

(a) Submit completed application and enrollment packet;

(b) Pass a DHS or OHA background check and cooperate with a recheck when requested;

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;

(d) Be 18 years of age or older; and

(e) Meet program specific guidelines; including attending an orientation within 90 days of receiving a provider number.

(3) Homecare and Personal Support Worker Orientation. Service delivery offices providing homecare or personal support worker orientation must:

(a) Offer orientation frequently enough that new homecare or personal support workers meet program timelines for completing orientation; and

(b) Use presentation and materials created by or approved by the Commission and DHS or OHA.

(c) Make every attempt to provide orientation in a culturally-appropriate manner, including:

(A) Attempt to convey the availability of translation and interpreter services in the six languages, besides English, most commonly spoken by consumers in the office's service delivery area.

(B) Attempt to provide written materials and an interpreter fluent in the workers' primary language if three or more speakers of that language will be in attendance; and

(C) Attempt to provide an interpreter fluent in the workers' primary language if one or two speakers of that language will be in attendance.

(d) Provide reasonable accommodations for homecare or personal support workers who experience disability, in accordance with Title II of the Americans with Disabilities Act.

(e) Allow the Union to make presentations to potential members at orientations, at a mutually agreeable time, in accordance with the current collective bargaining agreement.

(4) Workplace Substance Abuse Policy: The Commission encourages homecare and personal support workers and consumer-employers to voluntarily seek help with drug and alcohol dependence and provides information and referral on request.

(a) The Commission is committed to protecting the safety, health, and well-being of consumers of in-home services and homecare and personal support workers, through establishing a workplace substance abuse policy.

(b) This policy recognizes that substance abuse by homecare or personal support workers, consumers, family members or others in consumers' homes is disruptive, adversely affect the quality of in-home services, and pose serious health risks to users and others.

(c) This policy recognizes that workers' abuse of alcohol and other drugs during non-working hours may affect their ability to provide quality in-home services.

(d) Workers are expected to report to work unimpaired and fit for duty.

(A) If the use of a prescribed or over-the-counter medication may compromise the safety of a worker, a consumer-employer, or the public, it is the worker's responsibility to use appropriate personnel procedures such as calling in sick and notifying the consumer-employer and case manager to avoid unsafe workplace practices.

(B) It is a violation of the Commission's substance abuse policy for a worker to intentionally misuse or abuse prescription or over-the-counter medications. Appropriate action will be taken if job performance declines or if accidents occur, in accordance with DHS or OHA rules.

(e) It is a violation of the Commission's substance abuse policy for a worker to use, possess, sell, trade, manufacture, or offer for sale illegal drugs or intoxicants in the workplace.

(f) A worker who is convicted of any criminal drug or alcohol violation in the workplace or during non-working hours must notify the service delivery office in writing within five calendar days of the conviction. The service delivery office will take appropriate action in accordance with DHS or OHA rules.

(g) DHS case managers authorize services in settings that do not jeopardize the health and safety of providers, in accordance with OAR chapter 411, division 30.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.603, 410.604
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0030
Homecare and Personal Support Worker Training

(1) Training is offered by the Commission to homecare and personal support workers statewide to enhance worker skills and the quality of in-home and community services provided for consumer-employers.

(a) Training is provided without charge to homecare and personal support workers, consumer-employers, consumer-representatives, and appropriate service delivery staff.

(b) Stipends for actual hours in attendance at Commission-sponsored classes may be available to homecare and personal support workers who have provided publicly funded services in any of the three months before training or during the month of the training.

(A) The Commission determines the amount of a stipend and may provide a stipend for each eligible class only once per year.

(B) The Commission determines which classes are approved for stipends for homecare and personal support workers.

(2) Public Availability of Training. When classes are not filled, members of the public may attend, after registering and paying training fees determined by the Commission. Members of the public will not be eligible for stipends.

(3) Certifications for Homecare and Personal Support Workers.

(a) Cardio Pulmonary Resuscitation (CPR) and First Aid Certification:

(A) The Commission pays for active homecare and personal support workers, who meet the qualifications established by the Commission, to take First Aid training and adult CPR; and, if providing services to children, child CPR.

(B) Homecare and personal support workers must request payment in writing to the Commission before taking CPR and First Aid training.

(C) The Commission does not reimburse homecare or personal support workers who have paid for CPR and First Aid classes.

(b) Professional Development Recognition. The Commission awards Professional Development Recognition to homecare and personal support workers who have:

(A) Completed 20 hours of core, safety and skills training classes;

(B) Current CPR and First Aid certification; and

(C) An acceptable attendance record is one in which an individual homecare does not have a no show rate greater than 30 percent at Commission classes. This is defined by the Commission and published in monthly training newsletters and on the Professional Development Recognition web page. The application is located at: http://www.oregon.gov/dhs/spd/adv/hcc/docs/pro-dev.pdf.

(c) Enhanced Homecare Worker Certification.

(A) To be certified as an enhanced homecare worker, a homecare worker must:

(i) Have an active, unrestricted provider number;

(ii) Have current CPR and First Aid Certification;

(iii) Complete a written application;

(iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and

(v) If accepted, successfully complete enhanced homecare worker coursework and assessments.

(B) Enhanced homecare workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C)For ongoing enhanced homecare worker certification, a homecare worker must:

(i) Maintain an active homecare worker credential, CPR and First Aid certification.

(ii) Complete requirements for recertification before the end of each two–year credential period.

(d) Enhanced Personal Support Worker Certification.

(A) To be certified as an enhanced personal support worker, a personal support worker must:

(i) Have an active unrestricted provider number;

(ii) Have current CPR and First Aid Certification;

(iii) Complete a written application;

(iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and

(v) If accepted, successfully complete Enhanced Personal Support Worker coursework and assessments.

(B) Enhanced personal support workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced personal support worker certification, a personal support worker must:

(i) Maintain an active personal support worker credential, CPR and First Aid certification.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(e) Exceptional Personal Support Worker Certification:

(A) To be certified as an exceptional personal support worker, a personal support worker must complete:

(i) Enhanced personal support worker certification;

(ii) A written application;

(iii) Oregon Intervention System general or parent level certification as appropriate; and

(iv) If accepted, 10 — 12 hours of coursework and pass course assessments.

(B) For ongoing exceptional personal support worker certification a personal support worker must:

(i) Maintain an active personal support worker credential; CPR and First Aid; and Oregon Intervention System certifications.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(C) Exceptional personal support workers are eligible for an exceptional service payment rate only when providing services for a consumer-employer assessed by DHS as having exceptional needs.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.604, 410.625
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0040
Consumer-Employer Training Services

The Commission offers voluntary training services to consumer-employers and consumer representatives on how to select, manage, and dismiss homecare and personal support workers. These services may be referred to as STEPS to Success with Homecare Workers, STEPS to Success with Personal Support Workers, or generically as STEPS services.

(1) Providers of STEPS services are approved by or under contract with the Commission.

(2) Services are designed to meet consumer-employer needs and are provided in a culturally competent manner. Providers offer a continuum of services based on individual needs and preferences, on topics including but not limited to:

(a) Understanding the service plan and specific tasks authorized by the consumer's case manager;

(b) Creating job descriptions, locating workers, interviewing, completing reference checks, and hiring a homecare or personal support worker;

(c) Creating an employment agreement;

(d) Training, supervising and communicating effectively with workers;

(e) Ensuring work is performed satisfactorily;

(f) Correcting unsatisfactory work performance and discharging unsatisfactory workers;

(g) Scheduling and tracking hours worked and maintaining employment records;

(h) Developing a backup plan for coverage of services; and

(i) Preventing and reporting fraud and abuse.

(3) STEPS services must be provided in a timely manner.

(a) Consumers must be contacted within five working days of referral.

(b) A planning interview for STEPS services must be conducted with consumers or representatives within 10 business days of referral, unless a consumer requests a later date.

(c) Individualized consumer services must begin within 10 business days of the planning interview, unless a consumer or consumer representative requests a later date.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.603, 410.604
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0050
Registry

The Commission maintains an online Registry of qualified homecare and personal support workers to provide routine, emergency, and substitute referrals to consumer-employers.

(1) DHS and OHA responsibilities:

(a) DHS and OHA shall collect for each homecare worker or personal support worker:

(A) Name, address, and phone number or numbers and where available, email address;

(B) The program or programs under which the worker is approved to provide services;

(C) The provider number;

(D) Begin and end dates of credential period;

(E) Date of most recent background check;

(F) Restricted or unrestricted status; and

(G) Other information as requested.

(b) In accordance with interagency agreements, DHS and OHA will:

(A) Provide continuing technical support, including electronic system changes needed by the Commission to ensure:

(i) Receipt of information from state electronic provider data management systems and any fiscal intermediaries providing consumer and provider information necessary for Registry matching functions; and

(ii) Accuracy of data downloaded real-time or on a daily basis.

(B) Provide technical support, including system changes to ensure security rights information transferred to the Commission's Registry from current or future electronic systems are accurate and maintained.

(C) Continue to provide information needed by the Commission's Registry when any updates and changes to current electronic servers and systems are implemented.

(2) Service Delivery Office Responsibilities. Staff must enter into the Registry within five business days of the information becoming available:

(a) The date and location of each completed homecare worker or personal support worker orientation.

(b) The expiration dates of CPR and First Aid certification for homecare or personal support workers who present original documents at the service delivery office.

(3) Service Delivery Staff Use of Registry. DHS and OHA Service Delivery office staff will use the Registry exclusively to refer homecare or personal support workers to consumer-employers:

(a) When a consumer-employer or consumer representative requests names of homecare or personal support workers, an individual employer profile must be created and used for generating a Registry list of homecare or personal support workers who best match the consumer's profile.

(A) Service delivery staff must not create generic lists for distribution to multiple consumer-employers.

(B) Service delivery staff must not recommend specific homecare or personal support workers to consumer-employers or serve as employment references for such workers.

(b) Service delivery staff must refer consumer-employers or consumer representatives needing assistance with the Registry or those otherwise needing assistance locating homecare or personal support workers to the Commission Registry support or to the STEPS consumer training services program.

(4) Referral Requirements. For a homecare or personal support worker's name to appear on a Registry referral list, a homecare or personal support worker must:

(a) Have an active, unrestricted provider number;

(b) Be seeking employment;

(c) Authorize release of information by selecting this option on the Registry or in writing to the appropriate service delivery office;

(d) Maintain a complete, accurate profile;

(e) Have a valid telephone number and email address, if available. If a homecare or personal support worker does not have a working telephone number in the Registry, he or she will not be available for referral in the Registry and will be notified by the Commission via U.S. Mail or email;

(f) Update profile information at least every 30 days;

(g) Update changes including availability, telephone number, or other profile information when such changes occur; and

(h) Meet Commission annual continuing education requirements.

(5) Appropriate Use. The purpose of the Registry is for individual consumer-employers, persons authorized to act on behalf of consumers, or individuals hiring in-home workers privately, to find qualified homecare or personal support workers.

(6) Inappropriate Employer Use. Employer profiles or help wanted advertisements placed for purposes other than for individual searches as described in this rule are not authorized.

(7) Inappropriate Use by Homecare and Personal Support Workers. Homecare and personal support workers may not use the Registry for purposes other than its intended use. Homecare and personal support workers may not:

(a) Use the Registry to refer other homecare or personal support workers or contact other homecare or personal support workers;

(b) Use the Commission's name on business cards or other promotional materials;

(c) Represent themselves in print, electronic or social media as employees of the Commission, DHS, OHA, or any service delivery office.

(8) Violations of OAR 418-020-0050 by homecare or personal support workers will be investigated by the Commission.

(a) Sanctions may be imposed for non-compliance with these rules. Depending on severity and recurrence of violation, a sanction may include one or more of the following actions:

(A) Written warning;

(B) Suspension of availability for Registry referral for a prescribed period;

(C) Suspension of availability for Registry referral until conditions for suspension are corrected; or

(D) Training requirements.

(b) Depending on the severity of allegations of misconduct or inappropriate use, the Commission may suspend availability for referral during investigation.

(c) Notice of Sanction. If the Commission imposes a sanction, the Commission shall attempt to serve a notice of sanction upon the homecare or personal support worker by regular mail based on the last contact information provided by the worker, or, if requested by the recipient of the notice, by electronic mail. The Notice of Sanction will comply with OAR chapter 137, division 3 and OAR chapter 411, division 1, as applicable.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.603, 410.604, 410.606
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0060
Workers' Compensation

(1) The Commission elects workers' compensation coverage on behalf of consumer-employers who employ homecare and personal support workers.

(2) Consumer-employers and consumer representatives must:

(a) Sign required documents for homecare or personal support worker to receive workers' compensation coverage;

(b) Report homecare or personal support worker injuries to the Commission as soon as becoming aware of worker injury; and

(c) Provide information to the Commission and workers' compensation carrier when workers report injury.

(3) Service delivery office staff will:

(a) Collect from each consumer-employer, at time of eligibility for services, appropriate signed workers' compensation documents;

(b) Report injuries immediately to the Commission; and

(c) Respond to requests for information from the Commission and workers' compensation carrier when workers report injuries and when claims are filed.

(4) The Commission will:

(a) Assist homecare and personal support workers who are injured while performing service plan authorized tasks with filing claims; and

(b) Work as the agent of consumer-employers while providing information to the insurance carrier's claims adjusters, attorneys, return-to-work specialists, and vocational rehabilitation administrators.

(5) Homecare or personal support workers injured while providing authorized services must:

(a) Report work injuries as soon as becoming aware of injuries to the:

(A) Consumer-employer or consumer-representative;

(B) Case manager; and

(C) Commission;

(b) Cooperate with the Commission and workers' compensation carrier by providing all required documents and returning phone calls timely; and

(c) Keep the consumer-employer or consumer-representative informed regarding work restrictions resulting from injuries at work, medical appointments, and return to work dates.

Stat. Auth.: ORS 410.602
Stats. Implemented ORS 410.606, 410.625, 656.039
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-030-0000
Application

The rules contained in OAR chapter 418, division 30 govern the public contracting of the Oregon Home Care Commission. In addition to these rules, the Commission is subject to ORS Chapters 279A, 279B and 279C.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.604, 410.625
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-030-0010
Procurement Authority

(1) The Commission may:

(a) Enter into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the Commission;

(b) Contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with, and dispose of real and personal property in its own name; and

(c) Enter into an interagency agreement or contract with any state agency for the performance of the Commission's duties or the leasing of office space.

(2) The Commission delegates to the executive director the authority to act on behalf of the Commission to carry out its duties and responsibilities, including but not limited to, entering into contracts or agreements.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 279A.065, 279A.070, 410.604, 410.625
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-030-0020
Adoption of Oregon Health Authority Rules

The Oregon Home Care Commission adopts the rules in OAR chapter 943, division 60, except for rules and definitions which are not applicable to the work of the Commission authorized in ORS 410-595-625 as follows:

(1) Each instance of "Oregon Health Authority" or "Authority" means "Oregon Home Care Commission" or "Commission."

(2) The following rules, and subparts thereof, are not applicable:

(a) 943-060-0010, definitions (2)(a) and (c), (3)(a) through (o), and (8);

(b) 943-060-0020;

(c) In 943-060-0050, omit agreements under ORS 190.485, 190.112 and 660.342 (as renumbered to 660.334);

(d) 943-0060-0080;

(e) 943-060-0090; and

(f) 943-060-0110(1), (11), and (12).

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.604, 410.625
Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

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Department of Human Services, Self-Sufficiency Programs
Chapter 461

Rule Caption: Expanding a pilot project to provide assistance with SSD applications and appeals
Adm. Order No.: SSP 31-2014(Temp)
Filed with Sec. of State: 12-8-2014
Certified to be Effective: 12-8-14 thru 1-28-15
Notice Publication Date:
Rules Amended: 461-125-0370
Rules Suspended: 461-125-0370(T)
Subject: OAR 461-125-0370 about disability as a basis of need for Oregon Supplemental Income Program (OSIP) and Oregon Supplemental Income Program-Medical (OSIPM) is being amended to allow an individual who is served in Baker, Crook, Deschutes, Douglas, Gilliam, Grant, Harney, Jefferson, Klamath, Malheur, Morrow, Sherman, Umatilla, Wallowa, Wasco, or Wheeler County and who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability to receive free assistance from the department with applications and administrative appeals for Social Security Disability Insurance (SSD) benefits in order to meet the requirements of OAR 461-120-0330 (Requirement to Pursue Assets).
Rules Coordinator: Kris Skaro—(503) 945-6067

461-125-0370
Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), an individual meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:

(a) The individual is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the individual remains eligible for SSDI or SSI.

(b) The individual was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the

medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. Part 404.1505 or 416.905.

(d) The Social Security Administration (SSA) has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. Part 404.1505 or 416.905.

(2) If the Department finds the individual eligible for OSIPM in the absence of a disability determination by SSA, the individual remains eligible, provided that the individual continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to an individual is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. 435.541(c)(1) and (c)(4)):

(a) SSA made the determination for a reason other than disability.

(b) The individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(c) More than 12 months after the most recent SSA determination denying disability, the individual alleges that his or her condition has changed or deteriorated since that SSA determination, and the individual has not made application to SSA based on these allegations.

(d) The individual alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:

(A) The individual has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.

(B) It is clear that the individual no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) If a binding SSA disability determination is not in place, the determination of disability to qualify for OSIPM is made by the Presumptive Medicaid Disability Determination Team, composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports, other evidence relating to the individual's physical or mental impairments, and (as necessary) to determine the capacities of the individual to perform substantial gainful activity, as specified in 20 C.F.R. Part 416, Subpart J (see 42 C.F.R. 435.541(f)(2)).

(5) The Presumptive Medicaid Disability Determination Team obtains and reviews medical reports and other non-medical evidence pertaining to the individual and the claimed disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I. The Presumptive Medicaid Disability Determination Team then makes a decision about medical eligibility and whether and when a redetermination shall be made (see 42 C.F.R. 435.541(f)(1) and (3)).

(6) In the OSIP-EPD and OSIPM-EPD programs, an individual is disabled (see OAR 461-001-0035) or has a disability (see OAR 461-001-0035) if the individual has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the individual was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the individual loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination (see OAR 461-001-0035) using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, an individual is engaging in substantial gainful activity (SGA, see OAR 461-001-0035) if the earnings of the individual are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW, see OAR 461-001-0035).

(7) An individual who is served by a branch office (see OAR 461-001-0000) in Baker, Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Jackson, Jefferson, Josephine, Klamath, Lane, Lincoln, Linn, Malheur, Marion, Morrow, Polk, Sherman, Tillamook, Umatilla, Wallowa, Wasco, Washington, Wheeler, or Yamhill County and who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability (see section (1) of this rule) may receive free assistance from the Department with applications and administrative appeals for Social Security Disability Insurance (SSD) benefits in order to meet the requirements of OAR 461-120-0330 (Requirement to Pursue Assets).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 411.706
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.704 & 411.706
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 20-2014(Temp), f. & cert. ef. 8-1-14 thru 1-28-15; SSP 22-2014(Temp), f. 8-29-14, cert. ef. 9-1-14 thru 1-28-15; SSP 27-2014, f. & cert. ef. 10-1-14 thru 1-28-15; SSP 31-2014(Temp), f. & cert. ef. 12-8-14 thru 1-28-15

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

Rule Caption: Updates of Fuels Tax Administrative Rules to Implement Recent Legislation
Adm. Order No.: DMV 13-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 7-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 735-170-0015, 735-170-0035, 735-176-0100, 735-176-0110, 735-176-0120, 735-176-0130, 735-176-0140, 735-176-0150, 735-176-0160, 735-176-0170, 735-176-0180, 735-176-0190, 735-176-0200, 735-176-0210
Rules Amended: 735-170-0000, 735-170-0010, 735-170-0020, 735-170-0040, 735-170-0045, 735-170-0105, 735-174-0000, 735-174-0020, 735-174-0030, 735-174-0040, 735-174-0045
Rules Repealed: 735-176-0000, 735-176-0010, 735-176-0017, 735-176-0019, 735-176-0020, 735-176-0021, 735-176-0022, 735-176-0023, 735-176-0030, 735-176-0040, 735-176-0045
Subject: Passage of HB 2435 (2013) implemented tax forgiveness of B-20 made with used cooking oil. New rules outline documentation requirements for exempting the tax and the source of the biofuel.

Passage of HB 4131 (2014) implemented an option for an annual fee in lieu of the per-gallon tax on vehicles fueled with natural gas or propane. New rules include the application for permit, payment of fees, proration by application date.

These rules implement an electronic reporting system in 2015 and rules related to filing requirements and payment processes.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-170-0000
Definitions

(1) "Best Available Information" means any data or information that can be used to determine tax due including calculated projections or averages based on prior reports or data from other sources as determined by the Department.

(2) "Bill of Lading" means a document issued by the terminal operator that lists goods being shipped and specifies the terms of their transport.

(3) "Delivery Tag" means the delivery receipt or other record of a delivery.

(4) "Electronic signature" shall have the same meaning and requirements as defined in ORS 84.004(8).

(5) "Ethanol Blended Gasoline" means ethanol has been blended with gasoline and is intended for use in a motor vehicle. This product is defined as motor vehicle fuel and is a taxable product.

(6) To "Export" means to have ownership title to motor vehicle fuel or aircraft fuel from locations within Oregon, at the time it is delivered to locations outside Oregon by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling motor vehicle or aircraft except as provided in ORS 319.330.

(7) "Cause to be Exported" means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is exported from the State of Oregon by any means of transport, other than motor vehicle fuel exported from Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(8) "Ex-Tax" means that the tax is not included in the price of the fuel.

(9) "Failure to Report" means any tax report and payment not received by the Department on or before the due date of the next subsequent report.

(10) To "Import" means to have ownership title to motor vehicle fuel or aircraft fuel from locations outside of Oregon, at the time it is brought into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(11) "Cause to be Imported" means to have ownership title to motor vehicle fuel or aircraft fuel, at your order, request or solicitation, at the time it is brought into the State of Oregon by any means of transport, other than motor vehicle fuel brought into Oregon in the fuel tank of a motor vehicle used for the propulsion of the motor vehicle.

(12) "Invoice" means the receipt or other record of a sale transaction that describes an itemized list of goods shipped specifying the price and terms of sale as defined in OAR 735-170-0010.

(13) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(14) "Performing the Acts of a Dealer" means that the dealer is conducting business in Oregon as defined in ORS 319.010(6).

(15) "Properly Licensed" means that the person or entity "performing the acts of a dealer" is legally licensed under the "true name" and legally authorized to conduct business in Oregon per Oregon law.

(16) "Registered Fuel Handler" includes but is not limited to fuel transporters, biodiesel producers, ethanol producers, and terminal operators who handle fuel products. It does not include dealers in Motor Vehicle Fuel or Use Fuel Sellers licensed by the state of Oregon.

(17) "Terminal Position Holder" means a dealer who owns terminal storage inventory in Oregon.

(18) "True Name" means the name that is authorized per Oregon law to conduct business in Oregon.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.010 - 319.430
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0005; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0010
Records Required

The Department has the authority to prescribe required records under ORS 319.390 and 319.400. Every Oregon dealer, whether licensed or unlicensed, must maintain and keep the following records for at least three years from the date the fuel tax is due:

(1) Stock summary showing monthly totals for the gallons of motor vehicle fuel or aircraft fuel handled for each owned and operated distributing location within the State of Oregon with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain.

(a) An actual physical gallon inventory measurement of motor vehicle fuel and aircraft fuel stocks for each owned and operated distributing location must be taken at the end of each calendar month and preserved for audit purposes.

(b) A record showing all sales and withdrawals of motor vehicle fuel or aircraft fuel from storage. A dealer that withdraws fuel from storage for highway and non-highway use must:

(A) Summarize records into monthly totals and separately show the number of gallons used for highway and non-highway purposes;

(B) Separately show the total number of miles traveled and fuel used for each vehicle;

(C) Separately account for fuel withdrawn from bulk storage and fuel received from other sources;

(2) Purchase journal showing the number of gallons of motor vehicle fuel or aircraft fuel purchased or received each month supported by purchase invoices or other documents.

(3) Sales journal showing the number of gallons of motor vehicle fuel or aircraft fuel sold or distributed each month, supported by sales invoices covering each sale or delivery.

(4) Sales invoice forms must be approved by the Department and must include at least the following information:

(a) Date of sale or delivery;

(b) Point of origin;

(c) Name of dealer making the sale or delivery;

(d) All invoices must separately state and describe to the satisfaction of the Department the various products shipped and must be serially numbered except where other sales invoice controls acceptable to the Department are maintained;

(e) Name and address of the purchaser, and place and state where the delivery was actually made. Other sales/delivery documents showing physical address must be retained for audit and provided upon request by the Department.

(f) The gallons of motor vehicle fuel or aircraft fuel sold.

(5) All required records must be summarized into calendar month totals and must be centralized in the accounting office where the periodic tax audit is to be made.

(6) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the State of Oregon to examine the dealer's records. At any time such travel is determined necessary the dealer must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(7) The Department has the authority to investigate, examine and audit licensed or unlicensed dealers, carriers, brokers, service stations, and other persons who are storing, selling, or distributing motor vehicle fuels or other petroleum products in Oregon. Such investigations, examinations and audits will occur during normal business hours;

(8) Documentation in the following areas must be made readily available to the Department upon request by the Department by the date prescribed by the Department;

(a) Accounts;

(b) Records;

(c) Stocks;

(d) Facilities;

(e) Equipment;

(f) Shipping;

(9) Dealers who fail to make records available for inspection are subject to assessment based on "best available information," collection action, and possible license suspension and revocation.

(10) Dealers that handle use fuel under ORS 319.860 have the same record keeping requirements under 735-176-0110.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.370, 319.380, 319.390, 319.400
Hist.: MV 22, f. 2-15-63; Administrative Renumbering 3-1988, Renumbered from 735-011-0055; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 15-2010, f. 8-27-10, cert. ef. 1-1-11; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0015
Records Required for Registered Fuel Handlers

Except as otherwise provided in this rule, all fuel handlers, registered and unregistered, including but not limited to Bulk Distributors, Biodiesel Producers, Ethanol Producers, Terminal Operators, and Petroleum Products Carriers, must maintain and keep the following records for at least three years:

(1) Stock summary showing monthly totals for the gallons of fuel sold, stored, handled, or produced for each fuel type. Records are to be maintained for each operated distributing location within the State of Oregon with an analysis as to inventories, receipts, sales, production, transport, use, transfers, and loss or gain.

(a) An actual physical gallon inventory measurement of each fuel type for each owned and operated location must be taken at the end of each calendar month and preserved for audit purposes.

(b) Transport companies who do not store or produce fuel are not required to maintain month-end inventories of fuel placed in trucks for delivery.

(c) A record showing all sales and withdrawals of fuel, by fuel type.

(2) Purchase journal showing the number of gallons of fuel purchased or received each month supported by purchase invoices or other documents.

(3) Sales journal showing the number of gallons of fuel sold or distributed each month, supported by sales invoices covering each sale or delivery.

(4) Sales invoice forms must include at least the following information:

(a) Date of sale or delivery;

(b) Point of origin;

(c) Name of registrant making the sale or delivery;

(d) All invoices must separately state and describe the various products shipped;

(e) The gallons of fuel sold or transported;

(f) The invoice must clearly show the place and state where the delivery was actually made. Physical delivery address must be kept for audit purposes.

(5) All required records must be summarized into calendar month totals and must be centralized in the accounting office where the periodic records review is to be conducted. To comply with this rule, all for hire carriers as defined in ORS 825.005(7), must maintain all records required in the normal course of their operations including but not limited to those records required by Oregon Administrative Rules, Chapter 740, Division 55.

(6) The Department has the authority to investigate, examine and audit fuel handlers, dealers, carriers, brokers, service stations, and other persons who are storing, selling, or distributing motor vehicle fuels or other petroleum products in Oregon. Such investigations, examinations, and audits will occur during normal business hours;

(7) Documentation of the fuel handled, received, produced, stored, sold, and transported must be made readily available to the Department upon request by the Department by the date prescribed by the Department;

(8) Fuel handlers, whether registered or unregistered, who fail to make records available for inspection are subject to assessment based on "best available information," and possible collection action.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.370, 319.380, 319.390, 319.400
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0020
Required Tax Report Forms and Report Preparation

(1) Every licensed dealer must prepare a tax report that completely summarizes the number of gallons of motor vehicle fuel or aircraft fuel sold, distributed, or used in the State of Oregon each month with required schedules and detail to fully explain the various entries.

(2) A schedule must be prepared identifying the gallons sold and tax due in each taxing jurisdiction administered by the Department on forms provided by the Department.

(3) Every licensed dealer must follow motor vehicle fuel tax reporting instructions and use prepared forms as provided by the Department. Willful or habitual failure to complete tax reports in the manner prescribed by the Department may result in assessment based on "best available information," collection action, and possible license suspension and revocation.

(4) "To report" or "be reported" means a complete report, with all required schedules on forms prescribed by the Department and full remittance of tax, must be received by the Department or its designated agent not later than the 25th of the succeeding calendar month.

(a) All reports and required schedules with 100 or more transactions shall be filed electronically in a manner prescribed by the Department. Once a licensee or registrant is required to file their reports electronically, all subsequent reports shall be filed electronically regardless of the number of transactions.

(b) Computerized report data may be substituted for schedule detail when the dealer has less than 100 transactions and the format is compatible with the prescribed forms.

(c) If an electronic transaction requires the payment of taxes or fees, payment of those taxes or fees within the electronic transaction shall be:

(A) Made through an Automated Clearing House (ACH) debit or credit transaction;

(B) Made in US funds.

(5) Every person (as defined by ORS 319.010(13)) producing, manufacturing, importing, distributing, and blending use fuel must report Use Fuel Handled on Schedule 735-1305D not later than the 25th day of each calendar month for use fuel handled during the preceding calendar month.

(a) Schedule 735-1305D and supporting documents may be sent with other required materials or sent via email to the department not later than the 25th day of each calendar month.

(b) Use fuel tax will not be assessed on use fuel handled and reported on Schedule 735-1305D, nor is a person who produces, manufactures, imports, distributes and blends use fuel required to be registered with the department as a use fuel licensee, unless such person also meets the definition of a user or seller as defined by 735-176-0100(3), 735-176-0150 and ORS 319.520(13).

(c) Licensed dealers that are also licensed as use fuel sellers (as defined by ORS 319.520(9)) and who report use fuel handled on use fuel seller reports by submitting those reports in accordance with the applicable statutes and rules, are not required to complete form 735-1305D.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.010 - 319.430, 319.990
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0105; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 15-2010, f. 8-27-10, cert. ef. 1-1-11; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0035
Reporting Requirements for Registered Fuel Handlers

(1) All registered handlers will file a monthly report detailing the fuel handled, sold, produced, distributed, transported, or used during the month. For hire carriers, as defined in ORS 825.005(7), and other common carriers, that only transport fuel for dealers or registered fuel handlers are not required to submit reports, but are subject to the record keeping requirements in OAR 735-170-0015.

(2) Every registrant must follow the applicable fuel reporting instructions and use forms as provided by the Department. Willful or habitual failure to complete tax reports in the manner prescribed by the Department may result in assessment based on "best available information," collection action, and possible suspension or revocation.

(3) "To report" or "be reported" means a complete report, with all required schedules on forms prescribed by the Department and full remittance of tax or fee, must be received by the Department or its designated agent not later than the 25th of the succeeding calendar month.

(a) All reports and required schedules with 100 or more transactions shall be filed electronically in a manner prescribed by the Department. Once a licensee or registrant is required to file their reports electronically, all subsequent reports shall be filed electronically regardless of the number of transactions.

(b) Computerized report data may be substituted for schedule detail when the fuel handler has less than 100 transactions and the format is compatible with the prescribed forms.

(c) If an electronic transaction requires the payment of taxes or fees, payment of those taxes or fees within the electronic transaction shall be:

(A) Made through an Automated Clearing House (ACH) debit or credit transaction;

(B) Made in US funds.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.010 - 319.430, 319.990
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0040
Tax Report Filing Dates

(1) A licensed dealer or registered fuel handler must complete a monthly tax report with full payment of taxes which must be received by the Department not later than the 25th of the succeeding calendar month.

(a) "Received" is the date the report is physically received by the Department or its designated agent.

(b) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, the report and payment must be received by the Department or its designated agent on or before the next business day.

(2) Tax reports and payments not received by the Department in a timely fashion will be considered late and subject to interest and penalty as described in ORS 319.180. Any tax report and payment not received by the due date of the subsequent report constitutes a "failure to report" and is subject to an additional 10% penalty as described in ORS 319.200.

(3) If the report and payment are not received on or before the 25th day of the month a penalty will be assessed pursuant to ORS 319.180 or, if the Department determines that no tax is due, a penalty of $25 will be assessed.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.020, 319.180, 319.190, 319.200
Hist.: MV 22, f. 2-15-63; MV 48, f. 10-5-72, ef. 10-15-72; MV 53, f. 2-20-74, ef. 3-11-74; MV 1-1980(Temp), f. & ef. 1-21-80; MV 6-1980, f. & ef. 4-18-80; MV 11-1982, f. 4-30-82, ef. 5-1-82; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0115; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0045
Motor Vehicle Fuel Tax Waiver of Late Payment Penalties

(1) If a dealer or registrant disagrees with an action of the Department, they may request reassessment of the determination in writing within 30 days of the date of the notice. Notice types which may be reconsidered include:

(a) Denial or suspension of license.

(b) Adjustments to motor vehicle fuel dealer tax reports.

(c) Assessment of tax based on available information.

(2) If the Department and the dealer or registrant are not able to resolve the issue through the internal review process, the dealer or registrant may request a contested case hearing under the provisions of ORS

Chapter 183. The dealer or registrant must request the hearing in writing before the Notice of Assessment becomes final.

(3) ORS 319.090(2) and 319.180(4) allow the Department to waive certain penalties.

(4) Any entity or a person may submit a written request for waiver of penalty to the Department.

(5) The penalty under ORS 319.090 and 319.180 may be waived if the taxpayer shows reasonable cause.

(a) A taxpayer who wishes to apply for waiver of the penalty must make an affirmative showing of all facts alleged as a reasonable cause. The written statement must contain a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department as soon as possible thereafter.

(b) Circumstances that may constitute reasonable cause include, but are not limited to the following:

(A) War, riot, rebellion, acts of God or other disaster; or

(B) Acts or omissions by a third party which were beyond the control of the person; or

(C) The person in good faith took all steps and precautions reasonably necessary to comply with the statute; and

(D) Any other criteria the Department may find to be informative and appropriate.

(6) For purposes of determining the amount of motor vehicle fuel sold, distributed or used where a dealer fails to report as described in ORS 319.200, "best available information" is defined in OAR 735-170-0000.

(7) Penalties described in ORS 319.190 will not be waived. Penalties described in 319.200 are cumulative to penalties described in 319.090, 319.180 and 319.190 and will not be waived.

(8) The following reasons are not acceptable for granting a penalty waiver:

(a) Employee incompetence or inexperience;

(b) Employee turnover;

(c) Misunderstanding or ignorance of law;

(d) Computer failure or error that is not the result of a natural disaster;

(e) Changeover to new accounting processes, software or upgrades;

(f) Change in company operations;

(g) Errors or reliance on the part of third party suppliers or customers.

(9) Penalties for amended reports and audit adjustments will be applied in accordance with applicable statutes. At the discretion of the Department the following criteria may be used to determine waiver of penalty:

(a) Accuracy of previous audits and payment history;

(b) Accuracy of current reports based on Departmental review;

(c) Compliance with previous audit recommendations;

(d) Cooperation in providing requested records in a timely manner;

(e) Any other criteria the Department may find to be informative and appropriate.

(10) A taxpayer filing tax reports through the Department's electronic system will not be charged penalty or interest if:

(a) The licensee attempts to submit a timely filed tax report

(b) The Department's electronic filing system is not available to receive the transmission

(c) The licensee immediately notifies the Department that the electronic filing system is not available to receive their transmission.

(d) The licensee submits the tax report and remits the balance due on the first business day the system is available to receive the transmission.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.090, 319.180, 319.200
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0745; Renumbered from 735-174-0050 by DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-170-0105
Performance Bond Requirements

(1) Licensed dealers are required to maintain a bond amount that is twice the estimated monthly licensed tax. Twice the dealer's estimated monthly license tax as determined by the Department is computed as follows:

(a) Prior to becoming licensed the required bond amount will be twice the estimated tax based on the estimated taxable gallons stated on the motor vehicle fuel dealer license application;

(b) The Department will periodically review the bond for sufficiency based on an average of the gallons reported by the dealer on its monthly fuel tax reports;

(c) The Department may notify the dealer at any time to increase or decrease the bond. The dealer may at any time request a bond determination from the Department.

(2) When twice the dealer's estimated monthly tax is less than $1,000 the minimum bond required is $1,000.

(3) If the dealer's motor vehicle fuel dealer license was issued on or before October 23, 1999 and twice the dealer's estimated monthly tax is more than $100,000 the maximum bond is $100,000.

(4) If the dealer's motor vehicle fuel dealer license was issued after October 23, 1999 and twice the dealer's estimated monthly license tax is more than $250,000, the maximum bond is $250,000.

(5) A bond is subject to increase under certain conditions up to a maximum amount of $1 million.

(a) After a bond has been increased for a period of 24 months, a dealer may submit a written request for reduction of the bond.

(b) If the Department determines that conditions for bond reduction have been met, the bond may be reduced to twice the dealer's estimated monthly tax or a maximum of $250,000 regardless of when the motor vehicle fuel dealer license was issued.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.430, 319.990
Stats. Implemented: ORS 319.050 - 319.080
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-174-0000
General Provisions for Fuels Tax Refunds

(1) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its designated agent that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(2) Motor Vehicle Fuel — Gasoline. Oregon law provides that any person who has purchased motor vehicle fuel and who has paid any tax, either directly or indirectly, levied under the provisions of ORS 319.010 through 319.430, shall be entitled to a refund when such motor vehicle fuel is exported from the state (under certain conditions) or is used by the claimant for certain purposes. To obtain the refund, the claim must be filed within the prescribed time limits in ORS 319.290 on forms supplied by the Department.

(a) The claim must be accompanied by the original invoices or reasonable facsimiles approved by the Department, showing purchase of the fuel.

(b) For claims filed after July 1, 2015 using an electronic claim form, invoices may be provided electronically.

(A) For bulk fuel purchases, provide the supplier name, date, gallons, and invoice number.

(B) For cardlock purchases, you may attach an electronic copy of your cardlock statement.

(C) For individual invoices, you may scan the invoices and attach them to the refund claim form or fax them within 7 days of submitting the claim.

(3) Special fuels — Diesel Oil, Propane, etc. Refunds of any tax paid on use fuel shall be processed as prescribed in OAR 735-174-0020(2)(j) and subject to the conditions provided in ORS 319.831 and 319.835.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880
Stats. Implemented: ORS 319.280, 319.320, 319.831, 319.835
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0701; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-174-0020
Records and Invoice Requirements

(1) A tax refund claimant must retain records to substantiate a claim. Failure of the claimant to maintain required records and provide them for examination by the Department constitutes a waiver of all rights to the refund.

(2) The following rules shall govern records maintained to support refund claims and apply to all fuel maintained in storage other than a fuel can with a capacity of five gallons or less:

(a) The fuel storage tank must be equipped with a properly working metering device or have a consistent method for determining the amount of fuel withdrawn from storage for fuel to be considered for refund. For storage tanks equipped with a metering device, meter readings must be taken and documented each time fuel is dispensed.

(b) If more than one storage tank is maintained, tanks must be named or labeled and the invoices must be marked, by the supplier, at the time of delivery to identify the storage tank into which the fuel was delivered and indicate the accurate amount of fuel placed in each tank.

(c) Consumption records must be maintained for all bulk storage tanks regardless of the fuel use. All fuel purchases and distributions must be fully accounted for by detailed withdrawal records, to accurately show the manner in which it was used. This includes monthly meter readings and inventory readings.

(A) Consumption records must be made available upon request by the Department when fuel is used from a bulk storage tank.

(B) The separate storage method is not a sufficient means to determine refundable and non-refundable usage without the support of consumption records.

(d) Any fuel on hand (by actual measurement) should be deducted from a claim and should be reported as an opening inventory on the next claim. Credit for the inventory will be allowed on the next claim if it is filed within fifteen months from the filing date of the claim that established the inventory.

(e) Fuel Purchased for Other than Bulk Storage. Motor vehicle fuel purchased in small containers for non-highway use only, should be so identified on the purchase invoice as to the type of container or equipment fueled and include the name or signature of the purchaser.

(f) Fuel purchased at a cardlock. When fuel is purchased at a cardlock and a portion of that fuel is refundable the following conditions must be met:

(A) Cards must be assigned to a specific vehicle and the vehicle plate number, unit number, or description must be included on the cardlock statement at the time the statement is produced.

(B) Cards must be assigned to a piece of equipment or group of equipment and that must be indicated on the cardlock statement at the time the statement is produced.

(C) Cards must be assigned to a mobile fuel storage tank that is designated to contain gasoline to fill a group of equipment, and this must be indicated on the cardlock statement at the time the statement is produced. A mobile tank that is fueled at a cardlock is considered to be bulk storage.

(g) Proof of Highway Use. When minimal or no non-refundable use deduction, as determined by the Department, is made from invoices attached to the claim, the claimant should be prepared to show additional invoices or other proof of purchase of public road fuel upon request of the Department.

(A) Proof of non-refundable use includes all fuel purchases for all vehicles registered to the claimant.

(B) Proof of non-refundable use does not eliminate the requirements to keep and provide, upon request of the Department, consumption records for fuel used from a bulk storage tank that includes fuel used only in a refundable manner.

(h) Persons claiming a tax refund on motor vehicle fuel exported to another state in the fuel supply tank of a motor vehicle are required to provide the following:

(A) Evidence of payment of tax to another state and information for each vehicle showing the source of all motor vehicle fuel used, the total number of miles traveled, and the miles traveled in each state; and

(B) Evidence satisfactory to the Department of the amount of motor vehicle fuel that was exported

(i) A person or agency who operates a licensed motor vehicle on and off public highways may claim a refund of the Oregon tax on the fuel used to operate the vehicle as designated in ORS 319.320(1) and 319.320(4). The refund can be approved only if the claimant has maintained and provided the following records:

(A) The total miles operated as established by a working odometer for each licensed motor vehicle, including private passenger cars during the entire claim period; and

(B) The total gallons of fuel used in the vehicle to include both refundable and non-refundable use;

(C) The source of the fuel used in the vehicle to include purchase invoices supporting all fuel handled through bulk storage, as well as all fuel purchased at service stations, or received from other sources; and

(D) Calculation of highway fuel used for each vehicle, determined by calculating the total miles driven divided by the total gallons of fuel used and applying the resulting miles per gallon to total off road miles.

(j) Claims covering the operation of unlicensed motor vehicles entirely over roads or property subject to refund are required to establish the source and number of gallons of motor vehicle fuel used by consumption records.

(k) The claimant must be able to establish to the satisfaction of the Department the amount of fuel used in a refundable manner.

(3) Requirements covering invoices submitted in support of fuel tax refund claims:

(a) Each invoice, or reasonable facsimile approved by the Department, submitted with a claim must be the original either physical or electronic form, as issued at the time of purchase or initial billing.

(b) Each invoice must show the following:

(A) Month, day, and year of sale;

(B) Name and complete address of seller (city and state);

(C) Purchaser's name (Cash, boat number, etc., will not qualify);

(D) Kind of fuel and number of gallons purchased;

(E) Price per gallon purchased and dollar amount extended.

Stat. Auth.: ORS 184.616, 184.619, 319.010 - 319.880

Stats. Implemented: ORS 319.280

Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0716; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-174-0030

Rules and Special Requirements for Fuel Tax Refunds

(1) Signatures Required on Refund Claims:

(a) Individuals must sign their own claims;

(b) A partnership claim may be signed by any one of the partners;

(c) Claims by business firms or corporations must be signed by an authorized agent;

(d) Accountants and other persons assisting in preparation of claims must also sign in the space provided.

(e) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

(f) An executor of a person's estate may sign and make a claim for refund of fuels tax when a current letter of transfer to an estate as prescribed by the Department is provided with the refund claim.

(g) A refund claim, when filed electronically, may be signed with an electronic signature. "Electronic signature" shall have the same meaning and requirements as defined in ORS 84.004(8).

(2) Normally the "Buyer and User" is the person entitled to the refund and is the person or firm named on the invoice. Claims should be made out in the same name as that shown on the invoices. If it is desired to have a claim paid in a name differing from that shown on the purchase invoice, a letter of authorization as prescribed by the Department must be attached and signed by the person to whom the invoice was issued.

(3) Power take-off fuel use in motor vehicles as described in ORS 319.280:

(a) The refund formula in ORS 319.280(2)(b) does not apply to garbage trucks with power take-off that operates only a dump box, hoist, or other type of lift;

(b) Claims must be accompanied by valid purchase invoices to cover the total gallons of motor vehicle fuel purchased. Claimant must also maintain records to show the total gallons of motor vehicle fuel used in each vehicle and the total miles operated by each vehicle. Service station purchase invoices should identify each vehicle by showing the vehicle license plate number, unit number, or description;

(c) When motor vehicle fuel is drawn from the claimant's bulk storage, a detailed record must be kept of all withdrawals, together with beginning and ending inventories, so that a complete accounting may be made of all fuel handled;

(d) A summary, showing beginning inventory, receipts, withdrawals, loss or gain, and ending inventory, is to be shown on the claim form in the space provided;

(e) Claimants who operate petroleum delivery trucks must maintain records to show the total gallons of petroleum products pumped by each vehicle using power take-off equipment, together with supporting delivery meter readings;

(f) Each such refund claim must be made on the current Fuels Tax Refund Claim form as prescribed by the Department. This will be in addition to schedules or work sheets required for other refundable use or equipment.

(4) Auxiliary Engines. Fuel used in an auxiliary engine mounted on a licensed motor vehicle (ready mix concrete, refrigeration or air conditioning units, etc.), is considered refundable use if motor vehicle fuel for the auxiliary engine is supplied from a fuel tank, other than the fuel tank that supplies the engine propelling the vehicle. Estimates of refundable use do not qualify for refund. When separate fuel tanks are used, a record of the gallons of fuel delivered into each tank must be kept and purchase invoices covering both tanks must accompany the claim. Motor vehicle fuel used in the operation of an auxiliary engine, mounted on a licensed motor vehicle, supplied from the fuel tank that propels the vehicle, is only considered refundable use if a metering device approved by the Department is used.

The metering device must separately measure gallons of fuel used only by the auxiliary engine.

(5) Use or disposition of fuel which is not subject to refund:

(a) Fuel sold, lost, destroyed, stolen, or given away;

(b) Fuel used with respect to which payment of tax to the State of Oregon has not been verified;

(c) Fuel used to operate motor vehicles upon public highways with certain exceptions;

(d) Fuel used to operate licensed motor vehicles where complete mileage and fuel records required by law and administrative rule are not maintained;

(e) Motor vehicle fuel used in snowmobiles or other unlicensed motor vehicles, unless operated on private land.

(f) Fuel used while a vehicle is idling.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 26, f. 12-8-65; MV 42, f. 8-15-69; MV 45, f. 8-12-70, ef. 9-11-70; MV 53, f. 2-20-74, ef. 3-11-74; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0725; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-174-0040
Tax Refunds on Use of Gasoline and Other Motor Vehicle Fuels in Motor Boats

(1) The refund of tax on fuel used in motor boats is limited to fuel used for commercial purposes.

(2) Marked invoices and consumption records, if fueled from a bulk tank, are required to support such claims as prescribed in Administrative Rule 735-174-0020. Invoices must be marked by the supplier at the time of sale with the boat license number or vessel name if the fuel is placed directly into the fuel tank of the boat.

(3) The Department considers the use of fuel in motor boats for commercial purposes to include the following:

(a) Commercial fishing.

(A) A valid commercial fishing license number must be provided and active for the refund period.

(B) A valid boat license number must be provided and active for the refund period. It must be registered to the name of the claimant or a letter of authorization as prescribed by the Department, signed by the person to whom the invoice was issued must be attached.

(b) Charter boat operations.

(A) A valid commercial charter boat license number must be provided and active for the refund period.

(B) A valid boat license number must be provided and active for the refund period. It must be registered to the name of the claimant or a letter of authorization as prescribed by the Department, signed by the person to whom the invoice was issued must be attached.

(c) Log pond operations.

(d) Mail boat operations.

(e) Tourist boat operations.

(f) Any other type of operation that the Department may determine to be commercial use based on the documentary evidence provided by the claimant.

Stat. Auth.: ORS 184.616, 184.619 & 319.280
Stats. Implemented: ORS 319.280
Hist.: MV 20-1985, f. 12-30-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0735; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04; DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-174-0045
Tax Refunds for Use of Gasoline and Other Motor Vehicle Fuels in Aircraft

(1) The refund of tax on gasoline used in aircraft is limited to the person who purchased and used the fuel in an aircraft.

(2) If the aircraft is fueled from a bulk tank, marked invoices and consumption records must support refund claims as prescribed in Administrative Rule 735-174-0020.

(3) A valid tail number must be provided and active for the refund period. It must be registered to the name of the claimant or a letter of authorization as prescribed by the Department, signed by the person to whom the invoice was issued must be attached.

(4) The valid pilot's license number of the claimant must be provided with the claim. A copy of the pilot's license must be provided upon request of the Department.

Stat. Auth.: ORS 184.616, 184.619 & 319.010 - 319.880
Stats. Implemented: ORS 319.280
Hist.: DMV 10-2009, f. 5-22-09, cert. ef. 7-1-09; DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0100
Definitions

(1) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751.

(2) "Biodiesel blend" means a blend of biodiesel fuel meeting ASTM D 6751 with petroleum-based diesel fuel, designated BXX, where XX represents the volume percentage of biodiesel fuel in the blend.

(3) "Bulk Distributor" means an entity that sells bulk use fuel and is not otherwise qualified as a use fuel seller (as defined by ORS 319.520(13)) or a licensed motor vehicle fuel dealer (as defined by ORS 319.030 (6)), and is therefore not licensed with the state of Oregon. A Bulk Distributor must comply with Administrative Rules chapter 735, Division 176.

(4) "Bulk Facility" means a fixed storage location. The primary purpose of a bulk facility is to store fuel that will be distributed to customers' locations. Dispensing fuel at the bulk facility into a vehicle or container is not prohibited, but the fuel may be subject to tax and the bulk facility operator may be required to become licensed as a Use Fuel Seller.

(5) "Cardlock Statement" means the printed detail of customer purchases using a cardlock card. Each statement shall contain:

(a) The card issuer's name and address;

(b) The customer's name and address; and

(c) The transaction activity detailed by card number.

(6) "Derived from used cooking oil" means the feedstock used to produce the biodiesel is 100% used cooking oil.

(7) "Electronic Invoice" means the data captured when a cardlock card is used for a fuel purchase. The electronic invoice shall contain the same information as an "Invoice." Commonly, a series of electronic invoices will be printed in a periodic customer statement.

(8) "Electronic signature" shall have the same meaning and requirements as defined in ORS 84.004(8)

(9) "Emblem" means the document issued by the Department, which allows the licensed user to purchase fuel with the Oregon use fuel tax deferred. Emblems are issued for a specific vehicle and renewed annually.

(10) "Fleet Fueling" means a mobile retail fueling operation where the licensed seller places fuel into the tank of a vehicle or equipment at their customer's locations. Any sales made without collecting Oregon tax are subject to invoice requirements in ORS 319.671.

(11) "Handler" or "handler of fuel for use in a motor vehicle" includes but is not limited to bulk distributors, producers, sellers, users, transporters, and any other person who purchases, sells, trades, stores, produces, or transports fuel.

(12) "Incidentally Operated" means the vehicle or equipment is primarily designed to be operated off road but is allowed up to five (5) miles on-road travel starting from the location the vehicle was garaged or parked the previous day. If in excess of these miles, all on-road use is subject to tax.

(13) "Invoice" means the receipt or other record of an individual transaction, completed at the time of the sale. An invoice shall contain the information required in OAR 735-176-0170 (6).

(14) "Non-retail Facility," as defined in ORS 319.520(11), means an unattended facility where use fuels are dispensed through a cardlock card activated fuel dispensing device.

(15) "ODOT Fuels Tax Group" or "Department" means the organizational unit within the Oregon Department of Transportation or its agent that is primarily charged by the Department with the administration of ORS 319.010 through 319.880 on behalf of the state of Oregon.

(16) "Register" means to be entered into the Department's registry. Bulk distributors that are not otherwise qualified as a use fuel seller (as defined by ORS 319.520(13) and 319.621), or a licensed motor vehicle fuel dealer (as defined by 319.010(6) and 319.030) and therefore not licensed with the state of Oregon, will be required to register. By registering with the state of Oregon, the bulk distributor receives a registry number, which enables the state of Oregon to track and record bulk sales information.

(17) "Retail Facility" means a fueling operation that does not qualify as a non-retail facility. Unattended facilities that are not capable of generating an electronic invoice are considered retail facilities.

(18) "Simplified User Reporting" means a use fuel user who opts to pay tax on all gallons purchased on a monthly basis at bulk facilities, retail facilities, and non-retail facilities and report those purchases in a format determined by the Department.

(19) "Special Use Fuel Permit" is an emblem issued by the Department to a specific vehicle powered by natural gas or propane. The permit is renewed annually and allows the permit holder to pay an annual fee rather than the per-gallon use fuel tax.

(20) "Third Party Payer" means a bulk facility that reports all bulk fuel sales, collects and remits the applicable tax to the state of Oregon on behalf of use fuel users, or a licensed use fuel seller who is collecting and remitting the applicable tax to the state of Oregon on behalf of use fuel users as part of its operation.

(21) "User" or "User of Fuel in a Motor Vehicle" as used in ORS 319.510 through 319.880 and OAR chapter 735, division 176, means a person as defined in ORS 319.520(12) who uses fuel in a motor vehicle as defined in 319.520(15). "User" or "user of fuel in a motor vehicle" includes, but is not limited to, a lessor who allows a motor vehicle to operate on the highways of this state and allows the lessee to use fuel in that motor vehicle.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.880
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0110
Use Fuel Record Keeping Requirements

(1) Record Requirements. Every handler of fuel for use in a motor vehicle shall maintain and keep records for a period of three years from the due date of the report or three years from the date the report is filed, whichever is later, as follows:

(a) A purchase journal or other record of fuel received supported by purchase invoices and bills of lading showing delivery location for all use fuel purchases. When the fuel is B20 or greater derived from used cooking oil: the bill of lading, invoice, or delivery ticket shall include certification from the supplier that the biodiesel is derived from 100% used cooking oil as well as the location of the refinery where the biodiesel was manufactured

(b) A record of all bulk fuel sales, use, and transfers;

(c) A physical inventory of bulk fuel storage shall be recorded at the end of business on the last day of each calendar month and preserved for audit purposes. Tank inventory readings may be electronic tank monitor readings or physical stick inventory readings;

(d) Source documents for tank inventory readings for audit purposes (whether manual or electronic readings);

(e) Copies of customer invoices, whether paper or electronic, shall be kept for audit purposes. If tax is collected from use fuel users at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected.

(f) Invoices upon which tax collections are recorded shall be kept separate from other sales invoices;

(2) Required records will be summarized by calendar month and must be centralized in the state of Oregon at the office where the periodic tax audit is to be made.

(3) The Department may determine, at its sole discretion, when the auditor for the state must travel outside the state of Oregon to examine the licensee's records. At any time such travel is determined necessary the licensee must reimburse the state for all travel expenses incurred, including transportation, meals and lodging costs.

(4) Fuel handlers must make documentation readily available to the Department upon request by the Department by the date prescribed by the Department.

(5) Fuel handlers who fail to provide records for review are subject to assessment based on "best available information."

(6) Additional recordkeeping requirements for use fuel sellers:

(a) Pump meter readings shall be taken at the end of business on the last day of the month and retained for audit purposes. Physical pump meter readings (or non-resettable electronic readings) will be taken for all dispensers of use fuel operated by the seller at a location;

(b) Copies of customer invoices, whether paper or electronic, shall be kept for audit purposes. If tax is collected from use fuel users at the time of sale, fuel invoices must clearly show the amount of use fuel tax collected;

(c) Non-retail sellers will also retain fuel network statements to support customer invoices and fuel handled;

(d) Copies of exemption certificates that include a list of vehicles and the cards assigned to each vehicle if ex-tax cardlock cards are issued.

(e) Sellers who fail to provide records for review are subject to assessment based on "best available information" collection action, and possible license suspension and revocation.

(7) Additional record keeping requirements for use fuel users:

(a) If Oregon tax is included in the purchase price, a copy of the invoice, clearly showing the amount of tax collected, must be provided with the user report to receive tax-paid fuel credit;

(b) A record of the number of miles traveled over Oregon highways. In the absence of affirmative evidence all fuel will be presumed to have been used in a taxable manner;

(c) If fuel is stored in bulk, a physical inventory shall be taken at the end of each month and preserved for audit purposes. Consumption records will be retained by the user and made available to the Department upon request by the Department;

(d) A user with one use fuel vehicle with a light weight of less than 8,000 pounds, as verified by a method approved by the Department, may, in lieu of the requirements detailed in section (1)(a) through (7)(c) of this rule, keep an accurate record of Oregon miles driven. Tax for this user is calculated using a reasonable mile per gallon (as determined by the Department using industry standards) applied to Oregon miles traveled.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.510 - 319.990
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0120
Use Fuel Seller Licensing Requirements

(1) Seller License. Persons who sell fuel for use in a motor vehicle are required to be licensed. They must maintain records of fuel manufactured, purchased, handled, and distributed or sold and must preserve them for three years from the reporting due date or the date the report was filed, whichever is later. Persons who do not sell fuel for use in a motor vehicle are not required to be licensed. They must, however, maintain records of fuel manufactured, purchased, handled, and distributed or sold and include that information with the Motor Vehicle Fuel Dealer report or Registered Bulk Distributor report.

(2) Bond amounts for licensed sellers will be two times the estimated monthly tax liability as determined by the Department.

(a) For new licensees, the bond amount shall be determined by volume sold by prior owner or similar sellers in the area.

(b) In the event there is no reliable data on which to estimate the bond, the seller will post $1,000 bond or deposit, subject to annual review and adjustment.

(3) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.621, 319.665 & 319.697
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0130
Bulk Distributor Registration Requirements

Every person producing, manufacturing, importing, distributing, storing, transporting, or otherwise handling fuel must be registered. They must maintain records of fuel produced, imported, distributed, transported, or otherwise handled for three years from the reporting due date, or the date the report was filed, whichever is later.

Stat. Auth.: ORS 184.616, 184.619 & 319.510 - 319.880
Stats. Implemented: ORS 319.621, 319.665 & 319.697
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0140
Use Fuel User Licensing Requirements

(1) License Requirements.

(a) Persons who use fuel as defined in ORS 319.520(12) in a motor vehicle, except those excluded in 319.550 and 319.885, must first apply for and obtain a user license and a vehicle emblem for each vehicle;

(b) User licenses are subject to bonding as specified in subsection (4) of this section;

(c) Emblems are issued for specific vehicles on an annual basis; and

(d) ORS 319.611(1) imposes a penalty of 25 percent of the tax for using fuel without first obtaining a valid license and vehicle emblem.

(2) Other users required to be licensed and report vehicle operations and fuel usage include:

(a) Users of vehicles over 26,000 Gross Vehicle Weight Rating when any of the miles operated in Oregon are not subject to weight mile tax;

(b) Oregon state agencies;

(c) Oregon counties;

(d) Oregon cities;

(e) Rural fire protection districts;

(f) School districts;

(g) Special districts; and

(h) Other users as notified by the Department.

(3) Nonresidents in this state a total of 30 days or less during the calendar year are not required to be licensed if, for all fuel used in a motor vehicle in this state, the nonresident pays to a seller, at the time of the sale, the tax provided in ORS 319.530.

(4) Bond amounts are limited as shown in ORS 319.570. Bonds for licensed users will be two times the estimated monthly tax liability as deter-

mined by the Department. The estimated tax liability is not reduced by tax-paid fuel purchases.

(a) In the event there is no reliable data on which to estimate the bond, the user will post $100 bond or deposit, subject to annual review and adjustment.

(b) If a deposit other than cash is made, the bond or security on deposit shall have the Department of Transportation listed as an owner.

(5) An emblem is required to be displayed on the vehicle for which it was issued when purchasing fuel for the vehicle. An emblem is considered to be displayed in a conspicuous place if it is readily accessible and presented to the station attendant at the time of fueling, or the cardlock card issuer upon request and at the time the account is set up, or when requested by the supplier.

(6) The Department may refuse to cancel a user license when such cancellation is requested by the user, if the user is required to report. Effective cancellation dates may be set by the Department if the user does not return emblems. If emblem(s) is not returned at the request of the Department, then the user shall file reports throughout the year in which the emblem will expire.

(7) Responsibilities of the User:

(a) List all use fuel vehicles on application and user report;

(b) Retain emblem with the vehicle;

(c) Retain fueling and mileage records by vehicle;

(d) Notify the Department of any changes in vehicles;

(e) Cancel license in writing if the license is no longer needed; and

(f) Return emblems when license is canceled or revoked.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0150
Special Use Fuel Permit Requirements

Owners of vehicles powered by natural gas or propane may purchase an annual permit in lieu of paying the per-gallon use fuel tax. Each permit is issued to a specific vehicle and is not transferrable.

(1) Persons who operate a qualifying vehicle must first apply for and obtain a special user permit and a vehicle emblem for each vehicle;

(2) Application for the permit and payment of fees will be made electronically, through a website established for the Department

(3) Emblems are issued for a specific vehicle on an annual basis;

(4) Permit fees are based on vehicle weight as indicated on the registration; and

(5) Permit fees may be prorated as follows, for permit applications received between:

(a) Jan 1 to Mar 31 — 100%.

(b) Apr 1 to June 30 — 75%.

(c) July 1 to Sept 30 — 50%.

(d) Oct 1 to Dec 31 — 25%.

(e) There is no refund for permits cancelled before the end of the calendar year.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0160
Use Fuel Reporting Requirements

(1) Fuel is presumed to be used in a taxable manner when sold. Failure to account for non-taxed sales with accurate documentation completed at the time of sale, may result in the assessment of tax on the gallons of fuel sold, along with penalty and interest on the tax that has not been reported and paid.

(2) Every use fuel handler must prepare a report that completely summarizes use fuel gallons sold, distributed, or used during the report period. Schedules are required for each type of operation and fuel sold. Total taxable gallons from each schedule will be carried to the appropriate line on the front page of the report for computation of the tax, penalty and interest as applicable.

(3) Bulk fuel sales or use, both tax paid and tax exempt, must be reported on the forms prescribed by the Department and submitted not later than the 20th day of the succeeding calendar month.

(4) "To report" or "be reported" means a complete report, with all required schedules on forms prescribed by the Department and full remittance of tax must be received by the Department or its designated agent, not later than the 20th of the succeeding calendar month.

(a) All reports and required schedules with 100 or more transactions shall be filed electronically in a manner prescribed by the Department. Once a licensee or registrant is required to file their reports electronically, all subsequent reports shall be filed electronically regardless of the number of transactions.

(b) Received is the date the report is physically received by the Department or its designated agent.

(c) When the due date falls on a Saturday, a Sunday, or any recognized state or federal holiday, the report and payment must be received by the Department on or before the next business day.

(d) Computerized report data may be substituted for schedule detail when the dealer has less than 100 transactions and the format is compatible with the prescribed forms.

(e) If an electronic transaction requires the payment of taxes or fees, payment of those taxes or fees within the electronic transaction shall be:

(A) Made through an Automated Clearing House (ACH) debit or credit transaction;

(B) Made in US funds.

(5) A licensee or registrant will be deemed to have failed to file a report when:

(a) The report has not been filed by the next report due date if the handler is a monthly filer; or within 45 days of the due date if the licensee is a quarterly or annual filer; or

(b) The Department has requested that a report be filed by a specified date and the report is not received by the specified date.

(6) An agent may sign on an individual's behalf when a valid power of attorney or guardianship is in effect.

(7) Licensed use fuel sellers and use fuel users may qualify to report quarterly or annually when authorized under ORS 319.692.

(a) Bulk distributors will file monthly reports

(b) A credit of 4% of the tax is available to a licensed use fuel seller based on the seller's tax liability, which is supported by schedules showing the fuel was placed into the fuel tank of motor vehicles.

(A) The 4% credit of tax is not applicable to bulk fuel sales.

(B) The 4% credit of tax is not applicable when the seller tax report and/or payment are received after the due date.

(8) Additional reporting requirements for use fuel users:

(a) A licensed user will pay tax on all fuel unless vehicle operation information is provided.

(b) Users who have paid any Oregon tax on fuel purchased from Oregon sellers of fuel must detail such purchases in the fuel schedule of the tax report form and treat such transactions as credits against their total tax liability.

(A) Payment of tax to third party payer does not relieve the user of tax liability or reporting requirements. If the third party payer does not remit the tax, or the Department is unable to verify the tax was paid, an assessment of tax, penalty and interest will be sent to the user.

(B) Credit may be taken for Oregon use fuel tax paid on gallons purchased, up to the amount of gallons used in Oregon during the report period.

(C) Users who do not provide vehicle specific mileage and consumption records are not eligible for refunds or credits of tax paid on fuel used in a non-taxable manner.

(c) Some fuel may be exempt from Oregon tax when vehicle operations are provided:

(A) Miles reported to Motor Carrier Transportation Division on which weight-mile taxes were paid.

(B) Miles driven outside Oregon when mileage records are retained.

(C) Miles driven on private property when mileage records are retained.

(D) For qualifying school districts and education service districts, bus miles driven to transport students, and in support of student transportation, such as driver training, fueling, maintenance, and similar activities as approved by the Department are tax refundable. Bus charter miles driven and school district vehicles not used to transport students are subject to tax.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0170
Collecting Tax on Sales or Use; Invoice Requirement

(1) Suppliers may collect tax on deliveries into the bulk tank of an end user at the customer's request, provided the supplier is registered as a third party payer or is a licensed use fuel seller.

(a) Collection of tax at a customer's request does not relieve the customer of the need to be licensed and report.

(b) Taxes collected by a third party payer must be reported and remitted to the Department, in accordance with OAR 735-176-0160, on a monthly basis in a format determined by the Department.

(c) The 4% credit available to use fuel sellers is not applicable to bulk fuel sales.

(2) Persons who sell fuel and place it into the fuel tank of motor vehicles, except for sellers at non-retail facilities as defined in ORS 319.520(11), shall collect the Oregon tax at the time of sale except for sales into:

(a) Vehicles displaying a valid ODOT Motor Carrier Transportation Division weight receipt or pass;

(b) Vehicles displaying a valid use fuel vehicle emblem issued by the Department;

(c) Vehicles displaying a United States government license plate or the registration plate for state or local government owned vehicle issued registration pursuant to ORS 805.040 or a school bus or school activity vehicle issued registration pursuant to ORS 805.050;

(d) Farm tractors or other agricultural implements only incidentally operated on the highway as defined in ORS 319.520(10); and

(e) Cans, barrels, or containers other than the fuel supply tank of a motor vehicle.

(f) Vehicles displaying a valid Special Use Fuel Permit when purchasing natural gas or propane.

(3) A seller, as defined by ORS 319.520(13)(b), who sells fuel at non-retail facilities in Oregon shall collect the tax from a purchaser whose account is owned by the seller. The non-retail seller shall include the transactions in the taxable sales report unless the seller retains written certification signed by the purchaser on forms provided by the Department that the use of the fuel is tax deferred or exempt from the tax imposed under 319.530.

(a) "Certifies to the Seller" means the customer completes and signs the "Certification of Oregon Use Fuel Exempt Tax Status" form as provided by the Department. The seller is responsible for collecting and remitting the tax until the signed and dated exemption certificate is received from the customer. The form will contain:

(A) The name and address of the seller;

(B The name, address, account number and signature of the purchaser;

(C) The reason that the use fuel tax should not be collected by the seller;

(D) A list of vehicles and equipment;

(E) A statement from the purchaser that for all use fuel purchased at Oregon non-retail facilities on account with the seller, such fuel will be used only for purposes that are tax deferred or exempt from use fuel taxation under ORS 319.510 through 319.880.

(b) A seller may not sell use fuel without the tax until a valid exemption certificate is completed, signed and returned to the seller; and

(c) The customer provides the identifying information for each cardlock card to qualify the tax deferred status. The card issuer shall list the card number assigned to the vehicle or equipment when qualified for ex-tax purchases.

(4) Sellers, as defined by ORS 319.520(13), who do not operate non-retail facilities in Oregon but who own the accounts of purchasers who purchase fuel at Oregon non-retail facilities, must be licensed with the Department and are required to comply with all of the provisions of 319.510 through 319.880 and this rule.

(5) A seller, as defined by ORS 319.520(13), who sells at non-retail facilities in Oregon and does not collect the tax from a purchaser whose account is not owned by the seller, must provide, upon request of the Department, the purchaser's account number and the name and address of the non-retail seller who owns the account.

(6) Use fuel invoices shall contain:

(a) The seller's name and address,

(b) The purchaser's name and address,

(c) The full date of sale,

(d) The fuel type and number of gallons purchased,

(e) The amount of Oregon fuel tax included in the purchase price, or

(f) If the Oregon fuel tax is not included, the reason for the ex-tax sale:

(A) Motor Carrier Weight Receipt or pass number.

(B) Use Fuel User Emblem number.

(C) US Government plate number, State or local government agency plate number.

(D) Description of the vehicle or equipment if unlicensed.

(E) Description of the container if not placed into a fuel supply tank of a vehicle or equipment.

(F) Special User Permit number when purchasing propane or natural gas.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0180
Tax Forgiveness of Biodiesel and Biodiesel Blends Made From Used Cooking Oil

(1) To be eligible for the tax forgiveness in ORS 319.530(5), biodiesel must meet the requirements of ASTM D 6751 and be derived from 100% used cooking oil.

(2) To be eligible for the tax forgiveness in ORS 319.530(5), petroleum-based diesel must be blended with a minimum 20 percent biodiesel, which meets the requirements of ASTM D 6751, and is derived from 100% used cooking oil.

(3) To be eligible for the tax forgiveness in ORS 319.530(5), the fuel must be sold at a retail location, and must be placed in the fuel tank of a motor vehicle. Fleet fueling, bulk sales, and cardlock sales are not eligible.

(4) To certify the biodiesel is derived from 100% used cooking oil, the bill of lading for the biodiesel shall include certification from the supplier that the biodiesel is derived from 100% used cooking oil as well as the location of the refinery where the biodiesel was manufactured.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.530 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0190
Requesting Reassessment; Use Fuel Waiver of Late Payment Penalties

(1) If a user, seller, or bulk distributor disagrees with an action of the Department, they may request reassessment of the determination in writing within 30 days of the date of the notice. Notice types with appeal rights include:

(a) Denial or suspension of license.

(b) Adjustments to use fuel user or seller tax reports.

(c) Assessment of tax based on available information.

(2) If the Department and the user or seller are not able to resolve the issue through the internal review process, the user or seller may request a hearing.

(a) The hearing shall be a contested case hearing under the provisions of ORS Chapter 183.

(b) The licensee must request a hearing in writing before the Notice of Assessment becomes final.

(3) ORS 319.694(2) allows the Department to waive penalties for late payment of use fuel tax.

(4) An entity or a person may submit a written request for waiver of late payment penalties to the Department.

(5) The penalty under ORS 319.694 may be waived if the taxpayer shows reasonable cause for delay in filing the report or paying the tax.

(a) A taxpayer who wishes to apply for waiver of the penalty must explain the facts and circumstances that reasonably led to the failure to file a report or pay tax on time. The written statement will contain a declaration that it is made under penalty of perjury. The statement should be filed with the report or filed with the Department within 30 days of the Notice of Assessment.

(b) Circumstances that may constitute reasonable cause include, but are not limited to, the following:

(A) War, riot, rebellion, acts of God or other disaster which rendered it impossible to make the filing or payment or which made delay unavoidable in making the filing or payment; or

(B) Acts or omissions by a third party which were beyond the control of the person making the filing or payment and which made delay unavoidable in making the filing or payment; or

(C) The person took in good faith all steps and precautions reasonably necessary to ensure the timeliness of the filing or payment; and

(D) Any other criteria the Department may find to be informative and appropriate.

(c) The calculation of the penalty will be shown on all adjustments. If the person requests a waiver and it is granted, the amount waived will also be shown.

(d) The following reasons are not acceptable for granting penalty waiver:

(A) Employee incompetence or inexperience;

(B) Employee turnover;

(C) Misunderstanding or ignorance of law;

(D) Computer failure or error that is not the result of a natural disaster;

(E) Changeover to new accounting processes, software or upgrades;

(F) Change in company operations; or

(G) Reliance on, or errors made by third party payers, suppliers or customers.

(6) A taxpayer filing tax reports through the Department's electronic system will not be charged penalty or interest if:

(a) The licensee attempts to submit a timely filed tax report

(b) The Department's electronic filing system is not available to receive the transmission

(c) The licensee immediately notifies the Department that the electronic filing system is not available to receive their transmission.

(d) The licensee submits the tax report and remits the balance due on the first business day the system is available to receive the transmission.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.530 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0200
Use Fuel Tax Credit of Interest on Tax Overpayments

(1) The Department may allow interest credit for overpayments of use fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purpose of ORS 319.694(3)(b) and this rule, "any given audit period" means the time period from the last day of the immediate prior audit period up to the present. If there is no prior audit, "any given audit period" shall mean a period not to exceed three years prior to the current date.

(3) Any interest payments made on underpayments of tax from a prior audit period shall not be:

(a) Considered as interest on overpayments in the current audit period; or

(b) Subject to credit under ORS 319.694(3)(b).

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

735-176-0210
Refunds and Credits of Use Fuel Tax

(1) Refunds of use fuel tax are allowed in the following circumstances:

(a) Fuel is used in another state and is also taxed by that state (proof of payment of tax to other state is required);

(b) Fuel is used on private property in a motor vehicle (mileage records are required);

(c) Fuel is used in a qualifying government vehicle (federal, state, county, city);

(d) Fuel is used in qualifying student transportation;

(e) Fuel is used by a rural fire district;

(f) Fuel is used by a qualifying special district;

(g) Fuel used in vehicles subject to the road usage charge when that fee was paid and the use fuel tax was also charged on the fuel; and

(h) Refunds are limited to fuel purchased within 15 months of the date of the claim; application for refund is made on the form prescribed by the Department.

(2) Special Use Fuel Permit holders who also pay the Oregon tax on propane or natural gas may request a refund of the tax paid when:

(a) Fuel is used in a vehicle to which a special permit is issued, during the time the permit is valid.

(b) The Oregon fuel tax is shown on the receipt or invoice and remitted by the supplier.

(c) The Oregon fuel tax to be refunded is $25.00 or more.

(3) Use fuel users who pay their taxes through a third party payer or opt for simplified reporting are not eligible for refunds or credits.

(4) An erroneous collection occurs when the seller has the information to correctly and completely document a tax deferred non-retail sale at the time of the transaction, but the seller collected the tax in error. Erroneous collection claims are filed with the fuel supplier/seller and must be submitted as an amended tax report.

Stat. Auth.: ORS 184.616, 184.619, 319.510 - 319.880
Stats. Implemented: ORS 319.550 - 319.690
Hist.: DMV 13-2014, f. 11-25-14, cert. ef. 7-1-15

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Rules Amended: 735-062-0005, 735-062-0007, 735-062-0010, 735-062-0015, 735-062-0030, 735-062-0040, 735-062-0096, 735-062-0110, 735-062-0125, 735-062-0200
Subject: This rulemaking amended rules in Chapter 735, Division 62 as follows:

735-062-0005 — DMV amended the rule regarding Social Security number (SSN) verification through the Social Security Administration (SSA) to clarify that even if the name and date of birth provided to DMV are confirmed by SSA records, that the necessary verification is not made if the SSN is listed as inactive, invalid or otherwise not verifiable.

735-062-0015 — DMV amended the rule regarding acceptable proofs of legal presence as DMV continues to gain more experience viewing a variety of documents and working with the Department of Homeland Security to determine the validity of those documents. DMV also amended the rule to indicate when an acceptable document will not be accepted, for instance, if it is stamped cancelled.

735-062-0030 — DMV amended the rule regarding proof of residence address to make certain that the rule reflects what Oregonians may have available to prove residence address in today's world. For instance, the inclusion of documents delivered by UPS or Fed Ex to a residence address like DMV currently accepts for mail delivered by USPS.

735-062-0040 — DMV amended the rule regarding knowledge tests to include language that reflects the addition of surveillance cameras in the testing area.

735-062-0096 — DMV included language regarding the surrendering of a license from a foreign country to allow DMV to treat that license as agreed to in a reciprocity agreement with that country.

735-062-0110 — DMV amended the rule regarding replacement driver licenses, driver permits or identification cards to reflect the efficiency DMV implemented recently of using the most recent photograph currently on file on most replacements.

735-062-0125 — DMV made the process of issuing a Valid with Previous Photograph driver license, driver permit or identification card more secure by amending this rule not to allow issuance of the renewal or replaced driver license, driver permit or identification card to an applicant out-of-state or out-of-country who requests to change his or her name, date of birth or SSN, unless the applicant is an active duty member of the United States Armed Forces, or the spouse, domestic partner or dependent of an active duty member of the United States Armed Forces stationed outside of Oregon.

735-062-0200 — DMV amended this rule to specify that only a person surrendering a CDL issued by a U.S. state or the District of Columbia will have some of the CDL tests waived by DMV.

Changes in OAR 735-062-0007 and 735-062-0010 are to conform those rules with the proposed amendments in OAR 735-062-0015.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0005
SSN — Requirements for Collection and Verification of SSN or Proof of Ineligibility for a SSN

(1) When a person who is eligible for a SSN applies for any original, renewal or replacement driver license, driver permit or identification card, the person must provide his or her SSN on the application form.

(2) A person who applies for any original, renewal or replacement non-commercial driver license or driver permit or identification card and claims to be ineligible for a SSN must provide proof that he or she is not eligible for a SSN. A person may prove his or her ineligibility for a SSN by presenting documents issued by the SSA, the Department of Homeland Security or other federal agencies or federal courts, which demonstrate that the person is not eligible to be assigned a SSN by the SSA. The person must also certify that he or she is ineligible for a SSN.

(3) When an applicant provides a SSN as required by section (1) of this rule, DMV will submit the SSN to the SSA for verification, unless the applicant is a citizen or permanent legal resident of the United States whose SSN was previously verified under this rule. An applicant's SSN is verified when SSA notifies DMV that the applicant's SSN, name and date of birth are confirmed by SSA's records.

(4) Notwithstanding section (3) of this rule a SSN is not considered verified if the SSA notifies DMV that the SSN provided is inactive, invalid, impossible, not verifiable for other reasons or if there is a system error.

(5) Before issuing a temporary applicant permit as provided in OAR 735-062-0032 or 735-062-0033, DMV will require proof of the person's SSN if the SSN provided on the application is not verified as described in section (3) of this rule. Proof that the SSN is the one assigned to the person by the SSA may include, but is not limited to, one or more of the following documents:

(a) Social Security Card or other SSA documentation;

(b) Income tax form filed with the Internal Revenue Service or a state tax agency;

(c) Employment document;

(d) Military document (DD214); or

(e) Any document containing full SSN acceptable as proof of legal presence or identity and date of birth as listed in OAR 735-062-0015 or 735-062-0020.

(6) DMV will not issue, renew or replace any driver license, driver permit or identification card, except as provided in OAR 735-062-0032 and 735-062-0033, unless:

(a) The applicant has proved his or her legal presence in the United States as provided in OAR 735-062-0015, and DMV has verified the applicant's SSN as provided in section (3) of this rule; or

(b) If the applicant claims to be ineligible for a SSN, the applicant has proved his or her ineligibility for a SSN as provided in section (2) of this rule and his or her legal presence in the United States as provided in OAR 735-062-0015. DMV will not issue, renew or replace a commercial driver license or commercial driver permit to an applicant who claims to be ineligible for a SSN.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.050

Stats. Implemented: ORS 802.200, 807.021, 807.022 & 807.050

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1995, f. & cert. ef. 11-15-95; DMV 19-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0007

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040 and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) "Mother" means the biological or adoptive mother of the applicant;

(B) "Father" means the biological or adoptive father of the applicant; and

(C) "Legal guardian" means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(d) Provide proof of legal presence as provided in OAR 735-062-0015;

(e) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016;

(f) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020;

(g) Provide proof of the person's residence address as provided in OAR 735-062-0030;

(h) Provide proof, as provided in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(i) Surrender all driver permits and driver licenses in the person's possession issued outside of Oregon.

(j) In addition to all requirements in subsections (a) through (i) of this section, a person applying for a commercial driver license or commercial instruction permit must:

(A) Certify driving type; and

(B) Meet medical qualifications as described in OAR 735-063-0050.

(C) Satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200 if the person holds a commercial driver license from another jurisdiction.

(2) A person is not eligible for driving privileges under ORS 807.060(4) or (5) and DMV will not issue or renew driving privileges or replace a driver license or driver permit if on an application for driving privileges or a replacement license or permit a person:

(a) Answers yes to the question "Do you have a vision condition or impairment that has not been corrected by glasses, contacts or surgery that affects your ability to drive safely?" and the person is unable to pass a DMV vision screening;

(b) Answers yes to the question "Do you have any physical or mental conditions or impairments that affect your ability to drive safely?";

(c) Answers yes to the question "Do you use alcohol, inhalants, or controlled substances to a degree that affects your ability to drive safely?"

(3) A person who is denied issuance or renewal of driving privileges or replacement of a driver license or driver permit under section (2) of this rule will be allowed to establish or reestablish eligibility by passing DMV examinations under ORS 807.070, by getting a determination of eligibility from the Medical Determination Officer under 807.090 or both, as determined by DMV. The requirement may be waived if DMV determines the application was completed in error and the person is eligible for driving privileges.

(4) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(6) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(7) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(8) A driver license issued to a person with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the license or permit and mail it to the address provided by the applicant at the time of the application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(5), DMV will issue a limited term driver license or limited term driver permit and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term driver license or limited term driver permit is as described in ORS 807.130(3).

(11) DMV will issue a person who is a citizen of a country with a Compact of Free Association with the United States and who provides proof of legal presence as set forth in OAR 735-062-0015(4)(a), a driver license with an expiration date as described in ORS 807.130(1) or (2).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050, 807.060, 807.120, 809.310 & 807.050

Stats. Implemented: ORS 807.021, 807.040, 807.060, 807.066 & 807.130

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 27-2005, f. 12-14-05 cert. ef. 1-1-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; Renumbered from 735-062-0000, DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 19-2013, f. 12-20-13, cert. ef. 1-1-14; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0010
Identification Cards

(1) Pursuant to ORS 807.400 and as provided in this rule, DMV will issue an identification card to a person who does not have a valid driver license.

(2) A person applying for an identification card must:

(a) Satisfy all identification card requirements set forth in ORS 807.400 and 807.410, except as described under section (7) of this rule;

(b) Provide a verifiable SSN or proof that the person is not eligible for a SSN as provided in OAR 735-062-0005;

(c) Provide proof of legal presence as provided in OAR 735-062-0015;

(d) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016.

(e) Provide proof of the person's identity and date of birth as provided in OAR 735-062-0020; and

(f) Provide proof of the person's residence address as provided in OAR 735-016-0070 and 735-062-0030.

(3) Identification cards issued to persons for whom DMV has created an Oregon driving record will reflect the same number as that on the existing record.

(4) An applicant in possession of a driver license issued by another jurisdiction must surrender that license to DMV before an identification card will be issued. The person must provide a statement to DMV if the person's license is lost, destroyed or the person no longer has the license in his or her possession, and must agree that the license will be surrendered to DMV if found.

(5) Applicants for an identification card must personally apply at a DMV office to receive an identification card.

(6) All identification cards must include a photograph of the cardholder.

(7) DMV will waive the fee requirements set forth in ORS 807.410 for those persons applying for an identification card when:

(a) The person voluntarily surrenders an Oregon license or driver permit to DMV based upon the person's recognition that the person is no longer competent to drive; or

(b) The person's driving privileges are suspended under ORS 809.419(1) and the person voluntarily surrenders the person's license or driver permit to DMV.

(8) An identification card issue to a person with a February 29 birth date expires:

(a) On February 29 if the expiration year is a leap year; or

(b) On March 1 if the expiration year is not a leap year.

(9) After determining that an applicant has met all requirements under this rule, DMV will issue the identification card and mail it to the address provided by the applicant at the time of application.

(10) After determining that an applicant has met all requirements under this rule and has provided proof of legal presence in the United States on a temporary basis, as described in OAR 735-062-0015(5), DMV will issue a limited term identification card and mail it to the address provided by the applicant at the time of the application. The expiration date of a limited term driver license or limited term driver permit is as described in ORS 807.130(3).

(11) DMV will issue a person who is a citizen of a country with a Compact of Free Association with the United States and who provides proof of legal presence as specified in OAR 735-062-0015(4)(a) an identification card with an expiration date as described in ORS 807.400(8).

(12) DMV may renew an identification card as provided in OAR 735-062-0090 or may do so using a previous photograph only as provided 735-062-0125.

(13) DMV may replace an identification card as provided in OAR 735-062-0110 or may do so using a previous photograph only as provided 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021, 807.040, 807.050 & 807.400
Stats. Implemented: ORS 807.021, 807.022 807.130 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0003; MV 19-1990, f. 12-17-90, cert. ef. 1-1-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 24-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 12-2013, f. & cert. ef. 9-24-13; DMV 19-2013, f. 12-20-13, cert. ef. 1-1-14; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0015
Proof of Legal Presence

(1) Except as provided in OAR 735-062-0032 and 735-062-0033, a person who applies for any original, renewal or replacement driver permit, driver license, or identification card must provide valid documentary proof that the person is a citizen or permanent legal resident of the United States or is otherwise legally present in the United States in accordance with federal immigration laws, unless the person's DMV record shows DMV has previously verified the person's SSN and shows that the person is a citizen or permanent legal resident of the United States. The documents provided must be either original or certified copies; photocopies are not acceptable.

(2) Documents acceptable as proof of U.S. citizenship include, but are not limited to:

(a) A birth certificate issued by a U.S. Territorial government, the District of Columbia or the government of a state or political subdivision of a state of the United States. DMV will not accept a hospital-issued birth certificate, hospital card or birth registration or baptismal certificate.

(b) U.S. Consular Report of Birth Abroad (FS-240).

(c) U.S. government-issued Certification of Report of Birth (DS-1350 or FS-545).

(d) Request for Verification of Birth (DD372).

(e) United States passport, not expired more than five years.

(f) United States passport card, not expired more than five years.

(g) U.S. Territory passport, not expired more than five years.

(h) Tribal ID card from a federally recognized tribe located in Oregon or a federally recognized tribe with an Oregon affiliation, if DMV determines:

(A) The procedures used in issuing the card are sufficient to prove that a member is a citizen or permanent resident of the United States; and

(B) The card contains security features that are sufficient to prevent alteration or counterfeiting of the card.

(i) Certificate of Citizenship (N560 and N561).

(j) Certificate of Naturalization (N550, N570 and N578).

(k) U.S. Citizen Identification Card (I-197 and I-179).

(3) Documents acceptable as proof of permanent legal residence in the U.S include, but are not limited to: Resident Alien card; Permanent Resident card (I-551); or a Permit to Re-Enter (I-327).

(4) Proof of legal presence in the United States for:

(a) A citizen of a nation with a Compact of Free Association is a valid passport or a passport not expired more than five years issued by the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI) or the Republic of Palau.

(b) An American Indian born in Canada is documentation sufficient to meet the requirements for entry into the United States under 8 USC § 1359.

(5) Documents acceptable as proof that a person is not a citizen or permanent legal resident of the United States but is legally present in the United States on a temporary basis include, but are not limited to:

(a) Arrival/Departure Record (I-94 or CBP I-94A), current admittance stamp, or a valid I-797A Notice of Action issued by the Department of Homeland Security or Custom and Border Protection presented with or within a valid unexpired foreign passport.

(b) Temporary Resident ID card (I-688);

(c) Employment Authorization card (I-766);

(d) Refugee Travel Document Form I-571; or

(e) Arrival/Departure Record (I-94 or CBP I-94) stamped admitted as a Refugee, Asylee, Asylum, Parole, Parolee, or Paroled for an indefinite period presented with acceptable proof of identity as defined in OAR 735-062-0020.

(6) DMV will not accept any document issued by the United States Immigration and Customs Enforcement Agency containing the statement:

(a) Under Docket Control;

(b) Under the Order of Supervision; or

(c) Notice of Immigration Bond Cancelled.

(7) DMV will not accept as the proof required by sections (3) and (5) of this rule a document that is not verified through the Systematic Alien Verification for Entitlements (SAVE) system.

(8) Notwithstanding section (7) of this rule, DMV may accept a document described in section (5) of this rule that is not verified through the SAVE system if the document is presented for the replacement of a limited term driver license, limited term driver permit, or limited term identification card under OAR 735-062-0110.

(9) DMV will not accept any document as proof of legal presence in the United States that is:

(a) Stamped cancelled;

(b) Hole-punched;

(c) Marked with clipped corners;

(d) Altered; or

(e) Amended, unless the amendments were completed by the issuing authority.

(10) An applicant who must obtain a document in order to provide proof of legal presence may apply for an applicant temporary driver permit as described in OAR 735-062-0032 that will provide driving privileges for a limited time or an applicant temporary identification card as described in 735-062-0033.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.022
Stats. Implemented: ORS 807.021 & 807.022
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 23-2008(Temp), f. 9-11-08, cert. ef. 9-15-08 thru 3-13-09; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0030
Proof of Residence Address

(1) DMV requires all applicants for an original driver permit, driver license, or identification card to present at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or replacement driver permit, driver license, or identification card to present at least one document showing the applicant's current residence address if the applicant's address has changed since the last time the driver permit, driver license or identification card was issued or renewed. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's first and last name and current residence address on the same document:

(a) Any proof of identity and date of birth document listed in OAR 735-062-0020 containing the applicant's current residence address.

(b) Mortgage documents or a rental or lease agreement.

(c) A verbal statement from any person residing at the same residence address as provided by the applicant on the application. The person making the verbal statement must accompany the applicant at the time of application and present one acceptable proof of address document as set forth in this rule.

(d) Utility hook-up order or account statement issued by the service provider.

(e) A loan agreement, payment booklet, voucher, statement or other financial record.

(f) Any document delivered to the current resident address by the United States Postal Service, FedEx, UPS, or other delivery service. DMV will accept a document with or without the envelope or packaging as long as the residence address is printed on the document.

(g) Oregon vehicle title or registration documents belonging to the primary owner listed and may only contain the owner's residence address.

(h) Oregon manufactured structure ownership documents.

(i) Oregon voter notification card.

(j) Selective Service card.

(k) Insurance card, insurance policy, medical records or health benefits card.

(l) Educational institution transcript forms or other school documents showing enrollment for the current school year.

(m) An unexpired professional license issued by an agency in the United States.

(n) Form DS2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.

(o) A pay stub, W2, 1099 or income tax return.

(p) Letter from the United States Postal Service, Oregon State Hospital, Oregon Veteran Rehabilitation Center, a homeless shelter, a transitional service provider, nursing home, assisted/independent living care facility/home, adult care service provider/skill nursing facility, or halfway/group home certifying the applicant's residence address, approved by DMV.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address. DMV may require the applicant to provide proof that no residence address has been assigned to the property. Such proof may include, but is not limited to, a statement from the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant must also provide a mailing address.

(6) An applicant who travels continuously may use a residence address of "continuous traveler." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the use of "continuous traveler," the applicant must also provide a mailing address.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.050, 807.150 & 807.400
Stats. Implemented: ORS 807.110, 807.160 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017; DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04; DMV 5-2004, f. & cert. ef. 3-25-04; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 8-2005, f. & cert. ef. 2-16-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 9-2006, f. & cert. ef. 8-25-06; DMV 5-2007, f. 5-24-07, cert. ef. 8-1-07; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 5-2008, f. & cert. ef. 2-4-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0040
Knowledge Test

(1) Applicants for an original driver permit, driver license or endorsement must pass the knowledge test(s) required under ORS 807.070(2) and, if applicable, 807.065(1)(b).

(2) The knowledge test(s) will be specific to the class of license or endorsement sought. The test(s) will examine the applicant's knowledge and understanding of traffic laws, safe driving practices and factors that cause accidents.

(3) All knowledge tests are closed book. During a test an applicant is not allowed to use any study guides, manuals, notes, electronic devices or any other items to assist the applicant in obtaining answers to the test questions. During a test an applicant may not obtain an answer to any test question from another person.

(4) The first knowledge test for a driver license, permit or endorsement may be conducted the day the applicant becomes eligible for the test. If the applicant fails the first knowledge test, additional tests shall be conducted, as needed, with the following frequency:

(a) A second test may be conducted on any day after the day of the first test;

(b) A third test may be conducted on any day after the day of the second test;

(c) A fourth test may be conducted on any day after the third test;

(d) A fifth test may be conducted no sooner than 28 days after the fourth test; and

(e) Any subsequent test may be conducted no sooner than 28 calendar days after the previous test.

(5) If a compelling reason is shown the DMV may waive the waiting period for a knowledge test required by section (4) of this rule. Reasons for waiving the waiting period include, but are not limited to:

(a) The person can demonstrate he or she failed the test due to a cognitive or functional impairment. A statement from the person's doctor describing how the impairment affects the person's ability to pass a knowledge test is required;

(b) The person can demonstrate that failure to pass the test will result in loss of his or her job or a job opportunity;

(c) The person was not given an oral test when an oral test was requested; or

(d) The person requested but was not given the test in his/her native language and the test is available in the language requested.

(6) The waiting period between knowledge test failures is determined by the number of times an applicant fails a specific type of test. For example, the failure of a Class C driver license knowledge test and a Class A commercial driver license knowledge test the same day is considered as one test failure for each knowledge test, not two failures.

(7) An applicant is cheating on a knowledge test if a DMV employee, during the test or when reviewing video from a surveillance camera, observes behaviors such as, but not limited to, the following:

(a) The applicant clearly using notes, a study guide, a copy of the test, or any other kind of written material that may provide the answer to a test question.

(b) The applicant clearly using an electronic device with the capability for sound, email, text messages, web access including, but not limited to, a cellular phone, personal digital assistant or wireless handheld device.

(c) The applicant clearly obtaining answers to test questions from another person, either verbally or through the use of any type of physical gesture or signal.

(8) DMV will determine that the applicant is cheating if a DMV office manager, office team leader, or designee confirms the observation of the DMV employee as described in section (7) of this rule.

(9) If DMV determines an applicant is cheating, DMV will:

(a) Stop the test if the applicant is still completing the test; or

(b) Cancel any license, permit or endorsement that was issued based on a passing test score, if the applicant was issued a driving privilege based on test score achieved through cheating.

(10) Except as otherwise provided in this section, if DMV determines an applicant cheated, the applicant must wait 90 days before he or she may take a subsequent knowledge test. DMV will provide the applicant written notice of the 90 day waiting period either by handing the applicant notice on the day of the test or by mail if the applicant left the office without such notice. DMV may waive the 90-day waiting period required under this section if the person provides proof the waiting period creates an extreme hardship. The person must provide evidence of the hardship such as, but not limited to:

(a) A statement from an employer that the person's inability to obtain driving privileges or an endorsement will result in the loss of a job or of a job opportunity because the job requires driving a motor vehicle; or

(b) A statement from a physician that the person or a member of the person's immediate family is in need of regular medical treatment and that there is no alternative transportation.

(11) When DMV determines an applicant cheated on a knowledge test as described in section (8) of this rule, the applicant may request an administrative review. The following apply to an administrative review request:

(a) DMV will notify the applicant of the right to request an administrative review at the time the test is stopped.

(b) The applicant must request an administrative review within 60 days from the date of notice. The 90-day waiting period will remain in effect and will not be rescinded or stayed by DMV pending the outcome of the administrative review.

(c) A request for an administrative review must be in writing and must include:

(A) The person's full name;

(B) The person's complete mailing address;

(C) The person's Oregon driver license number, identification card number or customer number, if available; and

(D) A brief statement of the facts and any evidence the person wants to present showing he or she should not be subject to the 90-day waiting period or proof of extreme hardship if the person is requesting a waiver of the 90-day period as described in section (9) of this rule.

(d) A request for an administrative review should also include the person's date of birth.

(e) To be received by DMV, the request for an administrative review must be:

(A) Personally delivered to DMV Headquarters, 1905 Lana Avenue NE, Salem, OR;

(B) Delivered by mail to DMV Headquarters, 1905 Lana Avenue NE, Salem OR 97314;

(C) Received by facsimile machine at FAX number (503) 945-5497; or

(D) Submitted through an online request at www.OregonDMV.com.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.200, 802.540, 807.070

Stats. Implemented: ORS 807.070, 807.530, 809.310

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0023; MV 8-1988, f. & cert. ef. 3-2-88; MV 16-1989, f. 8-25-89, cert. ef. 4-2-90; MV 7-1991, f. & cert. ef. 7-16-91; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 6-2007, f. 5-24-07, cert. ef. 9-1-07; DMV 6-2007, f. 5-24-07, cert. ef. 9-1-07; DMV 3-2009, f. & cert. ef. 2-20-09; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0096

Surrendered Driver License, Driver Permit or Identification Card

(1) When DMV issues an interim driver card or an interim identification card to an applicant under OAR 735-062-0094 or an applicant temporary permit under ORS 807.310, DMV will invalidate and return the driver license, driver permit or identification card the applicant surrendered. An invalidated driver license or driver permit may not be used as proof of driving privileges, but is not deemed cancelled under ORS 801.175.

(2) DMV will invalidate a surrendered driver license, driver permit or identification card by hole-punching the card.

(3) The invalidated driver license, driver permit or identification card must be destroyed by the applicant when:

(a) A valid driver license, driver permit or identification card issued and mailed by DMV is received by the applicant; or

(b) Driving privileges or rights to an identification card have been suspended, cancelled or revoked.

(4) A foreign driver license that is surrendered under a reciprocity agreement with the country that issued the license will be handled as specified in the agreement.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: ORS 807.024, 807.045, 807.060, 807.150, 807.160, 807.310, 807.540, 807.550, 807.580

Hist.: DMV 6-2009, f. & cert. ef. 3-20-09; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0110

Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) DMV will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if the applicant meets the requirements set forth in ORS 807.160 and this rule and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when the applicant:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes a residence address or mailing address from the address noted on the person's driver license, driver permit or identification card or adds a mailing address.

(c) Is a corrections officer, eligible employee, or household member of a corrections officer or eligible employee killed in the line of duty who has requested, in accordance with ORS 802.250 or 802.253, that department records show the address of the corrections officer's or eligible employee's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying for or is required to add or remove a restriction on the person's driver license or driver permit.

(f) Is applying for or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Requests that a veteran designation be added to or removed from his or her driver license, driver permit or identification card. To add a veteran designation, the applicant must provide proof the person is a veteran as set forth in OAR 735-062-0012(2).

(h) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(i) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(j) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(k) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

(l) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(m) Has not received his or her driver license, driver permit or identification card in the mail and the applicant does not meet the requirements under OAR 735-062-0092(3) for a reissued driver license, driver permit or identification card.

(n) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(o) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(p) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(q) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must:

(a) Provide a verifiable SSN, or proof that the person is not eligible for a SSN, as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(4) An applicant for a replacement commercial driver license or commercial instruction permit must:

(a) Certify driving type; and

(b) Provide proof of medical qualification as described in OAR 735-063-0060.

(5) An applicant for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(6) An applicant for a replacement driver license, driver permit, or identification card must surrender the license, driver permit or identification card replaced to DMV, if possible.

(7) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(8) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(9) Notwithstanding section (8) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(10) Notwithstanding subsection (3)(c) of this rule, DMV will issue a replacement driver license, driver permit or identification card using the applicant's previous photograph on file with DMV unless:

(a) The last photograph on file with DMV is older than nine years two months, or does not meet current quality standards for capturing a photograph as described in OAR 735-062-0016;

(b) The applicant is requesting the replacement driver license, driver permit or identification card because of a significant change in his or her physical appearance; or

(c) The applicant is requesting the replacement driver license, driver permit or identification card because he or she is changing the gender designation on record with DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.160
Stats. Implemented: ORS 807.160, 807.021, 807.220, 807.230, 807.280 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 24-2008, f. 9-11-08, cert. ef. 10-1-08; DMV 19-2010, f. 10-25-10, cert. ef. 1-1-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0125
Standards for Issuance of a Renewal or Replacement Driver License, Driver Permit or Identification Card Containing a Previous Photograph

(1) DMV may renew or replace a person's driver license, driver permit or identification card, in accordance with applicable statutes authorizing renewal or replacement, by issuing a renewal or replacement driver license, driver permit or identification card containing a photograph of the person already on file with DMV, if the applicant:

(a) Provides proof that he or she is a resident of or domiciled in Oregon as described in OAR 735-016-0040;

(b) Provides proof or previously has proven legal presence in the United States as required by OAR 735-062-0015. An applicant who has not previously provided proof to DMV of legal presence in the U.S. may provide a copy, satisfactory to DMV, of one or more documents required by OAR 735-062-0015(2), (3) or (4).

(c) Provides his or her SSN on the application form as required under OAR 735-062-0005. DMV will verify the SSN with the SSA unless the SSN provided has previously been verified;

(d) Submits a written statement to DMV establishing good cause why he or she is not able to appear and apply for the renewal or replacement driver license, driver permit or identification card at a DMV office and certifying that he or she will not be returning to Oregon within 270 days from the date of application;

(e) Provides proof that he or she is, in fact, the person to whom the driver license, driver permit or identification card to be renewed or replaced was issued; and

(f) Meets all other qualifications for the driver license, driver permit or identification card sought.

(2) Circumstances constituting "good cause" for purposes of subsection (1)(d) of this rule include, but are not limited to, the following:

(a) The applicant is temporarily in another jurisdiction or country for business reasons, employment or education, will be returning to Oregon, and continues to satisfy Oregon's residency requirements.

(b) The applicant is traveling outside of Oregon and the applicant's Oregon driver license, driver permit or identification card is lost, stolen or mutilated;

(c) The applicant is traveling outside of Oregon and the applicant's Oregon driver license, driver permit or identification card has expired or will expire before the person returns to Oregon; or

(d) The applicant has a medical condition or health problems that prevent him or her from applying for a renewal or replacement driver license, driver permit or identification card at a DMV field office and submits to DMV proof of the medical condition or health problems from the applicant's licensed health care provider.

(3) DMV will not issue a valid with previous photograph replacement or renewal driver license, driver permit or identification card to an otherwise qualified applicant, if the applicant makes a request to change name, date of birth or SSN.

(4) DMV will not issue a valid with previous photograph renewal driver license, driver permit or identification card to a person who provided proof of being legally present in the United States on a temporary basis under ORS 735-062-0015(5).

(5) Notwithstanding section (1) of this rule, DMV may issue a renewal or replacement driver license, driver permit or identification card containing a photograph of the applicant already on file with DMV, if the applicant has an Oregon driver license, driver permit or identification card and is on active duty in the United States Armed Forces stationed outside of Oregon who provides a copy of his or her:

(a) Most current Leave Earning Statement showing Oregon as his or her home on record;

(b) Federally-issued active duty Military identification card; and

(c) SSN to be verified with the SSA, if not previously verified.

(6) A spouse, domestic partner or dependent of a military person on active duty in the United States Armed Forces outside of Oregon who qualifies under section (5) of this rule, who has an Oregon driver license, driver permit or identification card may qualify for a renewed or replaced driver license, driver permit or identification card using the previous photograph, if the spouse, domestic partner or dependent provides a copy of the following:

(a) The military member's most current Leave Earning Statement showing Oregon as his or her home on record;

(b) The military member's active duty Military identification card;

(c) The spouse, domestic partner or dependent's Military identification card; and

(d) The spouse, domestic partner or dependent's Social Security number. DMV must verify the SSN with the SSA, if not previously verified.

(7) Notwithstanding section (3) of this rule, DMV may issue a renewal or replacement driver license, driver permit or identification card with a name change to an applicant who provides sufficient proof of full legal name as required by OAR 735-062-0014 and otherwise qualifies for a valid with previous photograph driver license, driver permit or identification card under section (5) or (6) of this rule.

(8) A replacement driver license, driver permit or identification card issued at a DMV office will contain the applicant's previous photo on file unless the applicant qualifies for a new photograph as defined in OAR 735-092-0110(10).

(9) DMV will not replace or renew a driver license, driver permit or identification card under this rule, if the applicant's most recent photograph on file with DMV is more than nine years and two months old.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110
Stats. Implemented: ORS 807.110 & 807.400
Hist.: DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 25-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 14-2014, f. & cert. ef. 12-1-14

735-062-0200
Conversion From Another Jurisdiction's Commercial Driver License

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require an applicant for a com-

mercial driver license in this state who currently holds a CDL issued by another state or the District of Columbia to:

(a) Take and pass the Class C knowledge test and a vision screening; and

(b) Take and pass the CDL skills tests and knowledge test required, if the person applies for a higher class license.

(2) DMV may waive all tests, except the Class C knowledge test and the hazardous materials endorsement knowledge test, if the applicant applies for a license equal to the CDL the applicant has been issued by another state or the District of Columbia and the CDL has not been expired for more than one year.

(3) DMV may require an applicant to take any or all CDL tests prior to issuing a CDL.

(4) DMV will submit an inquiry through the Commercial Driver License Information System (CDLIS) and the National Driver Register (NDR)/Problem Driver Pointer System (PDPS) before issuing an Oregon CDL. DMV will not issue an Oregon CDL if the inquiry shows:

(a) The applicant has a current and valid CDL, issued by another jurisdiction unless the CDL is surrendered to DMV or the applicant certifies it has been lost or destroyed;

(b) The applicant's driving privileges are suspended, revoked or canceled in another jurisdiction;

(c) The applicant is disqualified from operating a commercial motor vehicle in another jurisdiction; or

(d) The applicant is not medically qualified for CDL issuance and the applicant does not provide other proof of medical qualification as described in OAR 735-063-0060.

(5) The driving record of the applicant from another jurisdiction will become a part of the Oregon driving record as provided in OAR 735-062-0210.

(6) A person whose driving privileges have been suspended, revoked, or canceled in another jurisdiction or who has been disqualified from operating a commercial motor vehicle in another jurisdiction, must be eligible for valid driving privileges in the other jurisdiction before an Oregon CDL may be issued. When the person is eligible for valid driving privileges in the other jurisdiction, he or she may ask that DMV check CDLIS and NDR/PDPS to verify the eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050 & 807.070
Stat. Implemented: ORS 807.045
Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2003, f. & cert. ef. 11-18-03, Remumbered from 735-060-0015; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 4-2007, f. 5-24-07, cert. ef. 6-5-07; DMV 17-2007, f. 12-24-07, cert. ef. 1-1-08; DMV 24-2008, f. 9-11-08, cert. ef. 10-1-08; DMV 20-2010, f. 11-19-10, cert. ef. 1-1-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 14-2014, f. & cert. ef. 12-1-14

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Rule Caption: Implements Chapter 14, Oregon Laws 2014, Relating to Vehicle Dealer Expedited Titling Services
Adm. Order No.: DMV 15-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 735-022-0065
Subject: The adoption of 735-022-0065 implements legislation enacted by the 2014 Legislative Assembly. Chapter 14, Oregon Laws 2014 requires the Department of Transportation to: (1) provide expedited titling services to vehicle dealers; (2) specify the manner for making a request for an expedited title to the department; and (3) adopt rules establishing criteria and procedures for providing expedited titling services.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-022-0065
Vehicle Dealer Expedited Title Services

This rule establishes the criteria and requirements for expedited titling services as provided under chapter 14 Oregon Laws 2014.

(1) A vehicle dealer who requests an expedited Oregon title must hold a current valid vehicle dealer certificate issued or renewed under ORS 822.020 or 822.040, and be designated as an agent of DMV pursuant to ORS 802.031 and OAR 735-0150-0040. The dealer must submit the following to DMV for each expedite request:

(a) A completed and signed Application for Oregon title, the appropriate title fee, and any other required documents or fees. The application must have the dealer transaction box checked and in the REMARKS section, include the dealer's certificate number and the word "EXPEDITE";

(b) The fee established under chapter 14 Oregon Laws 2014 for providing an expedited title. The fee is non-refundable;

(c) To request to pick up a processed title at the DMV Business Regulation Section in Salem, a written request to pick up the title. The request must contain the phone number, email address and name of the person that DMV will notify when the title is ready for pick up. If no such request is submitted, the title will be sent by U.S. Mail to the person and address specified on the title application.

(2) Applications for dealer expedited titling services may be:

(a) Mailed to: OREGON VEHICLE DEALER EXPEDITE TITLE SERVICE, DMV Services, 1905 Lana Avenue NE, Salem, Oregon 97314; or

(b) Hand delivered to DMV Business Regulation Section, 1965 Lana Avenue NE, Salem, Oregon 97314. Drop off times are Monday through Friday, 8 a.m. to 4:30 p.m., except state holidays or a closure due to inclement weather.

(3) Upon notification by DMV, a title requested for pick up under subsection (1)(c) of this rule will be available for pick up at DMV Business Regulation Section, 1965 Lana Avenue NE, Salem, Oregon 97314. Pick up times are Monday through Friday, 8 a.m. to 4:30 p.m., except state holidays or a closure due to inclement weather:

(a) Only the person whose name is printed on a title, or a third party authorized by that person, may pick up a processed title. An authorized third party must submit a completed and signed Third Party Authorization to Pick up a Dealer Expedite Title (DMV Form 735-7287) at the time of pick up.

(b) The person picking up a title must present valid government-issued photo identification at the time of pick up.

(4) Expedited titling services under this rule:

(a) Are limited to an application for title or replacement title;

(b) May be delayed when a title application is missing required information, documents or fees.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.031, 803.140, 803.207, 822.043, Ch. 14 OL 2014
Stats. Implemented: Ch. 14 OL 2014
Hist.: DMV 15-2014, f. 12-1-14, cert. ef. 1-1-15

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Removing Personal Property from Illegal Camping on State Highway Rights of Way
Adm. Order No.: HWD 9-2014
Filed with Sec. of State: 11-26-2014
Certified to be Effective: 12-8-14
Notice Publication Date: 10-1-2014
Rules Amended: 734-035-0010, 734-035-0040
Subject: The Department of Transportation may remove personal property that is left on state highway rights of way. This rule amendment clarifies the procedures outlined in OAR 734-035-0010 and 734-035-0040 pertaining to the removal of personal property specifically from camping on state highway rights of way that are not closed to public entry under OAR 734-035-0200 as agreed to in the recent Carr et al lawsuit settlement agreement.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-035-0010
Purpose

The purpose of OAR 734-035-0010 through 734-035-0040 is to outline a process for removing personal property from state highway rights of way by the Department of Transportation under ORS 377.650 and 377.653 where the personal property is reasonably believed to be the result of illegal camping.

Stat. Auth.: ORS 184.616, 184.619 & 377.653
Stats. Implemented: ORS 377.650 & 377.653
Hist.: HWY 12-1990(Temp), f. & cert. ef. 7-20-90; HWY 16-1990, f. & cert. ef. 12-28-90; HWD 4-2012, f. 2-21-12, cert. ef. 2-24-12; HWD 3-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14; HWD 5-2014(Temp), f. 7-9-14, cert. ef. 7-10-14 thru 12-21-14; HWD 9-2014, f. 11-26-14, cert. ef. 12-8-14

734-035-0040
Scheduling and Notice; Costs

(1) In locations where camping or staying overnight regularly occurs, signs may be posted by the Department announcing that camping is not allowed according to OAR 734-020-0095. In locations not open to public

entry, signs will be posted by the Department according to 734-035-0200. Personal property left on state highway right of way and reasonably believed to be the result of illegal camping may be removed from the right of way after the Department posts proper notice in accordance with this rule.

(2) Written notice will be posted in a conspicuous location in the general vicinity of the personal property to be removed. When the personal property is under a bridge, along a river, and within the urban growth boundary, notice will be posted in a conspicuous location within 30 feet of the personal property. The notice is to be posted at least ten days but not more than 19 days prior to removal of the personal property by the Department. In locations not open to public entry, notice is to be posted at least 24 hours prior to removal of the personal property by the Department.

(3) Notwithstanding subsection (2) of this rule, when the Department determines that either:

(a) personal property on highway right of way in locations not closed to public entry is in violation of environmental laws, the Department may remove the personal property 24 hours after posting notice.

(b) an exceptional emergency exists, personal property may be removed without notice described in this rule. An "exceptional emergency" is a situation which must be immediately addressed to avoid greater harm such as site contamination by hazardous materials or that either the personal property itself of individuals entering the location to retrieve the personal property presents an immediate danger to human life or safety.

(4) The written notice must be laminated or weather resistant and include:

(a) The date the notice was posted; for locations not open to public entry, the date and time the notice was posted;

(b) The date by which personal property must be removed by the property owner;

(c) The time frame in which the Department may remove the personal property; for locations not open to public entry, the Department may remove the personal property within 24 hours to 7 days after the date and time of the posting.

(d) The telephone number where information on recovering the property may be obtained; and

(e) The length of time the property will be stored by the Department.

(5) If the notice is removed during the posting period, the Department may proceed with the removal of the personal property but will replace the notice at the site to inform property owners about how to claim the personal property.

(6) Written notices will be in both English and Spanish.

(7) A $2 charge may be made for the cost of removal and storage of the personal property. No charge will be made for the cost of the personal property removal generally.

Stat. Auth.: ORS 184.616, 184.619 & 377.653
Stats. Implemented: ORS 377.650 & 377.653
Hist.: HWY 12-1990(Temp), f. & cert. ef. 7-20-90; HWY 16-1990, f. & cert. ef. 12-28-90; HWD 4-2012, f. 2-21-12, cert. ef. 2-24-12; HWD 9-2014, f. 11-26-14, cert. ef. 12-8-14

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Rule Caption: Designation and Posting of Department Real Property as Closed to Public Entry
Adm. Order No.: HWD 10-2014
Filed with Sec. of State: 11-26-2014
Certified to be Effective: 12-8-14
Notice Publication Date: 10-1-2014
Rules Adopted: 734-035-0200
Rules Repealed: 734-035-0200(T)
Subject: This rule adopts language from a temporary rule filed on June 25, 2014 and addresses ongoing risks to personal and public safety, infrastructure, and natural resources. This rule is intended to enable ODOT to safeguard designated areas outside of the travel surface, shoulders, and ditches of state highways against unauthorized public access, provide clarity and direction to ODOT staff, remedy existing unsanitary or unsafe conditions, and facilitate ODOT and contractor access to perform work to construct, operate and maintain the State of Oregon's transportation infrastructure.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-035-0200
Designation and Posting of Real Property as Closed to Public Entry

(1) The purpose of this rule is to identify the circumstances under which the Department of Transportation will designate and post real property owned or controlled by the department as closed to public entry for purposes other than those authorized by statute, rule or express permission of the department. This rule does not restrict the use of the highway for transportation purposes or access onto the highway allowed under Oregon Administrative Rule Chapter 734, Division 51.

(a) The department manager responsible for the real property may designate real property as closed to public entry for the following purposes:

(A) To ensure the safe construction, maintenance, operation and use of transportation facilities;

(B) To ensure the health and safety of department employees, contractors, or the general public;

(C) To prevent damage or loss to department property;

(D) To prevent damage to natural resources, including but not limited to soil, water, wetlands, and other environmentally-sensitive lands;

(E) To prevent damage, vandalism, theft or other loss of cultural or archeological resources.

(b) Decisions to designate real property as closed to pubic entry made on or after January 1, 2015 will be documented by the department manager.

(c) The department will provide notice of the designation under section (1) in a manner reasonably calculated to apprise the public that entry is prohibited, including but not limited to the posting of conspicuous signage.

(d) Signage posted under this section will, at minimum, include the statement of "No Trespass."

(2) Public entry or placing of any personal property upon department real property designated as closed to public entry under this rule is prohibited. Violators may be subject to citation under the laws of the State or local ordinance and asked to leave the area without delay.

Stat, Auth.: ORS 184.616, 184.619, 366.205 & 810.030
Stats. Implemented: ORS 366.205 & 810.030
Hist.: HWD 4-2014(Temp), f. & cert. ef. 6-25-14 thru 12-21-14; HWD 6-2014(Temp), f. & cert. ef. 7-9-14 thru 12-21-14; HWD 8-2014(Temp), f. & cert. ef. 8-20-14 thru 12-21-14; HWD 10-2014, f. 11-26-14, cert. ef. 12-8-14

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Health Licensing Office
Chapter 331

Rule Caption: Amend denturist practical examination to be approved by the board instead of board administered.
Adm. Order No.: HLA 7-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 10-1-2014
Rules Amended: 331-410-0050
Subject: Amend OAR 331-410-0050 to state that the Board of Denture Technology "approves" the practical examination rather than "administers" the practical examination. This allows the National Denturists Association to administer the written and practical examination with approval from the Board.
Rules Coordinator: Samantha Patnode—(503) 373-1917

331-410-0050
Qualification and Requirements for Practical Examination

(1) To be qualified to take the board approved practical examination the individual must submit official transcripts and documentation of 1,000 hours supervised clinical practice listed in OAR 331-410-0035(3)(a);

(2) To be scheduled to take the board approved practical examination, applicants must submit a form prescribed by the Agency and pay required fees at least 60 calendar days prior to the examination date.

(3) A practical examination candidate must provide the following at the time of practical examination:

(a) Government issued photographic identification listed under OAR 331-030-0000 proving that the practical examination candidate is the individual scheduled to take the practical examination;

(b) Government issued identification proving the patient is 18 years of age. See identification options under ORS 331-030-0000;

(c) An oral health certificate for the patient signed by a dentist, physician, nurse practitioner or a licensed denturist with the oral pathology endorsement, within 30 days of the practical examination, stating the patient's oral cavity is substantially free from disease and mechanically sufficient to receive a denture; and

(d) Agency prescribed practical examination candidate and patient forms.

(4) The patient must be completely edentulous;

(5) If a patient does not speak English the candidate for practical examination must ensure an interpreter is available for examination proc-

tors to communicate with patient. The interpreter is prohibited from being the practical examination candidate. Any costs incurred for interpreter services are the responsibility of the practical examination candidate.

(6) A practical examination candidate may be disqualified from taking the practical examination if any requirements of this rule are not met.

Stat. Auth.: ORS 680.520 & 680.565
Stats. Implemented: ORS 680.520 & 680.565
Hist.: HDLP 3-1998, f. 6-26-98, cert. ef. 7-1-98; HDLP 1-2001, f. 3-21-01, cert. ef. 4-1-01; HLO 2-2004, f. 6-29-04, cert. ef. 7-1-04; HLA 10-2013, f. & cert. ef. 7-1-13; HLA 4-2014(Temp), f. & cert ef. 7-1-14 thru 12-28-14; HLA 7-2014, f. & cert. ef. 12-1-14

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Rule Caption: Rules must be updated to keep pace with guideline changes and advances in the profession.
Adm. Order No.: HLA 8-2014
Filed with Sec. of State: 12-5-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 9-1-2014
Rules Adopted: 331-810-0010, 331-810-0025, 331-810-0031, 331-810-0060
Rules Amended: 331-800-0010, 331-800-0020, 331-810-0020, 331-810-0040, 331-820-0020, 331-830-0010, 331-830-0020, 331-840-0010, 331-840-0020, 331-840-0040, 331-810-0055, 331-840-0060, 331-840-0070, 331-850-0010
Rules Repealed: 331-810-0030, 331-810-0038, 331-810-0050, 331-820-0010, 331-830-0005, 331-840-0030, 331-840-0050
Subject: The Sex Offender Treatment Board's rules regarding the certification of clinical sex offender treatment therapists and associate sex offender therapists must be brought up to date to keep pace with changes to guidelines, ethics and advances in the profession.
Rules Coordinator: Samantha Patnode—(503) 373-1917

331-800-0010
Definitions

The following definitions apply to OAR 331-800-0010 to 331-850-0010:

(1) "Affidavit of Licensure" means an original document or other approved means of verifying an authorization to practice (licensure or registration), status and history, including information disclosing all unresolved or outstanding penalties and/or disciplinary actions. Refer to OAR 331-030-0040.

(2) ATSA means the Association for the Treatment of Sexual Abusers.

(3) "Direct clinical contact" means services provided with the primary purpose of assessment and developing and implementing a treatment plan focused on sex-offense-related behavior.

(4) "Direct supervision" includes a minimum of two hours of supervision by a certified clinical sex offender therapist for each 45 hours of direct clinical contact with sex offenders as specified in ORS 675.365(4).

(5) "Direct treatment services" means individual, group or family therapy that focuses on the sex offense-related behavior; the sex offender must be present.

(6) "Official transcript" mean an original document certified by an accredited college or university indicating hours and types of course work, examinations and scores that the student has completed. The accredited college or university must submit the transcript by mail or courier directly to the Office in a sealed envelope.

(7) "Ongoing oversight" means a supervisor is monitoring the service delivery of a certified associate sex offender therapist by direct and indirect means.

(8) "Reciprocity" means, according to ORS 675.380, certification, registration or licensure in another state based on standards of training, education and experience that are similar to those required for certification in Oregon as a certified clinical sex offender therapist or a certified associate sex offender therapist as specified in 675.375.

(9) "Treatment plan" means a written statement of intended care and services as documented in the evaluation that details how the sex offender's treatment needs will be met while protecting the community during the treatment.

Stat. Auth.: ORS 675.410 & 676.615
Stat. Implemented: ORS 675.360 - 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10; HLA 4-2010, f. & cert. ef. 5-18-10; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-800-0020
Fees

(1) An applicant or certificate holder are subject to the provisions of OAR 331-010-0010 and 331-010-0020 regarding the payment of fees, penalties and charges.

(2) Fees established by the Oregon Health Licensing Office pursuant to 676.592 are as follows:

(a) Application: $75.
(b) Certification: $325 — valid for one year.
(c) Renewal: $325 — valid for one year.
(e) Replacement: $25.
(f) Duplicate: $25.
(g) Late fee(s): $50 for each year of inactive status up to three years.
(h) Affidavit of licensure: $50.
(i) Administrative fee: $25.

Stat. Auth.: ORS 675.405, 675.410 & 676.625
Stat. Implemented: ORS 675.405
Hist: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2008, f. 9-15-08, cert. ef. 10-1-08; HLA 2-2010, f. & cert. ef. 3-15-10; HLA 4-2010, f. & cert. ef. 5-18-10; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0010
Clinical Sex Offender Therapist Certification

(1) Only a clinical sex offender therapist certified under ORS 675.375 may use the title "certified clinical sex offender therapist."

(2) A certification is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

Stat. Auth.: ORS 675.410 & 676.615
Stat. Implemented: ORS 675.360 & 675.410
Hist.: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0020
Application Requirements for Clinical Sex Offender Therapist Certification

An individual applying for certification as a clinical sex offender therapist must:

(1) Submit a completed application form prescribed by the Office.

(2) Submit proof of having at least a master's degree in a Board-approved behavioral science field. For a current list of Board-approved degrees, go to oregon.gov/OHA/HLO/SOTB.

(3) Submit proof of having a valid Oregon mental health professional license. A mental health professional means the individual is licensed to practice without supervision as a psychiatrist, psychiatric nurse practitioner, psychologist, psychological associate, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist who provides sex offender treatment of adults, juveniles or the functionally disabled.

(4) Submit proof of having at least 2,000 hours of direct clinical contact with sex offenders not less than three years and not more than six years ago. The hours include:

(a) 1,000 hours of direct treatment services; and
(b) 500 hours of evaluations; and
(c) 500 hours of treatment-plan related activity, including report writing, clinical consultations, case management, charting, peer review and consultations, meeting with attorneys, parole officers, families, victims and other members of the sex offender's social network.

(5) Submit proof of having at least 60 hours of formal training specific to sex offender evaluation, assessment and direct treatment provision. The training must have been obtained in the three years prior to the application date.

(6) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application and license fees.

(7) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004.

(8) Pay fees pursuant to OAR 331-800-0020.

(9) Pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.

Stat. Auth.: ORS 675.375, 675.400 & 676.615
Stat. Implemented: ORS 675.375 & 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10; HLA 4-2010, f. & cert. ef. 5-18-10; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0025
Associate Sex Offender Therapist Certification

(1) Only an associate sex offender therapist certified under ORS 675.375 may use the title "certified associate sex offender therapist."

(2) An associate sex offender therapist certification is valid for one year and becomes inactive on the last day of the month one year from the date of issuance.

(3) An associate sex offender therapist must be under the direct supervision of a certified clinical sex offender therapist.

(4) Submit a completed application form prescribed by the Office, which must contain the information listed in OAR 331-030-0000 and be accompanied by payment of the required application and license fees.

(5) Pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.

Stat. Auth.: ORS 675.410 & 676.615
Stat. Implemented: ORS 675.360 & 675.410
Hist.: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0031
Application Requirements for Associate Sex Offender Therapist Certification

In individual applying for certification as an associate sex offender therapist must:

(1) Submit a completed application form prescribed by the Office.

(2) Submit proof of having at least a bachelor's degree in the Board-approved behavioral sciences. For a list of Board-approved degrees, go to oregon.gov/OHA/HLO/SOTB.

(3) Submit proof of having at least 1,000 hours of direct clinical contact with sex offenders.

(4) Be under the direct supervision of a certified clinical sex offender therapist.

(5) Submit proof of having at least 30 hours of formal training specific to sex offender evaluation, assessment and direct treatment provision. The training must have been obtained in the three years prior to the application date.

(6) Pay fees pursuant to OAR 331-800-0020.

(7) Pass a fingerprint-based criminal background check pursuant to OAR 331-030-0004.

Stat. Auth.: ORS 675.375, 675.400, 676.615
Stat. Implemented: ORS 675.375, 675.400
Hist.: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0040
Reciprocity

An individual applying through reciprocity must submit:

(1) Submit a completed application form prescribed by the Office.

(2) An affidavit of licensure, pursuant to 331-030-0040, demonstrating proof of holding a current certification as a clinical sex offender therapist or associate sex offender therapist in another state, and has no current or pending disciplinary action against the certification. The certification requirements must be substantially equivalent to Oregon certification requirements pursuant to ORS 675.380.

Stat. Auth.: ORS 675.375, 675.380, 675.400 & 676.615
Stat. Implemented: ORS 675.375, 675.380 & 675.400
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 2-2010, f. & cert. ef. 3-15-10; HLA 4-2010, f. & cert. ef. 5-18-10; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0055
Supervision — Clinical Sex Offender Therapists

A certified clinical sex offender therapist who is supervising a certified associate sex offender therapist must:

(1) Enter into a formal contract prescribed by the Office with a certified associate sex offender therapist that specifies:

(a) The duties of a certified associate sex offender therapist;

(b) The scope and focus of the supervision; and

(c) Frequency and durations of meetings between the supervisor and the certified associate sex offender therapist to review the certified associate sex offender therapist's professional performance.

(2) Document dates and content of supervision meetings and make the information available to the Office if requested.

(3) Provide ongoing oversight to the certified associate sex offender therapist as defined in 331-800-0010 (7).

(4) Sign reports and correspondence prepared by the certified associate sex offender therapist.

(5) Supervise no more than four full-time or the equivalent certified associate sex offender therapists.

(6) Ensure that the certified associate sex offender therapist has sufficient training, education, background, preparation and supervision in order to evaluate and treat sex offenders.

(7) Notify the Office in writing within 10 business days of ending the supervision contract.

(8) Maintain supervision records for a minimum of 5 years after the last day of supervision. Upon request, you must make the records available to the Office.

Stat. Auth.: ORS 675.375, 675,400, 675,410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 1-2014(Temp), f. 1-16-14, cert. ef. 1-17-14 thru 7-16-14; HLA 3-2014, f. 5-29-14, cert. ef. 6-1-14; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-810-0060
Supervision — Associate Sex Offender Therapists

A certified associate sex offender therapist must:

(1) Enter into a formal contract prescribed by the Office with a certified clinical sex offender therapist that specifies:

(a) The duties of a certified associate sex offender therapist;

(b) The scope and focus of the supervision; and

(c) Frequency and durations of meetings between the supervisor and the certified associate sex offender therapist to review the certified associate sex offender therapist's professional performance.

(2) Notify the Office in writing within 10 business days of ending the supervision contract.

(3) Identify themselves as a certified associate sex offender therapist on all materials relating to the provision of sex offender treatment or the offering or advertising of sex offender treatment. This disclosure includes, but is not limited to: letterhead, business cards, telephone directory listings, internet postings, brochures, insurance billing and any other public or private materials. These representations must include the individual's title as a "certified associate sex offender therapist" and the supervisor's name and designation "supervisor."

(4) Document dates and content of supervision meetings. Upon request, you must make the records available to the Office.

Stat. Auth.: ORS 675.375, 675,400, 675,410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-820-0020
Certification Issuance and Renewal

(1) A certification is subject to the provisions of OAR Chapter 331, division 30 regarding the renewal of a certification, and provisions regarding authorization to use the title, identification and requirements for issuance of a duplicate certification.

(2) Certification renewal under this rule is valid for one year.

(3) Pass a state criminal background check pursuant to OAR 331-030-0004;

(4) Certification renewal: To avoid late fees, certification renewal must be made prior to the certification entering inactive status. The certification holder must submit the following:

(a) Renewal application form;

(b) Payment of renewal fee pursuant to OAR 331-800-0020;

(c) Attest to having obtained required annual continuing education under OAR 331-830-0010 on a form prescribed by the Office, whether the certification is current or inactive; and

(d) Attest to having at least 100 hours of clinical experience per year, of which 50 hours is direct clinical contact with sex offenders;

(5) Inactive certification renewal: A certification may be inactive for up to three years. A certification holder in inactive status is not authorized to use the title. When renewing, the inactive certification holder must submit:

(a) Renewal application form;

(b) Payment of late and certification fees pursuant to OAR 331-800-0020;

(c) Attest to having obtained required annual continuing education under OAR 331-830-0010 on a form prescribed by the Office, whether certification is current or inactive;

(d) Attest to having at least 100 hours of clinical experience per year, of which 50 hours is direct clinical contact with sex offenders;

(6) Expired certification: A certification that has been inactive for more than three years is expired and the certification holder must reapply for certification and meet the requirements listed in OAR 331-810-0020 or 331-810-0030.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stats. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-830-0010
Continuing Education Requirements

(1) To maintain certification, clinical and associate sex offender treatment therapists must complete a minimum of 1.5 credits or 15 hours every year of continuing education specific to the evaluation and treatment of sex offenders.

(2) Each certification holder must document compliance with the continuing education requirement through attestation on the certification renewal application. Certification holders are subject to provisions of OAR 331-830-0020 pertaining to periodic audit of continuing education.

(3) Continuing education must relate to sex offender treatment taught by a mental health professional with experience in the field.

(4) CEU credit will be awarded based on the following criteria:

(a) Completion and passing of academic courses taken from an accredited college or university at the same rate of credit established by that institution;

(b) Completion of professional courses that meet academic course requirements in content, instruction and evaluation will be assigned CEU credit at the same rate as academic courses.

(c) Courses that do not meet standards as set forth in paragraphs (a) and (b) of this subsection, such as workshops, symposiums, seminars, laboratory exercises, or any applied experience with or without formal classroom work may receive credit at the rate of 1.0 CEU for each 10 hours of attendance.

(5) Documentation supporting compliance with continuing education requirements must be maintained for two years following renewal, and must be available to the Office upon request.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-830-0020
Continuing Education: Audits, Required Documentation & Sanctions

(1) The Office will audit a percentage of certifications, as determined by the Board, to verify compliance with continuing education requirements.

(2) Certification holders who are selected for audit must submit satisfactory evidence of participation in required continuing education and having at least 100 hours of clinical experience per year, of which 50 hours is related to direct clinical contact, with sex offenders within 30 days of the audit notice.

(3) If selected for audit, the certification holder must provide documentation that includes:

(a) An official transcript from the accredited college or university;

(b) A certificate of completion that includes the ATSA approval number;

(c) A certificate of completion or other documentation that includes the Office preapproval number;

(d) A certificate of completion or other documentation for a class or training provided by a mental health association or regulatory board.

(4) If documentation of continuing education is incomplete, the registrant has 30 days from the date of notice to submit further documentation to substantiate having completed the required continuing education.

(5) Failure to meet continuing education requirements shall constitute grounds for disciplinary action, which may include, but is not limited to, assessment of a civil penalty and suspension or revocation of the certification.

Stat. Auth.: ORS 675.375, 675.400, 675.410, 676.615
Stat. Implemented: ORS 675.375, 675.400, 675.410
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08: HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-840-0010
Standards of Practice

(1) The standards set forth in OAR chapter 331, division 840 apply to all certified clinical sex offender therapists and certified associate sex offender therapists as specified in ORS 675.365(3).

(2) Failure to comply with these standards may constitute unprofessional conduct, which is subject to discipline under ORS 676.612.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615
Stats. Implemented: ORS 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-840-0020
Ethical Principles

The Sex Offender Treatment Board adopts the 2014 Association for the Treatment of Sexual Abusers (ATSA) Professional Code of Ethics and pages 1-15 of the Ethical Principles - to the extent it does not conflict with ORS 675.360 through 675.410, 676.605 through 676.625 - and any rules adopted by the Office. Documents are available at www.atsa.com/

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615 Stats. Implemented: ORS 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-840-0040
Mandatory Reporting

(1) Authorization holders are required to report to the Office any conviction, determination or finding of which they have personal knowledge that any person certified as a clinical sex offender therapist or associate sex offender therapist has committed an act that constitutes unprofessional conduct.

(2) Reports under this section must be made in writing and include the name, address, and telephone number of the person making the report, the name and address of the person about whom the report is made and complete information about the circumstances that prompted the report.

Stat. Auth.: ORS 675.390, 675.400, 675.410, 676.607, 676.612, 676.615
Stats. Implemented: ORS 163, 419B, 675.390, 675.400
Hist.: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-840-0060
Sex Offender Records

(1) Therapists must maintain documentation for each sex offender relevant to health history, clinical examinations and treatment and financial data.

(2) Records must include:

(a) Sex offender's name, address, telephone number and dates of service;

(b) Health history related to sex offender evaluation or treatment plan(s), including referral to other mental health-care provider or physician.

(c) Description of services — chart notes — including any complications. Chart notes must include the recorder's initials, certification number and professional title if multiple practitioners provide service to the sex offender.

(3) Therapist's name, license number, professional title or abbreviation, and signature or initials somewhere on the documentation as a means of identifying the person who is providing service to the sex offender. This information may be affixed to the record(s) in the form of a professional stamp or handwritten entry.

(4) Sex offender records and documentation must be retained for at least seven years after the therapist stops working with the sex offender.

Stat. Auth.: ORS 675.390, 675.4100, 675.410, 676.615
Stats. Implemented: ORS 675.390, 675.400, 675.410
Hist: HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-840-0070
Practice Standards and Guidelines

The Board adopts the following as the practice standards and guidelines for all certified clinical sex offender therapists and certified associate sex offender therapists:

(1) Adult Male Sex Offenders: The 2014 Association for the Treatment of Sexual Abusers (ATSA), Practice Standards and Guidelines. A copy of the Practice Standards and Guidelines may be purchased at the website: http://www.atsa.com/form.html. The information is also available by contacting ATSA: 4900 S.W. Griffith Drive, Suite 274, Beaverton, Oregon U.S.A. 97005, Phone: (503) 643-1023, Fax: (503) 643-5084, E-mail: atsa@atsa.com.

(2) Juvenile Sex Offenders: Practice Standards and Guidelines, adopted by the agency and board, January, 2010. A copy may be accessed on the agency website: www.oregon.gov/OHA/HLO/SOTB. The information is also available by contacting the agency at: 700 Summer St. NE, Suite 320, Salem, OR 97301-1287. Phone: (503) 378-8667, fax: (503) 585-9114, email: hlo.info@state.or.us.

(3) Sex Offenders with Intellectual and Other Developmental Disabilities: Practice Standards and Guidelines, adopted by the agency and board, January, 2010. A copy of the Practice Standards and Guidelines may be accessed at the agency website: www.oregon.gov/OHA/HLO/SOTB. The information is also available by contacting the agency at: 700 Summer St. NE, Suite 320, Salem, OR 97301-1287. Phone: (503) 378-8667, Fax: (503) 585-9114, email: hlo.info@state.or.us.

(4) Failure to comply with OAR chapter 331, division 840 may result in disciplinary action under ORS 676.612.

(5) Certified clinical sex offender treatment therapists and certified associate sex offender treatment therapists must use treatment modalities that are based on empirical research with regard to favorable treatment outcomes and are professionally accepted in the field of sex offender treatment of adults, juveniles, and functionally disabled individuals with sexual behavior problems.

Stat. Auth.: ORS 676.605, 676.606, 675.615, 675.400, 675.410 & 675.360

Stats. Implemented: ORS 676.360, 676.605, 676.606, 676.615, 675.400 & 676.410
Hist.: HLA 2-2010, f. & cert. ef. 3-15-10; HLA 4-2010, f. & cert. ef. 5-18-10; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

331-850-0010
Investigative Authority

The Office may initiate and conduct investigations relating to the practice of sex offender treatment pursuant to ORS 676.608, and may take appropriate disciplinary action in accordance with the provisions of 676.612 and 675.385.

Stat. Auth.: ORS 675.385, 676.608, 676.612
Stats. Implemented: ORS 675.385, 676.608, 676.612
Hist.: HLA 1-2008(Temp), f. 3-14-08, cert. ef. 3-15-08 thru 9-1-08; HLA 2-2008, f. 5-27-08, cert. ef. 6-1-08; HLA 8-2014, f. 12-5-14, cert. ef. 1-1-15

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Health Licensing Office, Behavior Analysis Regulatory Board
Chapter 824

Rule Caption: Affidavit option is added to documentation requirements for registration with the Behavior Analysis Regulatory Board.
Adm. Order No.: BARB 2-2014(Temp)
Filed with Sec. of State: 11-24-2014
Certified to be Effective: 12-2-14 thru 5-29-15
Notice Publication Date:
Rules Amended: 824-030-0030
Subject: Licensed health care professionals applying for registration with the Behavior Analysis Regulatory Board have an affidavit option if required documentation cannot be acquired.
Rules Coordinator: Samantha Patnode—(503) 373-1917

824-030-0030
Registration of Licensed Health Care Professional

An individual applying for registration as a Licensed Health Care Professional must:

(1) Submit a completed application form approved by the Board, which must contain the information listed in OAR 824-010-0040 and be accompanied by payment of the required application fees;

(2) Submit affidavit of licensure as a Licensed Health Care Professional.

(3) Submit an official transcript demonstrating attainment of at least a master's degree in any of these areas of study:

(a) Behavior analysis;
(b) Clinical psychology;
(c) Counseling;
(d) Developmental psychology;
(e) Education;
(f) Medicine — Medical doctor/doctor of osteopathic medicine;
(g) Occupational therapy;
(h) Physical therapy
(i) School psychology;
(j) Social Work;
(k) Speech/language pathology.

(4) Attest to having clinical experience treating individuals diagnosed with autism spectrum disorder.

(5) Provide all applicable evidence of sufficient competency to practice applied behavior analysis as defined in 824-010-0005(3). Evidence must include:

(a) Coursework — submission of official transcripts and other official documentation such as syllabi that demonstrates successful completion of graduate-level coursework in the areas (A)–(E). If coursework was obtained before Jan. 1, 2005, and other official documentation cannot be obtained, the applicant must provide their curriculum vitae and an affidavit. The affidavit must include an attestation that the coursework was completed, a list of the course(s) in which the content listed below was covered, and an explanation detailing why the official documentation is unavailable.

(A) Foundations of behavior analysis — 45 classroom hours;

(B) Behavioral assessment related to behavior analysis — 35 classroom hours;

(C) Research methods related to behavior analysis — 20 classroom hours;

(D) Behavioral change related to behavior analysis — 45 classroom hours;

(E) Observation and measurement related to behavior analysis — 20 classroom hours.

(b) 1,200 hours of supervised or mentored clinical experience with a professional with expertise in applied behavior analysis. Supervisor or mentor must provide a curriculum vitae and complete a form approved by the Board. If the required supervised or mentored clinical experience was obtained before Jan. 1, 2005, and the supervisor or mentor's curriculum vitae and form cannot be obtained, the applicant must provide an affidavit and their curriculum vitae. The affidavit must include an attestation that the 1,200 hours of supervised or mentored clinical experience was completed and an explanation detailing why the official documentation is unavailable.

(c) At least one example of professional development, such as a peer-reviewed publications or presentations; certification in an applied behavior analysis-based treatment model; a letter of reference that includes writer's curriculum vitae regarding the observation of the applicant's practice of behavior analysis with individuals with autism spectrum disorder; professional continuing education in applied behavior analysis completed within the last three years. If you have submitted an affidavit in sections (a) or (b) or both, two additional examples of professional development must be submitted.

(6) Submit required registration fees.

Stat. Auth.: ORS 676.800
Stats. Implemented: ORS 676.800
Hist.: BARB 1-2014, f. 10-21-14, cert. ef. 12-1-14; BARB 2-2014(Temp), f. 11-24-14, cert. ef. 12-2-14 thru 5-29-15

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Landscape Architect Board
Chapter 804

Rule Caption: Updates to examination requirements and examination application fee, plus clarifications to selected registration requirements
Adm. Order No.: LAB 1-2014
Filed with Sec. of State: 11-19-2014
Certified to be Effective: 11-19-14
Notice Publication Date: 10-1-2014
Rules Amended: 804-003-0000, 804-010-0000, 804-010-0010, 804-010-0020, 804-020-0001, 804-020-0003, 804-020-0005, 804-020-0010, 804-020-0015, 804-020-0030, 804-020-0045, 804-022-0000, 804-022-0015, 804-040-0000
Subject: Examination: The Board removed the requirement for a candidate to have specific work experience prior to gaining approval to sit for certain sections of the national examination. This change provides examination candidates more control over how they approach

taking the examination sections. Candidates can now apply once for approval to sit for all examination sections over a period of 5 years, with a possible 1 year extension. Candidates can reapply for Board approval to sit for examination if all sections were not completed in that timeframe. Candidates will not lose credit for examination sections already passed but would have to explain to the Board the preparation undertaken to facilitate completion of the examination. The Board also updated the fee rule to charge a $100 application fee instead of a $50 fee for each of sections 3 and 4 of the national examination. The overall cost to the candidate has not increased and in fact has decreased for any candidate taking sections 3 or 4 of the national examination multiple times as the Board no longer charges an application fee for a retake. Various housekeeping updates to exam-related rules were also made.

Registration: The Board added new definitions for "direct supervision" and "year" to provide more clarity about Board requirements for work experience. This change gives landscape architects and the candidates for registration they supervise more flexibility regarding how supervised work experience is obtained for purposes of qualifying for registration. Direct supervision, as defined, allows landscape architects to supervise candidates through a traditional employee-employer relationship but also through other

arrangements. Sidebars on the quality and frequency of supervision are included but in a manner intended to accommodate a variety of communication means and non-traditional relationships. The landscape architect's obligations to take responsibility for services and work are addressed. The definition of "year" clarifies how the Board calculates various types of work experience, including project-based work experience. Finally, the Board made housekeeping

changes to the rules addressing the optional Landscape-Architect-in-Training

registration and date of registration and renewal to better clarify Board requirements.

Rules Coordinator: Christine Valentine—(503) 589-0093

804-003-0000
Definitions

The definitions of terms used in ORS 671.310 to 671.459, and the rules of this chapter are:

(1) "Assumed or Fictitious Name" — A false name taken as one's own.

(2) "Business entity" — A sole proprietor Landscape Architect operating under either the registrant name or an assumed business name or any corporation, limited liability company, partnership, or other entity or association of persons providing landscape architectural design or consulting services.

(3) "Deceit" — An attempt to portray as true or valid something that is untrue or invalid.

(4) "Delinquent" — A registrant who fails to renew his/her certificate on or before the renewal date.

(5) "Direct Supervision" — For purposes of chapter 804 divisions 10, 20, 22, 27and 50, this is supervision provided by a licensed or registered Landscape Architect to a candidate or applicant for either examination or registration, including a Landscape Architect-in-Training. The supervising Landscape Architect must provide oversight, inspection, control, and direction regarding the services and work being performed by the candidate or applicant. This means the supervisor must:

(a) Be located in close proximity to or be readily accessible to the candidate or applicant;

(b) Be in frequent communication with the candidate or applicant;

(c) Ensure communications with the candidate or applicant are responsive and include face-to-face, e-mail, telephone, internet and other similar forms of direct communication; and

(d) Take responsibility for the services or work done by the candidate or applicant including but not limited to sealing and signing documents when required. The primary goals of direct supervision are to assure that the candidate or applicant understands and is performing services and work within the professional standard of practice and to ensure that public health, safety, and welfare are protected.

(6) "Emeritus" — Retired but retaining an honorary title corresponding to that held immediately before retirement.

(7) "Employing" — Hiring a person, not an independent contractor, for compensation.

(8) "Fraud" — Intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.

(9) "Grossly Negligent" — Reckless and wanton disregard for exercising care and caution.

(10) "Impersonate" — To assume, without authority or with fraudulent intent, the identity of another person.

(11) "In good standing" — For purposes of ORS 671.376(4) and OAR 804-022-0025(1), 'in good standing' means that the registrant when making the request for inactive status has a current active unrestricted registration; is in compliance with all requirements for registration including, but not limited to, payment of all required fees and compliance with all continuing education requirements; and is not the subject of a pending board investigation or action or the subject of a board order.

(12) Late fee: a fee assessed when a payment is received after the date due.

(13) "Material Misrepresentation" — An untrue statement that is significant under the circumstances.

(14) "Renewal of Registration" — To annually maintain the current status of a valid registration or to bring a delinquent certificate of registration to current, valid status.

(15) Year — for purposes of qualifying work experience for examination or registration, a year is calculated as one calendar year for full-time work (i.e., 40 hours per week on average) with part-time work prorated (i.e., a year of experience takes two calendar years to acquire at 20 hours per week on average) or the equivalent of 2,000 total hours worked.

Stat. Auth.: ORS 1670.310, 671.415
Stats. Implemented: ORS 670.310 – 671.459
Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1985, f. & ef. 7-1-85; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2006, f. & cert. ef. 8-14-06; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 2-2010, f. & cert. ef. 10-19-10; LAB 2-2013(Temp), f. & cert. ef. 6-20-13 thru 12-17-13; LAB 5-2013, f. & cert. ef. 12-12-13; LAB 1-2014, f. & cert. ef. 11-19-14

804-010-0000
Examination Qualifications

(1) To qualify to sit for the Board required examination, an examination candidate must have a degree from a program accredited and accepted by the Landscape Architecture Accreditation Board (LAAB) or the equivalent as specified in 804-010-0010 or 804-010-0020.

(2) For a LAAB degree program, it must be listed in LAAB's Accreditation Report current at the time of the candidate's graduation.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-010-0010
Equivalent Education and Experience

(1) In lieu of the degree specified in OAR 804-010-0000, an applicant may satisfy the education requirement for examination eligibility by accumulating the required five years of credit through a combination of one or more of the following:

(a) Non-accredited B.L.A or M.L.A., four years credit;

(b) NAAB-accredited B.Arch. or M. Arch, four years credit;

(c) ABET-accredited degree in Civil Engineering, four years credit; or

(d) Any Bachelor's degree, two years credit; and

(e) Up to three years of diversified experience in landscape architecture under the direct supervision of a licensed or registered landscape architect can fulfill the balance of the five years required to sit for the examination.

(2) In allowing examination applicants the opportunity to combine education and experience in fulfilling the minimum qualification requirements established by statute, the Board will apply the following evaluation criteria:

(a) Degrees listed in (1) above cannot be combined to satisfy the education credit requirement;

(b) The work experience applied as education credit may not also be used to satisfy experience requirements;

(c) Any degree awarded less than two years prior to the accreditation of the program will be accepted as an accredited degree;

(d) Any degree awarded after a program has ceased to be accredited will not be accepted as an accredited degree.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 1-1982(Temp), f. & ef. 5-6-82; LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 2-1998, f. & cert. ef. 4-22-98; Suspended by LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 1-2014, f. & cert. ef. 11-19-14

804-010-0020
Experience in Lieu of Education

(1) Applicants may qualify for examination under ORS 671.335(1) by completing eight years of experience under the direct supervision of a licensed or registered landscape architect.

(2) Applicants applying under the provisions of this section must submit a written request to the board seeking consideration of experience in lieu of education.

(3) The board shall supply the applicant with the format for submitting required documentation.

(4) A Board written response will provide the applicant with the Board's evaluation and conclusions regarding admission to the examination.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-010-0005, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0001
Landscape Architect Registration Examination (LARE)

(1) The Landscape Architect Registration Examination (LARE) is prepared by the Council of Landscape Architect Registration Boards (CLARB) and tests candidates' knowledge, skills, and abilities considered to be the minimum competency needed for protecting the health, safety and welfare of the public.

(2) All sections of the LARE are administered by CLARB.

(3) Exam candidates must obtain Board approval before registering for any section(s) of the LARE as addressed in OAR 804-020-0003 and 804-020-0010.

(4) Depending on the date examination sections were taken, exam candidates or licensure applicants must upon request of the Board or Board staff request of CLARB that verification be provided to the Board of passing scores for completed sections of the LARE.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 2-1998, f. & cert. ef. 4-22-98; Renumbered from 804-020-0020. LAB 1-2007, f. & cert. ef. 4-27-07; LAB 4-2008, f. & cert. ef. 11-7-08; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0003
Application for Board Approval

(1) Exam candidates must apply for and obtain Board approval before registering for any sections of the Landscape Architect Registration Examination (LARE).

(2)(a) The Board may delegate authority to the Board Administrator or a Board member to review and approve applications for examination.

(b) Board approval may be granted after verification of receipt and review of an application submitted on a form provided by the Board to the Board office and the following information:

(A) An official university sealed transcript(s) demonstrating the exam candidate meets the educational requirements to sit for the exam. For an exam candidate with a non-Landscape Architecture Accreditation Board (LAAB) accredited degree or no degree, work experience verification must also be provided as specified in 804-010-0010 or 804-010-0020, whichever is applicable.

(B) The exam application fee.

(3) When an exam application is approved, the exam candidate is authorized by the Board to register for all sections of the LARE, either at one time or at separate times. The Board's approval is valid for 5 years from the date of issuance.

(a) The Board Administrator may approve a 1 year extension of the Board's approval if the exam candidate has requested an extension in a written letter which includes an explanation of the need for the extension and is submitted no later than 45 days prior to the expiration of the Board's approval.

(b) If the Board's approval expires before the exam candidate completes all sections of the LARE, the exam candidate may re-apply but must include with the application a written explanation of preparation undertaken to facilitate completion of the examination.

(A) The exam candidate will not have to re-take exam sections already passed.

(B) The exam candidate will need to include the official university transcript if no longer on file with the Board.

(C) The exam application fee applies.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; Renumbered from 804-020-0000, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0005
Reapply for Exam

Applicants are not required to submit a new application to retake failed portions of the examination except when the Board approval has expired as addressed in 804-020-0003(3).

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0010
Date of Application and Prior Approval Request Receipt

(1) Applications for Board approval to register for the Landscape Architect Registration Examination (LARE) must be received in the Board's office as follows:

(a) For candidates with a degree that is accredited by the Landscape Architecture Accreditation Board (LAAB), applications must be received in the Board's office no less than 30 days prior to the close of the examination registration period as set by the Council of Landscape Architectural Boards (CLARB); or

(b) For candidates without a degree that is accredited by the Landscape Architecture Accreditation Board (LAAB) and applying based in whole or in part on work experience in lieu of education under OAR 804-010-0010 or 804-010-0020, applications must be received in the Board's office no less than 45 days prior to the close of the examination registration period as set by CLARB

(2) The Board Administrator may waive the deadlines in (1) on a case-by-case basis to accept an exam candidate's application closer to CLARB registration deadlines but only upon receipt of a written request from the exam candidate or CLARB and upon determination by the Board Administrator of extenuating circumstances outside the control of a candidate. Failure of an exam candidate to be knowledgeable about the need for Board approval or to begin the registration process in a timely manner considering the Board deadlines are examples of situations that would not constitute extenuating circumstances.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0015
Refunds

The Board's exam application fee is non-refundable.

Stat. Auth.: ORS 670.310, 671.335, 671.365, 671.415
Stats. Implemented: ORS 671.335, 671.365
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0030
Date of Exams

The Landscape Architect Registration Examination (LARE) shall be administered on the dates and times established by the Council of Landscape Architectural Registration Boards (CLARB) at test centers designated by CLARB.

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-020-0045
Notice of Score

Exam candidates will receive notification of examination scores directly from the Council of Landscape Architectural Boards (CLARB).

Stat. Auth.: ORS 670.310, 671.335, 671.415
Stats. Implemented: ORS 671.335
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

804-022-0000
Landscape Architect in Training (LAIT)

(1) A LAIT may only engage in the practice of landscape architecture under the direct supervision of a Registered Landscape Architect (RLA).

(2) A candidate who has successfully completed two or more sections of the Landscape Architect Registration Examination (LARE) and is working toward registration as a Landscape Architect is qualified to register with the Board as a LAIT.

(3) The initial LAIT registration application must include:

(a) A validation of supervision of the LAIT by the supervising RLA and

(b) Payment of the initial registration fee.

(4) The initial date of registration for an LAIT will be the date the application was approved.

(5) A LAIT registration must be renewed annually. An LAIT registration may only be renewed if the LAIT renewal form is signed by the LAIT and the RLA supervising the LAIT that is working toward registration as a Landscape Architect.

Stat. Auth.: ORS 670.310, 671.316(3), 671.335, 671.415
Stats. Implemented: ORS 671.316(3), 671.325, 671.335, 671.376
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1986, f. & ef. 1-3-86; LAB 3-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 3-2005, f. & cert. ef. 12-13-05; Renumbered from 804-020-0055, LAB 1-2007, f. & cert. ef. 4-27-07; LAB 3-2008, f. & cert. ef. 7-7-08; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 1-2014, f. & cert. ef. 11-19-14

804-022-0015
Initial Date of Registration & Renewal

(1) The initial date of registration will be the date the application was approved, and the registration will be subject to renewal on an annual basis.

(2) The annual registration renewal date is the last calendar day of the month in which registration was first granted by the Board. The registration is delinquent if not renewed by or before the renewal date.

(a) A renewal must include the completed renewal form signed by the registrant showing the registrant meets all the qualifications for renewal and the annual renewal fee.

(b) A renewal is considered timely if the Board has receipt of the items listed in (a) on or before the renewal date.

(3) The registration must be renewed annually on or before the renewal date to remain active. If the annual renewal is not made by the renewal date, the registration is delinquent but may be reinstated in accordance with 804-022-0020.

Stat. Auth.: ORS 670.310, 671.415
Stats. Implemented: ORS 671.325, 671.345, 671.365, 671.376
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1984, f. & ef. 5-1-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2005, f. & cert. ef. 2-14-05; Renumbered from 804-030-0015, LAB 1-2008, f. & cert. ef. 2-4-08; LAB 1-2014, f. & cert. ef. 11-19-14

804-040-0000
Fees

The following are fees established by the board:

(1) Examination Fees:

(a) Application fee for examination: $100.

(b) Landscape Architect Registration Examination (LARE): the cost for each section of the LARE is set by the Council of Landscape Architectural Boards (CLARB) and must be paid directly to CLARB.

(2) Registration Fees:

(a) Initial Landscape Architect in Training registration: $50.00.

(b) Annual renewal for Landscape Architect in Training: $50.00.

(c) Application fee for initial Landscape Architect registration: $100.00.

(d) Application fee for Landscape Architect registration by reciprocity: $100.00.

(e) Initial Landscape Architect registration: $250.00.

(f) Annual renewal for Landscape Architect: $250.00.

(g) Emeritus Annual fee: $25.00.

(3) Business Fees:

(a) Application fee for business registration: $100.00.

(b) Initial certification as an Authorized Business Entity in Landscape Architecture: $112.50.

(c) Annual renewal fee for an Authorized Business Entity in Landscape Architecture: $112.50.

(4) Miscellaneous Fees:

(a) Late fee: $100.00 for each delinquent year.

(b) Duplicate certificate: $50.00.

(c) Fee for registrant list: $50.00.

Stat. Auth.: ORS 182.466(4), 670.310, 671.365, 671.415
Stats. Implemented: ORS 671.325, 671.345, 671.365, 671.376
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14

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Landscape Contractors Board
Chapter 808

Rule Caption: Exam score to become a managing employee/owner valid one year after receipt of license application.
Adm. Order No.: LCB 10-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 9-1-2014
Rules Amended: 808-003-0065
Subject: Allows a passing exam score for Laws, Rules, & Business Practices section to become a managing employee/owner to be valid for one year after receipt of a license application, if that applicant has been the managing employee or managing owner of a licensed business within two years proceeding the date of receipt of the license application.
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-003-0065
Scoring; Exam Section Transfer March 1, 2014

(1) Each exam section shall be scored separately.

(2) Based on l00 percent, the passing score shall be 75 percent or higher for each section.

(3) Except as provided in subsection (4) & (5), a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

(4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application as stated in OAR 808-003-0030(3).

(5) A passing score of the Laws, Rules and Business Practice section will remain valid for any applicant that passed this section and has been the managing employee or managing owner of a licensed landscape contracting business within two years of the date of receipt of the license application; otherwise the scores will remain valid for up to one year from the date of the receipt of an application for licensing.

(6) Effective March 1, 2014 the following sections will transfer to the new exam sections as follows:

(a) Laws, Rules and Business Practice transfers into Laws, Rules and Business Practice;

(b) Plants and Turf transfers into the Plants and Turf Section;

(c) Grading and Drainage transfer into the Design, Grading and Drainage section;

(d) General Safety, estimating, soil science, chemicals and landscape design does not transfer into another exam section;

(e) Irrigation transfers into the Irrigation section; and

(f) Backflow Prevention transfers into Backflow Prevention.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.570
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 15-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 10-2014, f. & cert. ef. 12-1-14

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Rule Caption: Clarifies when an arbitration award is considered "issued".
Adm. Order No.: LCB 11-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 9-1-2014
Rules Amended: 808-008-0425
Subject: Clarifies when an arbitration award is considered "issued".
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-008-0425
Petition to Modify or Correct an Award; Issuance

(1) A party to an arbitration may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule as stated in subsection (13) of this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(d) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

(11) If the arbitrator who prepared the award is not available to consider a petition to modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

(12) Arbitration awards are not considered "issued" for the purposes of ORS 671.703(9) until:

(a) The time to file a petition to modify the award has expired with no request for modification; or

(b) The arbitrator has determined to modify the award or not, if there was a timely petition for modification of the award filed by one or both parties.

(13) Each party may file one petition to modify an initial Arbitration Award within 21 days after the award is signed by the arbitrator. Once the arbitrator makes a determination on all timely petitions filed, no additional petitions for modification may be requested. Neither party may file a petition to modify an Amended Arbitration Award. For procedures to respond to petitions for modification or seek judicial review of Amended Arbitration Awards, see OAR 808-008-0430.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 183 & 671.670
Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05; LCB 11-2014, f. & cert. ef. 12-1-14

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Rule Caption: Clarifies how to restore a revoked license that has not been permanently revoked.
Adm. Order No.: LCB 12-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 9-1-2014
Rules Adopted: 808-003-0231
Subject: Clarifies how to restore a revoked license that has not been permanently revoked.
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-003-0231
Restoration of a License that has not been Permanently Revoked

As provided in ORS 671.610(6) a license that has not been permanently revoked may be restored. This rule shall be effective as of July 1, 2012. The license may be restored under the following circumstances:

(1) Revocation for nonpayment of a claim under a final order of the board or an arbitration award or under a judgment rendered in this or any other state. To restore license, revoked licensee must pay the claim under a final order of the board, arbitration award, or judgment rendered in this or any other state in full, or make arrangements for payment of a claim under a final order of the Board if approved by the Board. If restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

(2) Revocation for non-payment of civil penalty. To restore license, revoked licensee must pay all civil penalties assessed and owing in full, or make arrangements for payment of civil penalty approved by the board. If the restored licensee fails to timely comply with payment arrangements approved by the Board, licensee is subject to revocation, including permanent revocation.

Stat. Auth.: ORS 670.310 & 671.760
Stats. Implemented: ORS 671.610
Hist.: LCB 12-2014, f. & cert. ef. 12-1-14

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Occupational Therapy Licensing Board
Chapter 339

Rule Caption: Establishes standards of practice for Telehealth.
Adm. Order No.: OTLB 2-2014
Filed with Sec. of State: 11-20-2014
Certified to be Effective: 11-20-14
Notice Publication Date: 5-1-2014
Rules Adopted: 339-010-0006
Subject: The rules on telehealth will clarify OT and OTA's rule in utilizing telehealth in their practice.
Rules Coordinator: Felicia Holgate—(971) 673-0198

339-010-0006
Standards of Practice for Telehealth

(1) "Telehealth" is defined as the use of interactive audio and video, in real time telecommunication technology or store-and-forward technology, to deliver health care services when the occupational therapist and patient/client are not at the same physical location. Its uses include diagnosis, consultation, treatment, prevention, transfer of health or medical data, and continuing education.

(2) Telehealth is considered the same as Telepractice for Occupational Therapists working in education settings; and Teletherapy and Telerehab in other settings.

(3) In order to provide occupational therapy services via telehealth to a patient/client in Oregon, the occupational therapist providing services to a patient/client must have a valid and current license issued by the Oregon OT Licensing Board. Oregon licensed Occupational Therapists using telehealth technology with a patient/client in another state may also be required to be licensed in the state in which the patient/client receives those services and must adhere to those state licensure laws.

(4) Occupational therapists shall obtain informed consent of the delivery of service via telehealth from the patient/client prior to initiation of occupational therapy services via telehealth and maintain documentation in the patient's or client's health record.

(5) Occupational therapists shall secure and maintain the confidentiality of medical information of the patient/client as required by HIPAA and state and federal law.

(6) When providing occupational therapy services via telehealth, an occupational therapist shall determine whether an in-person evaluation is necessary and make every attempt to ensure that a therapist is available if an on-site visit is required.

(a) If it is determined in-person interventions are necessary, every attempt must be made to ensure that an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

(b) The obligation of the occupational therapist to determine whether an in-person re-evaluation or intervention is necessary continues during the course of treatment.

(7) In making the determination whether an in-person evaluation or intervention are necessary, an occupational therapist shall consider at a minimum:

(a) The complexity of the patient's/client's condition;

(b) His or her own knowledge skills and abilities;

(c) The patient's/client's context and environment;

(d) The nature and complexity of the intervention;

(e) The pragmatic requirements of the practice setting; and

(f) The capacity and quality of the technological interface.

(8) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(a) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

(b) Provide services consistent the AOTA Code of Ethics and Ethical Standards of Practice; and comply with provisions of the Occupational Therapy Practice Act and its regulations.

(9) Supervision of Occupational Therapy Assistant under 339-010-0035 for routine and general supervision, can be done through telehealth, but cannot be done when close supervision as defined in 339-010-0005 is required. The same considerations in (7)(a) through (f) must be considered in determining whether telehealth should be used.

(10) An Occupational Therapist who is supervising a fieldwork student must follow the ACOTE standards and other accreditation requirements.

(11) Failure to comply with these regulations shall be considered unprofessional conduct under OAR 339-010-0020.

Stat. Auth.: ORS 675.320(8)
Stats. Implemented: ORS 675.320
Hist.: OTLB 2-2014, f. & cert. ef. 11-20-14

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Oregon Criminal Justice Commission
Chapter 213

Rule Caption: Justice Reinvestment Program Grant Rules
Adm. Order No.: CJC 2-2014
Filed with Sec. of State: 12-9-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 10-1-2014
Rules Adopted: 213-060-0010, 213-060-0020, 213-060-0030, 213-060-0050, 213-060-0060, 213-060-0070, 213-060-0080, 213-060-0095, 213-060-0130, 213-060-0140
Subject: Under 2013 Or Laws ch 649 sec 52-56, (HB 3194), the Criminal Justice Commission (the Commission) is required to administer the Justice Reinvestment Program, in consultation with the Justice Reinvestment Grant Review Committee. As a part of that program administration, the Commission is required to award grants to counties in accordance with rules adopted by the Commission. These new rules implement those requirements.
Rules Coordinator: Angela Allbee—(503) 378-4830

213-060-0010
Authority

These rules are promulgated pursuant to Sections 52 to 56, Chapter 649, 2013 Oregon Laws (Enrolled House Bill 3194).

Stat. Auth.: 2013 OL Ch.649 § 52–56
Stats. Implemented: 2013 OL Ch.649 § 52–56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0020
Purpose

The purpose of these rules is to administer the Justice Reinvestment Program established by Sections 52 to 56, Chapter 649, 2013 Oregon Laws.

Stat. Auth.: 2013 OL Ch.649 § 52–56
Stats. Implemented: 2013 OL Ch.649 § 52–56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0030
Definitions

As used in OAR 213-060-0010 to 213-060-0140, unless the context indicates otherwise:

(1) "Commission" means the Oregon Criminal Justice Commission.

(2) "Community-based programs" includes:

(a) Work release programs;

(b) Structured, transitional leave programs;

(c) Evidence-based programs designed to reduce recidivism that include the balanced administration of sanctions, supervision and treatment;

(d) Administering a reentry court under Section 29, Chapter 649, 2013 Oregon Laws;

(e) Specialty courts aimed at medium-risk and high-risk offenders; and

(f) Evidence-based policing strategies.

(3) "County" includes a regional collection of counties.

(4) "Grant Review Committee" means the Justice Reinvestment Grant Review Committee established under Section 53, Chapter 649, 2013 Oregon Laws.

(5) "Program" means a program that is cost-effective as defined in ORS 182.515(2) that is an evidence based program as defined in 182.515(3), that is a program as defined in 182.515(4), and that utilizes scientifically based research as defined in 182.515(5).

(6) "Recidivism" has the meaning provided in ORS 423.557(1)(a).

(7) "Trauma informed services" means providing the foundation for a basic understanding of the psychological, neurological, biological, and social impact that trauma and violence have on individuals, while incorporating proven practices into current operations to deliver services that acknowledge the role that violence and victimization play in their lives.

Stat. Auth.: 2013 OL Ch.649 § 52–56
Stats. Implemented: 2013 OL Ch.649 § 52–56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0050
Grant Applications

(1) The grant application cycle will be determined by the Commission. At the beginning of each grant application cycle, the Commission will determine the proportion of grant funds available to each county in accordance with the formula used to distribute baseline funding under ORS 423.483. The Commission will include those amounts in its grant application solicitation. Each qualifying county pursuant to criteria in subsection 213-060-0060 shall receive a grant award of no less than $100,000 per grant application cycle.

(2) Each county may submit only one application for a justice reinvestment grant to fund one or more community-based programs. The application must be submitted by the local public safety coordinating council and include proof of approval by the county governing body.

(3) The county may use up to 10 percent of the funds payable under the justice reinvestment grant for administrative costs, including activities such as purchasing, budgeting, payroll, accounting, staff services, and other costs as deemed appropriate by the Commission. Administrative costs may also include funds to incentivize compliance by law enforcement agencies with completing Uniform Crime Reporting and other timely law enforcement data collection activities.

(4) The Commission may communicate directly with an applicant to clarify the intent of its application or to recommend modifications in furtherance of the purpose of the Justice Reinvestment Program.

(5) The Commission may, in its sole discretion, waive solicitation requirements or cancel any solicitation in whole or in part if it deems such action to be in the best interests of the Justice Reinvestment Program.

(6) Within 60 days following the expiration of the grant application deadline, the Commission shall make award notifications to counties in accordance with these rules. If there are extenuating circumstances, the Commission may, in its sole discretion, extend the deadline for award notification.

(7) If unallocated funds remain at the conclusion of the grant acceptance period, the Commission shall distribute all remaining funds in the manner provided in OAR 213-060-0080.

Stat. Auth.: 2013 OL Ch.649 § 52–56
Stats. Implemented: 2013 OL Ch.649 § 52–56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0060
Grant Application Review Criteria

(1) Grant applicants shall provide proposed outcome measures that will assist the Commission in assessing the efficacy of individual programs. Outcomes should be specific, measurable, achievable, realistic and timely.

(2) The Grant Review Committee and the Commission will review and evaluate each grant application based on the following additional criteria:

(a) Whether the applicant's program is designed to reduce recidivism of offenders.

(b) Whether the applicant's program is designed to reduce utilization of prison capacity by offenders convicted of felonies described in ORS 137.717, 475.752 to 475.935, 811.182, 813.010, or 813.011.

(c) Whether the applicant's program would increase public safety. As part of evaluating a program that purports to increase public safety, factors that may be considered include, but are not limited to:

(A) Whether law enforcement agencies operating within the county timely submit uniform crime report data to the Oregon State Police on a quarterly basis, so that public safety can be measured.

(B) Whether the application contains a statement regarding total operable county jail capacity, what percentage of that capacity is being used at the end of each quarter, and how many persons were forced released during the prior quarter, so that capacity and pressure on the local jail can be evaluated.

(C) Whether the county regularly analyzes system data and participates in Regional Implementation Council meetings presented by the Commission.

(D) Whether the local public safety coordinating council meets on a regular basis with all statutorily required positions filled and reports as required by statute.

(E) Whether programs will collect demographic information regarding the populations that were served.

(F) Whether the programs operate in a culturally competent manner.

(d) Whether the applicant's program would hold offenders accountable. Factors that may be considered include, but are not limited to, whether the applicant's program would track successful completion of:

(A) Restitution.

(B) Probation.

(C) Treatment.

(D) Community service.

(e) Whether the county will evaluate its programs for increased costs to local governments resulting from the passage of 2013 Oregon laws Chapter 649.

(f) For purposes of evaluating the portion of the grant to be distributed to community-based nonprofit organizations that provide services to victims of crime, whether the grant application illustrates how use of funds will positively impact victims. The Grant Review Committee and the Commission will review and evaluate each grant application based on the following criteria:

(A) Demonstrated need for the proposed services in the community to be served by the applicant with emphasis on services that target marginalized, underserved populations.

(B) Services address access barriers, such as but not limited to: language, literacy, disability, cultural practices and transportation issues.

(C) Funding increases capacity for areas where services are difficult to access, limited or non-existent.

(D) Demonstration that the award will be invested in trauma-informed services.

(E) Data collection, including but not limited to, demographic information of victims served.

(g) Other criteria that the Commission chooses to include in the solicitation.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0070
Grant Application Processing

(1) Commission staff will evaluate each county's application based on the criteria provided in OAR 213-060-0060, and will make recommendations to the Grant Review Committee. If the recommendation by staff to the Grant Review Committee would be to not fund the grant proposal, the Commission staff shall first work with applicant to attempt to rehabilitate the application.

(2) The Grant Review Committee will review each county's grant application and the recommendations of Commission staff, and notify the Commission regarding which applications it has approved. Approval by the Grant Review Committee is subject to final approval by the Commission.

(3) The Commission will review and evaluate the approvals of the Grant Review Committee, and will notify applicants of the decision of the Commission within 60 days from the expiration of the grant application deadline. If there are extenuating circumstances, the Commission may, in its sole discretion, extend the deadline for award notification. The Commission will prepare a grant award agreement for each grant awarded, which will set forth the terms, conditions, and requirements of the grant.

(4) The Commission may amend a grant awarded under this rule. After the grant is awarded the Commission may amend the amount originally awarded based on non−compliance with the terms of the award. If the recommendation by staff to the Commission would be not to continue to fund the grant proposal, the Commission staff shall first work with applicant to attempt to rehabilitate the application.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0080
Supplemental Grant Period

If unallocated funds remain at the conclusion of the grant acceptance period, and the Commission decides to establish a supplemental grant period to distribute some or all of those unallocated funds, the Commission may:

(1) Use those funds to supplement and expand the scope of one or more grant programs that were awarded, without the need for further grant solicitation, but using the criteria provided in OAR 213-060-0060.

(2) Issue a supplemental competitive grant application solicitation, and allow counties to submit applications, using the criteria and process provided in OAR 213-060-0050 through 213-060-0070.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0095
Community Based Victim Services Advisory Panel

(1) The Commission may appoint a Community Based Victim Services Advisory Panel, consisting of up to 9 members, taking into account regional representation, knowledge in the delivery of victim services, and diversity of experience in types of victim services.

(2) If the Commission appoints a panel as described in this section, the panel shall review each application for the grant criteria specified in OAR 213-060-0060(2)(f), and make recommendations to the Commission staff.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0130
Evaluating Efficacy; Termination; Report to Legislature

(1)(a) Each program that is funded will be evaluated by the Commission on a quarterly basis, based on the proposed outcome measures provided in the grant application and grant award agreement that reflects the goals of the programs funded.

(b) A county that is not achieving criteria as outlined in OAR 213-060-0060 will be given notice and an opportunity to improve performance. The Commission may terminate the county's grant award if the county has not satisfactorily improved performance.

(2) The Commission will report the results of the evaluation conducted under this rule to a committee of the Legislative Assembly related to the judiciary.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

213-060-0140
Outcome Evaluations of Programs Funded

(1) The Commission may choose one or more Justice Reinvestment grants for a randomized controlled trial or other outcome evaluation. Counties selected for a randomized controlled trial or other outcome evaluation shall partner with the Commission in order to successfully complete the evaluation of their program.

(2) Three percent of the total amount of Justice Reinvestment Grant funds shall be used to help fund randomized controlled trials or outcome evaluations for grant awards selected for such evaluations. Subject to approval by the Commission, the funds may also be used to offset any increased costs to the county associated with undergoing a randomized controlled trial or other outcome evaluation.

(3) A county selected for a randomized controlled trial or other outcome evaluation shall contract with the Commission, or an entity approved by the Commission, to conduct such randomized controlled trial or other outcome evaluation.

(4) Any randomized controlled trial or other outcome evaluation funds not allocated or budgeted by July 1 of an even-numbered year shall be dispersed back to the counties participating in the Justice Reinvestment Grant Program according to the formula provided in ORS 423.483.

(5) A program selected for randomized controlled trial or other outcome evaluation shall have preference to be funded in future grant application cycles so long as study participants are still in the program.

(6) The Commission will report the results of evaluations conducted under this rule to a committee of the Legislative Assembly related to the judiciary and the Office of the Governor, and will post the report on the Commission's website.

(7) In choosing programs for randomized controlled trials or other outcome evaluations, the Commission will consider the following factors:

(a) The proposed program is promising and has the capability of being reproduced in other counties.

(b) The proposed program is capable of being evaluated through randomized controlled trials when taking into account sample size and other practical requirements.

(c) The proposed randomized controlled trial will meet the requirements of the institutional review board process.

(d) Studying the program will benefit the State and more broadly the field of criminal justice by adding to the body of knowledge currently available.

Stat. Auth.: 2013 OL Ch.649 § 52−56
Stats. Implemented: 2013 OL Ch.649 § 52−56
Hist.: CJC 2-2014, f. 12-9-14, cert. ef. 1-1-15

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Oregon Department of Education
Chapter 581

Rule Caption: Report on Physical Education Data
Adm. Order No.: ODE 42-2014
Filed with Sec. of State: 12-4-2014

Certified to be Effective: 12-4-14
Notice Publication Date: 6-1-2014
Rules Amended: 581-022-1661
Subject: Changes the annual collection of the physical capacity of public schools to provide students kindergarten through grade 5 with at least 150 minutes of physical education instruction and students in grades 6-8 with at least 225 minutes of physical education instruction to only reporting the data when there is an increase or a decrease of the school's physical capacity to provide the instruction. These revisions align the rule with the statute as amended in 2013.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1661
Report on Physical Education Data

(1) The following definitions apply to this rule:

(a) "Additional facilities" means the added space to the school needed to provide the minimum number of minutes of physical education instruction per week.

(b) "Number of minutes" means the number of minutes of physical education instruction that is actually provided to all students kindergarten through grade 8 each school week.

(c) "Physical capacity" means the space, indoors and out, available at the school to provide the prescribed number of minutes per at a class size that promotes effective practices consistent with the outcomes expected of the instructional programs.

(2) The Department of Education shall collect from school districts:

(a) The number of minutes of physical education that are provided to students in kindergarten through grade 8 each school week in each public school within the district;

(b) The physical capacity of public schools to provide students in kindergarten through grade 5 with at least 150 minutes of physical education during each school week and to provide students in grades 6 through 8 with at least 225 minutes of physical education during each school week; and

(c) The additional facilities required by public schools to provide physical education to students for the minimum number of minutes as described in paragraph (b) of this subsection.

(3) The department shall collect the data described in paragraph (2) of this section:

(a) Annually, for data described in paragraph (2)(a) of this section.

(b) Whenever a public school increases or decreases the school's physical capacity to provide students with physical education, for data described in paragraph (2)(b) and (c) of this paragraph.

(4) Prior to February 1 of each odd-number year, the Department shall report to the Legislative Assembly on the data collected under this rule for the prior two school years.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 329.498
Hist.: ODE 30-2007, f. & cert. ef. 12-12-07; ODE 42-2014, f. & cert. ef. 12-4-14

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Rule Caption: Beginning Teacher and Administrator Support Program
Adm. Order No.: ODE 43-2014
Filed with Sec. of State: 12-4-2014
Certified to be Effective: 12-4-14
Notice Publication Date: 6-1-2014
Rules Adopted: 581-018-0133
Rules Renumbered: 581-020-0065 to 581-018-0130, 581-020-0060 to 581-018-0136, 581-020-0085 to 581-018-0139, 581-020-0070 to 581-018-0142, 581-020-0075 to 581-018-0145, 581-020-0080 to 581-018-0148, 581-020-0090 to 581-018-0151
Subject: Defines mentoring and provides evidence-based best practices Mentoring Program Standards for mentoring programs. Eliminates the specified amount of funding for each beginning teacher and administrator that meet mentoring requirements in alignment with revised statute. Renumbers rules so that they become part of Network on Quality Teaching and Learning pursuant to HB 3233 (2013).
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0130
Definitions

The following definitions apply to Oregon Administrative Rules 581-018-0130 through 581-018-0151 unless the context requires otherwise:

(1) "Administrator's Present Position" means being assigned in the role as a principal or a superintendent.

(2) "Beginning Administrator" means a principal or superintendent who:

(a) Possesses an administrative license issued by the Teacher Standards and Practices Commission;

(b) Is employed as a principal or superintendent by a school district; and

(c) Has been assigned for fewer than two school years in the administrator's present position.

(3) "Beginning Teacher" means a teacher who:

(a) Possesses a teaching license issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than two school years, as a licensed teacher in any public, private, or state-operated school.

(4) "Classroom Teachers" means all teachers who provide direct instruction to students.

(5) "District" means a school district, an education service district, a state-operated school, or any legally constituted combination of such districts.

(6) "Mentor " means an individual who:

(a) Is an acting or retired teacher, principal or superintendent;

(b) Has met established best practice and research-based criteria as defined by the State Board of Education by rule

(c) Possesses a teaching or administrative license issued by the Teacher Standards and Practices Commission;

(d) Has successfully served for five or more years as a licensed teacher, principal or superintendent in any public school; and

(e) Has been selected and trained as described in ORS 329.815.

(7) "Mentorship program" means a program provided by a mentor to a beginning teacher or administrator that includes, but is not limited to, direct classroom observation and consultation; assistance in instructional planning and preparation; support in implementation and delivery of classroom instruction; development of school leadership skills and other assistance intended to assist the beginning teacher or administrator to become a confident and competent professional educator who makes a positive impact on student learning.

(8) "Teacher" means a licensed employee of a common or union high school district, an employee of an education service district or a state-operated school who has direct responsibility for instruction, coordination of educational programs or supervision of teachers and who is compensated for services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or a person whose duties require an administrative certificate.

(9) "Mentoring" means a professional relationship between an educator and a skilled mentor. In a confidential and trusting partnership, the mentor supports the educator to transform practice through a process of reflection and inquiry. The goals of this collaborative and continuous work are: to accelerate instructional practice, ensure equitable learning for all students, retain effective educators, and empower educational leaders.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0065 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0133
Mentoring Program Standards

(1) Districts applying for an Oregon Beginning Teacher and Administrator Mentoring Program Grant shall align mentoring programs with the Mentoring Program Standards.

(2) Mentoring Program Standards describe the structures and functions, processes, and effective practices necessary for a quality program. Effective mentoring is foundational to a quality program. An essential element of a mentoring program is a professional mentor who understands and utilizes the skills, strategies and tools necessary for the continuous development of teachers and administrators.

(a) Program: Districts are committed to integrating and sustaining comprehensive mentor programs targeting quality teaching and learning that aligns with other district and state initiatives and goals.

(A) Program Administration, Collaboration, and Communication: Quality mentor programs provides structures to assure a cohesive system for mentoring that is s supported at all levels. A Quality Mentor Program:

(i) Has a designated leader with sufficient resources, authority, knowledge and experience to guide program implementation and accountability.

(ii) Includes system-wide leadership.

(iii) Involves collaboration and coordination among program leaders and stakeholders to ensure that program goals and practices align with teacher preparation programs, educator professional learning, evaluation systems and other P-20 initiatives.

(iv) Develops and maintains structures and systems to promote two-way communication and stakeholder involvement.

(B) Leadership Engagement: Quality mentor programs require involved and informed leaders. Leaders in a Quality Mentor Program:

(i) Provide resources and conditions required to promote and improve teacher and administrator success.

(ii) Engage in professional learning in how best to support teachers and administrators.

(iii) Collaborate and coordinate with other mentor program leaders across the state.

(C) Program Assessment and Evaluation: Quality mentor programs collect data to evaluate and improve program effectiveness. A Quality Mentor Program:

(i) Purposefully and systematically collects data, using multiple measures, to demonstrate implementation, impact, and areas for continuous improvement.

(ii) Continuously and systematically shares evaluation findings with stakeholders1 to inform decision-making and accountability.

(b) Processes: Mentoring processes are characterized by collaborative cycles of inquiry that provide for standards based feedback loops leading to measurable outcomes and practices for the success of all students.

(A) Roles and Responsibilities: A quality mentor program carefully selects and assigns participants and clearly defines roles. A Quality Mentor Program:

(i) Has a formal, rigorous and timely process for recruiting and selecting mentors based on criteria consistent with the roles and responsibilities of mentoring.

(ii) Defines and communicates mentor roles and responsibilities that are focused on the continuous development of teacher and administrator practice.

(iii) Utilizes a standards based system of ongoing assessment for mentor growth and accountability.

(B) Professional Learning: Quality mentor programs expand the knowledge and refine the practice of mentors and mentees through a collaborative process, supported by research. A Quality Mentor Program:

(i) Establishes learning communities engaged in professional learning, problem-solving, and evidenced based collaborative inquiry for mentors, as well as teacher and administrator mentees.

(ii) Ensures participants apply new learning to mentoring practice through engaging in goal-setting and reflection, implementing inquiry action plans, and analyzing data.

(iii) Facilitates professional learning that is guided by research, standards, local priorities and the developmental needs of mentors, as well as teacher and administrator mentees.

(C) Teacher and Administrator Assessment: Quality mentor programs utilize a data based cycle of inquiry to assess effective instructional and leadership practices. A Quality Mentor Program:

(i) Includes self-reflection, goal setting, observations, and formative assessments.

(ii) Is designed to accelerate educator effectiveness to ensure that every student is ready for college, careers and engaged citizenship.

(iii) Includes multiple sources of evidence to assess teacher and administrator mentees' strengths and areas for growth and guide professional learning.

(c) Professional Practice:

(A) Instructional and Leadership Practices: Quality mentor programs accelerate the professional practice of beginning educators to positively impact student achievement. A Quality Mentor Program:

(i) Fosters self-reflection among teacher and administrator mentees to accelerate growth based on Oregon professional teaching or administrative standards.

(ii) Supports knowledge of curriculum standards, grade level and subject standards, pedagogy and performance levels for students.

(iii) Strengthens the ability of teacher and administrator mentees to analyze data in order to plan and differentiate instruction and programs.

(iv) Develops teacher and administrator mentees' knowledge and application of the physical, cognitive, emotional and social well-being of students.

(v) Supports collaborative partnerships among educators, families, and the community.

(B) Equity, Cultural Competence and Universal Access: Quality mentor programs foster and develop culturally competent educators. A Quality Mentor Program:

(i) Supports teachers and administrator mentees' knowledge of the cultural, gender, racial, ethnic, and socioeconomic characteristics of their classrooms, schools and community.

(ii) Expands teachers and administrators' self-awareness of cultural competency and how that impacts their learning, teaching and leadership.

(iii) Demonstrates a commitment to equity by developing culturally inclusive practices in teachers and administrators.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0136
Pertaining to Beginning Teacher and Administrator Mentorship Program

The State Board of Education shall establish a beginning teacher and administrator mentorship program to provide eligible beginning teachers and administrators in the state with continued and sustained support from a formally assigned mentor teacher or administrator. The legislative assembly finds that:

(1) The quality of teaching and administration in the public schools is of vital importance to the future of Oregon;

(2) Oregon has a special interest in insuring that the induction of beginning teachers and administrators into their profession enhances their professional growth and development by making a positive impact on student learning for all students, to help close the achievement gap;

(3) The formal assignment of mentors who have demonstrated the appropriate subject matter knowledge and teaching and administrative skills will substantially improve the induction and professional growth of beginning teachers in the state as well as provide mentors with additional and valuable opportunities to enhance their own professional growth ;

(4) Teachers and administrators who receive research-based, relevant mentoring produce students with a higher rate of achievement;

(5) School districts that have teacher mentoring have a higher rate of retention among teachers; and

(6) Administrators who receive mentoring improve their effectiveness as administrators and continue to improve throughout their careers.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0060 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0139
The Selection, Nature and Extent of Duties of Mentor Teachers

(1) The selection, nature and extent of duties of mentors shall be determined by the school district based on the requirements of ORS 329.790 to 329.820.

(2) No teacher, principal or superintendent shall be designated as a mentor unless willing to perform in that role;

(3) No mentor shall participate in the evaluation of a beginning teacher or administrator for purposes of actions taken under ORS 342.805 to 342.937;

(4) Written or other reports of a mentor regarding a beginning teacher or administrator may not be used in the evaluation of beginning teacher or administrator.

(5) Each mentor shall complete successfully a training provided by the Oregon Department of Education or approved according to criteria established by the Department of Education while participating in the beginning teacher and administrator mentorship program;

(6) The grant received for each beginning teacher or administrator may be used by the district to compensate mentors or to compensate other individuals assigned duties to provide release time for teachers, principals or superintendents acting as mentors.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 3-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0085 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0142
Eligibility

(1) There is established a beginning teacher and administrator mentorship program to provide eligible beginning teachers and administrators in this state with a continued and sustained mentorship program from a formally assigned mentor.

(2) Any district is eligible to apply to participate in the beginning teacher and administrator mentorship program. Grants may be subject to

application, evaluation, approval by the Oregon Department of Education, and the legislative appropriation of funds.

(3) A school district may enter into a partnership with another school district, an institution of higher education, an education service district or another organization to operate jointly a beginning teacher and administrator support program if:

(a) All moneys received as grants-in-aid for the mentorship program are administered by the participating school district to provide direct services to beginning teachers and administrators; and

(b) All other requirements of ORS 329.790 to 329.820 are met.

(4) The awarding of grants under OAR 581-020-0080 is subject to the availability of funds appropriated therefore.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0070 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0145
Grant Application

Each district that wishes to participate in the beginning teacher and administrator mentorship program shall submit a formal application to the Department of Education. The application shall include:

(1) The names of all eligible beginning teachers and administrators employed by the district and a description of their assignments and;

(2) A description of the proposed mentorship program, which must provide frequent contact, totaling a minimum of 90 hours between mentors and beginning teachers and administrators, throughout the school year.

(3) A description of the research based training that will be provided to mentors and beginning teachers and administrators.

(4) A description of how the training will build relationships of trust and mutual collaboration with beginning teachers and administrators.

(5) A description of the professional development mentors will receive before the school year begins and throughout the school year.

(6) A school district shall certify in the application that no eligible beginning professional educators are or may be under a conditional license, except as provided for by rules of the Teacher Standards and Practices Commission.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0075 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0148
Funding

(1) Subject to ORS 291.230 to 291.260, the Department of Education shall distribute grants-in-aid to qualifying school districts to offset the costs of beginning teacher and administrator mentorship programs. A qualifying district shall receive annually an amount that is aligned with evidence-based best practices for beginning teachers and administrators approved for support.

(2) If the funds are insufficient for all eligible proposals, the Department of Education shall award grants on a competitive basis taking into consideration geographic and demographic diversity.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 36-1988, f. & cert. ef. 8-5-88; EB 9-1990, f. & cert. ef. 1-30-90; EB 25-1990(Temp), f. & cert. ef. 5-18-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0080 by ODE 43-2014, f. & cert. ef. 12-4-14

581-018-0151
Violation and Penalty

A district that is determined by the Department of Education to be in violation of one or more of the requirements of OAR 581-020-0060 through 581-020-0085 may be required to refund all grants-in-aid moneys distributed under 581-020-0080. The amount of penalty shall be determined by the State Board of Education.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; ODE 3-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0090 by ODE 43-2014, f. & cert. ef. 12-4-14

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Oregon Department of Education, Early Learning Division
Chapter 414

Rule Caption: Healthy Families Oregon
Adm. Order No.: ELD 11-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 6-1-2014
Rules Ren. & Amend: 423-045-0005 to 414-525-0005, 423-045-0010 to 414-525-0010, 423-045-0015 to 414-525-0015
Subject: Amends rules to reflect 2013 Legislative changes to old Healthy Start Program. Changes program to Healthy Families Oregon. Reflects new local early childhood structure. Specifies program is for children ages prenatal to three.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-525-0005
Authority

These rules are promulgated pursuant to ORS 417.705 through 417.797.

Stat. Auth.: ORS 417.705 - 417.797
Stats. Implemented:
Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 2-2007, f. & cert. ef. 2-16-07 thru 8-15-07; Renumbered from 423-045-0005, ELD 11-2014, f. & cert. ef. 11-25-14

414-525-0010
Purpose

The purpose of these rules is to assist counties in the implementation and operation of Healthy Families Oregon program services. The Healthy Families Oregon program seeks to ensure healthy, thriving children and strong, nurturing families by offering a range of voluntary and non-stigmatizing services ranging from universal basic short-term services to long-term intensive home visiting for high risk families. Healthy Families Oregon initiates these services prenatally and at the time of birth, targeting high risk families. Healthy Families Oregon services are offered until the child's third birthday and as needed during a transition period following the birthday to assure connection to other school readiness services for the family. Services follow evidence-based practices designed to achieve appropriate early childhood benchmarks, following the Healthy Families America model. These rules are the minimum standards for the establishment, operations, evaluation, and funding of Healthy Families Oregon program services under ORS 417.795.

Stat. Auth.: ORS 417.705 - 417.797
Stats. Implemented: ORS 417.705 - 417.797
Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 2-2007, f. & cert. ef. 2-16-07 thru 8-15-07; Renumbered from 423-045-0010, ELD 11-2014, f. & cert. ef. 11-25-14

414-525-0015
Program Restrictions

(1) Systems Requirements:

(a) Healthy Families Oregon services will be offered in a manner consistent with the local early childhood system planning.

(b) Healthy Families Oregon programs will collaborate with local home visiting partners within the context of the statewide home visiting system as a part of the voluntary local early childhood system, to identify and build upon existing services for families and to prioritize additional services if needed,(e.g. mental health, drug and alcohol, and early intervention). If collaboration does not effectively occur, the Department of Human Services and the Agency will provide technical assistance to promote improved collaboration.

(c) Healthy Families Oregon programs actively participate in local community efforts to implement the early childhood system of supports and services towards the achievement of desired outcomes, working to maximize the effective use of available resources and avoid duplication of services.

(d) Local contracted agencies are not required to engage in a competitive bidding process, unless required by local policy, to select program providers for Healthy Families Oregon services each biennium. Local contracting agencies may conduct a competitive or collaborative funding process when significant deficits in program operations and services are found or when changes in the stability of service delivery systems present new options for these services.

(2) Age: Children ages prenatal through three and their families.

(3) Services: Funded service include: voluntary family support services, including but not limited to screening and follow-up services such as resource referral, further assessment, and intensive home visiting provided by highly trained home visitors organized in teams and supervised by a program manager and supervisor following the Healthy Families America model.

(4) Program Requirements:

(a) New Healthy Families Oregon Programs will make progress toward full compliance with ORS 417.795 as operationalized by the Healthy Families Oregon Implementation Manual: Statewide Program

Policies and Procedures. All Healthy Families Oregon programs are required to be in full compliance within one year of program start up.

NOTE: Copies of the Healthy Families America model best practice standards and of the Healthy Families Oregon Program Policy and Procedure Manual are available from the Agency.

(b) Programs will develop site specific procedure manuals to further specify local program operations. Local procedure manuals will be submitted to the Agency at intervals specified by the Agency.

(c) Participation in services provided by the Healthy Families Oregon program is voluntary. Service providers will obtain express written consent before any services are offered.

(d) Local Healthy Families Oregon programs will ensure that parents have given express written consent prior to any release of information.

(e) Healthy Families Oregon program services will not be a part of a mandated plan for families. Mandated plans include plans developed by the Department of Human Services Self Sufficiency and Child Welfare services.

(f) Local Healthy Families Oregon Programs will:

(A) Participate in the independent statewide program evaluation;

(B) Participate in statewide training for program managers, supervisors home visitors and screening staff;

(C) Participate in annual meetings and trainings for program managers ;

(D) Meet statewide and local early childhood system quality assurance standards;

(E) Participate in the Healthy Families America site self-assessment, as part of ongoing quality assurance;

(F) Ensure that voluntary home visiting services through Healthy Families Oregon are coordinated with home visiting services offered by the voluntary local early childhood system.

(5) Program Budget Requirements:

(a) All programs are required to participate in federal Medicaid (Title XIX) Administrative Claiming, following program procedures provided by the Agency.

(A) Medicaid earnings, except as described in 423-010-0023(3), must be used to maintain or expand Healthy Families Oregon program core services, as defined in the Healthy Families Oregon Program Policy and Procedure Manual.

(B) Programs will report on the use of their Medicaid (Title XIX) funds to the Agency at intervals specified by the Agency.

(C) All program staff will attend training provided by the Agency prior to participation in Medicaid (Title XIX) Administrative Claiming and annually thereafter.

(b) Local programs will demonstrate a 25 percent local match with at least 5% being cash or cash equivalent as part of the base operating budget of their programs. Match will be reported to the Agency at the intervals specified by the Agency. This leverage may be in any combination of cash, cash equivalent, in-kind or volunteer hours.

(c) The local contracting agency will monitor the local Healthy Families Oregon programs to ensure fiscal and programmatic integrity.

(d) If, for any reason, a current provider stops providing contracted services prior to the end of the contract, the local contracting agency will notify the Agency 45 days prior to signing a new provider contract so that the Agency can provide program specific training and technical assistance. The local contracting agency and the Agency may mutually agree to a notice period of less than 45 days if necessitated by specific local circumstances.

(e) The Agency will manage the Title XIX Medicaid Administrative Claiming program in accordance with all state and federal rules and regulations.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 417.705 - 417.797
Stats. Implemented: ORS 417.705 - 417.797
Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 2-2007(Temp), f. & cert. ef. 2-16-07 thru 8-15-07; Administrative correction 7-9-08; Renumbered from 423-045-0015, ELD 11-2014, f. & cert. ef. 11-25-14

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Rule Caption: Migrant and Seasonal Farmworker Child Care Program
Adm. Order No.: ELD 12-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 10-1-2014
Rules Adopted: 414-400-0090, 414-400-0095
Rules Amended: 414-400-0000, 414-400-0010, 414-400-0020, 414-400-0031, 414-400-0040, 414-400-0050, 414-400-0060, 414-400-0080
Rules Renumbered: 414-400-0033 to 414-400-0100
Subject: The Migrant and Seasonal Farm Worker (MSFW) child care subsidy program is one of four subsidy programs administered by the Office of Child Care. The administrative rules for this program are outdated, contain language that references entities that no longer exist, and need to reflect changes to the MSFW workforce statewide. Additionally, over the 25 years the MSFW program has been in place, there have been program changes that are reflected in policy but should be operationalized in administrative rule.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-400-0000
Purpose

The purpose of these rules is to define key terms, describe eligibility criteria, and rate payment policies related to Early Learning Division (ELD) Migrant and Seasonal Child Care Program. Expenditures by ELD under these rules are subject to availability of state and federal funds, as applicable, and are subject to immediate curtailment by ELD if the necessary state or federal authorizations or funding are curtailed.

Stat. Auth.: ORS 657A
Stats. Implemented: ORS 657A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0300; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0010
Definitions

(1) "Agricultural Labor" means:

(a) Any activity related to crop production, including soil preparation, planting, cultivating, crop protection or harvesting, preparing crops for market, irrigation work, operating farm machinery, or general farm work; or

(b) Any activity directly related to the processing of crops, including freezing, canning and drying; or

(c) Any activity directly related to the cultivation of trees and shrubs, or tree farming including wreath making.

(d) Labor that does not fall under "Agricultural Labor" includes, but is not limited to: landscaping, fishing, reforestation, and animal husbandry.

(2) "Authorized Absence" means the temporary absence from the facility by a child who is expected to return to care.

(3) "Available to care for children" means not working, attending or enrolled in school, and being physically and emotionally capable of caring for children.

(4) "Contractor" means the non-profit or other type of organization that does outreach to and performs administrative functions for Migrant and Seasonal farmworkers families seeking child care financial assistance.

(5) "Early Learning Division (ELD) Special Populations" means the child care subsidy program administered by the Oregon Department of Education, Early Learning Division.

(6) "Employment Related Day Care (ERDC)" means the child care subsidy program administered by the Oregon Department of Human Services.

(7) "Migrant Family" means:

(a) A family who is employed in farm labor as defined in "Agricultural Labor;" and

(b) An entire family that moves their residence for the purpose of employment in Agricultural Labor, and the move or moves result in either:

(A) An absence of at least two months from the geographical service area, or

(B) A cumulative total of at least 150 miles.

(8) "Seasonal Family" is a family:

(a) Whose wage earners make their living from agricultural labor on a seasonal basis in the same area as their residence; and

(b) That has fit the definition of a "Migrant family" within the last 36 months; and

(c) That has settled, or is in the process of settling, from migrant status, and

(d) Is not employed in agricultural labor year round by the same employer.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0320; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0020
Eligibility Criteria

(1) Migrant family eligibility criteria include:

(a) The Migrant family wage earners make their living doing farm labor as defined in "Agricultural Labor"; and

(b) Are residing in Oregon; and

(c) The parents are working in, or reporting for, agricultural labor in Oregon which they expect to be available at the time of reporting; and

(d) At least 50 percent of the family income for the preceding 12 months was earned from agricultural labor; and

(e) The family earns 185 percent or less of the current Federal Poverty Level; and

(f) The entire family moves their residence at least once in twelve months for the purpose of employment in agricultural labor; and

(g) There is no capable family member in the household who is 18 years of age or older available to provide child care.

(2) Seasonal Family eligibility criteria includes:

(a) The seasonal wage earners make their living doing agricultural labor; and

(b) Are residing in Oregon; and

(c) At least one parent is currently working in agricultural labor; and

(d) At least 50 percent of the family income for the preceding 12 months was earned from such work; and

(e) The family earns 185 percent or less of the current Federal Poverty Level; and

(f) At the time of application as a Seasonal Family, has fit the definition of a Migrant Family within the last 36 months; and

(g) There is no capable family member in the household who is 18 years of age or older available to provide child care.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0320; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0031
Eligibility Verification

(1) To accommodate the immediate need for child care by Migrant Families and to be eligible for ELD subsidized child care benefits, Migrant Family clients must do all of the following:

(a) Apply for the ELD Special Populations subsidy program using forms provided by the ELD and document: Applicant's family size and membership, current and previous places of residence, employment history and family income for the past 12 months. The income that determines family co-pay shall be for the 12 full months just prior to application, or for the most recent tax year, and shall be for all wage earners age 18 and above in the family membership.

(b) An ELD subsidy program application shall be completed or updated, and eligibility factors must be verified by the Contractor for all of the following: Contractor's intake staff must ask for and review documents that verify income, employment, entire family movement and current residence in Oregon.

(c) Contractor files must contain copies of documents or a record verifying documents were viewed.

(d) The ELD may verify any factors affecting eligibility or benefit when they are considered questionable.

(e) If reported information or information on the application is questionable or if it is inconsistent, the following conditions may apply:

(A) ELD may deny an application, or

(B) Immediately end ongoing benefits to the Migrant Family when acceptable verification is not provided, or if inconsistencies cannot be resolved; and

(C) Require the Contractor to reimburse the ELD for a portion or all of the subsidies that were paid for child care that were paid in error.

(f) A Migrant Family will be notified by the Contractor in writing at least ten business days prior to the end of the 12 months' eligibility or if funds are no longer available.

(g) Verification provided for one federal program may be used as verification for all ELD programs in which the Migrant Family participates.

(2) To be eligible for the ELD subsidy program, Seasonal Families must do all of the following:

(a) Apply for the Department of Human Services ERDC program and follow all eligibility, determination, and copayment rules.

(b) If applicant does not qualify for or is put on the reservation list for the ERDC program, the Seasonal Family may apply for the ELD Special Populations subsidy program. On forms provided by the ELD, applicant will document:

(A) Applicant's family size and membership, current and previous places of residence, employment history and family income for the past 12 months; and

(B) Verification of the family qualifying for Migrant Family status within the past 36 months at time of application.

(c) The income that determines family co-pay shall be for the 12 full months just prior to application, or for the most recent tax year, and shall be for all wage earners age 18 and above in the family membership group.

(d) An application shall be completed or updated and eligibility factors must be verified by the Contractor for all of the following:

(A) Contractor intake staff must ask for and review documents that verify income, employment, and current residence in Oregon; and

(B) Contractor files must contain copies of documents or a record verifying documents were viewed.

(e) The ELD may verify any factors affecting eligibility or benefit when they are considered questionable.

(f) If reported information or information on the application is questionable or if it is inconsistent, the following conditions may apply:

(A) The Early Learning Division may deny an application, or

(B) Immediately end ongoing benefits to the Seasonal Family when acceptable verification is not provided or if inconsistencies cannot be resolved, or

(C) Require the Contractor to reimburse the ELD for a portion or all of benefits that have been paid for child care that has been paid in error.

(g) A Seasonal Family will be notified by the Contractor in writing at least ten days prior to the end of the 12 month eligibility, or if funds are no longer available.

(h) Verification provided for one program may be used as verification for all Early Learning Division programs in which the client participates.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CCD 1-1994, f. & cert. ef. 1-14-94; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0040
Payment Process

Early Learning Division payment is subject to CCD established eligibility conditions described in these rules.

(1) ELD will pay only for child care authorized by the ELD.

(2) Payment is made to providers who are registered or certified and hold a valid child care subsidy contract with the ELD.

(3) If a child is in child care when the service plan is made, payment shall be made only from the date the service is authorized.

(4) ELD will make payments for temporary absence if required by the provider, subject to the following requirements and limits:

(a) The provider must use the same policy for both ELD and non-ELD child care subsidy families;

(b) The child must be expected to continue in child care with the same provider after the absence;

(c) ELD will make payment for actual absence(s) not to exceed a total of five (5) working days in any calendar month, not to exceed 40 hours of authorized absences per month; and

(d) Absence days, or portions thereof, will include on the time(s) for which child care has been authorized by ELD.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0340; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0050
Billing Method

(1) ELD payments for child care are made by check to the Contractor or provider on the behalf of the client after all care for the month has been given.

(2) The invoice is to be submitted by the Contractor or provider on forms approved by the ELD.

(3) Registered and Certified family child care and Certified Center providers must bill at an hourly rate not to exceed the total authorized.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0350; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0060
Determining Child Care Rates for Payment

(1) The maximum rates the ELD pays for Migrant and Seasonal child care are determined by the most recent Oregon Department of Human Services (DHS) market rate survey and will be furnished upon request.

(2) ELD will pay the provider's rates within the (DHS) maximums as specified in the provider contract with ELD.

(3) Rates charged to ELD for child care services may not exceed rates charged for comparable services to non-subsidy children.

(4) The provider shall not ask the family for, or accept directly or indirectly, any additional payment for care provided to an ELD subsidy eligible family other than those in section (2) of this rule.

(5) Families are subject to copayments according to DHS copayment standards:

(a) During the first month, or part thereof, of child care, all Migrant and Seasonal Families will be charged the minimum copayment.

(b) When all children in a family receive three or fewer hours a day of children, the minimum copayment will apply.

(c) For the ELD subsidy program, the copayment for each Seasonal Family will be determined based on 50 percent of the DHS copayment for the family size and monthly income. Monthly income shall be determined by dividing the annual family income by 12.

(d) The family shall be informed of their copayment when they apply and their copayment shall be included in writing on the client application.

(e) The Contractor is responsible to collect the copayment.

(f) The Contractor may choose not to collect the copayment from the family, but the copayment must be deducted from the amount billed to the ELD before ELD is billed.

(6) Copayment Subsidies: For Seasonal Families that have been determined eligible for the ERDC program, the ELD Special Populations program will reimburse the Contractor for 50 percent of the copayment required to be paid by the family to receive the ERDC child care subsidy.

(a) Contractor will invoice the ELD monthly for the copayment reimbursement, and will provide documentation that show the required payment for the Seasonal family.

(b) The subsidized copayment amount will be disbursed by the ELD directly to the child care provider or to the Contractor for payment to the child care provider.

(c) ELD subsidized copayments are meant to ease the financial burden on Seasonal Families seeking child care subsidy. Neither the Contractor nor the child care provider shall charge an applicant family any fees or copayments that have already been paid on behalf of the applicant family to the provider by ELD.

(7) In-home Care. Minimum wage for care in a child's own home is governed by the state minimum wage law. It may not be negotiated to a lower rate. Overtime at one-and-one-half times the regular rate must be paid for all hours worked in excess of 40 hours in a work week (seven sequential days). Overtime shall not be paid to a provider who lives in the child's home.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CSD 12-1992(Temp), f. & cert. ef. 5-19-92; CSD 17-1992, f. & cert. ef. 7-6-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0360; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0080
Exception

(1) Specific exception to any section of these rules may be granted for good and just cause by the Child Care Division. The exception must be requested in writing, and show how the intent of the rule will be met to the Early Learning Division.

(2) No exception will be granted which may jeopardize the health, safety, and well-being of any child in care.

(3) All exceptions must be submitted in writing to the Child Care Division, and remain there on file. The granting of an exception shall not constitute a precedent for any other provider or client.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CSD 11-1990, f. & cert. ef. 4-23-90; CSD 10-1992, f. & cert. ef. 3-17-92; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-011-0380; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0090
Parent Complaints

(1) All Contractors for the Migrant and Seasonal Farmworker child care services program shall establish a process by which families may present a grievance or complaint regarding child care services.

(2) Records of all complaints shall be maintained and the ELD must be notified in writing of all grievance and complaints within ten (10) working days of receipt by the Contractor.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: ; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0095
Mandatory Reporter

As required by Oregon Revised Statues (ORS) 419B.005 through 419B.050, Contractor must immediately inform either the local office of the Department of Human Services (DHS) or a law enforcement agency when they have reasonable cause to believe any child with whom the Contractor comes in contact has suffered abuse, or any person with whom the Contractor comes in contact has abused a child. Oregon Law recognizes child abuse to be physical injury; neglect or maltreatment; sexual abuse and sexual exploitation; threat of harm; mental injury; and child selling. Report must be made immediately upon awareness of the incident.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: ; ELD 12-2014, f. & cert. ef. 11-25-14

414-400-0100
Limits on Disclosure

(1) No employee or volunteer of the ELD, or other agency, may disclose information about clients except as stated in OAR 412-001-0100 through 412-001-0170, or at the direction of a court of competent jurisdiction, or upon advice of the Attorney General.

(2) The ELD may disclose information in order to administer its programs and provide services when it is in the best interest of the applicant's family, unless specifically forbidden by statutes, these rules or by court order. Reasons for disclosure include, but are not limited to, providing information to: A social service agency, service provider or agency of State Office for Children and Families for the purpose of arranging appropriate child care services for the applicant's family.

Stat. Auth: ORS 329A
Stat. Implemented: ORS 329A.010
Hist.: CCD 1-1994, f. & cert. ef. 1-14-94; Renumbered from 414-400-0033, ELD 12-2014, f. & cert. ef. 11-25-14

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Rule Caption: Child Care Contribution Tax Credit
Adm. Order No.: ELD 13-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 10-1-2014
Rules Amended: 414-700-0000, 414-700-0010, 414-700-0020, 414-700-0030, 414-700-0040, 414-700-0050, 414-700-0060, 414-700-0070, 414-700-0080, 414-700-0090
Subject: Changes reflect the transfer of the child Care Division from Employment Department to Early Learning Division. In this transfer the Child Care Division became the Office of Child Care within the Early Learning Division. Eliminates some responsibilities of community agencies. Removes time limit on how long a community agency may represent a community.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-700-0000
Purpose

The purpose of these rules is provide guidance for administration of the child care contribution tax credit program as authorized in ORS 314.752, 315.202 and 318.031 and Section 10, chapter 682, Oregon Laws 1987, Section 87, chapter 625, Oregon Laws 1989 and ORS Chapter 329A.700 to 329A.718. The child care contribution tax credit was enacted by the 2003 legislature to:

(1) Encourage taxpayers to make contributions to the Office of Child Care by providing a financial return on qualified contributions and by soliciting other contributions.

(2) Achieve specific and measurable goals for targeted communities and populations.

(3) Set standards for the child care industry concerning the cost of providing quality, affordable child care.

(4) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families.

Stat. Auth: ORS 329A.706
Statutes Implemented: ORS 329A.700-329A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0010
Definitions

(1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home

other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.

(2) "Community" means a recognized unit of government, service delivery area or other commonly recognized area or region within the state of Oregon.

(3) "Community agency" means a nonprofit agency that:

(a) Provides services related to child care, children and families, community development or similar services; and

(b) Is eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.

(4) "High quality child care" means child care that meets standards for high quality child care established or approved by the Early Learning Council.

(5) "Qualified contribution" means a contribution made by a taxpayer to the Office of Child Care or a selected community agency for the purpose of promoting child care, and for which an application is submitted for a tax credit certificate.

(6) "Tax credit certificate" means a certificate issued by the Office of Child Careto a taxpayer to qualify the taxpayer for a tax credit.

(7) "Tax credit marketer" means an individual or entity selected by the Office of Child Care to market tax credits to taxpayers.

Stat. Auth: ORS 329A.706
Statutes Implemented: ORS 329A.700-329A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0020
Advisory Committee

(1) The Early Learning Division shall guide and direct the implementation of this program in collaboration with an advisory committee established by the Office of Child Care.

(2) The advisory committee shall be comprised of representatives of state agencies, local organizations, advocates, and consumers with experience or interest in tax credit programs, high quality child care, or community development.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0030
Community Agencies

(1) The Office of Child Care shall select one or more community agencies that, in the judgment of the Office and based on the criteria set forth in OAR 414-700-0050(a) through (d), will best serve the interests of their community.

(2) Community agencies shall:

(a) Disburse moneys to child care providers in their community;

(b) Coordinate an application process by which persons may apply to be participating providers as described in 414-700-0060;

(c) Enter into agreements with participating providers under which the duties and responsibilities of providers and the community agency are stated;

(d) Provide or coordinate required training for participating providers;

Stat. Auth: ORS 329A.706
Statutes Implemented: ORS 329A.700-329A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0040
Application and Renewal Process for Community Agencies

(1) A community agency desiring to represent a community described in OAR 414-700-0030 shall submit an application to the Office of Child Care, in a form prescribed and provided by the Office of Child Care. The application will demonstrate and describe the agency's experience and abilities in the following areas:

(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit program.

(b) Demonstrated ability to serve low- and moderate- income families.

(c) A governing board that is stable, has experience with financial matters, is representative of the community, and has a history of collaboration with other agencies in the community.

(d) An executive officer and staff with skill and experience in child care business management and small business development.

(2) The Office of Child Care, in collaboration with the advisory committee established in OAR 414-700-0020, shall select a community agency to represent a community.

(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.

Stat. Auth: ORS 329A.706
Statutes Implemented: ORS 329A.700-329A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0050
Distribution of Funds to Community Agencies

(1) The Office of Child Care shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Office of Child Care , in collaboration with the advisory committee established in OAR 414-700-0020 and transmit those determinations to the selected community agencies of each year.

(2) The Office of Child Care shall distribute moneys to the community agencies in a manner that will facilitate timely implementation of the program in that community.

(3) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from taxpayers during the tax year, minus any reasonable administrative costs incurred by the Office of Child Care and the selected community agencies.

(4) Distributions shall be made to selected community agencies in the proportion that the Office of Child Care determines best promotes the provision of child care in the state.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0060
Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

(a) Be regulated by the Office of Child Care;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Early Learning Council in collaboration with the advisory council;

(d) Maintain adequate liability insurance, financial records and parent policies and contracts; and

(e) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

(a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and

(b) Provide care to children from at least two families that have incomes of 85 percent or less of the median income for the region.

(3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 85 percent or less of the median income for the region.

(4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established by the community agency pursuant to ORS 657A.715(2)(g), the fee charged to the family by an eligible provider shall not exceed ten percent of the family's gross monthly income.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 2-2005(Temp), f. & cert. ef. 6-16-05 thru 12-13-05; CCD 4-2005(Temp), f. 12-2-05, cert. ef. 12-15-05 thru 6-11-06; CCD 2-2006, f. 4-21-06, cert. ef. 4-23-06; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0070
Distribution of Funds to Participating Providers

(1) The selected community agency shall identify providers in the community that meet the requirements of OAR 414-700-0060 for the purpose of distribution of moneys. The selected community agency shall develop a process by which child care providers apply to receive distributions of moneys from contributions made by taxpayers.

(2) By the end of each calendar year, the selected community agency must distribute to participating child care providers all moneys available to the community as a result of this program. Distributions shall be based on:

(a) The actual costs of providing quality, affordable child care in the community for which distributions are being made, including training costs, operating expenses and wages.

(b) The incomes of the families the provider serves and the child care fees the provider charges.

(3) The selected community agency shall, through a process approved by the Child Care Division, determine the amount of moneys each eligible provider receives.

(4) A substantial portion of the moneys shall be distributed to providers who operate home-based child care businesses.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0080
Allocation of Certificates

(1) Tax credit certificates shall be available to taxpayers on a statewide basis. The Office of Child Care shall allocate tax credit certificates to taxpayers that make qualified contributions to the Child Care Fund.

(2) If a taxpayer makes a contribution to the Office of Child Care for the purpose of receiving a tax credit under this program, the taxpayer shall submit an application for a tax credit certificate with the contribution. The applications shall:

(a) Be available to taxpayers from the Office of Child Care; and

(b) Be submitted by December 31 of each year.

(3) Contributions made under this subsection shall be deposited in the Child Care Fund.

(4) The Office of Child Care shall consider applications for tax credit certificates in the chronological order in which the applications are received by the Office of Child Care. The division shall issue tax credit certificates to applicants until the total credit value of all certificates issued by the division for the calendar year equals $500,000. Each issued certificate shall state the value of the contribution being certified as eligible for the tax credit allowed under ORS 315.213.

(5) The Office of Child Care may not issue a tax credit certificate to a taxpayer to the extent the claim for credit in the application, when added to the total credit value previously certified by the Office of Child Care exceeds the $500,000 tax credit value available for the calendar year requested.

(6) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the Office of Child Care's denial or issuance of the certificate.

(a) The Office of Child Care shall send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request.

(b) The refund shall be made from the Child Care Fund.

(7) The Office of Child Care shall send a copy of all tax credit certificates issued to the Department of Revenue.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

414-700-0090
Taxpayer Requirements

(1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions made to the Office of Child Care under OAR 414-700-0080.

(a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated in the tax credit certificate.

(b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the credit is claimed.

(2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be carried forward for any tax year thereafter.

(a) A taxpayer shall retain the tax credit certificate received under OAR 414-700-0080 with their copy of their tax return filed with the state Department of Revenue for the tax year in which the tax credit certificate applies.

(b) A credit under this section may be claimed by a non-resident or part-year resident without proration.

(3) The credit allowed under this section is in addition to, and not in lieu of, any credit or deduction allowable under ORS chapters 316, 317, or 318 for charitable contributions and contributions made in relation to child care.

(4) If a taxpayer makes a contribution to the Office of Child Care but does not want to receive a tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a charitable contribution.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 329A.010.

Stat. Auth.: ORS 657A.706
Stats. Implemented: ORS 657A.700 - 657A.718
Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; ELD 13-2014, f. & cert. ef. 11-25-14

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Oregon Health Authority, Addictions and Mental Health Division: Mental Health Services Chapter 309

Rule Caption: Temporary amendments to OAR 309-114 entitled Informed Consent By Patients in State Institutions
Adm. Order No.: MHS 15-2014(Temp)
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14 thru 5-29-15
Notice Publication Date:
Rules Amended: 309-114-0005, 309-114-0025
Subject: These rules prescribe standards and procedures to be observed by personnel of state institutions operated by Division in obtaining informed consent to significant procedures, as defined by these rules, from patients of such state institutions. These rules do not apply to routine medical procedures. The purpose of these rules is to assure that the rights of patients are protected with respect to significant procedures.
Rules Coordinator: Marcus Kroloff—(503) 945-9717

309-114-0005
Definitions

As used in these rules:

(1) "Authorized Representative" or "representative" means an individual who is an employee of the system described in ORS 192.517(1) and who may represent a party in a contested case hearing; the representative must be supervised by an attorney that is licensed by the Oregon State Bar and employed by the same system described in 192.517(1).

(2) "Chief Medical Officer" means the physician designated by the superintendent of each state institution pursuant to ORS 179.360(1)(f) who is responsible for the administration of medical treatment at each state institution.

(3) "Committed" or "Commitment" means an individual is admitted under ORS 161.327, 161.370, 426.701, 426.130, 427.215 or 426.220 when the individual's guardian or health care representative is unavailable or unable to consent

(4) "Dangerousness" means either:

(a) A substantial risk that physical harm will be inflicted by an individual upon his own person, as evidenced by threats, including verbal threats or attempts to commit suicide or inflict physical harm on him or her self. Evidence of substantial risk may include information about historical patterns of behavior that resulted in serious harm being inflicted by an individual upon him or herself as those patterns relate to the current risk of harm;

(b) A substantial risk that physical harm will be inflicted by an individual upon another individual, as evidenced by recent acts, behavior or threats, including verbal threats, which have caused such harm or which would place a reasonable person in reasonable fear of sustaining such harm. Evidence of substantial risk may include information about historical patterns of behavior

(5) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(6) "Guardian" means a legal guardian who is an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated person.

(7) "Health Care Representative" means a person who has authority to make health care decisions for a patient.

(8) "Legally Incapacitated" means having been found by a court of law under ORS 426.295 to be unable, without assistance, to properly manage or take care of one's personal affairs, or who is a person under guardianship.

(9) "Material Risk." A risk is material if it may have a substantial adverse effect on the patient's psychological or physical health, or both. Tardive dyskinesia is a material risk of neuroleptic medication. Other risks include, but are not limited to raised blood pressure, onset of diabetes and metabolic changes.

(10) "Medication Educator" means a Qualified Mental Health Professional (QMHP) who provides information about the proposed significant procedures to patients.

(11) "Patient" means an individual who is receiving care and treatment in a state institution for the mentally ill.

(12) Patient with a "grave disability" means a patient who:

(a) Is in danger of serious physical harm to his or her health or safety absent the proposed significant procedures; or

(b) Manifests severe deterioration in routine functioning evidenced by loss of cognitive or volitional control over his or her actions which is likely to result in serious harm absent the proposed significant procedures.

(13) "Person Committed to the Division" or "Person" means an individual committed under ORS 161.327, 161.370, 426.130, or 427.215.

(14) "Psychiatric Nurse Practitioner," means a registered nurse with prescription authority who independently provides health care to clients with mental and emotional needs or disorders.

(15) "Qualified Mental Health Professional" (QMHP) means any individual meeting the following minimum qualifications as documented by the state institution:

(a) Graduate degree in psychology;

(b) Bachelor's or graduate degree in nursing and licensed by the State of Oregon;

(c) Graduate degree in social work or counseling;

(d) Graduate degree in a behavioral science field;

(e) Graduate degree in recreational art, or music therapy;

(f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; or

(g) Bachelor's or graduate degree in a relevant area.

(16) "Routine Medical Procedure" means a procedure customarily administered by facility medical staff under circumstances involving little or no risk of causing injury to a patient including, but not limited to physical examinations, blood draws, influenza vaccinations, tuberculosis (TB) testing and hygiene.

(17) "Significant Procedure" means a diagnostic or treatment modality and all significant procedures of a similar class that pose a material risk of substantial pain or harm to the patient such as, but not limited to psychotropic medication and electro-convulsive therapy. Significant procedures do not include routine medical procedures. For purposes of these rules, "Human immunodeficiency virus" (HIV) testing shall be considered a "Significant Procedure."

(18) "Significant Procedures of a Similar Class" means a diagnostic or treatment modality that presents substantially similar material risks as the significant procedure listed on the treating physician's or psychiatric nurse practitioner's informed consent form and is generally considered in current clinical practice to be a substitute treatment or belong to the same class of medications as the listed significant procedure.

(a) For purposes of these rules, medications listed in subsections 14(a)(A) through 14(a)(F) of this rule will be considered the same or similar class of medication as other medications in the same subsection:

(A) All medications used under current clinical practice as antipsychotic medications including typical and atypical antipsychotic medications;

(B) All medications used under current clinical practice as mood stabilizing medications;

(C) All medications used under current clinical practice as antidepressants;

(D) All medications used under current clinical practice as anxiolytics;

(E) All medications used under current clinical practice as psychostimulants; and

(F) All medications used under current clinical practice as dementia cognitive enhancers.

(b) Significant procedures of the same or similar class do not need to be specifically listed on the treating physician's or psychiatric nurse practitioner's form.

(19) "State Institution" or "Institution" means all Oregon State Hospital campuses and the Blue Mountain Recovery Center.

(20) "Superintendent" means the executive head of the state institution listed in section (18) of this rule, or the superintendent's designee.

Stat. Auth.: ORS 179.040 & 413.042

Stats. Implemented: ORS 179.321, 183.458, 426.070 & 426.385

Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert. ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 1-2009(Temp), f. & cert. ef. 1-23-09 thru 7-22-09; MHS 2-2009(Temp), f. & cert. ef. 4-2-09 thru 7-22-09; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 6-2009, f. & cert. ef. 12-28-09; MHS 5-2010(Temp), f. & cert. ef. 3-12-10 thru 9-8-10; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 13-2010(Temp), f. & cert. ef. 11-19-10 thru 5-18-11; MHS 4-2011, f. & cert. ef. 5-19-11; MHS 15-2014(Temp), f. & cert. ef. 12-1-14 thru 5-29-15

309-114-0025
Contested Case Hearing

(1) Patient's Rights: A patient has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to OAR 309-114-0020(5)(c). If the patient is a minor or legally incapacitated, the parents, guardian, or patient if the patient has a guardian or health care representative who is unavailable has the right to contest the hospital's determination that it has good cause to involuntarily administer a significant procedure without informed consent pursuant to 309-114-0020(5)(c).

(a) Instructions and a simple method of requesting such a hearing shall be provided to every patient when he or she receives notice that the institution intends to administer a significant procedure without informed consent. The patient indicating in writing or verbally to any staff member a desire to challenge the institution's decision will be sufficient to request a contested case hearing.

(b) A patient's verbal or written request for a hearing implies consent to the release of his or her records and protected health information to his or her representative, the institution's representative, and the Office of Administrative Hearings for the purpose of preparing for and conducting the contested case hearing.

(c) After filing a request for an administrative hearing, an attorney or certified law student will be appointed by the Division to represent any patient who requests one. The patient has the right to be represented at the hearing by a representative appointed and paid by the state. The patient also has the right to be represented at the hearing by an attorney or certified law student of his or her choice and at his or her own expense.

(d) If a patient requests a contested case hearing and is not already receiving the significant procedure pursuant to a valid physician's or psychiatric nurse practitioner's order the patient has the right to not receive the significant procedure prior to and during the hearing. If the patient is already receiving the significant procedure pursuant to a valid physician's or psychiatric nurse practitioner's order, the institution may continue to administer the significant procedure to the patient until the final order is issued.

(2) Contested Case Hearing: The administrative hearing will conform to the requirements set forth in ORS 183.413 through 183.500, and the Attorney General's Model Rules at OAR 137-003-0501 and the following:

(a) The hearing must be held within 14 days of the date of the patient's request, unless the patient or his or her representative or the state institution's representative requests a delay for good cause or the patient or his or her representative and the state institution's representative agree to a postponement. Good cause includes, but is not limited to, the following circumstances: the patient's ward is quarantined at the time of the hearing, additional time is required to access necessary and relevant records not in the possession of the state institution, or titration of the patient's medication is necessary to allow minimally adequate communication by the patient with his or her representative for purposes of the hearing.

(b) These hearings are closed to all non-participants, except personnel from the institution or the Attorney General's Office, personnel from Disability Rights Oregon, personnel from the Office of Administrative Hearings, or members of the patient's family. Any exceptions to this policy must be agreed to in advance by the institution's representative and the patient or their representative. The institution may exclude non-participants, otherwise allowed to attend these hearings, who are disruptive or represent a safety concern.

(c) In lieu of discovery, the patient or his or her representative will be provided with the treating physician's or psychiatric nurse practitioner's form, independent examining physician's evaluation form, the superintendent's or chief medical officer's form approving or disapproving of the administration of the significant procedure, and the preprinted information regarding the risks and benefits of the proposed significant procedures. The patient or his or her representative may also review the patient's chart and consult with the patient's treating physician or psychiatric nurse practitioner.

(d) The following procedures are not available in these contested case hearings: summary determination procedures as defined in OAR 137-003-580, pre-hearing motions as defined in 137-003-0630, and pre-determination review procedures in 137-003-0640.

(e) A final order must be issued by the administrative law judge within two days, excluding weekends and holidays, after the hearing, except when the administrative law judge determines that there is good cause to delay the final order. All final orders must be issued within 3 days of the

close of the hearing or the record, whichever is later, excluding weekends and holidays. A final order is effective immediately upon being signed or as otherwise provided in the order.

(f) If after the hearing, the administrative law judge determines that there is an issue not raised by a party or the agency that impacts the outcome of the case, the administrative law judge must grant a continuance for good cause and inform the institution's representative and the patient or his or her representative so that they may present additional arguments and evidence on that issue.

(g) The administrative law judge must determine whether to affirm or reverse the state institution's decision that it has good cause to involuntarily administer a significant procedure without informed consent from the patient as defined by the factors in OAR 309-114-0020(1) with regards to the significant procedures listed on the treating physician's or psychiatric nurse practitioner's informed consent form.

(h) A final order affirming or reversing the institution's decision to involuntarily administer a significant procedure to the patient without informed consent includes all significant procedures listed on the treating physician's or psychiatric nurse practitioner's informed consent form and all unlisted significant procedures of a similar class.

(i) A final order approving the involuntary administration of the significant procedure without informed consent shall be reexamined if the treating physician or psychiatric nurse practitioner determines that there is a substantial increase in the risk to the patient in administering the significant procedure during the term of a person's commitment, but in no case longer than 180 days. Approval of the significant procedure may also be reexamined pursuant to OAR 309-114-0020(8) if the treating physician or psychiatric nurse practitioner determines that there is substantial improvement in the patient's capacity.

(j) A final order disapproving the involuntary administration of the significant procedure without informed consent lasts for no longer than 180 days. If a substantial change in the patient's condition occurs during this time, the institution may re-evaluate the patient using the entire OAR 309-114-0020 process, and must additionally document and explain what substantial change in the person's capacity has occurred since the administrative law judge decision was issued.

(k) If the final order reverses the institution's decision to involuntarily administer a significant procedure and the patient is already receiving the significant procedure, then the hospital may continue to administer the significant procedure to the extent it is necessary to develop and implement a titration plan to safely discontinue the significant procedure according to current clinical practice.

(l) If the patient withdraws his initial request for hearing or refuses to attend the initial hearing without good cause, the administrative law judge will issue a dismissal order pursuant to OAR 137-003-0672(3). A dismissal order will allow the institution to immediately administer the significant procedure without informed consent as if the patient had never requested a hearing. If a dismissal order is issued, the patient may request a second hearing. If the patient withdraws his second request for hearing or refuses to attend the second hearing without good cause, the hearing will occur as scheduled with the institution presenting a prima facie case pursuant to ORS 183.417(4) and the administrative law judge will issue a final order by default. The final order by default will be issued in a manner consistent with the time frames and process outlined in OAR 309-114-0025(2).

(m) Any administrative law judge who will preside over a hearing regarding involuntary administration of a significant procedure without informed consent must complete agency approved training unique to administration of psychiatric treatment without consent. This training shall be developed by the Division in consultation with Disability Rights Oregon.

(n) Subject to the approval of the Attorney General, an agency officer or employee is authorized to appear, but not make legal argument, on behalf of the agency in contested case hearings involving the involuntary administration of a significant procedure to a patient.

(A) For purposes of this rule, the term "legal argument" is used as defined in ORS 183.452 and OAR 137-003-0545.

(B) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after the conclusion of the hearing.

Stat. Auth.: ORS 179.040
Stats. Implemented: ORS 179.321, 426.070 & 426.385
Hist.: MHD 3-1983, f. 2-24-83, ef. 3-26-83; MHD 3-1988, f. 4-12-88, (and corrected 5-17-88), cert ef. 6-1-88; MHS 14-2007(Temp), f. 11-30-07, cert. ef. 12-1-07 thru 5-29-08; MHS 2-2008(Temp), f. & cert. ef. 4-7-08 thru 10-4-08; MHS 6-2008, f. & cert. ef. 7-25-08; MHS 3-2009, f. & cert. ef. 6-26-09; MHS 12-2010, f. & cert. ef. 9-9-10; MHS 15-2014(Temp), f. & cert. ef. 12-1-14 thru 5-29-15

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Rule Caption: 309-031 Programs for Mental or Emotional Disturbances
Adm. Order No.: MHS 16-2014(Temp)
Filed with Sec. of State: 12-12-2014
Certified to be Effective: 12-12-14 thru 6-9-15
Notice Publication Date:
Rules Amended: 309-031-0010
Subject: This rule prescribes the policies and procedures related to assuring that persons committed to the custody of state institutions can be served in appropriate settings.
Rules Coordinator: Marcus Kroloff—(503) 945-9717

309-031-0010
Forensic Psychiatric Services

(1) Purpose. This rule prescribes procedures for state institutions serving persons committed to the Division by a court of criminal jurisdiction and persons ordered to a state institution by the Psychiatric Security Review Board or Oregon Health Authority. This rule also designates the state institution to receive other dangerous persons in certain instances.

(2) Statutory Authority and Procedure. This rule is authorized by ORS 161.390, 179.360, 179.040, and 413.042 and carries out the provisions of 161.295 through 161.370, 161.725 to 161.735, 426.005 to 426.680, 427.175, 427.180 & 430.610 to 430.725.

(3) Definitions. As used in this rule:

(a) "Administrator" means the Assistant Director, of the Addictions and Mental Health Division.

(b) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(c) "Patient" means a person who is receiving care and treatment in a state institution for the mentally ill.

(d) "Psychiatric Security Review Board" is the Board created by ORS 161.385.

(e) "Resident" means a person who is receiving care, treatment, and training in a state institution for the mentally retarded.

(f) "State Institution" means Dammasch State Hospital in Wilsonville, Oregon State Hospital in Salem, Fairview Training Center in Salem, and Eastern Oregon Hospital and Training Center in Pendleton.

(g) "Superintendent" means the executive head of the state institution as listed in subsection (3)(f) of this rule.

(4) Designation of State Institution for Serving Persons Under Jurisdiction of Court, the Oregon Health Authority, or Psychiatric Security Review Board:

(a) If a court orders a person committed to a state institution for an evaluation under ORS 161.365 to determine a defendant's fitness to proceed to trial, under 161.315 to determine a defendant's criminal responsibility, or under 161.725 to determine if a defendant is a habitual criminal, the person will be admitted to the Forensic Psychiatric Service of Oregon State Hospital according to conditions set forth in subsection (b) of this section, unless otherwise ordered by the Administrator;

(b) The Clinical Director of the Forensic Psychiatric Service may, upon finding that requests for admission to the Service pursuant to subsection (a) of this section are sufficient in number to require the establishment of a waiting list to govern admissions, establish a waiting list based on such factors as:

(A) Severity of the mental disorder;

(B) Degree to which the person presents an immediate and serious danger to others;

(C) Adequacy of the facility having custody to continue care and custody of the person; and

(D) Sequence in which the order or request for admission was received by the Forensic Psychiatric Service.

(c) If a court orders a person committed to the custody of the Superintendent of a state institution under ORS 161.370, or if a court, the Psychiatric Security Review Board, or the Oregon Health Authority orders a person committed to a state institution under ORS 161.327, 161.328, 161.336, 161.341, or 161.346, the Superintendent may:

(A) Admit the person to a state institution; or

(B) Treat the person at another facility, by agreement with the authority responsible for that facility, if the Superintendent determines that the medical needs of the person or the safety and welfare of the person or of others require that the person be served in another facility, unless otherwise ordered by the Administrator.

(5) Interinstitutional Transfers:

(a) If, in the opinion of the Superintendent of Oregon State Hospital or his designee, it is deemed to be required by the medical needs of the person or for the safety and welfare of the person or the safety of others that a patient of the Forensic Psychiatric Service be transferred within Oregon State Hospital, or to Dammasch State Hospital, Eastern Oregon Hospital and Training Center, or Fairview Training Center, the superintendent shall initiate a request for transfer on forms prescribed by the Division and, upon approval by the superintendent of the receiving institution, arrange for transfer. A patient of the Forensic Psychiatric Service may request such a transfer through a written request to the Superintendent of Oregon State Hospital. Transfers made to the Mental Retardation Section of Eastern Oregon Hospital and Training Center or Fairview Training Center shall comply with the eligibility requirements outlined in OAR 309-042-0000 to 309-042-0050 (Admission and Release of Residents), as determined by the Diagnosis and Evaluation Service of the Division;

(b) If, in the opinion of the superintendent of a state institution, it is deemed to be required by the medical needs of the person or for the safety and welfare of the person or the safety of others that a patient or resident be transferred to the Forensic Psychiatric Service, the superintendent shall initiate a request for transfer on forms prescribed by the Division and, upon approval by the Superintendent of Oregon State Hospital, arrange for transfer;

(c) If a request for transfer to or transfer from the Forensic Psychiatric Service of Oregon State Hospital is rejected by the receiving state institution, the referring institution may request the Administrator to convene the Interinstitutional Disposition Board to determine the placement consistent with the person's needs and the safety of others. The Board shall be convened as expeditiously as possible but in no case later than two weeks after such request. The decision of the chairperson shall be final;

(d) In all cases, the patient or resident shall be informed in writing of the impending transfer or rejection of the transfer request and shall be given an opportunity to request a hearing. Within seven days after a patient or resident signs a request for hearing, a hearing shall be held before the Interinstitutional Disposition Board to determine whether the patient or resident shall be transferred. The patient or resident may be transferred on a emergency basis pending the decision of the Board for a period not to exceed 15 days;

(e) The Interinstitutional Disposition Board shall not consider the request for transfer or other written evidence or oral statements unless the patient or resident has the opportunity to cross-examine the person making the statement. At the hearing before the Board, the patient or resident shall have the right to present evidence, to cross-examine all witnesses, and to be represented by an attorney upon request. These rights shall only be denied when good cause is shown;

(f) The patient or resident shall have the right to be present at the Interinstitutional Disposition Board hearing on request, except when the Board finds that the testimony of the treating physician or any other witness in the presence of the patient or resident would be damaging to the future treatment and care of the patient or resident. In that instance, the testimony and cross-examination of those witnesses shall be conducted out of the presence of the patient or resident;

(g) Based upon the testimony given before the Interinstitutional Disposition Board, the Administrator of the Division or the Administrator's designee shall determine the best placement for the patient or resident and issue a written order directing that the patient or resident be transferred or that the transfer be denied. The order shall contain a statement of the facts upon which the order is based.

(6) Interinstitutional Disposition Board:

(a) The Interinstitutional Disposition Board is composed of the following representatives:

(A) The Administrator of the Division or the Administrator's designee, who shall serve as chairperson;

(B) The Superintendent of Oregon State Hospital or alternate;

(C) The Superintendent of Dammasch State Hospital or alternate;

(D) The Superintendent of Eastern Oregon Hospital and Training Center or alternate; and

(E) The Superintendent of Fairview Training Center or alternate.

(b) The Administrator may invite such other persons to sit with the Board as the Administrator believes may be helpful in reaching a decision;

(c) The Administrator shall inform all members of the Interinstitutional Disposition Board of the standards for confidentiality of records in ORS 179.505, 192.501 to 192.505, and 42 CFR Part 2, as well as prescribed penalties for failure to comply with these standards.

(7) Release of Patient or Resident. A patient or resident who is under a court having criminal jurisdiction, the Corrections Department, or the Psychiatric Security Review Board will not be released or otherwise discharged from the custody of the Division without the specific approval of the appropriate legal authority. This approval will be documented in the patient's or resident's clinical record.

Stat. Auth.: ORS 161. 390, 179.360, 179.040 & 413.042
Stats. Implemented: ORS 161, 426.005 – 426.680, 427.175 & 427.180
Hist.: MHD 38, f. 4-5-76, ef. 4-26-76, MHD 7-1978, f. & ef. 8-30-78; MHD 13-1982, f. & ef. 7-2-82; MHS 16-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-15

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Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

Rule Caption: Hospital Assessment Rate Increase
Adm. Order No.: DMAP 68-2014
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14
Notice Publication Date: 11-1-2014
Rules Amended: 410-050-0861
Rules Repealed: 410-050-0861(T)
Subject: This hospital assessment rule increases the hospital assessment rate from 5.30% to 5.80% effective October 1, 2014. Upon adoption of this rule, the temporary rule, effective October 1, 2014, will be repealed.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-050-0861
Tax Rate

(1) The tax rate for the period beginning January 1, 2005, and ending June 30, 2006, is .68 percent.

(2) The tax rate for the period beginning July 1, 2006, and ending December 31, 2007, is .82 percent.

(3) The tax rate for the period beginning January 1, 2008, and ending June 30, 2009, is .63 percent.

(4) The tax rate for the period of January 1, 2008 through June 30, 2009 does not apply to the period beginning July 1, 2009.

(5) The tax rate for the period beginning July 1, 2009, and ending September 30, 2009, is .15 percent.

(6) The tax rate for the period beginning October 1, 2009, and ending June 30, 2010, is 2.8 percent.

(7) The tax rate for the period beginning July 1, 2010, and ending June 30, 2011, is 2.32 percent.

(8) The tax rate for the period beginning July 1, 2011, and ending September 30, 2011, is 5.25 percent.

(9) The tax rate for the period beginning October 1, 2011, and ending December 31, 2011, is 5.08 percent.

(10) The tax rate for the period beginning January 1, 2012, and ending March 31, 2013, is 4.32 percent.

(11) The tax rate for the period beginning April 1, 2013 and ending September 30, 2014, is 5.30 percent.

(12) The tax rate for the period beginning October 1, 2014, is 5.80 percent.

Stat. Auth.: ORS 413.042
Stats. Implemented: 2009 OL Ch. 867 § 17, 2007 OL Ch. 780 § 1 & 2003 OL Ch. 736 § 2 & 3
Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05; OMAP 34-2005, f. 7-8-05, cert. ef. 7-11-05; OMAP 14-2006, f. 6-1-06, cert. ef. 7-1-06; DMAP 29-2007, f. 12-31-07, cert. ef. 1-1-08; DMAP 3-2008, f. & cert. ef. 1-25-08; DMAP 24-2009, f. & cert. ef. 7-1-09; DMAP 25-2009(Temp), f. & cert. ef. 7-15-09 thru 1-10-10; DMAP 27-2009, f. & cert. ef. 9-1-09; DMAP 33-2009, f. & cert. ef. 10-1-09; DMAP 21-2010, f. 6-30-10, cert. ef. 7-1-10; DMAP 16-2011(Temp), f. & cert. ef. 7-1-11 thru 11-1-11; DMAP 26- 2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 11-1-11; DMAP 31-2011, f. 10-28-11, cert. ef. 11-1-11; DMAP 50-2011(Temp), f. 12-30-11, cert. ef. 1-1-12 thru 4-30-12; DMAP 8-2012, f. 2-27-12, cert. ef. 3-1-12; DMAP 15-2013(Temp), f. & cert. ef. 4-1-13 thru 9-27-13; DMAP 41-2013, f. & cert. ef. 8-1-13; DMAP 58-2014(Temp), f. & cert. ef. 10-1-14 thru 3-29-15; DMAP 68-2014, f. & cert. ef. 12-1-14

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Rule Caption: Remove Sunset Date from the Third Trimester Pregnancy Enrollment Exemption
Adm. Order No.: DMAP 69-2014(Temp)
Filed with Sec. of State: 12-8-2014
Certified to be Effective: 12-27-14 thru 12-31-14

Notice Publication Date:
Rules Amended: 410-141-3060
Subject: The Division needs to amend this rule to remove the sunset date included in OAR 410-141- 3060 (16) (b). The rule currently includes a sunset date of July 1, 2014 for the third trimester pregnancy enrollment exemption included in this rule. This allows Oregon Health Plan members in their third trimester to receive exemption from CCO managed care enrollment into Oregon Health Plan.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3060
Enrollment Requirements in a CCO

(1) A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in 414.631(2), (3), (4), and (5) and 414.632(2) or exempted by this rule.

(2) If, upon application or redetermination, a client does not select a CCO, the Authority shall enroll the client and the client's household in a CCO that has adequate health care access and capacity.

(3) For existing members of a PHP that has transitioned to a CCO, the Authority shall enroll those members in the CCO when the Authority certifies and contracts with the CCO. The Authority shall provide notice to the enrollees 30 days before the effective date.

(4) Existing members of a PHP that is on the path to becoming a CCO shall retain those members. The Authority shall enroll those members in the CCO when certification and contracting are complete. The Authority shall provide notice to the clients 30 days before the effective date.

(5) Unless otherwise exempted by sections (17) and (18) of this rule, existing clients receiving their physical health care services on a fee-for-service (FFS) basis shall enroll in a CCO serving their area that has adequate health care access and capacity. They must enroll by November 1, 2012. The Authority shall send a notice to the clients 30 days before the effective date.

(6) The following apply to clients receiving physical health care services on a fee-for-service basis but managed or coordinated behavioral health services:

(a) The Authority shall enroll the client in a CCO that is serving the client's area before November 1, 2012;

(b) The client shall receive their behavioral health care services from that CCO;

(c) The client shall continue to receive their physical health care services on a fee-for-service basis; and

(d) On or after November 1, 2012, the Authority shall enroll the client in a CCO for both physical health and behavioral health care services, unless otherwise exempted by sections (17) and (18) of this rule.

(e) On or after November 1, 2012, for the client exempt from coordinated physical health services by sections (17) and (18) shall receive managed or coordinated behavioral health services from a CCO or MHO.

(7) The following apply to clients enrolled in Medicare:

(a) A client may enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(b) A client enrolled in Medicare Advantage, whether or not they pay their own premium, may enroll in a CCO, even if the CCO does not have a corresponding Medicare Advantage plan.

(c) A client may enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(d) A client may enroll with a CCO even if the client is enrolled in Medicare Advantage with another entity.

(8) From August 1, 2012, until November 1, 2012, enrollment is required in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. The following outlines the priority of enrollment during this period in service areas where enrollment is required:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client shall enroll in a PHP if:

(A) A PHP serves an area that a CCO does not serve; or

(B) A PHP serves an area that a CCO serves, but the CCO has inadequate health care access and capacity to accept new members;

(c) Priority 3: The client shall receive services on a fee-for-service basis.

(9) From August 1, 2012, until November 1, 2012, enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP. If a client decides to enroll in a CCO or PHP, the priority of enrollment in section (8) applies.

(10) On or after November 1, 2012, CCO enrollment is required in all areas. The following outlines the priority of options to enroll in all service areas:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client shall enroll in a PHP on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members;

(c) Priority 3: The client shall enroll in a PHP that is not on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care access or capacity to accept new members;

(d) Priority 4: The client shall receive physical services on a fee-for-service basis.

(11) On or after July 1, 2013, a client shall enroll in a CCO or managed dental care organization (DCO) in a service area where a CCO or DCO has adequate dental care access and capacity, and a CCO or DCO is open to enrollment.

(12) If a client receives physical health care through a PHP, PCM, or on a fee-for-service basis under circumstances allowed by this rule, the client shall enroll in a CCO or mental (behavioral) health organization (MHO) in a service area where MHO enrollment is required. The following determines if a service area requires CCO or MHO enrollment:

(a) CCO: The service area has adequate CCO behavioral health care access and capacity;

(b) MHO: A CCO does not serve in the area; or

(c) MHO: A CCO serves the area, but the CCO has inadequate health care access and capacity to accept new members:

(13) From August 1, 2012, until November 1, 2012, if a service area changes from required enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-41-3080.

(14) The Department or OYA shall select the CCO for a child in the legal custody of the Department or OYA except for children in subsidized adoptions.

(15) The following populations are exempt from CCO enrollment:

(a) Populations expressly exempted by ORS 414.631(2) (a), (b) and (c), which includes:

(A) Persons who are non-citizens who are eligible for labor and delivery services and emergency treatment services;

(B) Persons who are American Indian and Alaskan Native beneficiaries; and

(C) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(b) Newly eligible clients are exempt from enrollment with a CCO if the client became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service basis only until the hospital discharges the client. The client is not exempt from enrollment in a DCO. The client is not exempt from enrollment in a DCO.

(c) Children in the legal custody of the Department or OYA where the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) Access to health care on a fee-for-service basis is not available; or

(B) Enrollment would preserve continuity of care.

(d) Clients with major medical health insurance coverage, also known as third party liability, except as provided in OAR 410-141-3050;

(e) Clients receiving prenatal services through the Citizen/Alien Waivered-Emergency Medical program; and

(f) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs.

(16) The following populations are exempt from CCO enrollment until specified below:

(a) From August 1, 2012, until November 1, 2012, children under 19 years of age who are medically fragile and who have special health care needs. Beginning November 1, 2012, the Authority may enroll these children in CCOs on a case-by-case basis; children not enrolled in a CCO shall continue to receive services on a FFS basis.

(b) Women who are in their third trimester of pregnancy when first determined eligible for OHP or at redetermination may qualify as identified below to receive OHP benefits on a fee-for-service basis until 60 days after the birth of her child. After the 60 day period the OHP member shall enroll in a CCO. In order to qualify for the FFS third trimester exemption the member must:

(A) Not have been enrolled with a service area CCO, FCHP, or PCO during the three months preceding redetermination,

(B) Have an established relationship with a licensed qualified practitioner who is not a participating provider with the service area CCO, FCHP, or PCO and wishes to continue obtaining maternity services from the non-participating provider on a FFS basis, and

(C) Make a request to change to FFS prior to the date of the delivery if enrolled with a CCO, FCHP, or PCO.

(c) From August 1, 2012 until November 1, 2012, clients receiving health care services through the Breast and Cervical Cancer Program are exempt. Beginning November 1, 2012, enrollment is required;

(d) Existing clients who had organ transplants are exempt until the Authority enrolls them in a CCO on a case-by-case basis; and

(e) From August 1, 2012, until November 1, 2012, clients with end-stage renal disease. Beginning November 1, 2012, enrollment is required.

(17) The following clients who are exempt from CCO enrollment and who receive services on a fee-for-service basis may enroll in a CCO:

(a) Clients who are eligible for both Medicare and Medicaid;

(b) Clients who are American Indian and Alaskan Native beneficiaries;

(18) The Authority may exempt clients or temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis. Other just causes include the following considerations:

(a) Enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(19) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

(20) Coordinated care services shall begin on the first day of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

(b) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(c) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 4-2013(Temp), f. & cert. ef. 2-7-13 thru 6-29-13; DMAP 33-2013, f. & cert. ef. 6-27-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 35-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 69-2014(Temp), f. 12-8-14, cert. ef. 12-27-14 thru 12-31-14

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Rule Caption: Revise CCO Enrollment Requirement and Removing Sunset Date for Third Trimester Pregnancy Exemption
Adm. Order No.: DMAP 70-2014
Filed with Sec. of State: 12-8-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 410-141-3060
Rules Repealed: 410-141-3060(T)
Subject: This rule provides the framework for Coordinated Care Organization (CCO) enrollment requirements including any existing exemptions from CCO enrollment. The Authority requested stakeholder and public comment on the following: The Licensed Direct Entry Midwives (LDEM) Staff Advisory Workgroup made recommendations related to perinatal service options for Medicaid enrollees. The Authority's Director, Suzanne Hoffman, responded with a letter dated May 21, 2014, stating the Division would implement changes necessitating the removal of the sunset date and allowing for time to make further program implementations and additional rule revisions. The Authority decided to implement the CCO enrollment exemption criteria on which to build additional program specific criteria later in 2015 outlining the detail level of the program requirements.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3060
Enrollment Requirements in a CCO

(1) A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in ORS 414.631(2), (3), (4), and (5) and 414.632(2) or exempted by this rule.

(2) If, upon application or redetermination, a client does not select a CCO, the Authority shall enroll the client and the client's household in a CCO that has adequate health care access and capacity.

(3) For existing members of a PHP that has transitioned to a CCO, the Authority shall enroll those members in the CCO when the Authority certifies and contracts with the CCO. The Authority shall provide notice to the enrollees 30 days before the effective date.

(4) Existing members of a PHP that is on the path to becoming a CCO shall retain those members. The Authority shall enroll those members in the CCO when certification and contracting are complete. The Authority shall provide notice to the clients 30 days before the effective date.

(5) Unless otherwise exempted by sections (17) and (18) of this rule, existing clients receiving their physical health care services on a fee-for-service (FFS) basis shall enroll in a CCO serving their area that has adequate health care access and capacity. They must enroll by November 1, 2012. The Authority shall send a notice to the clients 30 days before the effective date.

(6) The following apply to clients receiving physical health care services on a fee-for-service basis but managed or coordinated behavioral health services:

(a) The Authority shall enroll the client in a CCO that is serving the client's area before November 1, 2012;

(b) The client shall receive their behavioral health care services from that CCO;

(c) The client shall continue to receive their physical health care services on a fee-for-service basis; and

(d) On or after November 1, 2012, the Authority shall enroll the client in a CCO for both physical health and behavioral health care services, unless otherwise exempted by sections (17) and (18) of this rule.

(e) On or after November 1, 2012, for the client exempt from coordinated physical health services by sections (17) and (18) shall receive managed or coordinated behavioral health services from a CCO or MHO.

(7) The following apply to clients enrolled in Medicare:

(a) A client may enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(b) A client enrolled in Medicare Advantage, whether or not they pay their own premium, may enroll in a CCO, even if the CCO does not have a corresponding Medicare Advantage plan.

(c) A client may enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(d) A client may enroll with a CCO even if the client is enrolled in Medicare Advantage with another entity.

(8) From August 1, 2012, until November 1, 2012, enrollment is required in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. The following outlines the priority of enrollment during this period in service areas where enrollment is required:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client shall enroll in a PHP if:

(A) A PHP serves an area that a CCO does not serve; or

(B) A PHP serves an area that a CCO serves, but the CCO has inadequate health care access and capacity to accept new members;

(c) Priority 3: The client shall receive services on a fee-for-service basis.

(9) From August 1, 2012, until November 1, 2012, enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP. If a client decides to enroll in a CCO or PHP, the priority of enrollment in section (8) applies.

(10) On or after November 1, 2012, CCO enrollment is required in all areas. The following outlines the priority of options to enroll in all service areas:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client shall enroll in a PHP on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members;

(c) Priority 3: The client shall enroll in a PHP that is not on the path to becoming a CCO if:

(A) The PHP serves an area that a CCO does not serve; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care access or capacity to accept new members;

(d) Priority 4: The client shall receive physical services on a fee-for-service basis.

(11) On or after July 1, 2013, a client shall enroll in a CCO or managed dental care organization (DCO) in a service area where a CCO or DCO has adequate dental care access and capacity, and a CCO or DCO is open to enrollment.

(12) If a client receives physical health care through a PHP, PCM, or on a fee-for-service basis under circumstances allowed by this rule, the client shall enroll in a CCO or mental (behavioral) health organization (MHO) in a service area where MHO enrollment is required. The following determines if a service area requires CCO or MHO enrollment:

(a) CCO: The service area has adequate CCO behavioral health care access and capacity;

(b) MHO: A CCO does not serve in the area; or

(c) MHO: A CCO serves the area, but the CCO has inadequate health care access and capacity to accept new members:

(13) From August 1, 2012, until November 1, 2012, if a service area changes from required enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-41-3080.

(14) The Department or OYA shall select the CCO for a child in the legal custody of the Department or OYA except for children in subsidized adoptions.

(15) The following populations are exempt from CCO enrollment:

(a) Populations expressly exempted by ORS 414.631(2) (a), (b) and (c), which includes:

(A) Persons who are non-citizens who are eligible for labor and delivery services and emergency treatment services;

(B) Persons who are American Indian and Alaskan Native beneficiaries; and

(C) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(b) Newly eligible clients are exempt from enrollment with a CCO if the client became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service basis only until the hospital discharges the client. The client is not exempt from enrollment in a DCO. The client is not exempt from enrollment in a DCO.

(c) Children in the legal custody of the Department or OYA where the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) Access to health care on a fee-for-service basis is not available; or

(B) Enrollment would preserve continuity of care.

(d) Clients with major medical health insurance coverage, also known as third party liability, except as provided in OAR 410-141-3050;

(e) Clients receiving prenatal services through the Citizen/Alien Waivered-Emergency Medical program; and

(f) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs.

(16) The following populations are exempt from CCO enrollment until specified below:

(a) From August 1, 2012, until November 1, 2012, children under 19 years of age who are medically fragile and who have special health care needs. Beginning November 1, 2012, the Authority may enroll these children in CCOs on a case-by-case basis; children not enrolled in a CCO shall continue to receive services on a FFS basis.

(b) Women who are in their third trimester of pregnancy when first determined eligible for OHP or at redetermination may qualify as identified below to receive OHP benefits on a fee-for-service basis until 60 days after the birth of her child. After the 60 day period the OHP member shall enroll in a CCO. In order to qualify for the FFS third trimester exemption the member must:

(A) Not have been enrolled with a service area CCO, FCHP, or PCO during the three months preceding redetermination,

(B) Have an established relationship with a licensed qualified practitioner who is not a participating provider with the service area CCO, FCHP, or PCO and wishes to continue obtaining maternity services from the non-participating provider on a FFS basis, and

(C) Make a request to change to FFS prior to the date of the delivery if enrolled with a CCO, FCHP, or PCO.

(c) From August 1, 2012 until November 1, 2012, clients receiving health care services through the Breast and Cervical Cancer Program are exempt. Beginning November 1, 2012, enrollment is required;

(d) Existing clients who had organ transplants are exempt until the Authority enrolls them in a CCO on a case-by-case basis; and

(e) From August 1, 2012, until November 1, 2012, clients with end-stage renal disease. Beginning November 1, 2012, enrollment is required.

(17) The following clients who are exempt from CCO enrollment and who receive services on a fee-for-service basis may enroll in a CCO:

(a) Clients who are eligible for both Medicare and Medicaid;

(b) Clients who are American Indian and Alaskan Native beneficiaries;

(18) The Authority may exempt clients or temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis. Other just causes include the following considerations:

(a) Enrollment would pose a serious health risk; and

(b) The Authority finds no reasonable alternatives.

(19) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

(20) Coordinated care services shall begin on the first day of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

(b) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(c) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 4-2013(Temp), f. & cert. ef. 2-7-13 thru 6-29-13; DMAP 33-2013, f. & cert. ef. 6-27-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 35-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 69-2014(Temp), f. 12-8-14, cert. ef. 12-27-14 thru 12-31-14; DMAP 70-2014, f. 12-8-14, cert. ef. 1-1-15

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Rule Caption: PHP and CCO Payment Methodologies for At Risk A & B Critical Access Hospitals

Adm. Order No.: DMAP 71-2014

Filed with Sec. of State: 12-8-2014

Certified to be Effective: 1-1-15

Notice Publication Date: 11-1-2014

Rules Amended: 410-141-0420, 410-141-3420

Rules Repealed: 410-141-0420(T), 410-141-3420(T)

Subject: The Division needs to amend these rules to comply with ORS 414.653. The statute requires Type A & B Hospitals to move to a new payment methodology. Type A & B Hospitals that are found at financial risk will remain on the current methodology and will not have to change.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0420

Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

(1) Providers shall submit all billings for OHP members following the timeframes:

(a) Submit billings within 12 months of the date of service in the following cases:

(A) Pregnancy;

(B) Eligibility issues such as retroactive deletions or retroactive enrollments;

(C) When Medicare is the primary payer, except where the MCO is responsible for the Medicare reimbursement;

(D) Other cases that could have delayed the initial billing to the MCO, which does not include failure of the provider to certify the member's eligibility; or

(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.

(b) Submit billings within four months of the date of service for all other cases.

(2) Providers must be enrolled with the Division to be eligible for Authority fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), shall be approved by the Local Mental Health Authority (LMHA) and the Authority's Addictions and Mental Health (AMH) division before enrollment with the Authority or to be eligible for PHP payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260 (Provider Enrollment).

(3) Providers, including mental health providers, shall be enrolled with the Authority as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the encounter is accepted.

(4) Providers shall verify, before providing services, that the member is eligible for the Division's programs on the date of service using the Authority and PHP's tools, as applicable, and that the service to be provided is covered under the member's OHP Benefit Package. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider shall complete and have the member sign an Authority 3165, or facsimile, as described in OAR 410-120-1280.

(5) PHPs shall pay for all capitated services. These services shall be billed directly to the PHP, unless the PHP or the Authority specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider except as follows:

(a) PHPs shall have written procedures for processing preauthorization requests received from any provider and written procedures for processing claims submitted from any source. The procedures shall specify time frames for:

(A) Date stamping preauthorization requests and claims when received;

(B) Determining within a specific number of days from receipt whether a preauthorization request or a claim is valid or non-valid;

(C) The specific number of days allowed for follow-up on pended preauthorization requests or pended claims to obtain additional information;

(D) The specific number of days following receipt of the additional information that a redetermination shall be made;

(E) Providing services after office hours and on weekends that require preauthorization;

(F) Sending notice of the decision with appeal rights to the member when the determination is a denial of the requested service as specified in OAR 410-141-0263.

(b) PHPs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs shall be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP shall provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHPs shall notify providers of such determination within two working days of receipt of the request;

(c) For expedited preauthorization requests in which the provider indicates or the PHP determines that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(A) The PHP shall make an expedited authorization decision and provide notice as expeditiously as the member's health condition requires and no later than three working days after receipt of the request for service;

(B) The PHP may extend the three working day time period no more than 14 calendar days if the member requests an extension or if the PHP justifies to the Authority a need for additional information and how the extension is in the member's best interest.

(d) For all other preauthorization requests, PHPs shall notify providers of an approval, denial, or need for further information within 14 calendar days of receipt of the request as outlined in OAR 410-141-0263. PHPs shall make reasonable efforts to obtain the necessary information during the 14-day period. However, the PHP may use an additional 14 days to obtain follow-up information if the PHP justifies, to the Authority upon request, the need for additional information and how the delay is in the member's best interest. If the PHP extends the timeframe, it shall give the member written notice of the reason for the extension as outlined in OAR 410-141-0263. The PHP shall make a determination as the member's health condition requires but no later than the expiration of the extension;

(e) PHPs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(f) PHPs shall provide written notification of PHP determinations when the determinations result in a denial of payment for services as outlined in OAR 410-141-0263;

(g) PHPs may not require providers to delay billing to the PHP;

(h) PHPs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare and may not require non-Medicare approved providers to bill Medicare;

(i) PHPs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(j) PHPs may not delay or deny payments because a co-payment was not collected at the time of service.

(7) FCHPs, PCOs, and MHOs shall pay for Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the member receives within the PHP for authorized referral care and for urgent care services or emergency services the member receives from non-participating providers. FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers.

(8) FCHPs and PCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for out-of-state services that the FCHP and PCO have arranged and authorized when those services are available within the state, unless otherwise approved by the Authority.

(9) PHPs shall pay for covered services provided by a non-participating provider that were not preauthorized if the following conditions exist:

(a) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(b) The covered service was delivered in good faith without the preauthorization; and

(c) It was a covered service that would have been preauthorized with a participating provider if the PHP's referral protocols had been followed;

(d) The PHP shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(10) For Type A or Type B hospitals transitioning from Cost-Based Reimbursement (CBR) to an Alternative Payment Methodology (APM):

(a) Sections (10)–(12) only apply to services provided by Type A or Type B hospitals to clients or members that are enrolled in a PHP;

(b) In accordance with ORS 414.653, the Authority may upon evaluation by an actuary retained by the Authority, on a case-by-case basis, require PHPs to continue to fully reimburse a rural Type A or Type B hospital determined to be at financial risk for the cost of covered services based on a cost-to-charge ratio.

(11) Redetermination of which Type A or Type B hospitals will transition off of CBR:

(a) No later than April 30, 2015, the Authority shall update the algorithm for calculation of the CBR methodology with the most recent data available;

(b) After recalculation for each Type A and Type B hospital, any changes in a hospital's status from CBR to APM or from APM to CBR shall be effective January 1, 2016;

(c) The reimbursement methodology for each hospital shall be recalculated every two years thereafter;

(d) Type A and Type B hospitals located in a county that is designated as "Frontier" will not be subject to redetermination via the algorithm and shall remain on CBR.

(12) Non-contracted Type A or Type B hospital rates for those transitioning off of CBR:

(a) Charges shall be discounted for both inpatient and outpatient services. The initial reimbursement rate effective January 1, 2015 shall be based on the individual hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services;

(b) Reimbursement rates effective for the calendar year beginning January 1, 2016 shall be based on the hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services and further adjusted by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increases during FY 2014–FY 2015 and the Authority's global budget rate increase as defined by the CMS 1115 waiver, using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(c) Subsequent year reimbursement rates shall be adjusted and calculated by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increase and the Authority's global budget rate increase as defined by the CMS 1115 waiver, using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(d) ASU shall contact hospitals regarding price increases during March of each year;

(e) Inpatient and outpatient reimbursement rates shall be calculated separately;

(f) A volume adjustment shall also be applied. ASU shall develop a risk corridor on the volume adjustment on a hospital specific basis. The Authority shall determine when the volume adjustment might sunset on a hospital specific basis;

(g) Non-contracted Type A or Type B hospital reimbursement rates for those transitioning off of CBR can be found in the Rate Table section at the following: http://www.oregon.gov/oha/healthplan/Pages/hospital.aspx.

(13) Members enrolled with PHPs may receive certain services on a FFS basis:

(a) Certain services shall be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though the services are paid by the Authority on a FFS basis. Before providing services, providers shall verify a member's eligibility via the web portal or AVR;

(b) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Authority administrative rules and supplemental information including rates and billing instructions;

(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the contracts, billing instructions, and Authority administrative rules and supplemental information;

(e) The Authority may not pay a provider for providing services for which a PHP has received a capitation payment unless otherwise provided for in rule;

(f) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Authority, AMH, or PHP except as provided for in Authority administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate); and

(g) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the FCHP or PCO would make for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of Balanced Budget Act (BBA) 4712(b)(2).

(14) Coverage of services through the OHP Benefit package of covered services is limited by OAR 410-141-0500 (Excluded Services and Limitations for OHP Clients).

(15) OHP clients enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per-client, per-month payment to provide PCM services in accordance with OAR 410-141-0410 (PCM Medical Management);

(b) PCMs provide primary care access and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services, and outpatient hospital services. The Authority payment for these PCM managed services is contingent upon PCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Authority in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Authority administrative rules and supplemental information.

(16) All OHP members enrolled with a PCO receive inpatient hospital services on a FFS basis:

(a) May receive services directly from any enrolled provider;

(b) All services shall be billed directly to the Authority in accordance with FFS billing instructions contained in the Authority administrative rules and supplemental information;

(c) The Authority shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Authority administrative rules and supplemental information.

(17) OHP clients not enrolled with a PHP receive services on a FFS basis:

(a) Services may be received directly from any appropriately enrolled provider;

(b) All services shall be billed directly to the Authority in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(c) The Authority shall pay at the FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Authority administrative rules and supplemental information.

Stat. Auth.: ORS 413.042, 414.065, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.065 & 414.610 - 414.685

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 53-2006(Temp), f. 12-28-06, cert. ef. 1-1-07 thru 6-29-07; DMAP 9-2007, f. 6-14-07, cert. ef. 6-29-07; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 16-2010, f. 6-11-10, cert. ef. 7-1-10; DMAP 42-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 29-2011, f. 10-19-11, cert. ef. 10-20-11; DMAP 48-2011(Temp), f. 12-23-11, cert. ef. 1-1-12 thru 6-25-12; Administrative correction, 8-1-12; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 45-2014, f. 7-15-14, cert. ef. 8-1-14; DMAP 66-2014(Temp), f. 11-13-14, cert. ef. 12-28-14 thru 6-25-15; DMAP 71-2014, f. 12-8-14, cert. ef. 1-1-15

410-141-3420
Billing and Payment

(1) Providers shall submit all billings for CCO members in the following timeframes:

(a) Submit billings within 12 months of the date of service in the following cases:

(A) Pregnancy;

(B) Eligibility issues such as retroactive deletions or retroactive enrollments;

(C) Medicare is the primary payer, except where the CCO is responsible for the Medicare reimbursement;

(D) Other cases that could have delayed the initial billing to the CCO, which does not include failure of the provider to certify the member's eligibility; or

(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.

(b) Submit bills within four months of the date of service for all other cases.

(2) Providers shall be enrolled with the Division to be eligible for fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), shall be approved by the Local Mental Health Authority (LMHA) and the Authority's Addictions and Mental Health (AMH) division before enrollment with the Authority or to be eligible for CCO payment for services. Providers may be retroactively enrolled in accordance with OAR 410-120-1260 (Provider Enrollment).

(3) Providers, including mental health providers, shall be enrolled with the Authority as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the encounter is accepted.

(4) Providers shall verify, before providing services, that the member is eligible for coordinated care services on the date of service. Providers shall use the Authority's tools and the CCO's tools, as applicable, to determine if the service to be provided is covered under the member's OHP benefit package. Providers shall also identify the party responsible for covering the intended service and seek preauthorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider shall complete a DMAP 3165, or facsimile, signed by the client, as described in OAR 141-120-1280.

(5) CCOs shall pay for all covered coordinated care services. These services shall be billed directly to the CCO, unless the CCO or the Authority specifies otherwise. CCOs may require providers to obtain preauthorization to deliver certain coordinated care services.

(6) Payment by the CCO to participating providers for coordinated care services is a matter between the CCO and the participating provider except as follows:

(a) CCOs shall have written procedures for processing preauthorization requests received from any provider and written procedures for processing claims submitted from any source. The procedures shall specify time frames for:

(A) Date stamping preauthorization requests and claims when received;

(B) Determining within a specific number of days from receipt whether a preauthorization request or a claim is valid or non-valid;

(C) The specific number of days allowed for follow-up on pended preauthorization requests or pended claims to obtain additional information;

(D)The specific number of days following receipt of the additional information that a redetermination shall be made;

(E) Providing services after office hours and on weekends that require preauthorization;

(F) Sending notice of the decision with appeal rights to the member when the determination is a denial of the requested service as specified in OAR 410-141-3263.

(b) CCOs shall make a determination on at least 95 percent of valid preauthorization requests within two working days of receipt of a preauthorization or reauthorization request related to urgent services, alcohol and drug services, or care required while in a skilled nursing facility. Preauthorization for prescription drugs shall be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the CCO shall provide for the dispensing of at least a 72-hour supply if there is an immediate medical need for the drug. CCOs shall notify providers of the determination within two working days of receipt of the request;

(c) For expedited prior authorization requests in which the provider indicates or the CCO determines that following the standard timeframe could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function:

(A) The CCO shall make an expedited authorization decision and provide notice as expeditiously as the member's health or mental health condition requires and no later than three working days after receipt of the request for service;

(B) The CCO may extend the three working day time period no more than 14 calendar days if the member requests an extension or if the CCO justifies to the Authority a need for additional information and how the extension is in the member's best interest.

(d) For all other preauthorization requests, CCOs shall notify providers of an approval, a denial, or the need for further information within 14 calendar days of receipt of the request as outlined in OAR 410-141-3263. CCOs shall make reasonable efforts to obtain the necessary information during the 14-day period. However, the CCO may use an additional 14 days to obtain follow-up information if the CCO justifies to the Authority, upon request, the need for additional information and how the delay is in the member's best interest. If the CCO extends the timeframe, it shall give the member written notice of the reason for the extension as outlined in 410-141-3263. The CCO shall make a determination as the member's health or mental health condition requires, but no later than the expiration of the extension;

(e) CCOs shall pay or deny at least 90 percent of valid claims within 45 calendar days of receipt and at least 99 percent of valid claims within 60 calendars days of receipt. CCOs shall make an initial determination on 99 percent of all claims submitted within 60 calendar days of receipt;

(f) CCOs shall provide written notification of CCO determinations when the determinations result in a denial of payment for services as outlined in OAR 410-141-3263;

(g) CCOs may not require providers to delay billing to the CCO;

(h) CCOs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare or require non-Medicare approved providers to bill Medicare;

(i) CCOs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;

(j) CCOs may not delay or deny payments because a co-payment was not collected at the time of service.

(7) CCOs shall pay for Medicare coinsurances and deductibles up to the Medicare or CCOs allowable for covered services the member receives within the CCO for authorized referral care and urgent care services or emergency services the member receives from non-participating providers. CCOs may not pay for Medicare coinsurances and deductibles for non-urgent or non-emergent care members receive from non-participating providers.

(8) CCOs shall pay transportation, meals, and lodging costs for the member and any required attendant for services that the CCO has arranged and authorized when those services are not available within the state, unless otherwise approved by the Authority.

(9) CCOs shall pay for covered services provided by a non-participating provider that was not preauthorized if the following conditions exist:

(a) It can be verified that the participating provider ordered or directed the covered services to be delivered by a non-participating provider; and

(b) The covered service was delivered in good faith without the preauthorization; and

(c) It was a covered service that would have been preauthorized with a participating provider if the CCO's referral procedures had been followed;

(d) The CCO shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the CCO) for covered services that are subject to reimbursement from the CCO in the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals;

(e) CCOs shall reimburse hospitals for services provided on or after January 1, 2012, using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods that incorporate the most recent Medicare payment methodologies for both inpatient and outpatient services established by CMS for hospital services and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments, and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to Type A or Type B hospitals as referenced in ORS 442.470. CCOs shall attest annually to the Authority in a manner to be prescribed to CCO's compliance with these requirements.

(10) For Type A or Type B hospitals transitioning from Cost-Based Reimbursement (CBR) to an Alternative Payment Methodology (APM):

(a) Sections (10)–(12) only apply to services provided by Type A or Type B hospitals to clients or members that are enrolled in a CCO;

(b) In accordance with ORS 414.653, the Authority may upon evaluation by an actuary retained by the Authority, on a case-by-case basis, require CCOs to continue to reimburse fully a rural Type A or Type B hospital determined to be at financial risk for the cost of covered services based on a cost-to-charge ratio;

(c) For those Type A or Type B hospitals transitioning from CBR to an APM, the Authority shall require hospitals and CCO's to enter into good faith negotiations for contracts to be effective by January 1, 2015. Dispute resolution during the contracting process shall be subject to OAR 410-141-3268 and 410-141-3269, as applicable;

(d) For monitoring purposes, CCOs shall submit to the Authority no later than November 30 of each year a list of those hospitals with which they have contracted for these purposes.

(11) Redetermination of which Type A or Type B hospitals shall transition off of CBR:

(a) No later than April 30, 2015, the Authority shall update the algorithm for calculation of the CBR methodology with the most recent data available;

(b) After recalculation for each Type A and Type B hospital, any changes in a hospital's status from CBR to APM or from APM to CBR shall be effective January 1, 2016;

(c) The Authority shall recalculate the reimbursement methodology for each hospital every two years thereafter;

(d) Type A and Type B hospitals located in a county that is designated as "Frontier" will not be subject to redetermination via the algorithm and shall remain on CBR.

(12) Non-contracted Type A or Type B hospital rates for those transitioning off of CBR:

(a) Charges shall be discounted for both inpatient and outpatient services. The initial reimbursement rate effective January 1, 2015 shall be based on the individual hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services;

(b) Reimbursement rates effective for the calendar year beginning January 1, 2016 shall be based on the hospital's most recently filed Medicare cost report adjusted to reflect the hospital's Medicaid/OHP mix of services and further adjusted by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increases during FY 2014 – FY 2015 and the Authority's global budget rate increase as defined by the CMS 1115 waiver, using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(c) Subsequent year reimbursement rates shall be adjusted and calculated by the Actuarial Services Unit (ASU) based on the individual hospital's annual price increase and the Authority's global budget rate increase as defined by the CMS 1115 waiver, using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);

(d) ASU shall contact hospitals regarding price increases during March of each year;

(e) Inpatient and outpatient reimbursement rates shall be calculated separately;

(f) A volume adjustment shall be applied. ASU shall develop a risk corridor on the volume adjustment on a hospital specific basis. The Authority shall determine when the volume adjustment might sunset on a hospital specific basis;

(g) Non-contracted Type A or Type B hospital reimbursement rates for those transitioning off of CBR can be found in the Rate Table section at the following: http://www.oregon.gov/oha/healthplan/Pages/hospital.aspx.

(13) Members may receive certain services on a Fee-for-Service (FFS) basis:

(a) Certain services shall be authorized by the CCO or the Community Mental Health Program (CMHP) for some mental health services, even though the services are then paid by the Authority on a FFS basis. Before providing services, providers shall verify a member's eligibility using the web portal or AVR;

(b) Services authorized by the CCO or CMHP are subject to the Authority's administrative rules and supplemental information including rates and billing instructions;

(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;

(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the Authority's administrative rules , contracts, and billing instructions;

(e) The Authority may not pay a provider for providing services for which a CCO has received a CCO payment unless otherwise provided for in rule;

(f) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Authority or a CCO except as provided in Authority administrative rules and supplemental information (e.g., coordinated care services that are not included in the nursing facility all-inclusive rate);

(g) CCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the CCO would pay for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(14) Coverage of services through the OHP benefit package of covered services is limited by OAR 410-141-0500 (Excluded Services and Limitations for OHP Clients).

Stat. Auth.: ORS 413.042, 414.065, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.065 & 414.610 - 414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 60-2013, f. & cert. ef. 10-31-13; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 34-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 66-2014(Temp), f. 11-13-14, cert. ef. 12-28-14 thru 6-25-15; DMAP 71-2014, f. 12-8-14, cert. ef. 1-1-15

Rule Caption: Rewrite Enrollment Rules to Reflect Current Enrollment Practices Including Full Pregnancy Enrollment Exemption process.

Adm. Order No.: DMAP 72-2014(Temp)

Filed with Sec. of State: 12-9-2014

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 410-141-0060, 410-141-3060

Subject: The Division rewrote OAR 410-141-3060 and 410-141-0060 to better align the MCO and CCO enrollment and to reflect current enrollment practices. In those changes the Authority has specified its pregnancy enrollment exemption protocols, as specified by agreement between Authority leadership and the Licensed Direct Entry Midwives. The Licensed Direct Entry Midwives (LDEM) Staff Advisory Workgroup came out with recommendations related to perinatal service options for Medicaid enrollees. OHA Director Suzanne Hoffman responded with a letter dated May 21, 2014, stating DMAP would implement changes, necessitating the removal of the sunset date, allowing for time to make further program implementations and additional rule revisions.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0060

Oregon Health Plan Managed Care Enrollment Requirements

(1) For the purposes of this rule, the following definitions apply:

(a) Client means an individual found eligible to receive health services. "Client" is inclusive of members enrolled in PHPs and CCOs as stated in OAR 410-120-0000;

(b) Eligibility Determination means an approval or denial of eligibility and a renewal or termination of eligibility as stated in OAR 410-200-0015;

(c) Member means a client enrolled with a pre-paid health plan or coordinated care organization as stated in OAR 410-120-0000;

(d) Newly Eligible means recently determined through the eligibility determination process as having the right to obtain state health benefits, satisfying the appropriate conditions;

(e) Redetermination means a review of eligibility outside of regularly scheduled renewals. Redeterminations that result in the assignment of a new renewal date or a change in program are considered renewals as stated in OAR 410-200-0015;

(f) Renewal means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status.

(2) The following populations may not be enrolled into an MCO or any type of health care coverage including:

(a) Persons who are non-citizens and are Citizen/Alien Waivered-Emergency Medical program eligible for labor and delivery services and emergency treatment services;

(b) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs without other Medicaid;

(c) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(3) The following populations may not be enrolled into an MCO under the following circumstances:

(a) Newly eligible clients are exempt from enrollment with an MCO but not exempt from enrollment in a DCO, if they became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service (FFS) basis only until the hospital discharges the client. The individual will receive dental services through the DCO.

(b) The client is covered under a major medical insurance policy or other third party resource (TPR) that covers the cost of services to be provided by a PHP as specified in and ORS 414.631 and, except as provided for children in Child Welfare though the BRS and PRTS programs, outlined OAR 410-141-3050. A client shall be enrolled with a DCO even if they have a dental TPR.

(4) Persons who are documented American Indian and Alaskan Native (AI/AN) beneficiaries are exempt from auto assignment mandatory enrollment for their managed care plans, as specified in 42 USC 1932, 2 (C), but may elect to be manually enrolled.

(5) Populations specified below are exempt from mandatory enrollment into a physical health MCO but are subject to mandatory enrollment

into both dental and mental health plans as available in the member's service area. The member may be manually enrolled into a physical health plan as deemed appropriate by the Authority. These individuals are as follows:

(a) Children in the legal custody of the Department or Oregon Health Authority where the child is expected to be in a substitute care placement for less than 30 calendar days unless:

(A) Access to health care on a FFS basis is not available; or

(B) Enrollment would preserve continuity of care.

(b) Clients who are dually eligible for Medicare and Medicaid but not enrolled in a program of all-inclusive care for the elderly. The following apply to these clients:

(A) A client who is also a Medicare beneficiary and is in a hospice program may not enroll in an FCHP or PCO that is also a Medicare Advantage plan. The client may enroll in either an FCHP or PCO that does not have a Medicare Advantage plan unless exempt for some other reason listed in this rule;

(B) The client is enrolled in Medicare and the only FCHP or PCO in the service area is a Medicare Advantage plan. The client may choose not to enroll in an FCHP or PCO;

(C) Enrollment in a FCHP or PCO of a client who is receiving Medicare and who resides in a service area served by PHPs shall be as follows:

(i) If the client who is Medicare Advantage eligible selects a FCHP or PCO that has a corresponding Medicare Advantage plan, the client shall complete the 7208M or other CMS approved Medicare plan election form;

(ii) If the Medicare Advantage Plan Election form (OHP 7208M) described in this rule is signed by someone other than the client, the client's representative must complete and sign the Signature by Mark or State Approved Signature sections of the OHP 7208M;

(iii) If the client is a Medicare beneficiary who is capable of making enrollment decisions, the client's representative may not have authority to select FCHPs or PCOs that have corresponding Medicare Advantage components:

(I) If the FCHP or PCO has not received the form within ten calendar days after the date of enrollment, the FCHP or PCO shall send a letter to the member with a copy sent to the APD branch manager. The letter shall explain the need for the completion of the form; inform the member that if the form is not received within 30 days, the FCHP or PCO may request disenrollment; and instruct the member to contact their caseworker for other coverage alternatives.

(II) The FCHP or PCO shall choose whether to disenroll or maintain enrollment for all the clients from whom they do not receive a form at the end of 30 days, except as otherwise provided in this rule. The FCHP or PCO shall notify the PHP coordinator of the PHP's annual decision to disenroll or maintain enrollment for the clients in writing. This notification shall be submitted by January 31 of each year or another date specified by the Authority. If the FCHP or PCO has decided to:

(III) Disenroll the clients and has not received a client's form at the end of 30 days, the FCHP or PCO shall request disenrollment. HMU will disenroll the member effective the end of the month following the notification;

(D) Maintain enrollment. The FCHP or PCO may not request disenrollment at the end of 30 days.

(E) If the client is enrolled as a private member of a Medicare Advantage plan, the client may choose to remain enrolled as a private member or to enroll in the FCHP or PCO that corresponds to the Medicare Advantage plan:

(F) If the client chooses to remain as a private member in the Medicare Advantage plan, the client shall remain in the Medicaid FFS delivery system for physical health care services but shall select a DCO and MHO where available;

(G) If the client chooses to discontinue the Medicare Advantage enrollment and then, within 60 calendar days of disenrollment from the Medicare Advantage plan, chooses the FCHP or PCO that corresponds to the Medicare Advantage plan that was discontinued, the client shall be allowed to enroll in the FCHP or PCO even if the FCHP or PCO is not open for Enrollment to other clients;

(H) A Fully Dual Eligible (FDE) client who has been exempted from enrollment in an MHO may not be enrolled in a FCHP or PCO that has a corresponding Medicare Advantage plan unless the exemption was done for a provider who is on the FCHP's or PCO's panel.

(6) The Authority may temporarily exempt clients from mandatory enrollment for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis for those as follows:

(a) Children under 19 years of age who are medically fragile and who have special health care needs. The Authority may enroll these children in MCOs on a case-by-case basis; children not enrolled in a MCO shall continue to receive services on a FFS basis;

(b) Until December 31, 2017, women who are pregnant and meet the qualifications in sub-sections A through E below may receive OHP benefits on a FFS basis for physical health only until 60 days after the birth of her child. Women meeting the criteria for the pregnancy enrollment exemption for their physical health plan coverage will continue to be enrolled in the appropriate MCO or CCO plan in their service area for dental and mental health coverage. After the 60 day period, the member shall enroll in a plan as appropriate. Those women under consideration for a pregnancy enrollment exemption for their physical health enrollment shall receive a response from the Authority within 30 working days of request. Upon approval of the FFS pregnancy exemption for physical health enrollment only, the client shall remain FFS for as long as she continues to meet the requirements in A through E below. In order to qualify for the FFS pregnancy exemption for physical health only, there shall be no home birth option available to the client through her plan and the client shall:

(A) Be pregnant;

(B) State that her intention is to have a home birth;

(C) Have an established relationship for the purpose of home birth with a licensed qualified practitioner who is not a participating provider with the client's MCO;

(D) Make a request to change to FFS. This request can be made at any point in the pregnancy prior to delivery; and

(E) Meet any OAR and statutory requirements that define when a home birth is eligible for reimbursement by the Authority:

(i) Should a woman become unable to meet any of the requirements specified in OAR 333-076-0650(1), Table 1, either upon initial evaluation or once the exemption is granted, the exemption shall be withdrawn, and the client will be subject to MCO enrollment requirements as stated in 410-141-3060;

(ii) Conditions arising during the pregnancy as listed in subsections (I) through (V) below shall be reviewed by the Authority on a case-by-case basis for continuation of the FFS enrollment exemption:

(I) Fetal presentation other than vertex when known;

(II) Abnormal bleeding;

(III) Low-lying placenta within 2 cm. or less of cervical os;

(IV) Genital herpes, primary; secondary uncoverable at onset of labor; and

(V) Current substance abuse that has the potential to adversely affect labor and the infant.

(c) The following apply to clients and exemptions relating to organ transplants:

(A) Newly eligible clients are exempt from enrollment with an MCO if the client is newly diagnosed and under the treatment protocol for an organ transplant;

(B) Newly eligible clients with existing transplants shall enroll into the appropriate MCO for their service area;

(d) Other just causes to preserve continuity of care include the following considerations:

(A) Enrollment would pose a serious health risk; and

(B) The Authority finds no reasonable alternatives.

(7) Unless exempted above, enrollment is mandatory in all areas served by an MCO.

(8) When a service area changes from mandatory to voluntary, the member will remain with their PHP for the remainder of their eligibility period unless the member meets the criteria stated in this rule or as provided by OAR 410-141-0080.

(9) If the client resides in a mandatory service area and fails to select a DCO, MHO, PCO, or FCHP at the time of application for the OHP, the Authority shall enroll the client with a DCO, MHO, PCO, or FCHP as follows:

(a) The client shall be assigned to and enrolled with a DCO, MHO, PCO, or FCHP that meets the following requirements where MCO enrollment is not available or services are not available through the MCO:

(A) Is open for enrollment;

(B) Serves the county in which the client resides;

(C) Has practitioners located within the community-standard distance for average travel time for the client.

(b) Assignment shall be made first to an MCO;

(c) The Authority shall send a notice to the client informing the client of the assignments and the right to change assignments within 30 calendar days of enrollment. A change in assignment shall be honored if there is

another DCO, MHO, PCO, or FCHP open for enrollment in the county in which the client resides;

(10) Clients shall be enrolled with PHPs according to the following criteria:

(a) Areas with sufficient physical health service capacity through a combination of Coordinated Care Organizations (CCOs), Fully Capitated Health Plans (FCHP), and Physician Care Organizations (PCO) shall be called mandatory service areas. In mandatory service areas, a client shall select:

(A) A CCO; or

(B) An FCHP or PCO:

(i) If the client has an existing relationship with a provider who is contracted with the FCHP or PCO; and

(ii) If approved by the Authority.

(b) Service areas without sufficient physical health service capacity shall be called voluntary service areas. In voluntary service areas, a client has the option to:

(A) Select a CCO; or

(B) Select an FCHP or PCO;

(i) If the client has an existing relationship with a provider who is contracted with the FCHP or PCO; and

(ii) If approved by the Authority; or

(C) Remain in the Medicaid fee-for-service (FFS) physical health care delivery system.

(c) Service areas with sufficient mental health and dental care service capacity through MHOs and DCOs shall be called mandatory MHO and DCO service areas. A client shall select an MHO and DCO in a mandatory MHO and DCO service area if mental health and dental services are not available through a CCO or the client is otherwise exempt from CCO enrollment;

(d) Service areas without sufficient dental care service capacity through MHOs and DCOs shall be called voluntary MHO and DCO service areas. In voluntary MHO and DCO service areas, a client may choose to:

(A) Select a CCO open to enrollment that offers dental services; or

(B) Select any MHO and DCO open for enrollment if CCO enrollment is not available; or

(C) Remain in the Medicaid FFS mental health and dental care delivery system;

(11) Enrollments resulting from assignments shall be effective the first of the month or week after the Department enrolls the client and notifies the client of enrollment and the name of the PHP: If enrollment is initiated by an Authority worker on or before Wednesday, the date of enrollment shall be the following Monday. If enrollment is initiated by an Authority worker after Wednesday, the date of enrollment shall be one week from the following Monday. Monthly enrollment in a mandatory service area, where there is only one plan or DCO, shall be initiated by an auto-enrollment program of the Authority, effective the first of the month following the month-end cutoff. Monthly enrollment in service areas, where there is a choice of PHPs, shall be auto-enrolled by computer algorithm.

(12) The provision of capitated services to a member enrolled with a PHP shall begin as of the effective date of enrollment with the MCO except for:

(a) A newborn whose mother was enrolled at the time of birth. The date of enrollment shall be the newborn's date of birth;

(b) Persons, other than newborns, who are hospitalized on the date enrolled. The date of enrollment shall be the first possible enrollment date after the date the client is discharged from inpatient hospital services;

(c) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority and may be earlier than the effective date outlined above.

Stat. Auth.: ORS 413.042, 414,615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 & 414.685

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 8-1994(Temp), f. & cert. ef. 2-1-94; DEQ 24-1994, f. 5-31-94, cert. ef. 6-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 29-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 12-2002, f. & cert. ef. 4-1-02; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 46-2005, f. 9-9-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 10-2006(Temp), f. & cert. ef. 5-4-06 thru 10-27-06; OMAP 23-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 72-2014(Temp), f. 12-9-14, cert. ef. 1-1-15 thru 6-29-15

410-141-3060

Enrollment Requirements in a CCO

(1) For the purposes of this rule, the following definitions apply:

(a) Client means an individual found eligible to receive OHP health services. "Client" is inclusive of members enrolled in PHPs and CCOs as stated in OAR 410-120-0000;

(b) Eligibility Determination means an approval or denial of eligibility and a renewal or termination of eligibility as stated in OAR 410-200-0015;

(c) Member means a client enrolled with a pre-paid health plan or coordinated care organization as stated in OAR 410-120-0000;

(d) Newly Eligible means recently determined, through the eligibility determination process, as having the right to obtain state health benefits, satisfying the appropriate conditions;

(e) Redetermination means a review of eligibility outside of regularly scheduled renewals. Redeterminations that result in the assignment of a new renewal date or a change in program are considered renewals as stated in OAR 410-200-0015;

(f) Renewal means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status.

(2) The following populations may not be enrolled into a CCO for any type of health care coverage including:

(a) Persons who are non-citizens and are Citizen/Alien Waivered-Emergency Medical program eligible for labor and delivery services and emergency treatment services;

(b) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs without other Medicaid;

(c) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(3) The following populations may not be enrolled into a CCO under the following circumstances:

(a) Newly eligible clients are exempt from enrollment with a CCO but not exempt from enrollment in a DCO if they became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service (FFS) basis only until the hospital discharges the client. The individual will receive dental services through the DCO;

(b) The client is covered under a major medical insurance policy or other third party resource (TPR) that covers the cost of services to be provided by a PHP as specified in ORS 414.631 and except as provided for children in Child Welfare through the BRS and PRTS programs outlined in OAR 410-141-3050. A client shall be enrolled with a DCO even if they have a dental TPR.

(4) Persons who are documented American Indian and Alaskan Native (AI/AN) beneficiaries are exempt mandatory enrollment into a managed care plan, as specified in 42 USC 1932, 2 (C), but may elect to be manually enrolled.

(5) Populations specified below are exempt from mandatory enrollment into a physical health CCO but are subject to mandatory enrollment into both dental and mental health plans as available in the member's service area. The member may be manually enrolled into a physical health plan as deemed appropriate by the Authority. These populations are as follows:

(a) Children in the legal custody of the Department or where the child is expected to be in a substitute care placement for less than 30 calendar days unless:

(A) Access to health care on a FFS basis is not available; or

(B) Enrollment would preserve continuity of care;

(b) Clients who are dually eligible for Medicare and Medicaid but not enrolled in a program of all-inclusive care for the elderly. The following apply to these:

(A) A client has the option to enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(B) A client enrolled in Medicare Advantage, whether or not they pay their own premium, has the option to enroll in a CCO even if the CCO does not have a corresponding Medicare Advantage plan;

(C) A client has the option to enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(D) A client has the option to enroll with a CCO even if the client is enrolled in Medicare Advantage with another entity.

(6) The Authority may temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis for those as follows:

(a) Children under 19 years of age who are medically fragile and who have special health care needs. The Authority may enroll these children in CCOs on a case-by-case basis. Children not enrolled in a CCO shall continue to receive services on a FFS basis;

(b) Until December 31, 2017, women who are pregnant and meet the qualifications in sub-sections A through E below may receive OHP benefits on a FFS basis for physical health only until 60 days after the birth of her child. Women meeting the criteria for the pregnancy enrollment exemption for their physical health plan coverage will continue to be enrolled in the appropriate MCO or CCO plan in their service area for dental and mental health coverage. After the 60-day period the member shall enroll in a plan as appropriate. Those women under consideration for a pregnancy enrollment exemption for their physical health enrollment shall receive a response from the Authority within 30 working days of request. Upon approval of the FFS pregnancy exemption for physical health enrollment only, the client shall remain FFS for as long as she continues to meet the requirements in A through E below. In order to qualify for the FFS pregnancy exemption for physical health only, there must be no home birth option available to the client through her plan and the client must:

(A) Be pregnant;

(B) State that her intention is to have a home birth;

(C) Have an established relationship for the purpose of home birth with a licensed, qualified practitioner who is not a participating provider with the client's CCO; and

(D) Make a request to change to FFS. This request can be made at any point in the pregnancy prior to delivery; and

(E) Meet any OAR and statutory requirements that define when a home birth is eligible for reimbursement by the Authority:

(i) Should a woman become unable to meet any of the requirements specified in OAR 333-076-0650(1) Table 1 either upon initial evaluation or once the exemption is granted, the exemption shall be withdrawn and the client will be subject to CCO enrollment requirements as stated in 410-141-3060.

(ii) Conditions arising during the pregnancy as listed in subsections (I) through (V) below shall be reviewed by the Authority on a case-by-case basis for continuation of the FFS enrollment exemption:

(I) Fetal presentation other than vertex, when known;

(II) Abnormal Bleeding;

(III) Low-lying placenta within 2 cm. or less of cervical os;

(IV) Genital herpes, primary; secondary uncoverable at onset of labor; and

(V) Current substance abuse that has the potential to adversely affect labor and the infant;

(c) The following apply to clients and exemptions relating to organ transplants:

(A) Newly eligible clients are exempt from enrollment with a CCO if the client is newly diagnosed and under the treatment protocol for an organ transplant;

(B) Newly eligible clients with existing transplants shall enroll into the appropriate CCO for their service area;

(d) Other just causes to preserve continuity of care include the following considerations:

(A) Enrollment would pose a serious health risk; and

(B) The Authority finds no reasonable alternatives.

(7) Unless stated above, CCO enrollment is mandatory in all areas served by a CCO. A client who is eligible for or receiving health services must enroll in a CCO as required by ORS 414.631, except as provided in 414.631(2), (3), (4), and (5) and this rule.

(8) Enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP.

(9) Enrollment is mandatory in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. If upon application or redetermination, a client does not select a CCO, the Authority shall auto-assign the client and the client's household to a CCO that has adequate health care access and capacity. The following outlines the priority of enrollment in service areas where enrollment is mandatory and a PHP remains available for enrollment:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client has the option to enroll in a PHP through a manual process if:

(A) The client has an established relationship with a provider who is only contracted with the PHP; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members. Clients will be FFS unless already established with a PHP's provider;

(c) Priority 3: The client shall receive services on a FFS basis.

(10) If a service area changes from mandatory enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-141-3080.

(11) Clients who are exempt from physical health services or who are enrolled with a PHP for physical health services will receive managed or coordinated mental health and oral health services as follows:

(a) The client shall be enrolled with a CCO if the CCO offers mental health and oral health services; or

(b) The client shall be enrolled with an MHO for mental health services and with a DCO for oral health services if the CCO does not offer those services; or

(c) The client shall be enrolled with a DCO for oral health services and remain FFS for mental health services if an MHO is not available; or

(d) The client shall remain FFS for both mental health and oral health services if an MHO or DCO is unavailable.

(12) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

(13) Coordinated care services shall begin as of the effective date of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

(b) For persons other than newborns who are hospitalized on the date enrolled, the date of enrollment shall be the first possible enrollment date after the date the client is discharged from inpatient hospital services;

(c) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority and may be earlier than the effective date outlined above.

(d) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 4-2013(Temp), f. & cert. ef. 2-7-13 thru 6-29-13; DMAP 33-2013, f. & cert. ef. 6-27-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 35-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 69-2014(Temp), f. 12-8-14, cert. ef. 12-27-14 thru 12-31-14; DMAP 70-2014, f. 12-8-14, cert. ef. 1-1-15; DMAP 72-2014(Temp), f. 12-9-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Precluded Payment for Out-of-Hospital Birth in High Risk Pregnancies
Adm. Order No.: DMAP 73-2014
Filed with Sec. of State: 12-9-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 410-130-0240
Subject: Add risk criteria requirement for determining when OHP will pay for a home birth. OHP will only pay for labor and delivery services in a home setting for women experiencing a low risk pregnancy. Risk criteria will match what is already in place for births in a birthing center. Additionally, the age limitation (seven or under) for applying dental varnish in a medical setting is being removed opening this service up to older children. This service is already available in dental settings. The change only applies to medical settings.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0240
Medical Services

(1) Coverage of medical and surgical services is subject to the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List). Medical and surgical services requiring prior authorization (PA) are listed in Oregon administrative rule (OAR or rule) 410-130-0200, PA Table 130-0200-1, and medical and surgical services that

are Not Covered/Bundled services are listed in OAR 410-130-0220, Table 130-0220-1.

(2) Coverage for acupuncture services by an enrolled acupuncture provider are subject to the HERC Prioritized List and the client's benefit plan.

(3) Coverage for medically appropriate chiropractic services provided by an enrolled chiropractor is subject to the HERC Prioritized List and benefit plan for:

(a) Diagnostic visits including evaluation and management services;

(b) Chiropractic care including manipulative treatment;

(c) Laboratory and radiology services.

(4) Maternity care and delivery:

(a) The Division may consider payment for delivery within a hospital, clinic, birthing center, or home setting;

(b) For out-of-hospital births, the Division may only consider payment for labor and delivery care of women experiencing low risk pregnancy. The Division will determine whether a pregnancy can be considered low risk and an out-of-hospital birth is eligible for payment;

(c) The Division adopts Table I from OAR 333-076-0650 to outline the absolute risk factors that, if present, would preclude payment for initiation or continuation of any out-of-hospital labor and delivery care. For a planned out-of-hospital birth, the Division requires that a contingency for an in-hospital birth be included in the medical record. The division considers all conditions listed in Table I of OAR 333-076-0650 to necessitate an in-hospital birth if present or anticipated to be present at the onset of labor. The Division may deny payment for labor and delivery services in an out-of-hospital setting if it determines that an in-hospital birth was necessary and appropriate steps to facilitate an in-hospital birth were not pursued. When an in-hospital birth becomes necessary for a client that was seeking a planned out-of-hospital birth and care is transferred from one provider to another, the Division will consider payment for both providers for the portion of care provided. Bill using appropriate CPT and HCPCS codes.

(d) When a provider is practicing within the authorization of his or her license, the division may consider payment for administration of drugs and devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation and that are deemed integral to providing safe care.

(e) For out-of-hospital births, drugs authorized in subsection (d) or this section are limited:

(A) For out-of-hospital births, the Division will make no payment for general, spinal, caudal, or epidural anesthesia administered for care associated with labor and delivery;

(B) For out-of-hospital births, the Division will make no payment for inducing, stimulating, or using chemical agents to augment labor during the first or second stages of labor;

(C) For out-of-hospital births, the Division will consider payment for chemical agents administered to inhibit labor only as a temporary measure until referral or transfer of the client to a higher level of care is complete.

(f) Within the home setting, the Division may consider payment for appropriate supplies in addition to delivery payment. The additional payment for supplies includes all supplies, equipment, staff assistance, and newborn screening cards;

(g) During labor in an out-of-hospital setting, should any of the risk factors outlined in Table II of OAR 333-076-0650 develop, the Division requires that the client will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care must be in accordance with the practitioner's licensure requirements. When labor management does not result in a delivery, and the client is appropriately transferred to a higher level of care, the provider shall code for labor management only. Bill code 59899 and attach appropriate clinical documentation of services performed with respect to labor management;

(h) For births in an out-of-hospital setting, should any of the risk factors outlined in Table III of OAR 333-076-0650 develop during the postpartum period in the mother or infant, the Division requires that the client will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care must be in accordance with the practitioner's licensure requirements. The Division will consider payment for both providers for the portion of care provided when appropriate;

(i) For multiple vaginal births, use the appropriate CPT code for the first delivery. Use the delivery-only code for the subsequent deliveries. The Division will reimburse the first delivery at 100 percent and the subsequent deliveries at 50 percent of the delivery-only code's maximum allowance. For multiple babies delivered via cesarean section, the Division pays for the cesarean section only once.

(5) Neonatal Intensive Care Unit (NICU) procedures:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;

(b) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use appropriate CPT ECMO codes.

(6) Neurology or Neuromuscular payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12-month period.

(7) Oral health services provided by medical practitioners may include an oral assessment and application of topical fluoride varnish during a medical visit for children. Refer to OAR 410-123-1260 Dental Services program rule.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: PWC 839(Temp), f. & ef. 4-28-77; PWC 849, f. 7-15-77, ef. 8-1-77; PWC 868, f. 12-30-77, ef. 2-1-78; AFS 14-1978(Temp), f. 4-14-78, ef. 4-15-78; AFS 31-1978, f. & ef. 8-1-78; AFS 26-1980, f. 5-21-80, ef. 6-1-80, AFS 56-1980(Temp), f. 8-29-80, ef. 9-1-80; AFS 2-1981, f. 1-9-81, ef. 2-1-81; AFS 36-1981, f. 6-29-81, ef. 7-1-81; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 38-1983, f. & ef. 8-1-83; AFS 57-1983, f. 11-29-83, ef. 1-1-84; AFS 48-1984(Temp), f. 11-30-84, ef. 12-1-84; AFS 29-1985, f. 5-22-85, ef. 5-29-85; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 56-1987, f. 10-29-87, ef. 11-1-87; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0021 & 461-014-0056; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0650, 461-014-0690 & 461-014-0700; HR 14-1991(Temp), f. & cert. ef. 3-7-91; HR 18-1991(Temp), f. 4-12-91, cert. ef. 4-15-91; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f. 2-28-92, cert. ef. 3-1-92; HR 18-1992, f. & cert. ef. 7-1-92; HR 36-1992, f. & cert. ef. 12-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 16-1993, f. & cert. ef. 7-2-93; HR 6-1994, f. & cert. ef. 2-1-94, Renumbered from 410-130-0320, 410-130-0340, 410-130-0360 & 410-130-0740; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 13-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 40-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 88-2004, f. 11-24-04, cert. ef. 12-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 58-2012(Temp), f. 12-27-12, cert. ef. 12-28-12 thru 6-25-13; DMAP 27-2013, f. & cert. ef. 6-25-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 73-2014, f. 12-9-14, cert. ef. 1-1-15

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Rule Caption: Allow Use of Medical Billing Codes Designated for Adaptive Behavior Assessment and Treatment Services

Adm. Order No.: DMAP 74-2014(Temp)

Filed with Sec. of State: 12-9-2014

Certified to be Effective: 1-1-15 thru 6-29-15

Notice Publication Date:

Rules Amended: 410-130-0160

Subject: This rule directs medical providers to use billing codes following national standards and identifies which code sets are appropriate. One aspect of the current rule prevents use of Category III CPT Codes — a code set designated for services or technologies that are new and need to be tracked for data collection. The Division has identified that the billing codes for Adaptive Behavior Assessment and Treatment services, found within the Category III CPT Code set, are the most appropriate codes to use for billing ABA therapy. This rule change will allow use of these ABA therapy related billing codes. It will continue to restrict use of the remaining Category III codes.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0160

Codes

(1) ICD-9-CM Diagnosis Codes:

(a) Always use the principal diagnosis code in the first position to the highest degree of specificity. List additional diagnosis codes if the claim includes charges for services that relate to the additional diagnoses. However, it is not necessary to include more than one diagnosis code per procedure code;

(b) Diagnosis codes are required on all billings including those from independent laboratories and portable radiology including nuclear medicine and diagnostic ultrasound providers;

(c) Always supply the ICD-9-CM diagnosis code to ancillary service providers when prescribing services, equipment, and supplies.

(2) CPT and HCPCS Codes:

(a) Use only codes from the current year for Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS) codes;

(b) Effective January 1, 2005, HIPAA regulations prohibit the use of a grace period for codes deleted from CPT or HCPCS. In the past the grace period was from January 1 through March 31;

(c) The division may consider reimbursement for CPT category III codes included under the following headings: Adaptive Behavior Assessments, Adaptive Behavior Treatment, and Exposure Adaptive Behavior Treatment With Protocol Modification. All CPT category II (codes with fifth character of "F") and all other category III codes (codes with fifth character "T") are not Division of Medical Assistance Programs' (Division) covered services;

(d) Use the most applicable CPT or HCPCS code. Do not fragment coding when services can be included in a single code (see the "Bundled Services" section of this rule). Do not use both CPT and HCPCS codes for the same procedure. This is considered duplicate billing.

(3) The Medical-Surgical Service rules list the HCPCS/CPT codes that require authorization or have limitations. The Health Evidence Review Commission's Prioritized List of Health Services (rule 410-141-0520) determines covered services.

(4) For determining the appropriate level of service code for Evaluation and Management services, read the definitions in the CPT and HCPCS codebook. Use the definitions to verify level of service, especially for office visits. Unless otherwise specified in the Medical-Surgical provider rule, use the guidelines from CPT and HCPCS.

(5) Bundled Services: Reimbursements for some services are "bundled" into the payment for another service. The Division does not make separate payment for bundled services and clients may not be billed for bundled services. The Division's Not Covered/Bundled Services rule, OAR 410-130-0220, provides more information regarding bundled services.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0610; HR 19-1991, f. 4-12-91, cert. ef. 5-1-91; HR 2-1992, f. & cert. ef. 1-2-92; HR 8-1992, f, 2-28-92, cert. ef. 3-1-92; HR 23-1992, f. 7-31-92, cert. ef. 8-1-92; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 10-1996, f. 5-31-96, cert. ef. 6-1-96; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 2-2002, f. 2-15-02, cert. ef. 4-1-02; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 74-2014(Temp), f. 12-9-14, cert. ef. 1-1-15 thru 6-29-15

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Rule Caption: Amending Prior Authorization Guide - March 27, May 29, July 31, 2014 DUR/P&T Action

Adm. Order No.: DMAP 75-2014

Filed with Sec. of State: 12-12-2014

Certified to be Effective: 12-12-14

Notice Publication Date: 9-1-2014

Rules Amended: 410-121-0040

Rules Repealed: 410-121-0040(T)

Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0040:

Central Nervous (CNS) Sedatives — Non Benzodiazepines — updated criteria.

Central Nervous (CNS) Sedatives — Quantity Limit — updated criteria.

Central Nervous (CNS) Sedatives — Therapy duplication — updated criteria.

Hepatitis B Antivirals — updated criteria.

Ivacaftor (Kalydeco®) — updated criteria.

Multi-Vitamins and Antioxidant Multivitamin Combinations — new criteria.

Hormones Testosterone — updated criteria.

Oral Direct Factor Xa inhibitor — updated criteria.

Oral Direct Thrombin inhibitor — updated criteria.

Platelet inhibitor — updated criteria.

Sofosbuvir (Sovaldi®) — updated criteria.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-For-Service Prior Authorization Approval Criteria (PA Criteria guide) dated August 13, 2014, incorporated in rule by reference and found on our website at: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: 413.042, 414.065, 414.325 & 414.334

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAP 75-2014, f. & cert. ef. 12-12-14

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Rule Caption: Amending Prior Authorization Guide per DUR/P&T Action September 23, 2014

Adm. Order No.: DMAP 76-2014(Temp)

Filed with Sec. of State: 12-12-2014

Certified to be Effective: 12-12-14 thru 6-7-15

Notice Publication Date:

Rules Amended: 410-121-0040

Subject: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0040:

Sofosbuvir (Sovaldi®) — updated criteria.

ADHD (Attention Deficit Hyperactivity Disorder) Safety Edit — updated criteria (replaces CNS Stimulants).

Biologicals for RA, Psoriasis, Crohn's disease — updated criteria (replaces TIMS).

Botulinum Toxins — new criteria.

Growth Hormone — updated criteria.

Hepatitis C General — updated criteria.

Incretin Enhancers — updated criteria.

Incretin Mimetics — updated criteria.

Oral MS drugs - updated criteria.

Palivizumab (Synagis®) — updated criteria.

Peginterferon Beta 1-a — new criteria.

Sodium Glucose C-transporter 2 (SGLT2) — updated criteria.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures required in OAR 410-121-0060.

(2) All drugs and categories of drugs, including but not limited to those drugs and categories of drugs that require PA as described in this rule, are subject to the following requirements for coverage:

(a) Each drug must be prescribed for conditions funded by Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication shall not be covered unless there is a co-morbid condition for which coverage would be extended. The use of the medication must meet corresponding treatment guidelines, be included within the client's benefit package of covered services, and not otherwise excluded or limited;

(b) Each drug must also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Oregon Health Authority (Authority) may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-For-Service Prior Authorization Approval Criteria (PA Criteria guide) dated October 14, 2014, incorporated in rule by reference and found on our Web page at: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/clinical.html

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (see OAR 410-121-0100 for a description of the DUR program). The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA is required for brand name drugs that have two or more generically equivalent products available and that are NOT determined Narrow Therapeutic Index drugs by the Oregon DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant must be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant must notify the department of patent expiration within 30 days of patent expiration for (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in subsection (3) or (4) of this rule applies, follow that criteria;

(B) If (6)(A) does not apply, the prescribing practitioner must document that the use of the generically equivalent drug is medically contraindicated, and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA is required for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP or;

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 141.325, 414.330 to 414.414, 414.312 & 414.316

Stats. Implemented: 414.065, 414.325, 414.334, 414.361, 414.371, 414.353 & 414.354

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-

1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAp 75-2014, f. & cert. ef. 12-12-14; DMAP 76-2014(Temp), f. & cert. ef. 12-12-14 thru 6-7-15

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Rule Caption: Preferred Drug List March 27, 2014 DUR/P&T Action
Adm. Order No.: DMAP 77-2014
Filed with Sec. of State: 12-12-2014
Certified to be Effective: 12-12-14
Notice Publication Date: 8-1-2014
Rules Amended: 410-121-0030
Rules Repealed: 410-121-0030(T)
Subject: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:
Preferred:
Testosterone (Androgel®) Pump.
Calcitriol.
Calcium Carbonate.
Calcium Carbonate/Vitamin D3.
Cholecalciferol (Vitamin D3).
Cyanocobalamin (Vitamin B-12).
Ergocalciferol (Vitamin D2).
Ferrous Gluconate.
Ferrous Sulfate.
Folic Acid.
Pyridoxine HCL.
Thiamine HCL.
Immune Glob, Gam Caprylate (IGG) Injection (Gamunex-C®).
Non-Preferred:
Pirbuterol Acetate.
Doxepin HCL.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000(cc)) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information that makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated July 8, 2014 is incorporated in rule by reference and is found on our website at: www.orpdl.org.

Stat. Auth.: ORS 414.065, 413.042 & 414.325
Stats. Implemented: ORS 414.065
Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-14; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14

Rule Caption: Amending Preferred Drug List May 29, July 31, 2014 DUR/P&T Action.
Adm. Order No.: DMAP 78-2014(Temp)
Filed with Sec. of State: 12-12-2014
Certified to be Effective: 12-12-14 thru 6-9-15
Notice Publication Date:
Rules Amended: 410-121-0030
Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:
Preferred:
Imitrex® — Brand only.
Tobramycin (Bethkis).
Calcium Acetate.
Anafranil — Brand only.
Escitalopram Oxalate.
Imipramine HCL.
Acamprosate Calcium.
Amiloride HCL.
Naltrexone HCL.
Pulmonary Drug Reorganization removed COPD, Asthma Controllers, Asthma Rescue.
(New Drug class names)
Combination Inhalers:
- Inhaled Anticholinergics.
- Inhaled Corticosteroids.
- Inhaled Long Acting Bronchodilators.
- Miscellaneous Pulmonary Drugs.
- Short Acting Bronchodilators.
Tazarotene (Tazorac®).
Non-Preferred:
Clomipramine HCL.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures fee-for-service clients of the Oregon Health Plan shall have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer reviewed research) make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL (as defined in 410-121-0000(cc)) consists of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall determine the drugs selected in (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in subsection (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) Evaluation shall occur more frequently at the discretion of the Division if new safety information or the release of new drugs in a class or other information that makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all changes or revisions to the PDL using the rulemaking process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision;

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise subject to the regulations outlined in OAR 410-121-0155;

(b) The brand name medication is listed as preferred on the PDL.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted in instances:

(A) Where the prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Help Desk; or

(B) Where the prescriber requests an exception subject to the requirement of (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) Table 121-0030-1, PMPDP PDL dated October 29, 2014 is incorporated in rule by reference and is found on our website at: www.orpdl.org.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-14; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14; DMAP 78-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-15

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Oregon Housing and Community Services Department
Chapter 813

Rule Caption: Amends the applicable manual date, adds application criteria, extends term of reservation and clarifies charges
Adm. Order No.: OHCS 36-2014
Filed with Sec. of State: 12-2-2014
Certified to be Effective: 12-2-14
Notice Publication Date: 11-1-2014
Rules Adopted: 813-110-0031
Rules Amended: 813-110-0005, 813-110-0015, 813-110-0020, 813-110-0021, 813-110-0026, 813-110-0027, 813-110-0030
Rules Repealed: 813-110-0005(T), 813-110-0034, 813-110-0040, 813-110-0045

Rules Renumbered: 813-110-0032 to 813-110-0029
Subject: The Oregon Affordable Housing Tax Credit program certifies affordable multi-family rental housing development projects sponsored by government entities, nonprofit corporations and certain persons ("sponsoring entities" and "sponsors") to enable a lending institution to claim tax credits against Oregon taxes with respect to loans for the construction or acquisition and rehabilitation of such projects. The proposed rules amend the applicable date of the program manual; clarifies criteria that may be considered during the review of an application; clarifies applicable charges; and repeals rules for monitoring and compliance; transfer of loans, owner or project; and remedies. These rules are centrally located in the department's General Rules.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-110-0005
Purpose

OAR chapter 813, division 110, is promulgated to carry out the provisions of ORS 317.097 under which the department certifies affordable multifamily rental housing development projects sponsored by government entities, nonprofit corporations and certain persons ("sponsoring entities" or "sponsors") so as to enable a lending institution to claim Oregon affordable housing tax credits ("OAHTC" or "tax credits") against Oregon taxes with respect to loans for the construction or acquisition, and rehabilitation of such projects. The purpose of the tax credits is to encourage the creation or preservation of safe, sanitary and affordable housing for lower-income Oregonians. Additional policies and instructions are outlined in the Oregon Affordable Housing Tax Credits (OAHTC) Manual dated June 2, 2014 (the "OAHTC Manual" or "Manual"), incorporated herein by reference. The manual may be accessed online at the department's website.

Stat. Auth.: ORS 317.097 & 456.555
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625 & 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 29-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0015
Application Requirements

(1) For the purpose of enabling a lending institution to obtain a reservation of OAHTC under ORS 317.097, a sponsoring entity may apply to the department for certification of a qualified loan for the allocation of OAHTC consistent with OAR chapter 813 pursuant to relevant solicitation documents issued by the department including, but not limited to a Notice of Funding Availability ("NOFA"), or as otherwise determined by the department. The application shall provide information satisfactory to the department including but not limited to:

(a) The name, address and telephone number of the sponsoring entity;

(b) Proof as required by the department that the sponsoring entity is a qualified borrower;

(c) The relevant background of the qualified borrower and its management agent and their expertise with housing for low-income persons, if applicable;

(d) A firm commitment of financing by the lending institution to the sponsoring entity for the property that is the subject of the tax credits claim containing all of the terms and conditions that the sponsoring entity has to satisfy before the loan will be funded and including an estimated comparable market interest rate for the proposed loan, the estimated reduced interest rate and the estimated amount of savings or a letter of intent for the purpose of a reservation under OAR 813-110-0021;

(e) The name, address and contact person of the lending institution making the loan;

(f) A description of the project, including the type of housing or program involved, the number and type of housing units to be provided, the number of bedrooms, the address where the project is or will be located, and the federal, state and local agencies or organizations involved in financing or managing the project;

(g) A certification that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project;

(h) An agreement by the sponsoring entity to execute restrictive covenants satisfactory to the department to which covenants will be recorded at the time of loan closing;

(i) A demonstration relating to occupancy of the units in the project, as required by subsection (2) of this section;

(j) A demonstration that the project meets the minimum requirements of any other department program used by the project, as required by subsection (3) of this section;

(k) Any additional information or actions requested by the department; and

(l) A certification by the sponsoring entity that includes, at a minimum, the statement that all information in the application is true, complete and accurately describes the project.

(2) The following provisions apply to the demonstration relating to occupancy of units that is required in subsection (1) of this section:

(a) A demonstration for a project other than a manufactured dwelling park must show that units constructed or rehabilitated with OAHTC will be occupied by households earning less than 80 percent of adjusted area median income at the time of initial occupancy.

(b) In the case of a preservation project or a manufactured dwelling park awarded after September 27, 2007, pass-through is not required for a certification produced on or after September 27, 2007.

(c) For a project other than a project to which paragraph (b) of this subsection applies, the demonstration must show that at the time the project is initially rented or purchased, and thereafter for the term of the OAHTC or twenty years, whichever is longer, the sponsor will pass the benefits of the project's reduced loan interest rate to tenant or homeowner households whose earnings are less than 80 percent of area median income at the time of initial tenant or homeowner qualification.

(d) A demonstration for a manufactured dwelling park must show that the project meets the occupancy requirements applicable to manufactured dwelling parks in ORS 317.097.

(3) Because the OAHTC program is intended to lower rents below the level that would be obtained after all other subsidies have been applied, a project that uses one or more other department programs must demonstrate that the project meets or will meet the minimum requirements of those other programs before application of the OAHTC subsidy rent reduction. For example, if an applicant has applied for tax credits under the Low Income Housing Tax Credits (LIHTC) program and that application indicated a target of 60 percent of area median income rents, the application under this rule must show the project is feasible at the targeted 60 percent median rents without the OAHTC subsidy. The OAHTC subsidy must be applied to reduce rents below the 60 percent level and must be passed on directly to the OAHTC qualified tenants or homeowners in its entirety although the pass-through need not be distributed evenly among the units.

(4) Rental units covered by section 8 project based assistance are not eligible to be used to demonstrate pass-through savings for the OAHTC program because the rent reductions related to the OAHTC subsidy typically would not be passed on to the tenants in the form of a rent reduction from what the tenants would otherwise pay, and therefore, would not achieve pass-through savings. Projects that are partially covered with project based assistance may qualify to use OAHTC on the remaining units by, inter alia, demonstrating pass-through interest savings that result in appropriate rent reductions to the OAHTC qualified tenants.

(5) The department may require more extensive and enduring affordability covenants than provided in subsections (2) through (4) as may be reflected in relevant solicitation documents or otherwise.

(6) The department may require a non-refundable application charge and may assess such other charges as it deems reasonable to cover anticipated costs of processing the application, coordinating with other funding or project partners, negotiating and recording required documents or additional administration. Certain other charges are identified later in these rules.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 2-1994(Temp), f. & cert. ef. 3-25-94; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0020
Application Review

(1)(a) Applications for a reservation of OAHTC, or for an OAHTC certification of award if conditions are met as required under OAR 813-110-0015, are subject to department review:

(b) Any resulting reservation or certification of award may include modifications to the application and may be rescinded if conditions subsequent are not satisfied, including but not limited to the requirement to timely acquire a qualified funder who will appropriately use the tax credits.

(2) When a reservation or certification of award is made through a solicitation process, the reservation or certification of award will be subject to conditions identified in the solicitation documents that may differ from or supplement OAR 813-110-0021. When a reservation or certification of award is made outside of a solicitation process, the department may specify additional conditions that may differ from or supplement OAR 813-110-0021.

(3) Criteria that the department may apply in considering an application include but are not limited to the following:

(a) The experience of the sponsoring entity, property management agent and other involved person in providing low-income housing;

(b) Estimated rents that would have to be charged or the purchase price that would be required in order to make the project financially feasible, for the type and location of housing to be provided;

(c) The dollar amount of estimated savings from the reduction in rents from the estimated rents under paragraph (b) of this subsection, or the reduction in purchase price, owing to the OAHTC subsidy;

(d) The estimated rent reduction or purchase price reduction under paragraph (c) of this subsection;

(e) How long the tax credits are needed to meet the sponsoring entity's goals of long-term safe, sanitary and affordable housing;

(f) Except for manufactured dwelling park or preservation projects awarded after September 27, 2007, the sponsoring entity's statement that the proposed rent reduction or reduced purchase price will be maintained for or offered to households whose annual incomes are less than 80 percent of area median income;

(g) If the project is a preservation project, whether the project-based contract for rental assistance from the U.S. Department of Housing and Urban Development or the U.S. Department of Agriculture covers at least 25 percent of all units in the project;

(h) Restrictive covenants that provide for, but are not limited to, appropriate habitability, income and rent restrictions;

(i) A certifying statement from the agent for the lending institution of a local owner-occupied community rehabilitation program, if applicable;

(j) The target population to be served;

(k) The need for such affordable housing in the area to be served;

(l) Consistency with the comprehensive housing plan for the state or community;

(m) The location of the project site, including its proximity to transportation, shopping, social, commercial and recreational facilities, medical services and such other facilities and services that best serve the residents;

(n) Availability of street, sewer, water, utilities and other public services;

(o) Architectural design, including aesthetic quality, soundness of construction, energy efficiency, and suitability to the needs of the residents to be served;

(p) Compliance with applicable local comprehensive plan and land use regulations, housing codes and other applicable standards;

(q) The experience of the developer, contractors, architects, consultants and management agents in developing, constructing and operating housing projects; and

(r) The department's experience with and the reputation, experience and capacity of the sponsoring entity, project owner and developer and their representatives, employees and contractors.

(4) Applications are subject to review by the department under this rule according to a process that may include, but need not be limited to an invitation only, a first-come first-reviewed or a competitive review process.

(5) The amount of a reservation or certification of award made pursuant to an application under this division, together with the total outstanding tax credits, may not exceed the maximum allowable amount of tax credits for a project established under program requirements including, but not limited to those established in ORS 317.097.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0021
Reservation in Lieu of Certification

(1) For a reservation granted under OAR 813-110-0020:

(a) Except as provided in subsection (2) of this section, the reservation is valid for 240 days and is subject to extension by the department at its sole discretion; and

(b) Is a confirmed reservation unless the lending institution modifies the original letter of intent or there is a failure to comply with material terms of the reservation.

(2) A reservation for a sponsoring entity that is a local government entity providing a community rehabilitation program or rental project may be made for the period of proposed financing and may be extended at the discretion of the department.

(3) A sponsor that furnishes the department a firm commitment of financing prior to the expiration of a reservation is eligible, subject to other program requirements, for issuance of a certification.

(4) A sponsor that has a reservation issued shall notify the department of any change in the lending institution as well as any failure to comply with a material term of the reservation.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0026
Reservations, Certifications and Other Commitments Subject to State Housing Council Approval

If the department provides a reservation, certification of award or otherwise commits to an award of OAHTC under this division and if the amount of any related tax credits or any other department funding approved by the department that was considered by the department in setting the amount of the tax credits ("complementary funding") meets or exceeds the threshold amount established in OAR 813-001-0007(1) for review by the State Housing Council, the reservation, certification or other commitment is subject to review and approval by the council of such tax credit assistance and any such complementary funding. The council may approve, deny, modify or further condition funding assistance subject to its review. Based upon any relevant council determination, including with respect to complementary funding, any subject reservation, certification or other commitment may be deemed revoked, be modified or be further conditioned.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.625 and 456.722
Hist.: OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0027
Certification Request by Lending Institution

(1) A sponsor shall submit on behalf of the lending institution a separate request for each certification of a sponsoring entity requested under the Oregon Affordable Housing Tax Credits program.

(2) A sponsor shall pay a charge as assessed by the department for each request for a certification.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0029
Supplemental Application Charge

A sponsoring entity of a project under the OAHTC program shall pay a supplemental application charge, as established by the department from time to time, when the sponsoring entity requests additional resources for a project that has already been funded under the program.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605 and 456.722
Hist.: OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; Renumbered from 813-110-0032, OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0030
Monitoring and Reporting Requirements

A lending institution claiming state tax credits under ORS 317.097 is subject to monitoring by the department. A lending institution shall submit to the department by May 1 of each year a report satisfactory to the depart-

ment in which the lending institution affirms that the lending institution has met all requirements imposed by law to qualify for the tax credits. The report must be submitted on a form furnished by the department and signed by an officer of the lending institution, and:

(1) May not include any representation as to the performance by the sponsoring entity; and

(2) Shall include, at a minimum, the name and address of the institution, the name and phone number of a contact person, the number of loans for which tax credits will be claimed, the amount of credit claimed, the annual charge payment, the dates the loans were closed, the location of the projects financed by those loans, the amount loaned for each project, the outstanding balances of all loans, and the average annual balance for each loan.

Stat. Auth.: ORS 317.097
Stats. Implemented: ORS 317.097, 456.508, 456.510, 456.513, 456.559, 456.605, 456.722
Hist.: HSG 1-1990(Temp), f. & cert. ef. 1-5-90; HSG 3-1990(Temp), f. & cert. ef. 3-1-90; HSG 9-1990, f. & cert. ef. 5-11-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 6-1991(Temp), f. & cert. ef. 11-5-91; HSG 3-1992, f. & cert. ef. 2-4-92; HSG 7-1994, f. & cert. ef. 9-9-94; HSG 2-1995, f. & cert. ef. 9-25-95; OHCS 7-2006, f. & cert. ef. 5-17-06; OHCS 11-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 9-2007, f. & cert. ef. 1-11-07; OHCS 14-2007(Temp), f. & cert. ef. 10-16-07 thru 4-12-08; OHCS 5-2008, f. & cert. ef. 4-11-08; OHCS 9-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 22-2013, f. & cert. ef. 12-18-13; OHCS 36-2014, f. & cert. ef. 12-2-14

813-110-0031
Charges

(1) A base charge of 5 percent of the annual tax credits claimed by an eligible lending institution plus $100 per month for each full month the annual report is delayed shall be paid by the lending institution to the department.

(2) On projects certified prior to September 29, 1991, all annual charges required in OAR 813-110-0031, except for any charges for delayed reports, shall be waived.

Stat. Auth.: ORS 317.097 & 456.515 - 456.720
Stats. Implemented: ORS 317.097
Hist.: OHCS 36-2014, f. & cert. ef. 12-2-14

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Rule Caption: Amends date of applicable program manual and repeals rules centrally located in department's General Rules.
Adm. Order No.: OHCS 37-2014
Filed with Sec. of State: 12-2-2014
Certified to be Effective: 12-2-14
Notice Publication Date: 11-1-2014
Rules Amended: 813-055-0001
Rules Repealed: 813-055-0095, 813-055-0105, 813-055-0115
Subject: The General Housing Account carries out the allocation of monies deposited in the General Housing Account to meet critical housing needs, building the organizational capacity of affordable housing partners throughout the state, and requiring equitable distribution of resources over time based on objective measures of need. The proposed rules amend the date of the applicable General Housing Account program manual and repeals rules for monitoring requirements; transfer of recipient, assistance or ownership, subordinate liens, encumbrances; and remedies. The repealed rules are centrally located in the department's General Rules.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-055-0001
Purpose

OAR chapter 813, division 55, is promulgated to carry out the allocation of monies deposited in the General Housing Account and to carry out the account's purpose of meeting critical housing needs, building the organizational capacity of affordable housing partners throughout the state, and requiring equitable distribution of resources over time based on objective measures of need. Additional policies and instructions are outlined in the General Housing Account Program (GHAP) Manual dated June 2, 2014 (the "GHAP Manual" or "Manual"), incorporated herein by reference. The Manual may be accessed online at the department's website.

Stat. Auth.: ORS 456.555, 458.665
Stats. Implemented: ORS 456.515 - 456.725, 458.665
Hist.: OHCS 5-2009, f. & cert. ef. 12-22-09; OHCS 13-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 23-2013, f. & cert. ef. 12-18-13; OHCS 28-2014(Temp), f & cert. ef. 6-5-14 thru 12-2-14; OHCS 37-2014, f. & cert. ef. 12-2-14

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Rule Caption: Amends process for soliciting and administering funding awards for the Low-Income Housing Tax Credit Program
Adm. Order No.: OHCS 38-2014
Filed with Sec. of State: 12-2-2014
Certified to be Effective: 12-2-14
Notice Publication Date: 11-1-2014
Rules Adopted: 813-090-0055, 813-090-0064
Rules Amended: 813-090-0005, 813-090-0010, 813-090-0015, 813-090-0031, 813-090-0036, 813-090-0037, 813-090-0039, 813-090-0080
Rules Repealed: 813-090-0005(T), 813-090-0010(T), 813-090-0015(T), 813-090-0031(T), 813-090-0036(T), 813-090-0037(T), 813-090-0039(T), 813-090-0080(T), 813-090-0110(T), 813-090-0027, 813-090-0095
Subject: The Low-Income Housing Tax Credit program assists and encourages the development of multi-family housing development rental units through the allocation of housing tax credits. The rules reflect changes in the allocation of the tax credits and repeals rules for monitoring; transfer of owner, tax credit or project ownership; and suspends the temporary rule for remedies. All of these rules can be found in the department's General Rules.
Rules Coordinator: Sandy McDonnell—(503) 986-2012

813-090-0005
Purpose

The rules of OAR chapter 813, division 90, are promulgated to carry out the provisions and enforce ORS 456.515 through 456.720, and specifically 456.559(1)(f). These rules implement the Low-Income Housing Tax Credit (LIHTC) Program. The program's objective is to assist and encourage the development of affordable housing rental units for low-income households through the allocation of housing tax credits as provided by Section 42 of 1986, as amended of the Internal Revenue Code (IRC). The department has been designated as the housing tax credit allocating agency for the state of Oregon. Additional LIHTC program policies and instructions are outlined in the LIHTC program manual dated June 2, 2014 (the "LIHTC Manual" or "Manual," and the General Policy and Guideline Manual may be accessed online on the department's website.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: HSG 13-1987(Temp), f. & ef. 9-28-87; HSG 1-1988, f. & cert. ef. 3-8-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 18-1989, f. & cert. ef. 11-3-89; HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0010
Definitions

All words and terms used in OAR chapter 813, division 90 are as provided in OAR 813-005-0005 and herein. As used in these rules:

(1) "Applicant" means a person or entity that applies for an allocation of Housing Credit from the Department by completing an application provided by the Department.

(2) "Carryover allocation" means an allocation of housing credit made to a proposed project owner by the department for a proposed project which is not yet eligible to receive an allocation form 8609 and which is over ten percent completed as of the end of the calendar year in which the allocation is made.

(3) "Credit authority" means the dollar amount of housing credit available for allocation by the department for any calendar year and may include estimates of future amounts.

(4) "Housing credit" means the low-income housing tax credit available to a project pursuant to IRC section 42. The amount of low income housing tax credit available for allocation to a project is that amount which the department determines is necessary to make the project financially feasible but in no instance may it be greater than the applicable percentage of the qualified basis of each qualified low income building.

(5) "Housing credit agency" means designated state agency that will implement Section 42 on behalf of the Internal Revenue Service.

(6) "IRC" means the Internal Revenue Code of 1986, as amended.

(7) "Oregon agency" and "Department" mean the Oregon state agency of the state of Oregon.

(8) "Project" means a qualified low income housing project as defined in IRC Section 42(g). A project may include one or more buildings and any associated common area and may be located on scattered sites, if each of the dwelling units within each building is rent-restricted as required in IRC Section 42(g).

(9) "NOFA" means Notice of Funding Availability.

(10) "Reservation and extended use agreement" is a contract between the department and the proposed project owner whereby the proposed project owner agrees, among other things, to provide and maintain the project and to guarantee its compliance with the requirements of IRC Section 42 and the department by executing and recording the Declaration of Land Use Restrictive Covenants on the project in return for an allocation of housing credit in accordance with IRC Section 42(h)(6). It will also include by reference the carryover allocation agreement.

Stat. Auth.: ORS 183 & 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: HSG 13-1987(Temp), f. & ef. 9-28-87; HSG 1-1988, f. & cert. ef. 3-8-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 18-1989, f. & cert. ef. 11-3-89; HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0015
Allocation of Credit Authority

(1) The department may, to the extent of its credit authority, allocate housing credits pursuant to a qualified allocation plan of the department approved by executive order.

(2) The department shall allocate the housing credit in compliance with the requirements of IRC Section 42, applicable regulations and revenue procedures enacted or adopted thereunder, ORS 456.559(1)(f) and the rules of this division. Applications will be solicited during specified periods within the department's Notice of Funding Availability (NOFA). The department may also select from a pool of qualified applicants, or such other process the department deems appropriate.

(3) The department shall maintain a record of allocations and the balance of credit authority remaining for each calendar year. The records shall account separately for credit authority set-aside under OAR 813-090-0067 and 813-090-0027.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.508, 456.510, 456.513, 456.559, 456.605, 456.626, 456.722
Hist.: HSG 13-1987(Temp), f. & ef. 9-28-87; HSG 1-1988, f. & cert. ef. 3-8-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 18-1989, f. & cert. ef. 11-3-89; HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; ; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0031
Application Requests and Charges

(1) The department may solicit applications for an allocation of housing credit from interested parties when such credit is available.

(2) The department may require a non-refundable application charge from any applicant requesting low income housing tax credits through the consolidated funding cycle or otherwise.

(3) The department may require a supplemental application charge from applicants requesting additional resources for projects that have already been funded by the department.

(4) The department may require a transfer application charge from owners of projects that receive grants or tax credits through the department, who request the department's approval of a change in project ownership. Exempt from this is an initial transfer of ownership occurring in the first year after the placed-in-service date of the project. The department may assess a transfer review charge to project owners and transferees who effect a change in project ownership without prior written department approval.

(5) The department may require a recipient charge from any applicant prior to the execution of a reservation and extended use agreement.

(6) The department may assess additional late charges to an applicant if its LIHTC final application is received by the department after established deadlines. The department also may assess a supplemental charge to an applicant if the department determines that a re-evaluation of the applicant's final application is necessary or warranted.

(7) If the housing credits awarded to a project cannot be used by the end of the calendar year of the tax credit allocation and the owner is expected to incur 10% of project costs, an application for a carryover allocation of housing credits must be made by the deadline established by the department for the credit year or the credits will be lost. The department may require a supplemental application charge from an applicant who submits an LIHTC carryover application after the deadlines established by the department. The department also may assess a supplemental charge to an applicant if the department determines that a re-evaluation of the applicant's carryover application is necessary or warranted.

(8) The carryover requirements do not apply to LIHTC projects using tax-exempt bond financing.

(9) The applicant shall submit an application for final allocation of housing credits when the project is placed in service. The department shall prescribe the period for submitting a final application. The department may assess a late charge for applicants that submit applications after the prescribed deadline. The department also may assess a supplemental charge to an applicant if the department determines that a re-evaluation of the applicant's final application is necessary or warranted.

(10) The department may charge the project owner reasonable charges for the department's costs of monitoring the project owner's compliance with restrictions established by the department and IRC Section 42 or applicable law.

(11) The department shall evaluate completed applications based on a ranking system consistent with IRC Section 42(m)(l), established by the department and set forth in the department's qualified allocation plan.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist. HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07; Suspended by OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0036
Procedures for Allocation of Low-Income Housing Tax Credit (the "Carryover Allocation Agreement"

(1) Applicants selected for an offer under OAR 813-090-0035 must execute with the department a reservation and extended use agreement in a form satisfactory to the department. The reservation and extended use agreement will include, among other things, a provision for financial evaluation of the project based on cost certification and will incorporate a declaration of land use restrictive covenants to be executed and recorded prior to the department completing a form 8609 and delivering a copy thereof to the applicant.

(2) If the housing credit cannot be used in the year of allocation but the proposed project in the next calendar year is expected to be over 10 percent completed, a carryover allocation may be made. If a carryover allocation has been made, the owner shall submit the application for final allocation of housing credit when the project is placed in service. The department shall limit at the time of the extension/provision of a carryover allocation, the maximum annual allocation of credit which the proposed project may receive.

(3) Upon receipt of a certified copy of the recorded declaration of land use restrictive covenants in a form satisfactory to the department, the department shall complete and issue Part I of Internal Revenue Service Form 8609 to confirm final allocation of housing credits.

(4) The project owner shall be responsible for filing the required IRS Form with his or her tax return.

(5) An allocation may not be rescinded or reduced by the department except as provided under OAR 813-090-0080. Proposed project owners may return unneeded housing credit by completing and filing with the department, forms supplied by the department.

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; OHCS 9-2006(Temp), f. & cert. ef. 8-4-06 thru 1-30-07; OHCS 8-2007, f. & cert. ef. 1-11-07; Suspended by OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0037
Qualified Allocation Plan and Project Evaluation

(1) The department shall develop and maintain a capitalized Qualified Allocation Plan for the allocation of housing credit.

(2) The department may periodically solicit applications or select projects from a pool of qualified applications for the allocation of housing credit pursuant to the department's capitalized Qualified Allocation Plan ("QAP"), program manual and General Policy and Guideline Manual. Applications will be evaluated consistent with IRC Section 42, ORS 456.559(1)(f), the rules of this division and procedures consistent with the department goals to provide long term affordable housing.

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist. HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; Renumbered from 813-090-0030 by OHCS 5-2013, f. & cert. ef. 6-21-13; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0039
Reservation and Extended Use Agreement Low-Income Commitment

(1) No allocation shall be made by the department to an applicant until or unless the department and the applicant enter into a reservation and extended use agreement ("REUA"). The reservation and extended use agreement shall specify, among other things, a minimum applicable unit fraction as defined by IRC Section 42(c)(1)(B) and the rent formula to be maintained for the project to continue to qualify for housing credit.

(2) An executed reservation and extended use agreement shall be enforceable in any state court by any individual who qualified for occupancy by virtue of the income limitation set for such buildings; shall be binding on all successors of the applicant; and the declaration of land use restrictive covenants incorporated within the reservation and extended use agreement shall be recorded pursuant to state law as a restrictive covenant.

(3) The housing credit allocation may not exceed the amount necessary for the financial feasibility of those units of the project represented by the applicable fraction at the restricted rents specified in the reservation and extended use agreement.

(4) The reservation and extended use agreement shall include a commitment to meet the applicable fraction and restricted rent requirements for 15 years or more beyond the initial 15

year compliance period and may postpone for a specific time the project owner's rights under IRC Section 42(h)(6) to terminate the commitment after the initial 15 year compliance period.

Stat. Auth.: ORS 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; Renumbered from 813-090-0029, OHCS 5-2013, f. & cert. ef. 6-21-13; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0055
Amount of Tax Credits

The department's determination of the amount of low-income housing tax credits for a project may not exceed the amount necessary for the financial feasibility of the units of the project that are represented by the applicable fraction at the restricted rents specified in the agreement under OAR 813-090-0031. The amount of LIHTC available may further not exceed the applicable percentage of the qualified basis of each qualified low-income building.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.508, 456.510, 456.513, 456.559, 456.605 & 456.722
Hist.: OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0064
Set-Aside

The department shall set aside ten percent of the amount of its competitive annual authority issued by the Internal Revenue Service to the department for tax credit reservations to applicants involving the participation of a not-for-profit entity in the development or operation, or both, of a low-income housing project.

Stat. Auth.: ORS 456.555
Stats. Implemented: ORS 456.508, 456.510, 456.513, 456.559, 456.605 & 456.722
Hist.: OHCS 38-2014, f. & cert. ef. 12-2-14

813-090-0080
Revocation or Reduction of Housing Credit

(1) The department may refuse to make an offer, may revoke an offer of a housing credit allocation, or may terminate a reservation and extended use agreement, if the department determines that:

(a) The proposed project owner will not obtain a construction loan or building permit, or close its equity agreement for the proposed project in a timely manner;

(b) The proposed project will not be placed in service by the date mutually agreed upon;

(c) The proposed project financing is not committed as indicated; or

(d) The applicant has supplied misleading information.

(2) The department may reduce the allocation amount identified in the reservation and extended use agreement prior to the issuance of a copy of a carryover allocation or Form 8609 to the project owner if the department determines that the project requires a lesser amount of housing credit to be financially feasible, as required in IRC Section 42(m).

(3) When the department has issued a carryover allocation, the department may reduce the allocation amount identified in the carryover allocation prior to the delivery of a copy of a Form 8609 to the project owner if the department determines that the project requires a lesser amount of housing credit than previously determined to be financially feasible.

(4) The department may revoke a carryover allocation if the department determines that at least 10% of the total project cost will not be expended in accordance with the carryover requirements in Internal Revenue Code Section 42, or that the project will not be placed in service within two years following the calendar year in which a carryover allocation is made or by the dates mutually agreed upon.

Stat. Auth.: ORS 183 & 456.515 - 456.720
Stats. Implemented: ORS 456.559(1)(f)
Hist.: HSG 13-1987(Temp), f. & ef. 9-28-87; HSG 1-1988, f. & cert. ef. 3-8-88; HSG 3-1989(Temp), f. & cert. ef. 6-8-89; HSG 18-1989, f. & cert. ef. 11-3-89; HSG 12-1990(Temp), f. & cert. ef. 5-29-90; HSG 14-1990, f. & cert. ef. 10-26-90; HSG 2-1991(Temp), f. & cert. ef. 8-7-91; HSG 7-1991, f. & cert. ef. 12-19-91; Renumbered from 813-090-0060, OHCS 5-2013, f. & cert. ef. 6-21-13; OHCS 10-2013(Temp), f. & cert. ef. 6-21-13 thru 12-18-13; Administrative correction, 2-5-14; OHCS 27-2014(Temp), f. & cert. ef. 6-5-14 thru 12-2-14; OHCS 38-2014, f. & cert. ef. 12-2-14

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Oregon Military Department, Office of Emergency Management Chapter 104

Rule Caption: Division 10, Participation of Local and Tribal Governments in the EMPG Program of FEMA
Adm. Order No.: OEM 1-2014
Filed with Sec. of State: 12-15-2014
Certified to be Effective: 12-15-14
Notice Publication Date: 9-1-2014
Rules Amended: 104-010-0005
Subject: Division 10, Participation of Local and Tribal Governments in the EMPG Program of FEMA
Rules Coordinator: Cherie Cline—(503) 378-2911, ext. 22221

104-010-0005
Participation of Local and Tribal Governments in the Emergency Management Performance Grant (EMPG) Program of the Federal Emergency Management Agency (FEMA)

(1) The Oregon Military Department, Office of Emergency Management (OEM), and local and tribal emergency management/services agencies participating in the Emergency Management Performance Grant (EMPG) Program will implement the EMPG Program in the State of Oregon consistent with these rules, the Federal Emergency Management Agency's (FEMA) annual EMPG Program guidance, and an annual grant agreement and work plan agreed to by OEM and each participating local or tribal emergency management agency.

(2) Eligible applicants for participation in the Oregon EMPG Program include the state's 36 counties, nine (9) federally recognized tribes, and cities with a population of over 85,000.

(3) Each county, tribal government and city must meet the following requirements to be eligible to participate in the program:

(a) Have an assigned emergency manager.

(b) Be National Incident Management System (NIMS) compliant.

(c) Have an Emergency Operations Plan (EOP) that is consistent with OEM's statewide planning guidance, updated every two years, and promulgated by agency officials every four years.

(d) Have a FEMA approved Natural Hazards Mitigation Plan that is updated every five years.

(e) Have an Emergency Operations/Coordination facility.

(f) Have an incident command structure.

(4) Each county, tribal government and city must meet the following additional requirements to participate in the program:

(a) Conduct emergency exercises as outlined in the annual grant program work plan.

(b) Ensure that each agency staff member funded in any part with EMPG funds participates in emergency exercises as outlined in the annual grant program work plan.

(c) Ensure that each agency staff member funded in any part with EMPG funds completes all training identified in the annual grant program work plan and attends a minimum of 20 hours of emergency management professional development training during the grant performance period.

(d) Comply with additional federal mandates as outlined in the annual federal EMPG Funding Opportunity Announcement and included in the agency's approved annual work plan.

(5) OEM will allocate EMPG funds to the participating agencies each fiscal year based on the program funds made available by FEMA and the Oregon EMPG funding formula implemented by OEM on July 1, 2013.

(6) The EMPG is a 50% non-federal cost share grant and grant funds are provided on a reimbursement basis. All EMPG Program funds must be

spent and accounted for in accordance with applicable OMB Circulars and Title 44 of the Code of Federal Regulations.

(7) Work Plan Submission and Reporting Requirements:

(a) Each participating agency must prepare and submit a proposed annual work plan in accordance with guidance provided by OEM.

(b) Each participating city must have its respective county emergency manager acknowledge review of its proposed annual work plan. Each county with a participating city or cities must have the city emergency manager(s) acknowledge review of its proposed annual work plan.

(c) OEM will review and approve each participating agency's annual work plan. Upon approval, OEM will prepare a formal grant agreement and forward the agreement and approved work plan to the participating agency.

(d) The work plan and formal grant agreement must be approved by the governing body of the participating agency and the signed documents returned to OEM by a date set by OEM.

(e) Each participating agency must submit quarterly program reports detailing its accomplishment of work plan objectives. When completion of an objective produces a tangible product (e.g., a plan, annex, analysis, etc.) a copy of the product must be submitted to OEM with the corresponding quarterly program report. Quarterly program reports must be received by OEM within 15 days of the close of each fiscal year quarter. If the fifteenth day falls on a weekend or legal holiday, program reports must arrive no later than the next working day.

Programmatic Reporting Deadlines:
October 15
January 15
April 15
July 15

(f) Each participating city must have its respective county emergency manager acknowledge review of its quarterly program reports. Each county with a participating city or cities must have the city emergency manager(s) acknowledge review of its quarterly program reports.

(g) Each participating agency must submit monthly or quarterly fiscal reports detailing the costs for which it is seeking reimbursement and providing the appropriate cost documentation. Monthly fiscal reports must be received by OEM within 30 days of the end of each month. Quarterly fiscal reports must be received by OEM within 30 days of the end of each fiscal year quarter. If the thirtieth day falls on a weekend or legal holiday, fiscal reports must arrive no later than the next working day.

Fiscal Reporting Deadlines:
October 30
January 31
April 30
July 30

(8) Penalties:

(a) Failure to meet the requirements spelled out in the annual work plan, whether determined by review of program and fiscal reports or through an audit, may result in no funding for the next fiscal year, forfeiture of grants funds already received for the year covered by the work plan, non-reimbursement of outstanding requested expenditures, or any combination thereof.

(b) Failure to submit program or fiscal reports by the prescribed reporting deadlines may result in program suspension.

(9) Reinstatement:

(a) Upon receipt of a late program or fiscal report from a suspended agency, the OEM Director may reinstate the agency if it satisfactorily demonstrates its desire, commitment, and ability to continue in the program.

(b) When an agency's participation is reinstated, the agency's funding allocation will be reduced for each day the program or fiscal report was late. The reduction will be in an amount equal to one day's allocation (1/365) multiplied by the number of days the report was late.

(c) If the reinstated agency satisfactorily demonstrates to the OEM Director that the lateness of the report causing its suspension was due to circumstances beyond the control of the agency's emergency program manager, the OEM Director may waive all or a portion of the late penalty.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 401.092
Stats. Implemented: ORS 401.096
Hist.: OEM 1-2000, f. & cert. ef. 10-17-00; OEM 1-2014, f. & cert. ef. 12-15-14

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Update OSGP rules to reflect changes to federal law and proposed improvements in the program.
Adm. Order No.: PERS 15-2014
Filed with Sec. of State: 11-21-2014
Certified to be Effective: 11-21-14
Notice Publication Date: 11-1-2014
Rules Amended: 459-050-0076, 459-050-0120
Subject: OAR 459-050-0076, In-Plan Roth Conversion, allows plan participants to convert their pre-tax dollars in OSGP to after-tax and move their money to the Roth 457 account. Initially, the Internal Revenue Code only allowed this option after plan participants had a severance from employment. However, with the passage of the American Taxpayer Relief Act of 2012, plan participants are now eligible to convert any pre-tax money in their OSGP account to the Roth 457 account while still employed.

Paragraph (1)(a)(A) of the rule has been modified and paragraph (B) has been deleted because plan participants no longer need a severance of employment to be eligible for an In-Plan Roth Conversion. Paragraph (1)(a)(E) has been deleted because the IRS has not provided guidance that non-spouse beneficiaries are eligible for In-Plan Roth Conversion.

Finally, subsection (3)(a) has been modified because only plan participants who are making a Roth conversion after a severance from employment are required to receive a written explanation on the rollover eligibility of their Roth conversion amount.

OAR 459-050-0120, Self-Directed Brokerage Option, was adopted in 2011 to implement the new option added to the OSGP. Previously, the Oregon State Treasury required that participants have at least $20,000 in their OSGP account before they could participate in the Self-Directed Brokerage Option. Treasury has now agreed to lower the restriction to a $10,000 account balance. This change was approved by the Oregon Investment Council (OIC) at its July 30, 2014 meeting. Subsection (2)(a) of the rule was modified to reflect the new dollar amount.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-050-0076
In-Plan Roth Conversion

(1) Definitions. For purposes of this rule:

(a) "Distributee" means:

(A) A Deferred Compensation Plan participant;

(B) The surviving spouse of a deceased participant; or

(C) The spouse or former spouse who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 243.507.

(b) "In-Plan Roth Conversion" means the payment of an eligible rollover distribution by the Deferred Compensation Program directly from the Deferred Compensation Account to the Designated Roth Account as instructed by the Distributee and in compliance with IRC Section 402A(c)(4) and meets the otherwise applicable rollover requirements of IRC Section 457(e)(16).

(2) Limitations.

(a) If a Distributee elects an In-Plan Roth Conversion, the Distributee may not roll the money back to the Deferred Compensation Account at a later date.

(b) Once completed, all balances from any In-Plan Roth Conversion shall be accounted for individually and separately within the Designated Roth Account.

(3) 402(f) Notice and Election Procedure.

(a) For a Distributee making an In-Plan Roth Conversion after severance of employment, the Deferred Compensation Program staff shall provide such Distributee with a written explanation of the direct rollover rules for any eligible distribution, as required by IRC Section 402(f).

(b) An In-Plan Roth Conversion election shall be in writing and must be signed by the Distributee or by his or her authorized representative pursuant to a valid power of attorney. The election must be on forms furnished by the Deferred Compensation Program.

Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.462
Hist.: PERS 10-2012, f. & cert. ef. 5-24-12; PERS 15-2014, f. & cert. ef. 11-21-14

459-050-0120
Self-Directed Brokerage Option

(1) For purposes of this rule:

(a) "Core Investment Option" means an investment alternative made available under ORS 243.421, but does not include the Self-Directed Brokerage Option.

(b) "Self-Directed Brokerage Option" means an investment alternative made available under ORS 243.421 that permits a participant to establish a brokerage account and participate in investment products other than core investment options.

(c) "Trade" has the same meaning as in OAR 459-050-0037.

(2) A participant may initiate participation in the Self-Directed Brokerage Option only by a trade from core investment options.

(a) The participant's combined Deferred Compensation and Designated Roth Accounts balance must be at least $10,000 on the date of the trade.

(b) The amount of the trade may not exceed 50 percent of the participant's combined Deferred Compensation and Designated Roth Accounts balance on the date of the trade.

(3) A participant in the Self-Directed Brokerage Option may not:

(a) Contribute to the Self-Directed Brokerage Option by any means other than a trade from a core investment option.

(b) Make a trade from a core investment option to the Self-Directed Brokerage Option if:

(A) The participant's balance in the Self-Directed Brokerage Option exceeds the balance in the participant's core investment options on the date of the trade; or

(B) The trade would cause the participant's balance in the Self-Directed Brokerage Option to exceed the participant's balance in the core investment options on the date of the trade.

(4) The Self-Directed Brokerage Option may not be included in any automatic account rebalancing function offered by the Program.

(5) Notwithstanding OAR 459-050-0080, funds in the Self-Directed Brokerage Option are not available for distribution.

(a) Funds in the Self-Directed Brokerage Option must be traded to a core investment option to be available for distribution under OAR 459-050-0080.

(b) A participant, beneficiary, or alternate payee subject to Required Minimum Distributions, as described in OAR 459-050-0300, must maintain a balance in the core investment options that will accommodate the timely distribution of the required amount.

(c) A participant, beneficiary, or alternate payee who fails to comply with subsection (b) of this section is solely responsible for any tax, penalty, or cost imposed by reason of a delayed or partial required minimum distribution.

(6) The Deferred Compensation Manager, if necessary to comply with restrictions imposed by a participating mutual fund, a contracted broker, or the Securities and Exchange Commission, may establish additional temporary restrictions for the Self-Directed Brokerage Option.

(7) Any action taken by the Deferred Compensation Manager under section (6) of this rule must be presented to the Board at its next scheduled meeting. The Board may take action as authorized by ORS 243.401 to 243.507. If the Board does not act, the action(s) taken by the Deferred Compensation Manager shall expire on the first business day following the date of the meeting.

(8) The restrictions provided in this rule are not exclusive. The Board may establish additional restrictions or sanctions as authorized by ORS 243.401 to 243.507.

Stat. Auth.: ORS 243.470
Stats. Implemented: ORS 243.401 - 243.507
Hist.: PERS 6-2011, f. & cert. ef. 8-4-11; PERS 10-2012, f. & cert. ef. 5-24-12; PERS 15-2014, f. & cert. ef. 11-21-14

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Rule Caption: Remove language that could be inconsistent with House Bill 4155 regarding recovery of administrative expenses.
Adm. Order No.: PERS 16-2014(Temp)
Filed with Sec. of State: 11-21-2014
Certified to be Effective: 11-21-14 thru 5-19-15
Notice Publication Date:
Rules Amended: 459-007-0009
Subject: OAR 459-007-0009 was adopted by the PERS Board on July 25, 2014, as authorized by House Bill 4155 (2014) (now codified at ORS 238.610). The rule establishes procedures for recovering the additional actuarial and auditing costs associated with providing employers information necessary to comply with the new GASB 68 requirements.

The last sentence of OAR 459-007-0009(2) needs to be clarified. As previously adopted, the rule states: "In any year in which earnings on those accounts are not sufficient to recover those costs, employer contribution accounts will be reduced by the amount of those costs." Although ORS 238.610(1)(a) allows for administrative expenses to be deducted from employer accounts, (1)(b) specifically says that administrative costs may be recovered "only from interest earned on employer contributions... ." The statute does not specifically allow employer accounts to be reduced. Rather, in practice, there are always earnings throughout the year even though there may be a net loss for a particular year. These GASB 68 costs will be deducted from these employer earnings prior to netting all earnings and losses for the calendar year.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-007-0009
Allocating Costs of Compliance with Generally Accepted Accounting Principles

(1) Pursuant to ORS 238.610(1)(b), PERS will provide employers with audited financial data each year to comply with generally accepted accounting principles as established by the Government Accounting and Standards Board (GASB) standards.

(2) Prior to earnings crediting each year, PERS shall compile the actuarial, auditing, and internal staff costs of providing the audited financial data it will provide to employers. Earnings on employer contribution accounts shall be reduced by the amount of those costs.

Stat. Auth.: ORS 238.650, 238A.450
Stats. Implemented: ORS 238.610(1)(b)
Hist.: PERS 9-2014, f. & cert. ef. 7-25-14; PERS 16-2014(Temp), f. & cert. ef. 11-21-14 thru 5-19-15

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Oregon University System, Eastern Oregon University
Chapter 579

Rule Caption: To modify rules for Special Student Fees
Adm. Order No.: EOU 2-2014(Temp)
Filed with Sec. of State: 12-1-2014
Certified to be Effective: 12-1-14 thru 5-29-15
Notice Publication Date:
Rules Amended: 579-020-0006
Subject: Amend fees charged to students for special uses of facilities, services or supplies at Eastern Oregon University.
Rules Coordinator: Teresa Carson-Mastrude—(541) 962-3773

579-020-0006
Special Student Fees

Eastern Oregon University is adopting by reference Special Student Fees for the 2014–2015 school year.

[ED. NOTE: Fees referenced are available from the agency.]
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: EOSC 3, f. & ef. 6-23-76; EOSC 8, f. & ef. 6-16-77; EOSC 6-1978, f. & ef. 10-2-78; EOSC 1-1979, f. & ef. 6-27-79; EOSC 1-1981, f. & ef. 1-12-81; EOSC 3-1981, f. & ef. 7-1-81; EOSC 2-1983, f. & ef. 12-16-83; EOSC 2-1984, f. & ef. 10-25-84; EOSC 1-1986, f. & ef. 2-13-86; EOSC 2-1988, f. & cert. ef. 10-28-88; EOSC 2-1989, f. & cert. ef. 7-31-89; EOSC 2-1990, f. & cert. ef. 10-9-90; EOSC 3-1991, f. & cert. ef. 9-20-91; EOSC 5-1990, f. & cert. ef. 12-20-91 (and corrected 1-2-92); EOSC 1-1992, f. & cert. ef. 5-13-92; EOSC 2-1992, f. & cert. ef. 8-24-92; EOSC 4-1993, f. & cert. ef. 8-2-93; EOSC 4-1994, f. & cert. ef. 7-25-94; EOSC 1-1996, f. & cert. ef. 8-15-96; EOU 1-2001, f. & cert. ef. 9-28-01; EOU 1-2003, f. & cert. ef. 7-31-03; EOU 1-2005, f. & cert. ef. 5-16-05; EOU 1-2006, f. & cert. ef. 4-14-06; EOU 1-2007, f. & cert. ef. 5-14-07; EOU 4-2007(Temp), f. & cert. ef. 8-15-07 thru 1-15-08; Administrative Correction 1-24-08; EOU 1-2008, f. & cert. ef. 3-14-08; EOU 5-2008, f. & cert. ef. 8-15-08; EOU 1-2009, f. & cert. ef. 3-12-09; EOU 2-2009, f. & cert. ef. 8-14-09; EOU 3-2009, f. & cert. ef. 12-15-09; EOU 1-2010, f. & cert. ef. 5-13-10; EOU 2-2010, f. & cert. ef. 7-15-10; EOU 1-2011, f. & cert. ef. 6-6-11; EOU 3-2011, f. & cert. ef. 8-5-11; EOU 4-2011(Temp), f. & cert. ef. 11-14-11 thru 5-6-12; EOU 5-2011(Temp), f. & cert. ef. 12-1-11 thru 5-6-12; EOU 1-2012, f. & cert. ef. 4-23-12; EOU 4-2012(Temp), f. & cert. ef. 6-22-12 thru 12-15-12; EOU 6-2012, f. & cert. ef. 10-15-12; EOU 2-2013, f. & cert. ef. 5-28-13; EOU 1-2014, f. & cert. ef. 5-8-14; EOU 2-2014(Temp), f. & cert. ef. 12-1-14 thru 5-29-15

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of a Rulemaking to Implement SB 844 (2013) Voluntary Emission Reduction Program
Adm. Order No.: PUC 8-2014
Filed with Sec. of State: 12-3-2014
Certified to be Effective: 12-3-14
Notice Publication Date: 9-1-2014
Rules Adopted: 860-085-0500, 860-085-0550, 860-085-0600, 860-085-0650, 860-085-0700, 860-085-0750

Subject: This rulemaking implements ORS 757.539 (2013 Senate Bill 844) by establishing rules that include criteria for emission reduction project eligibility, identify components for emission reduction project application, establish a two-tiered process for PUC review, and set a rate cap for all projects authorized under the rules.
Rules Coordinator: Diane Davis—(503) 378-4372

860-085-0500
Voluntary Emission Reduction Projects

OAR 860-085-0500 through 860-085-0750 are established under ORS 757.539 and are to be read in conjunction with that statute. For purposes of these rules, "Emission Reduction Project" or "Project" means a single or set of voluntary measures, including all labor, equipment, materials, items, or actions, designed to reduce anthropogenic greenhouse gas emissions within a defined boundary that would not otherwise occur.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

860-085-0550
Project Eligibility Criteria

To be eligible for Commission approval, the Project must satisfy the minimum criteria set forth in ORS 757.539(3).

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

860-085-0600
Project Application Requirements

In addition to the information required by ORS 757.539(4)(a)–(k), a Project application must include:

(1) General information:

(a) A description of how the Project satisfies the minimum eligibility criteria described in ORS 757.539(3)(a)–(f);

(b) A discussion of all Project measures being employed to reduce emissions;

(c) The estimated Project measure life;

(d) A description of the Project boundary and scope;

(e) A discussion of the emission reduction strategy used, and why the approach is appropriate, timely, and merits approval; and

(f) Whether the Project is able to generate environmental credits or certificates and any potential revenues associated with their sale or use. The utility must explain the rationale for the proposed treatment of any credits and refer to any appropriate protocols, certification systems, regulatory regimes, or other rules for generating, trading, and retirement of such credits or certificates;

(2) Cost recovery information:

(a) A requested method for cost recovery as described in ORS 757.539(8);

(b) A showing of the Project benefits received and the allocation of benefits for each type of ratepayer. "Project benefits" means those benefits that accrue to ratepayers of the utility when such benefits can reasonably be attributed to the Project;

(c) A description of any requested incentive payments, and requested recovery that complies with OAR 860-085-0750. A utility may propose an incentive structure with its initial Project proposal that can then be applied to subsequently approved Projects; and

(d) Any required tariffs; and

(3) An Emissions Reduction Verification Plan that includes;

(a) The methodology used to calculate the projected emission reductions. The methodology must identify:

(A) A Project baseline; that is, an estimate of the emissions that would occur under the ordinary course of business or set of conditions reasonably expected to occur within the defined boundary and scope of an Emission Reduction Project in the absence of the Emission Reduction Project, taking into account all current laws and regulations, as well as current economic and technological trends;

(B) Emission leakage and Project emissions, which must be deducted from the emission reductions generated by the Project activity. "Emission leakage" means a reduction in greenhouse gas emissions within the Project that is offset by an increase in greenhouse gas emissions outside the Project. "Project emissions" means any emissions attributable to the implementation of an Emission Reduction Project; and

(C) How the emission reduction verification methodology was developed; and

(b) A plan for monitoring emission reductions, including the ongoing collection and retention of data for determining the Project baseline, Project emissions, and emissions reductions that are attributable to the Project. With the plan, the utility must describe the methods and equipment used, and identify the anticipated costs of monitoring and verifying emission reductions.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

860-085-0650
Project Threshold

For the purpose of determining whether an application will be subjected to the procedural process described in either ORS 757.539(6) or (7), Tier-1 and Tier-2 Projects are defined as follows:

(1) A Tier-1 Project is one that has projected costs that would be borne by the ratepayers of the utility proposing the Project that are equal to or less than $1 million and has an overall project cost of less than $85 per metric ton of reduced emissions.

(2) A Tier-2 Project is one that has projected costs that would be borne by the ratepayers of the utility proposing the Project that are greater than $1 million or has an overall project cost of equal to or greater than $85 per metric ton of reduced emissions.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

860-085-0700
Project Cap

Projected costs to ratepayers of all Emission Reduction Projects must not exceed 4 percent of the utility's last approved retail revenue requirement, inclusive of all revenue collected under adjustment schedules. The costs of incentives the utility proposes to recover under this rule will be included in the determination of the costs to ratepayers under this cap.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

860-085-0750
Utility Incentives for Applicable Projects

(1) The Commission may grant incentive payments for an Emission Reduction Project.

(2) The total costs to ratepayers of all incentives received by the utility may not exceed 25 percent of the project cap specified in 860-085-0700;

(3) The Commission may structure incentives such that the amounts allowed:

(a) Are linked to the amount of emissions reduced; or

(b) Vary depending on whether a Project is recovered as an expense or an investment placed in rate base.

(4) The Commission may discontinue or reduce the incentives to be paid to the utility if a Project is out of compliance with any requirements of the Commission's approval order.

Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 757.539
Hist.: PUC 8-2014, f. & cert. ef. 12-3-14

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Public Utility Commission, Board of Maritime Pilots
Chapter 856

Rule Caption: Training rule amendments for the Columbia-Willamette River pilotage ground.
Adm. Order No.: BMP 4-2014
Filed with Sec. of State: 11-26-2014
Certified to be Effective: 11-26-14
Notice Publication Date: 11-1-2014
Rules Amended: 856-010-0010, 856-010-0011, 856-010-0012
Subject: Training rules for the Columbia-Willamette River pilotage ground are being amended to address changes in traffic patterns. This has resulted in the need to redistribute some of the requirements across various stages of the training program in order to make sure that trainees are able to meet the requirements.
Rules Coordinator: Susan Johnson—(971) 673-1530

856-010-0010
Original Licensing Requirements

In addition to the qualifications required for licensing of pilots under ORS 776, the applicant shall:

(1) Present an application in writing to the administrator of the board on the form provided by the board for the pilotage ground for which the applicant intends to become licensed. The application shall be filed not less than 30 days prior to appearance before the board for a written examination and may be supplemented at any time until the examination is taken. The board shall consider the application and upon approval, the written examination will be scheduled. The examination shall be proctored by the board's administrator. The examination for each pilotage ground shall be prepared by the board with the assistance of the board's licensed training organization for that pilotage ground. The examination will test for skill and knowledge of those factors identified in ORS 776.035(2) and 776.325(1)(b). The examination will be graded by the board member from the pilotage ground for which the applicant is seeking a license. If requested by the training course monitor, up to two additional pilots selected by the training course monitor and approved by the board may participate with the board member in grading the exam. The examination will be pass/fail.

(2) Accompany the application with a photocopy of a U.S. Coast Guard physical examination report and signed by an Oregon or Washington licensed physician verifying that the applicant meets the physical, medical and mental criteria required to qualify for a federal pilot's license.

(a) If the examining physician determines that the applicant is not competent to perform the duties of a pilot, the applicant is not then medically eligible to receive a license from the board.

(b) If the examining physician determines that the applicant is competent to perform the duties of a pilot, or if the examining physician determines that the applicant's physical, medical or mental condition is in need of further review, then the applicant is then considered medically eligible to receive a license from the board, subject to any later review and conclusion by the U.S. Coast Guard that the applicant is not competent for continued federal licensure as a pilot

(c) If the U.S. Coast Guard undertakes further medical review of an applicant's physical, medical or mental competency, either upon recommendation by the examining physician or otherwise, then the applicant shall report to the board at least every 30 days regarding the status of such further review. If, at the conclusion of such review process, the U.S. Coast Guard declines to approve the applicant for continued federal licensure as a pilot, the applicant shall immediately notify the board and the board will treat the decision as a suspension of the applicant's federal license. Any license issued by the board shall be automatically suspended as of the date the board receives notice of the U.S. Coast Guard's decision, notwithstanding any appeal that may be taken from such decision. If the Coast Guard concludes its review by issuing a waiver to the applicant, the terms of the waiver shall be immediately reported to the board, and the license issued by the board shall become subject to the terms of the waiver issued by the Coast Guard.

(3) Have actual experience as a pilot handling ships over the pilotage ground for which a state license is sought and state in the application the names of ships piloted, dates, draft, gross tonnage, and length over all, as specified in (but not limited to) (4), (5), (6) and/or (7) in this section, and:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard;

(b) Hold an unlimited federal pilot's endorsement for the ground for which a state license is sought; and

(c) Have served at least two years as Master aboard vessels, or when applying for a license over the Columbia and Willamette River pilotage ground, have completed a program of apprenticeship training which has been approved by the Board.

(4) In addition to the requirements in OAR 856-010-0010(1), (2), (3), to qualify for a Grade "C" license over the Columbia and Willamette River pilotage ground, the applicant shall, prior to taking the board's examination required under section (1) above:

(a) Have served at least 730 active working days as captain of towing vessels on the Columbia River and its tributaries, or have completed a program of apprenticeship training which has been approved by the Board, as specified in OAR 856-010-0014;

(b) Complete at least six trips under the supervision of an unlimited state-licensed pilot while on the bridge of a ship of not less than 500 feet length over-all (L.O.A.) through the bridges in the upper harbor in Portland, up to and including the Broadway Bridge, which shall be made with and without the aid of a tug or towboat, including at least one trip in each direction. The training course monitor may defer satisfaction of the requirement for trips through the Broadway Bridge if insufficient training trip opportunities through that bridge are available, provided that any license issued without fully satisfying this subsection will be restricted to below the Broadway Bridge until the requirements of this subsection are fully satisfied, and provided further than the holder of such a restricted license must complete the requirements at the earliest opportunity training trips through the Broadway Bridge are available;

(c) Complete at least 110 transits while on the bridge of a ship of not less than 500 feet L.O.A. within the 270 days preceding the examination, with at least 70 of these transits made under the supervision of an unlimited state-licensed pilot and at least 80 of the transits completed within 150 days after the first transit is completed;

(d) When combining trip segments to establish a transit, each trip segment may be used only once;

(e) Complete at least six trips under the supervision of an unlimited state-licensed pilot within the 270 days preceding the examination while on the bridge of a ship of not less than 500 feet L.O.A. in a combination of the following directions, with at least three trips in each direction:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south into the Willamette River.

(f) Complete at least 10 trips in either direction between Astoria and Longview or Kalama under the supervision of an unlimited state-licensed pilot.

(g) Complete at least 4 trips from dock to dock or anchor to dock while on ships not less than 500 feet L.O.A. while under the supervision of an unlimited state-licensed pilot, with each such trip requiring a 180 degree turn before docking.

(h) Train at least 25 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor that may include, but need not be limited to, shipboard training, electronic navigation training, manned model training, attendance at meetings with maritime-related governmental agencies or exposure to maritime related administrative activities.

(i) Present recommendations from the training course monitor and from at least ten unlimited state-licensed pilots who participated in the training, certifying that the applicant has demonstrated sufficient knowledge and shiphandling skills to pilot ocean-going ships up to 600 feet L.O.A. on the pilotage ground.

(5) When applying for a license on the Coos Bay bar pilotage ground, the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilot's endorsement for the Coos Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Coos Bay bar while under the supervision of an unlimited state-licensed Coos Bay bar pilot, with at least ten crossings with each unlimited state-licensed Coos Bay bar pilot and with at least 25 of the bar crossings completed during hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed pilot;

(e) Make at least 25 trips through each of the bridges; and

(f) Submit letters from each of the Coos Bay bar pilots who have supervised the training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(6) When applying for a license on the Yaquina Bay bar pilotage ground the applicant shall:

(a) Hold a valid license as Master endorsed for Radar Observer issued by the U.S. Coast Guard and shall have served at least two years as Master aboard vessels;

(b) Obtain an unlimited federal pilot's endorsement for the Yaquina Bay bar pilotage ground;

(c) Complete at least one hundred (100) crossings of the Yaquina Bay bar while under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of bar crossings at Yaquina Bay may be reduced to 12, with at least one such crossing with each unlimited state-licensed Yaquina Bay bar pilot and with at least twenty-five percent (25%) of the bar crossings completed during the hours of darkness;

(d) Dock and undock at least 25 ships under the supervision of an unlimited state-licensed Yaquina Bay bar pilot, or after completing two years of piloting with a state license in Coos Bay, the number of dockings and undockings may be reduced to 12;

(e) Make at least twenty-five (25) trips through the bridge, or after completing two years of piloting with a state license in Coos Bay, the number of trips may be reduced to 12; and

(f) Submit letters from each of the Yaquina Bay bar pilots who have supervised training of the applicant, certifying that the applicant has demonstrated local knowledge of the pilotage ground and shiphandling skills sufficient to pilot ocean-going ships on the pilotage ground.

(7) When applying for an original license on the Columbia River bar pilotage ground the applicant shall:

(a) Hold a valid license issued by the U.S. Coast Guard as "Unlimited Master any oceans — any tonnage", endorsed for Radar Observer;

(b) Have served at least two years as Master of an offshore merchant ship of 5,000 gross tons or more, certified by Certificates of Discharge or Continuous Discharge Book;

(c) Obtain a federal pilot's endorsement for the Columbia River bar pilotage ground, after which a minimum of one hundred (100) crossings of the Columbia River bar shall be made under the supervision of an unlimited state-licensed pilot, and make crossings with at least five unlimited state-licensed Columbia River bar pilots;

(d) Be on board a minimum of ten ships docking or undocking from the Astoria Port Docks, Tongue Point, and other facilities;

(e) Make approximately twenty-five percent (25%) of the crossings of the Columbia River bar during the hours of darkness.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115 & 670.310

Hist.: PC 1, f. 10-29-57, ef. 7-1-57; PC 7, f. 6-13-73, ef. 7-15-73; MP 2-1984, f. & ef. 10-4-84; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; MP 3-1995, f. & cert. ef. 3-16-95; MP 1-1996, f. & cert. ef. 5-9-96; BMP 2-1999, f. & cert. ef. 6-24-99; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2003, f. & cert. ef. 2-26-03; BMP 3-2006, f. 9-29-06, cert. ef. 10-1-06; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 2-2007, f. & cert. ef. 5-22-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 2-2009, f. 6-19-09, cert. ef. 6-23-09; BMP 4-2009, f. & cert. ef. 8-5-09; BMP 4-2011, f. 6-28-11, cert. ef. 6-29-11; BMP 5-2011, f. 6-28-11, cert. ef. 6-29-11; BMP 2-2014(Temp), f. & cert. ef. 5-23-14 thru 11-19-14; BMP 4-2014, f. & cert. ef. 11-26-14

856-010-0011
Restrictions on Licenses

After receiving an original license the following restrictions shall apply:

(1) Columbia and Willamette River Grade "C" and Grade "B" license holders shall not pilot vessels with a draft of 38 feet or greater. Columbia and Willamette River Grade "A" license holders shall not pilot vessels with a draft of 40 feet or greater. Columbia and Willamette River Grade "C", "B" and "A" license holders shall not pilot tankers.

(2) Columbia and Willamette River license holders shall not pilot any vessel through or above the Broadway Bridge in the upper harbor of Portland until the licensee has completed the requirements of OAR 856-010-0010(4)(b) for the Broadway Bridge.

(3) Except for Columbia River bar pilots who have a minimum of two years' experience on tankers as Master or pilot, no Columbia River bar pilot shall pilot a loaded tanker during the first two years as a licensee.

(4) Coos Bay bar pilots shall not move any ship exceeding 40,000 gross tons, or exceeding 700 feet in length, or exceeding 106 feet of beam, or any ship exceeding 300 feet in length with the wheelhouse forward of amidships, during the first two years as a licensee.

(5) Coos Bay bar pilots shall not move loaded tankers during the first two years as a licensee, nor shall Coos Bay bar pilots move any ship exceeding 23,000 gross tons through the bridges during the first two years as a licensee.

(6) Yaquina Bay bar pilots shall not move any ship exceeding 23,000 gross tons, or any ship exceeding 300 feet in length with the wheelhouse forward of amidships, during the first two years as a licensee.

(7) Yaquina Bay bar pilots shall not move loaded tankers during the first two years as a licensee.

(8) The Board may, upon application by the licensee, recognize any combination of master's tanker and pilot's experience to equal any time period required by this rule.

Stat. Auth.: ORS 670 & 776

Stats. Implemented: ORS 776.115 & 670.310

Hist.: MP 1-1992, f. & cert. ef. 4-29-92; MP 1-1996, f. & cert. ef. 5-9-96; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2011, f. 6-28-11. cert. ef. 6-29-11; BMP 2-2014(Temp), f. & cert. ef. 5-23-14 thru 11-19-14; BMP 4-2014, f. & cert. ef. 11-26-14

856-010-0012
Degrees of Licenses for the Columbia and Willamette River Pilotage Ground

(1) Grade "C" License: The initial license issued by the Board to a pilot for the Columbia and Willamette River pilotage ground shall only authorize the pilot to pilot vessels under 600 feet length over-all (L.O.A.).

(2) To obtain a Grade "B" License while holding a Grade "C" License: In order to obtain authority from the Board to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade "C" license;

(b) Complete at least 30 transits on the pilotage ground piloting ships of between 300 and 600 feet L.O.A.;

(c) Complete at least 25 transits on ships 600 feet L.O.A. or greater under the supervision of a minimum of ten different pilots, at least six of whom have held unlimited state licenses for at least 5 years;

(d) Complete at least 5 trips in either direction between Astoria and either Longview or Kalama on ships 600 feet L.O.A. or greater under the supervision of an unlimited state-licensed pilot;

(e) Make at least 6 trips under the supervision of unlimited state-licensed pilots while on the bridge of ships not less than 500 feet L.O.A., with at least 3 trips in each of the following directions:

(A) From the Willamette River, turning east (upstream) into the Columbia River; and

(B) From the Columbia River upstream of the mouth of the Willamette River, turning south (upstream) into the Willamette River;

(f) Complete at least 2 trips from dock to dock or anchor to dock while on ships not less than 600 feet L.O.A. while under the supervision of an unlimited state-licensed pilot, with each such trip requiring a 180 degree turn before docking;

(g) Present recommendations from the training course monitor and from at least ten pilots holding unlimited state licenses who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A.; and

(h) The requirements specified in subsections (b), (c), (d), (e), and (f) of this section must have been met during the 180 days preceding application for authority to pilot vessels from and including 600 feet L.O.A. up to 700 feet L.O.A.; and

(i) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 700 feet L.O.A., except that the applicant shall not pilot tankers, or vessels with a draft of 38 feet or greater, on the pilotage ground.

(3) To obtain a Grade "A" License while holding a Grade "B" License: In order to obtain authority from the Board to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A. on the Columbia and Willamette River pilotage ground, an applicant must meet the following requirements:

(a) Complete at least 270 days service on the pilotage ground while holding a Grade "B" license;

(b) Complete at least 40 transits piloting ships of between 300 and 700 feet L.O.A. as a state-licensed pilot;

(c) Complete at least 20 transits on ships 700 feet L.O.A. or greater while under the supervision of at least ten unlimited state-licensed pilots;

(d) Complete 2 trips from dock to dock or from an anchorage to a dock under the supervision of unlimited state-licensed pilots while on ships 700 feet L.O.A. or greater, with each trip including a 180 degree turn before docking;

(e) Make at least 4 trips under the supervision of unlimited state-licensed pilots within the 270 days preceding the application while on the bridge of a ship 700 feet L.O.A. or greater, with trips in each of the following directions:

(A) At least 3 trips from the Willamette River, turning east (upstream) into the Columbia River; and

(B) At least 1 trip from the Columbia River upstream of the mouth of the Willamette River, turning south (upstream) into the Willamette River;

(f) Train at least 5 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(g) Present recommendations from the training course monitor and from at least ten unlimited pilots who participated in the training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A. on the pilotage ground;

(h) The requirements specified in subsections (b), (c), (d), (e) and (f) of this section must have been met during the 270 days preceding application for authority to pilot vessels from and including 700 feet L.O.A. up to 800 feet L.O.A.; and

(i) When the foregoing requirements are met, the Board shall issue a license to the applicant authorizing the applicant to pilot vessels which are less than 800 feet L.O.A. on the pilotage ground, except that the applicant shall not pilot tankers, or vessels with a draft of 40 feet or greater.

(4) To obtain an Unlimited License while holding a Grade "A" License: In order to obtain authority from the Board to pilot vessels on the Columbia and Willamette River pilotage ground without any limitation on the length and draft of the vessels, including tankers and vessels with a draft of 40 feet or greater, an applicant must meet the following requirements:

(a) Complete at least 180 days service on the pilotage ground while holding a Grade "A" license;

(b) Complete at least 30 transits on ships of between 300 and 800 feet L.O.A. during the 180 days preceding application for an unlimited license;

(c) Train at least 10 additional days as directed by the training course monitor, with assignments chosen at the discretion of the training course monitor;

(d) While holding a Grade "B" or Grade "A" license, complete at least ten transits on ships greater than 800 feet L.O.A. while under the supervision of ten different unlimited pilots. Five of these transits must be supervised by pilots with not less than five years' experience as unlimited state-licensed pilots;

(e) Present recommendations from the training course monitor and from at least ten unlimited pilots who participated in training, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels 800 feet L.O.A. or greater on the pilotage ground;

(f) While holding a Grade "B" or Grade "A" license, complete at least 12 transits on tankers (including at least nine transits on loaded tankers) while under the supervision of at least six different state-licensed pilots with not less than five years' experience as unlimited state-licensed pilots;

(g) Present recommendations from the training course monitor and from at least six pilots who participated in training on tankers, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot tankers on the pilotage ground and understands the risks and hazards peculiar to piloting tankers on the pilotage ground;

(h) While holding a Grade "B" or a Grade "A" license, complete at least twelve transits on ships with drafts of 40 feet or greater while under the supervision of at least six different state-licensed pilots with not less than five years' experience as unlimited state-licensed pilots;

(i) Present recommendations from the training course monitor and from at least six unlimited pilots who participated in training on vessels with drafts 40 feet or greater, certifying that the applicant has sufficient knowledge and shiphandling skills to pilot vessels with drafts 40 feet or greater;

(j) Provide proof of completion of a United States Coast Guard approved course in automatic radar plotting aids (ARPA).

(k) When the foregoing requirements are met, the Board shall issue an unlimited license to the applicant authorizing the applicant to pilot vessels of any length and draft, including tankers, on the pilotage ground.

(5) Each grade of license will be valid for one year. No license except an unlimited license may be renewed.

Stat. Auth.: ORS 776, 670

Stats. Implemented: ORS 776.115, 670.310

Hist.: MP 2-1985, f. & ef. 6-7-85; MP 3-1988, f. & cert. ef. 11-9-88; MP 1-1992, f. & cert. ef. 4-29-92; BMP 3-2001, f. & cert. ef. 10-30-01; BMP 1-2005, f. & cert. ef. 11-29-05; BMP 1-2007, f. 1-25-07, cert. ef. 1-26-07; BMP 4-2008, f. & cert. ef. 1-24-08; BMP 5-2011, f. 6-28-11, cert. ef. 6-29-11; BMP 2-2014(Temp), f. & cert. ef. 5-23-14 thru 11-19-14; BMP 4-2014, f. & cert. ef. 11-26-14

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Racing Commission
Chapter 462

Rule Caption: Amends rule to void a claim if horse dies or is catastrophically injured on racetrack.
Adm. Order No.: RC 4-2014
Filed with Sec. of State: 11-21-2014
Certified to be Effective: 11-21-14
Notice Publication Date: 11-1-2014
Rules Amended: 462-150-0030
Subject: Amends claiming rule 462-150-0030(11): Claimant would not be obligated to follow through with claim if horse is determined to be a starter but dies or is catastrophically injured on the racetrack resulting in euthanasia by State Veterinarian.
Rules Coordinator: Karen Parkman—(971) 673-0208

462-150-0030
Claiming Rules

(1) The primary purpose of claiming races is the classification of horses. No person shall enter or allow to be entered in a claiming race a horse against which any mortgage, bill of sale or lien of any kind is held, unless the written consent of the mortgagor, the holder of the bill of sale or the lien claimant has been filed with the racing secretary.

(2) In claiming races, any horse is subject to claim for the entered price by any owner licensed by the commission and in good standing who has at least one eligible horse registered with the racing secretary of a race meet in Oregon, or by any licensed owner with a valid claim certificate. Any other person who wishes to claim a horse must complete a prospective horse owner's application form, and the completed form must be approved by the board of stewards or the commission. After the board of stewards or the commission has approved the prospective horse owner's application a claim certificate may be issued. A claim certificate shall become void on the date of a successful claim.

(3) A claim may be made by an authorized agent, but only for the account of those for whom he or she is licensed as an authorized agent by the commission. A trainer's license is not an authorized agent's license.

(4) No person shall claim or cause to be claimed, directly or indirectly, a horse in which the person has an ownership interest.

(5) A person may claim more than one horse from any one race. An authorized agent may submit claims for more than one owner in any one race, but may not submit more than one claim for any one horse. When a trainer's stable consists of more than one owner, each owner may submit a claim in any one race, but no two or more shall submit a claim for any one horse or all such claims shall be void. No person will be eligible to claim another owner's horse from his/her own trainer's stable. "Person" includes any corporation, partnership, stable name or other legal entity.

(6) The claiming price of each horse in a claiming race shall be printed on the official program, and all claims shall be for the designated amount. However, if there is a printer's error in the official program, the claiming price designated on the official entry form shall govern. Submission of a claim in excess of the official claiming price shall not void the claim.

(7) All claims shall be made in writing by the prospective owner or authorized agent on forms and in the envelopes furnished by the race meet licensee and approved by the commission. Forms and envelopes must be filled out completely and must accurately identify the claim, and be properly signed. If two or more owners are claiming the horse together as Owner #1 "and" Owner #2 "and" Owner #3, all owners must sign the claim form otherwise, the claim will be void. If two or more owners are claiming the horse together as Owner #1 "or" Owner #2 "or" Owner #3, any one or all of the owners may sign the claim form.

(8) All claim forms shall be deposited in the claiming box at least 15 minutes before the established post time of each race. After the claim is deposited the claimant shall have no access to the claim form or the envelope.

(9) No money or its equivalent shall be put in the claiming box. For a claim to be valid, the claimant must have a credit balance of not less than the amount of the claim in the claimant's account with the race meet licensee's paymaster of purses.

(10) Claims are irrevocable unless fraud or deception is involved. The claimant former owner and/or authorized agent shall have 48 hours from the start of the race from which the horse was claimed to file a protest.

(11) Title to a claimed horse shall be vested in the successful claimant from the time the horse is determined to be a starter by the board of stewards. The successful claimant shall become the owner of the horse even if the horse is injured during or after the race. However, the claim shall be void if the horse is determined to be a starter and either:

(a) The claimed horse dies on the racetrack; or

(b) Suffers an injury while on the racetrack which requires the euthanasia of the horse as determined by the State Veterinarian.

(12) A claimed horse shall run in the interest and for the account of the owner from whom it is claimed.

(13) Claims which are not in keeping with these rules shall be void. The stewards may at any time require any person filing a claim to attest in writing that the person is claiming in accordance with these rules. The stewards shall be the judges of the validity of all claims.

(14) A claim shall represent a bona fide offer by the claimant to buy at the claiming price. Claiming owners are bound by claims made by their authorized agent. By entering a horse in a claiming race, all owners agree to sell at the designated claiming price if the stewards determine there is a valid claim.

(15) Any horse that has been claimed may be directed by the board of stewards to be taken to the test barn by the prior owner or their representative for delivery to the claimant or representative. The claimant or representative shall accompany the claimed horse to the test barn, however, the care and custody of the horse shall be the responsibility of the original owner or representative until the post race samples have been taken. If a claimed horse is not directed to the test barn, the original owner or their representative shall accompany the horse to the paddock for delivery to the claimant or their representative unless otherwise instructed by the stewards. Written authorization for any claim must be signed by a steward, the clerk of scales, or claims clerk and delivered to the original owner or representative.

(16) No person shall refuse to deliver to a valid claimant a horse claimed out of a claiming race. A horse that has been validly claimed shall be disqualified until delivery is made to the claimant.

(17) If more than one valid claim is filed for the same horse, the title to the horse shall be determined by lot in the paddock under the supervision of one or more of the stewards or claims clerk.

(18) No horse claimed in a claiming race shall be sold or have ownership in said horse transferred, wholly or in part, to anyone within 30 days after the date it was claimed, except in another claiming race.

(19) No claimed horse shall remain in or return to the same trainer's stable or under the care or management of the owner or trainer from whom the horse was claimed for the 30 days.

(20) In claiming races, engagements follow the horse unless the conditions of the race specifically state to the contrary.

(21) No person shall offer or enter into an agreement to claim or not to claim or attempt to prevent another person from claiming, any horse in a claiming race. No person shall attempt to prevent anyone from running a horse in any claiming race. No owner or trainer shall make any agreement with another owner or trainer or jockey for the protection of each other's horses in a claiming race, or refuse to race to prevent a claim.

(22) Should any stable name be eliminated by sale or removal from the racecourse, the right to claim is void without a valid claim certificate. When a stable name has been eliminated by claiming, the affected owner shall have the right to claim during the next 30 calendar days at the same continuous race meet in this state, even though all or a portion of the next 30 calendar days may take place in the following year.

(23) No official or employee of a race meet licensee shall give any information as to the filing of claims until after the race has been run.

(24) When a claimed horse goes to the test barn, a representative of both the former owner and the new owner shall accompany the horse to the test barn. The claiming of any horse in a race shall not diminish or limit the liability or responsibility of the former owner and trainer for compliance with the statutes and rules of horse racing as to the claimed horse.

(25) The foal certificate of a claimed horse must remain in the custody of the racing secretary until the new owner removes the horse from the racecourse. No registration papers on a claimed horse may be removed from the racing secretary's office for 48 hours after the race.

(26) No person shall enter a mare in any claiming race when the mare is pregnant, unless prior to the time of entry the owner shall have deposited with the racing secretary a signed agreement whereby the owner, at the time of entry, shall provide to the successful claimant without cost, protest or fee of any kind, a valid stallion service certificate covering the breeding of the mare. A successful claimant of a mare in a claiming race may file with the commission a petition for rescission of the claim within forty-five (45) days exclusive of the day of claim if the claimant finds that the claimed mare is pregnant and the agreement to provide a stallion service certificate has not been deposited as required by this section.

(27) If, in a claiming race, a horse is scratched after scratch time or is declared a non-starter, any claim or claims for the horse will be void. The stewards may require the horse to run back at the same price in the horse's next start.

(28) Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse shall be solely responsible for the determination of the sex or age of any horse claimed.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: ORS 462.270
Hist.: RC 3-2000, f. 3-27-00, cert. ef. 5-1-00; RC 2-2008, f. & cert. ef. 9-30-08; RC 2-2009, f. 8-24-09, cert. ef. 10-1-09; RC 4-2014, f. & cert. ef. 11-21-14

Water Resources Department
Chapter 690

Rule Caption: Well construction rules focused on: Bentonite seals, deepenings, sparge wells, grout reporting and closed loops.
Adm. Order No.: WRD 3-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 9-1-2014
Rules Amended: 690-200-0005, 690-210-0310, 690-210-0340, 690-215-0045, 690-240-0005, 690-240-0035, 690-240-0046
Subject: The rule changes vary in scope and include:

- Changes the classification of a sparge well from a geotechnical hole to a monitoring well.
- Requires well constructors to calculate and report how much sealing material is required and how mush is used when placing an annular seal.
- Clarifies the requirements when deepening an existing well and requires a copy of the original well report or the original well report number to be submitted with the deepening well report.
- Corrects a rule reference error in the Geotechnical Hole rules.
- Clarifies that the quality of water cannot interfere with the proper hydration of bentonite in closed loop installations.
- Allows unhydrated bentonite to be used to 200 feet through up to 50 feet of standing water to seal water supply wells.
- Requires unhydrated bentonite to be screened during placement through water, water quality to be tested and describes when it cannot be used.

Rules Coordinator: Joshua Spansail—(503) 986-0874

690-200-0005
Basis for Regulatory Authority

(1) The right to reasonable control of the ground waters of the State of Oregon has been declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with the administration of the rights of appropriation and use of the ground water resources of the state and the prevention of waste and contamination of ground water. This is primarily accomplished by the licensing of well constructors and the promulgation of rules governing well construction, alteration, abandonment, conversion, maintenance, and use. Ultimately the landowner of the property where the well is constructed is responsible for the condition, use, maintenance of setbacks, and abandonment of the well.

(2) The following rules apply to all wells which are constructed for the purpose of locating or obtaining water as defined in ORS 537.515(9) with the following exceptions:

(a) The construction, maintenance, conversion, and abandonment of monitoring wells, geotechnical holes, and other holes are regulated under OAR 690-240;

(b) Holes constructed under ORS Chapters 517, 520, 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geologic and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources; and

(c) Underground Injection Systems, which are regulated by the Oregon Department of Environmental Quality under OAR 468B.

NOTE: Table 200-1 lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring. [Table not included. See ED. NOTE.]

(3) When natural flow of water occurs in holes not regulated under these rules, the Water Resources Commission may regulate under separate rules or statutes to protect the ground water from contamination or waste;

(4) In addition to regulating new well construction, alteration, abandonment, conversion, and maintenance actions, the Water Resources Commission may impose conditions upon the use of any existing water supply well as may be necessary to prevent waste, undue interference with other wells or contamination. When necessary, the Commission may order discontinuance of use, repair, temporary, or permanent abandonment of any well to accomplish the same objectives.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The

official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, conversion, abandonment and maintenance of water supply wells in Oregon.

(7) The rules and regulations set forth herein shall become effective upon adoption by the Commission.

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

Stat. Auth.: ORS 536.027, 536.090 & 537.505 - 537.795

Stats. Implemented: ORS 536.090 & 537.505 - 537.795

Hist.: WRD 3, f. & ef. 2-18-77; WRD 9-1978, f. 12-12-78, ef. 1-1-79; Renumbered from 690-060-0005 by WRD 13-1986, f. 10-7-86, ef. 11-1-86; WRD 7-1988, f. & cert. ef. 6-29-88; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

690-210-0310
Cement Grout

When using cement grout as the sealing material in a well, it must meet the following requirements:

(1) Cement grout used to seal a well shall be composed of a uniformly mixed slurry of Portland cement or High Early Strength Type III Portland cement and potable water, or High-alumina cement and potable water, mixed in the following proportions (Type of Cement — Gallons of Water Per Sack of Dry Cement, respectively):

(a) Portland Cement — 4-1/2 to 6;

(b) High Early Strength Type III Portland Cement — 5-1/2 to 6-1/2;

(c) High-alumina Cement — 4-1/2 to 6.

(2) Additives to increase fluidity, reduce shrinkage, or control time of set may be used in a cement grout mixture. Expanding agents such as aluminum powder may be used at a rate not exceeding 0.075 ounce (one level teaspoonful) per sack of dry cement. The powder shall not contain polishing agents. The addition of bentonite clay to a cement grout mixture is permissible but shall not in any case exceed five percent (5%) by weight of dry cement. Calcium chloride may be added to a Portland cement grout to accelerate the set but shall not exceed two pounds per sack of dry cement. High-alumina cement and Portland cement of any type shall not be mixed together for use in a well.

(3) Cement types other than those set forth herein shall not be used as a sealing material in a well except upon written approval of the Director of the Water Resources Department.

(4) In no case shall sand or aggregate be added to cement grout seal mixtures.

(5) The volume of sealing material required shall be calculated prior to seal installation. The calculated volume and actual volume used shall be reported on the water supply well report.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 9-1978, f. 12-12-78, ef. 1-1-79; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0086; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

690-210-0340
Method of Placement of Unhydrated Bentonite

(1) An upper oversize drillhole, four inches greater than the nominal inside diameter of the permanent well casing, shall be constructed to a minimum depth of 18 feet below land surface. The use of unhydrated bentonite as a casing seal shall not be allowed deeper than 200 feet below land surface. In the event that the materials penetrated by the oversize drillhole cave, or tend to cave, an outer temporary surface casing shall be used to case out the caving materials during construction of the oversize drillhole. The outer temporary surface casing shall be removed during seal installation and before completion of the well.

(2) In the event groundwater is encountered during the construction of the oversize drillhole, only unhydrated bentonite chips manufactured to be 3/8 inch to ¾ inch, pellets or tablets shall be allowed in the water-filled portion of the annulus. A maximum of 50 feet of water may be present in the sealing interval. Unhydrated bentonite shall be screened across a minimum ¼ inch mesh screen prior to being placed in the water-filled portion of the annulus to minimize the introduction of bentonite dust into the seal interval. Unhydrated bentonite shall not be used:

(a) In the water-filled portion of a temporary casing; or

(b) If there is any uphole flow in the annular seal interval.

(3) Unhydrated bentonite may only be used as an annular seal material below the water level in a well when the groundwater it comes in contact with does not exceed 800 parts per million (ppm) total dissolved solids (TDS).

(a) Unhydrated bentonite may be used as an annular seal material in water supply wells exceeding 800 ppm TDS if the bentonite manufacturer provides documentation that their product can be used in water that exceeds 800 ppm TDS.

(A) Prior Department approval is required before placement.

(B) The bentonite manufacturer's documentation and Department approval shall be submitted with the Water Supply Well Report as required in OAR 690-205-0210.

(b) In all cases, the TDS shall be reported on the Water Supply Well Report as required in OAR 690-205-0210.

(c) Regardless of the reported TDS, the quality of the water in the well shall not interfere with the proper hydration of bentonite.

(4) After placement of the permanent casing, the annular space shall be filled to land surface with bentonite. The annular space shall be kept full of bentonite to land surface while drilling or driving casing. A calibrated sounding tape with weight shall be used continuously in the sealing interval during bentonite placement to measure fill rate and to check for and break up possible bridges.

(5) Placement of bentonite shall conform to the manufacturer's specifications and result in a seal that is free of voids or bridges. Care shall be taken to minimize the introduction of bentonite dust into the sealing interval.

(6) The volume of sealing material required shall be calculated prior to seal installation. The calculated volume and actual volume used shall be reported on the water supply well report.

(7) Unhydrated bentonite chip, pellet or tablet annular seals shall be hydrated from land surface with potable water prior to removing the drilling machine from the well site. The hydration shall begin once all of the bentonite annular seal material has been placed and shall end when the annular seal interval refuses to take more water or after at least one annular space volume of water has been placed.

(8) Granular bentonite may only be used as an annular seal material in a dry annular space above the interval where water was first encountered. Granular bentonite shall not be screened or hydrated during placement.

(9) Pour rate shall be two minutes or slower per 50 pound sack in the water-filled portion of the annulus.

Stat. Auth.: ORS 536.090 & 537.505 - 537.795

Stats. Implemented:

Hist.: WRD 12-1985, f. 12-6-85, ef. 12-7-85; WRD 13-1986, f. 10-7-86, ef. 11-1-86, Renumbered from 690-061-0097; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

690-215-0045
Deepening of Wells

(1) Only the following wells may be deepened without an approved special standard:

(a) Wells with well reports that describe the original construction. The original well report must be:

(A) Referenced on the deepening well report; or

(B) Attached to the deepening well report.

(b) Wells that are recased and resealed to meet the current minimum well construction standards.

(2) The static water level shall be measured prior to and after deepening any well. Both readings shall be recorded on the well log.

(3) If the deepening of an existing well results in access to a new aquifer then prior to completion of deepening work all previous aquifers, including previous aquifers that have gone dry or are low-producing, shall be cased and sealed off using the methods described in OAR 690-210.

(4) The deepening of a water supply well shall not result in the commingling of aquifers.

Stat. Auth.: ORS 183, 536, 537 & 540

Stats. Implemented:

Hist.: WRD 7-2001, f. & cert. ef. 11-15-01; WRD 3-2014, f. & cert. ef. 11-25-14

690-240-0005
Introduction

(1) Monitoring wells and geotechnical holes drilled to allow ground water and geologic determinations are constructed in a variety of environments and under a variety of conditions. Improper construction, maintenance, operation, and abandonment can allow deterioration of ground water quality and supply. Although enforcement actions may be exercised against other parties, the landowner of the property where the monitoring well or

geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, conversion, and abandonment of the monitoring well, or geotechnical hole.

(2) Holes other than monitoring wells, water supply wells, or geotechnical holes which are drilled, excavated, or otherwise constructed in the earth's surface can also provide an avenue for deterioration of ground water quality. Improper construction, maintenance, use, and abandonment of other holes can pose a significant risk to ground water. **Table 240-1** lists common subsurface borings and indicates which administrative rule governs the construction, conversion, maintenance, alteration, and abandonment of the boring.

(3) Ground water problems are difficult, expensive, and time consuming to correct. The Water Resources Commission (Commission) has been authorized to develop standards for wells drilled for the purpose of monitoring ground water in order to protect the state's ground waters. The Commission has also been authorized to develop standards for other holes through which ground water may become contaminated. The rules set forth herein are adopted to provide that protection. Their purpose is to prevent and eliminate ground water contamination, waste, and loss of artesian pressure.

(4) The Commission may develop additional rules as needed prescribing standards for the construction, operation, maintenance, and abandonment of other specific types of wells and holes to protect ground water.

(5) Except for the Commission's power to adopt rules, the Commission may delegate to the Water Resources Director the exercise or discharge in the Commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the Commission. The official act of the Director acting in the Commission's name and by the Commission's authority shall be considered to be an official act of the Commission. The Commission delegates to the Director full authority to act in the Commission's name where that delegation is reflected in these rules.

(6) Under the provisions of ORS 537.780, the Commission is authorized to adopt such procedural rules and regulations as deemed necessary to carry out its function in compliance with the Ground Water Act of 1955. In fulfillment of these responsibilities and to ensure the preservation of the public welfare, safety, and health, the Commission has established these rules and regulations as the minimum standards for the construction, alteration, abandonment, conversion, and maintenance of monitoring wells in Oregon.

(7) Monitoring wells are wells as defined in ORS 537.515(9). A license and licensing fee, bond, examination, well report, and start card are required for construction, conversion, alteration, or abandonment of a monitoring well. In addition, a start card fee is required for new construction, deepening a well, and conversion.

(8) To protect the ground water resource, the Commission has the authority to regulate geotechnical holes under ORS 537.780(1)(c)(A). Construction of geotechnical holes requires either a Water Supply Well Constructor or Monitoring Well Constructor's License or Oregon registration as a geologist or civil engineer. If any one of the criteria in OAR 690-240-0035(2)(a)–(d) is met, a geotechnical hole report must be submitted.

(9) To protect the ground water resource, the Commission has the authority, under ORS 537.780(1)(c)(A), to regulate any hole through which ground water may be contaminated. Construction of holes other than water supply wells and monitoring wells does not require a license and licensing fee, bond, examination, well report, start card, and start card fee.

(10) Holes constructed under ORS Chapters 517, 520, and 522, and rules promulgated from those statutes, are the responsibility of the Oregon Department of Geology and Mineral Industries and are not subject to these rules. These include, but are not limited to, holes constructed for the purposes of exploring for, or producing, petroleum, minerals, or geothermal resources.

(11) The rules and regulations set forth herein shall become effective upon adoption by the Water Resources Commission.

(12) Under no circumstances shall a monitoring well, piezometer, geotechnical hole, or other hole be constructed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. (See definition of aquifer.)

(13) The rules and regulations set forth herein provide the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of monitoring wells, geotechnical holes, and other holes. After the effective date of adoption of these rules and regulations, no monitoring well, geotechnical hole, or other hole shall be constructed, altered, converted, or abandoned contrary to the provisions of these rules and regulations without prior approval from the Water Resources Department. Violation of these standards may result in enforcement under OAR chapter 690, division 240, including suspension or revocation of a constructor's license, imposition of civil penalties on the landowner or constructor, action on a bond, or other sanctions authorized by law.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 536.090 & 537.505 - 537.795
Stats. Implemented: ORS 536.090 & 537.505 - 537.795
Hist.: WRD 14-1990, f. & cert. ef. 8-9-90; WRD 8-1993, f. 12-14-93, cert. ef. 1-1-94; WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2014, f. & cert. ef. 11-25-14

690-240-0035
Geotechnical Holes: General Performance and Responsibility Requirements

(1) A geotechnical hole is defined in OAR 690-240-0010(36). Geotechnical holes, cased or uncased, are generally constructed to evaluate subsurface data or information (geologic, hydrogeologic, chemical, or other physical characteristics). Geotechnical holes are divided into the following classifications:

(a) Temporary (abandoned within 72 hours) geotechnical holes;

(b) Cased permanent geotechnical holes;

(c) Uncased permanent geotechnical holes; or

(d) Slope stability geotechnical holes.

(2) A geotechnical hole report shall be signed by a professional and must be submitted to the department if the geotechnical hole is:

(a) Greater than 18 feet deep;

(b) Within 50 feet of a water supply or monitoring well;

(c) Used to make a determination of water quality; or

(d) Constructed in an area of known or reasonably suspected contamination.

(3) Geotechnical holes between ten and eighteen feet in depth that do not meet any of the criteria spelled out in OAR 690-240-0035(2) do not require a geotechnical hole report to be filed with the Department, but shall be required to have a professional as described in 690-240-0035(4)(c) be responsible for the construction and abandonment of the geotechnical hole.

(4)(a) Although enforcement actions may be exercised against other parties, the landowner of the property where the geotechnical hole is constructed is ultimately responsible for the condition, use, maintenance, and abandonment of the geotechnical hole;

(b) Conversion of a geotechnical hole to a water supply or monitoring well shall be considered by the Department on a case by case basis;

(c) When a geotechnical hole report is required, or if it is between 10' and 18' in depth, the professional responsible for the construction, alteration or abandonment of a geotechnical hole shall have one of the following certifications or licenses at the time the professional signs the geotechnical hole report:

(A) A valid Oregon Monitoring Well Constructor's License;

(B) A valid Oregon Water Supply Well Constructor's License;

(C) Valid certification by the State of Oregon as a Registered Geologist; or

(D) Valid certification by the State of Oregon as a Professional Engineer.

(d) The professional shall provide proof of license, certification or registration and photo identification to Department employees upon request.

(e) In order to protect the ground water resource, all geotechnical holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water, or loss of artesian pressure.

(f) If the geotechnical hole is completed above ground, it shall have a minimum casing height of one foot above finished grade and a lockable cap with lock shall be attached to the top of the casing. If a geotechnical hole, except a slope stability hole, is completed flush with the land surface, a lockable watertight cap with lock, shall be attached to the top of the casing. A vault or monument designed to be watertight, level with the ground surface, shall be installed to prevent the inflow of surface water. The cover must be designed to withstand the maximum expected loadings.

(5)(a) A 'Geotechnical Hole Report' shall be prepared for each geotechnical hole, including unsuccessful geotechnical holes, constructed, altered, converted, or abandoned if the hole meets any of the requirements of OAR 690-240-0035(2) above.

(b) The 'Geotechnical Hole Report' shall be filed with the Department within 30 days of the completion of the geotechnical hole;

(c) The report shall be prepared in triplicate on forms furnished or previously approved in writing by the Water Resources Department. The original shall be furnished to the Director, the first copy shall be retained by the professional, and the second copy shall be given to the landowner or customer who contracted for the construction of the geotechnical hole;

(d) In the event any drilling equipment or other tools are left in a geotechnical hole the professional shall enter this fact on the Geotechnical Hole Report;

(e) A copy of any special authorizations or special standards issued by the Director shall be attached to the Geotechnical Hole Report. See OAR 690-240-0006 for information concerning special standards;

(f) The report of geotechnical hole construction shall include, as a minimum, the following:

(A) Landowner name and address;

(B) Started/Completed date;

(C) Location of the geotechnical hole by County, Township, Range, Section, tax lot number, if assigned, street address, or nearest address, and either the 1/4, 1/4 section or Latitude and Longitude as established by a global positioning system (GPS);

(D) Use of geotechnical hole;

(E) Type of geotechnical hole;

(F) Depth;

(G) Map showing location of geotechnical hole on site must be attached and shall include an approximate scale and a north arrow;

(H) General hydrologic and geologic information as indicated on the Geotechnical Hole Report; and

(I) Such additional information as required by the Department.

(6) Temporary geotechnical holes:

(a) Temporary geotechnical holes include but are not limited to: drive points, soil and rock borings, temporary sample holes, permeability test holes, and soil vapor holes;

(b) Temporary geotechnical holes shall be abandoned within 72 hours of initial construction;

(c) Any temporary casing that has been installed shall be removed as part of the abandonment.

(7) Cased permanent geotechnical holes:

(a) Cased permanent geotechnical holes include but are not limited to: gas migration holes, cathodic protection holes and vapor extraction holes;

(b) If permanent casing is installed in a geotechnical hole, it shall meet the casing requirements in OAR 690-240-0430, 690-210-0210, or 690-210-0190 and the sealing requirements in 690-240-0475.

(8) Uncased permanent geotechnical holes:

(a) Uncased permanent geotechnical holes include but are not limited to: pneumatic and electrical piezometers;

(b) Temporary casing can be used during the construction of the uncased permanent geotechnical hole but must be removed prior to completion. Surface casing (5 feet maximum) may be installed for placement of logging or recording equipment.

(9) Slope stability geotechnical holes.

(a) Slope stability geotechnical holes include but are not limited to: slope instrumentation holes such as slope inclinometers, and slope remedial holes.

(b) Slope stability geotechnical holes are defined in OAR 690-240-0010(74). Such holes shall be constructed, operated, used, maintained, and abandoned in such a manner as to prevent contamination or waste of ground water.

(c) When a Geotechnical Hole Report is required under OAR 690-240-0035(2) for a slope stability geotechnical hole that is constructed to facilitate water level measurements, an affidavit from an engineer or geologist qualified to perform geotechnical investigations shall be attached to the Geotechnical Hole Report. The affidavit shall have the qualified engineer or geologist's stamp on it and shall certify that the slope stability geotechnical hole is on a landslide or a mass-wasting feature.

(10) Geotechnical Holes abandonment:

(a) Geotechnical holes shall be abandoned so that they do not:

(A) Connect water bearing zones or aquifers;

(B) Allow water to move vertically with any greater facility than in the undisturbed condition prior to construction of the geotechnical hole; or

(C) Allow surface water to enter the hole.

(b) Temporary geotechnical holes constructed to collect a water quality sample shall be abandoned in accordance with OAR 690-240-0510.

Stat. Auth.: ORS 537.780
Stats. Implemented:
Hist.: WRD 2-1995, f. 5-17-95, cert. ef. 7-1-95; WRD 7-2001, f. & cert. ef. 11-15-01; WRD 1-2003, f. & cert. ef. 3-14-03; WRD 4-2004, f. & cert. ef. 6-15-04; WRD 2-2006, f. & cert. ef. 6-20-06; WRD 3-2008, f. 12-22-08, cert. ef. 1-2-09; WRD 2-2012, f. & cert. ef. 2-2-12; WRD 3-2014, f. & cert. ef. 11-25-14

690-240-0046
Grouting of Uncased Boring

(1) Grouting of an uncased boring shall be completed after the heat exchange loop is installed. The boring shall be completed in a manner to allow ease in locating including but not limited to the use of marking or locating magnetic tape if maintenance or abandonment is necessary The area near land surface where the ground source heat pump boring will be connected to a manifold or to the closed loop system may be filled with earth materials.

(2) Sealing shall be completed using active solids content bentonite grout slurry (minimum 20% active solids by weight) or high solids fluid mixture of cement. Controlled density fill (CDF), fly ash, drill cuttings or drilling fluids shall not be used in grouting the uncased boring.

(3) Mixes of bentonite or cement slurry shall be installed by pumping through a grout pipe in a continuous operation from the bottom of the boring upward. The grout pipe shall extend the full depth of the borehole before pumping begins. Minimum slurry volume used shall be equal to or exceed the calculated annulus volume in the borehole. Grouting material shall surround all pipes remaining in the borehole.

(4) The quality of the water in the boring shall not interfere with the proper hydration of bentonite.

Stat. Auth.: ORS 536.027 & 537.780
Stats. Implemented:
Hist.: WRD 2-2012, f. & cert. ef. 2-2-12; WRD 3-2014, f. & cert. ef. 11-25-14

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Rule Caption: Allows for assignment of a permit to one or more parties with replacement permits issued.
Adm. Order No.: WRD 4-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 10-1-2014
Rules Adopted: 690-325-0010, 690-325-0020, 690-325-0030, 690-325-0040, 690-325-0050, 690-325-0060, 690-325-0070, 690-325-0080, 690-325-0090, 690-325-0100, 690-325-0110
Subject: To establish requirements and procedures that shall be used by the Department to evaluate an application by a landowner of record holding a water right for irrigation, nursery, temperature control, stock watering or agricultural use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders.
Rules Coordinator: Joshua Spansail—(503) 986-0874

690-325-0010
Purpose

The rules in OAR chapter 690, division 325 establish requirements and procedures that shall be used by the Department to evaluate an application by a landowner of record holding a water right permit for irrigation, nursery, temperature control, stock watering or agricultural water use, to assign all or part of the water right permit and to issue a replacement permit to reflect an assignment from the current permit holder to one or more additional permit holders. These rules do not replace OAR chapter 690-320-0060.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0020
Applicability

(1) The Department can only accept an application for assignment and request for issuance of replacement permits to reflect the assignment where the original water right is for irrigation, nursery, temperature control, stock watering or agricultural water use.

(2) The Department may not accept an application for assignment and request for issuance of replacement permits under the rules in OAR chapter 690, division 325 for municipal permits, quasi-municipal permits, or water right permits held by a unit of local government, including but not limited to water right permits held by a port, water authority, or a district.

(3) Any water right permit for the use(s) of irrigation, nursery, temperature control, stock watering, or agricultural purposes, with a completion date that has expired may not be assigned pursuant to ORS 537.225 or by the rules in OAR Chapter 690, division 325.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0030
Definitions

The definitions in this rule, along with the definitions in OAR 690-300-0010 (Definitions) and OAR 690-380-0100 (Water Right Transfers),

apply to the rules in OAR chapter 690, division 325. Where a term is defined in more than one rule, the definition in this rule applies.

(1) "Enlargement" means an expansion of a water right permit and includes, but is not limited to:

(a) Using a greater rate or duty of water per acre than currently allowed under a permit;

(b) Increasing the acreage irrigated under a permit;

(2) "District" means an irrigation district formed under ORS Chapter 545, a drainage district formed under Chapter 547, a water improvement district formed under Chapter 552, a water control district formed under Chapter 553 or a corporation organized under Chapter 554.

(3) "Injury" or "Injury to an existing water right" means a water right transaction that would result in another, existing water right not receiving previously available water to which it is legally entitled.

(4) "Unit of local government" includes a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0040
Application Requirements

(1) Each application shall be prepared in ink or typewritten on forms provided by the Department.

(2) The application shall contain the following information concerning the subject water right permit and assignment:

(a) The name, mailing address, e-mail address (if it exists), and telephone number of each applicant. Each applicant's name shall have an assigned alphabet letter or number that corresponds with the application map as required under OAR 690-325-0050(2)(e).

(b) Name(s) appearing on the water right permit.

(c) Water Right Permit number.

(d) Water Right Permit use. Must be one or more of the following uses approved for assignment under OAR 690-325-0010: irrigation, nursery, temperature control, stock watering or agricultural water use.

(e) A map meeting the criteria set forth in OAR 690-325-0050.

(f) A copy of the recorded deed showing the applicant is an owner of the land to which the water right permit is appurtenant.

(g) An affidavit certifying that the water right permit has not been conveyed or withheld, and remains appurtenant to the applicant's land and also certifying that the applicant has read the permit.

(h) A statement by the applicant that the most recent water use under the applicant's portion of the water right permit, if any, has been exercised within relevant terms and conditions of the permit.

(i) Agreements to the assignment and to the request of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or an assignment of interest and request for the issuance of replacement water right permits by one or more of the owners of land to which the water right permit is appurtenant and information identifying other landowners not participating in the assignment and request for issuance of replacement water right permit. Such information shall include:

(A) Landowner(s) name;

(B) Address;

(C) Description of the properties by public land survey and tax lot number.

(D) Number of acres and permit rate held by each landowner.

(j) A listing of the names and mailing addresses of any district within which the water right permit is located.

(k) The Department may require the applicant to provide any additional information the department deems appropriate in determining whether or not to approve the application.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0050
Map Requirements

(1) A map shall be included with the application required under OAR 690-325-0040. The map shall meet the following criteria:

(a) The map shall be prepared by a certified water right examiner.

(b) The map shall be based upon the original water right application map or permit amendment map.

(c) The map shall not include:

(A) Any unauthorized change to the location of the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

(B) Any unauthorized change to the location of the point(s) of diversion/appropriation as exhibited on the original water right application map or approved permit amendment application map.

(d) The map shall be of permanent quality and shall be printed with dark ink on a good quality paper that is easily reproduced on a standard copy machine. Color copies that cannot be easily interpreted when copied to black and white will not be accepted.

(e) The preferred map size is 8-1/2" x 11" (letter). If a larger map is required to provide sufficient detail, a size of 8-1/2" x 14" (legal) or 11" x 17" (oversized) may be used.

(f) Notwithstanding subsection (1)(c) of this rule, a map size of up to 30" x 30" may be used if one additional copy is submitted.

(g) The map scale shall be:

(A) 1" = 400';

(B) 1" = 1,320';

(C) The scale of the county assessor map if the scale is not smaller than 1" = 1,320'; or

(D) Another standard engineering scale if the Department grants advance written or e-mail approval of the use of the scale.

(h) Horizontal field accuracy shall be consistent with standard surveying practices for the purpose of locating and quantifying water rights.

(i) The map shall be plotted to the accuracy consistent with the map scale.

(j) The locations of points of diversion or appropriation and places of use shall be described by distance and bearing or coordinates (distance north or south and east or west) from a recognized survey corner or by latitude-longitude coordinates. Latitude-longitude coordinates shall be expressed as either:

(A) Degrees-minutes-seconds with at least one digit after the decimal in the seconds portion (e.g., 42¼ 32' 15.5"); or

(B) Degrees-decimal with five or more digits after the decimal (e.g., 42.53764°).

(2) The map shall include the following information:

(a) A north arrow, the scale, and a clear legend.

(b) The certified water rights examiner's stamp and signature. An electronically generated stamp or seal is acceptable, provided the signature is original.

(c) The place of use of each applicant's portion of the water right permit shall be clearly defined by outline and shaded or hachured and shall show the number of acres for each portion in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the water right permit has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.

(d) The place of use of any part of the water right permit not being assigned shall be clearly defined by outline and shaded or hachured and shall show the number of acres in each quarter-quarter section, government lot, or quarter-quarter section as projected within government lots, donation land claims, or other recognized public land survey subdivisions. If the portion of the water right permit not being assigned has multiple priority dates or uses, the lands to be served by each priority date and on which each use is authorized, must be separately identified.

(e) Each applicant's portion of the water right permit shall be referenced, by either alphabet letter or number, to each assignee's listed in the application form under OAR 690-325-0040(2).

(f) The rate and any applicable acre-feet allowance of water use under the water right permit for each applicant's portion of the permit shall be clearly labeled on the map.

(g) The location of each authorized point of diversion or appropriation.

(h) The location of tax lot lines for all properties upon which the water right permit is located.

(i) The location of township, range, section, quarter-quarter section, donation land claim, and other recognized public land survey lines.

(j) Notwithstanding the requirements of subsection (1)(i), the general location of main canals, ditches, flumes, pipelines, pumps, or other water delivery features.

(k) Notwithstanding the requirements of subsection (1)(i), the general location of physical features sufficient to assist in defining the location of the place of use of the water right permit. These features may include,

but are not limited to, rivers, creeks, lakes, reservoirs, ponds, roads, railroads, fences, and direction of flow, if appropriate.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0060
Receipt of Application; Fees

(1) The applicant is required to pay the Water Resources Department the full cost to the Department of processing the application.

(2) Within 15 days upon receipt of an application containing all the requirements described under OARs 690-325-0040 and 690-325-0050, the Department shall estimate the actual cost of work involved in processing the application.

(3) The Department shall notify the applicant of the estimate of the actual cost of work and provide a time period of:

(a) 30 days for the applicant to submit the appropriate fees covering the estimated actual cost of work, or

(b) Upon a written or e-mailed request from the applicant, a reasonable time period greater than 30 days to submit the appropriate fees.

(4) If the Department does not receive the appropriate fees after the expiration of the appropriate time period described in OAR 690-325-0060(3), the Department will send notice to the applicant that if the fees are not received by the Department within 10 days of the mailing of this notice, the Department will consider the application incomplete and will notify the applicant that the application is not properly filed and that the application will be of no further force or effect.

(5) All required fees must be received before the final assignment is made and replacement water right permits reflecting the assignment are issued. Excess fees will be returned after the final order is issued.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0070
Technical Review and Issuance of Draft Documents

(1) The Department's technical review of the application shall include:

(a) Verification of the mailing address of each owner of the authorized place of use identified on the map contained in the application.

(b) Verification that the deed(s) supplied with the application matches the properties proposed for the assignments.

(c) Verification that the most recent water use under the permit, if any, has been exercised within relevant terms and conditions of the water right permit.

(d) Assessment of the application for enlargement of the original water right permit and injury to other water right holders.

(2) Once the technical review described in OAR 690-325-0070(1) has been completed, the Department shall:

(a) Prepare a draft proposed final order to approve the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will not result in the enlargement of the original water right permit nor injury to other water right holders and that the water right permit has been exercised by the applicant in compliance within the terms and conditions of the water right permit, or

(b) Prepare a draft proposed final order to deny the application. The draft proposed final order shall include finding(s) that the Department has found that the proposed replacement water right permits will result in the enlargement of the original permit and/or injury to other water right holders and/or that the water right permit has not been exercised by the applicant in compliance within its terms and conditions.

(c) Prepare drafts of the replacement water right permits if a draft proposed final order to approve the application under OAR 690-325-0070(2)(a) is prepared.

(3) Within 30 days after the appropriate fees have been received, the Department shall mail, or with consent of the applicant, send by electronic means, copies of the application, map, existing water right permit, draft proposed final order, and, if the requirement under OAR 690-325-0070(2)(a) is satisfied, draft replacement water right permits, to each owner of land upon which the water right permit is appurtenant.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0080
Public Notice and Request for Comments

(1) Within ten days of proceeding with the application under OAR 690-325-0070(3), the Department shall give notice of the application in the weekly notice published by the Department. The notice shall include a request for comments on the application, the date by which the comments must be received by the Department, information about how an interested person may view or obtain future notices about the application and a copy of the proposed final order and information about how an interested person may review the application or obtain a copy of the application.

(2) The notice shall include the following information about the application:

(a) County of water use.

(b) Permit number.

(c) Authorized use and associated rate and/or duty.

(d) Permit Completion Date.

(e) Applicant name(s).

(f) Number of acres, rate (or applicable acre-feet allowances), allowed under the existing water right permit.

(g) Source(s).

(h) Location of the point(s) of diversion/appropriation by quarter-quarter, section, township and range.

(3) Within 30 days after the public notice under OAR 690-325-0080(1), any record landowner, applicant, assignee, affected water right permit holder, or other person interested in the application may submit written comments or request copies of the documents described in OAR 690-325-0070(3). All comments and requests for copies must be received by the Department on or before 5 p.m. on the last day of the 30-day comment period.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0090
Proposed Final Order; Public Notice

(1) Within 30 days after the comment period closes under OAR 690-325-0080(3), the Department shall issue a proposed final order either approving or denying the application, taking into account comments received in response to the notice under 690-325-0080.

(2) The Department shall send copies of the proposed final order to each owner of land described in OAR 690-325-0070(3) by mail, or, with the consent of the applicant, send by electronic means, and to each person who submitted comments under 690-325-0080(3).

(3) Within seven days of issuance of the proposed final order, the Department shall publish notice of the proposed final order by publication in the weekly notice published by the Department. The notice shall give the date that protests must be received by the Department, no later than 45 days after the date the notice is published.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0100
Protests

(1) A record landowner, an applicant, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right permit assignment under ORS 537.225. The protest must be in writing and received by the Department within the time provided under OAR 690-325-0090(3). The protest must be accompanied by the protest fee required under ORS 536.050 and include:

(a) The name, address, and telephone number of the person filing the protest; and

(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.

(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.

(3) If a protest is properly filed, the Department may work with the applicant and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The Department may:

(a) Reissue a proposed final order;

(b) Issue a final order; or

(c) Refer the matter for a contested case hearing.

(4) If the Department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the Department an opportunity for response is not subject to review at the contested case hearing.

(5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:

(a) The applicant for the water right permit assignment; and

(b) Persons that timely filed a protest against the proposed order under (OAR 690-325-0090(3).

Stat. Auth.:
Stats. Implemented: ORS 537.227
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

690-325-0110
Final Order and Replacement Water Right Permits

(1) Within 30 days of the end of the protest period described in OAR 690-325-0090(3) and if no protests were received, an application for assignments and issuance of replacement water right permits shall be approved by final order of the Department. The final order approving the assignment shall contain:

(a) Findings that the assignment and issuance of replacement water right permits do not enlarge the permit as defined in OAR 690-325-0030(1);

(b) Findings that the assignment and issuance of replacement water right permits do not injure other water rights as defined in OAR 690-325-0030(3).

(c) Findings that all other requirements for assignments and issuance of replacement water right permits are met, including, but not limited to the completion date of the water right permit.

(2) The replacement water right permits shall:

(a) Include the same conditions as the replaced water right permit, including, but not limited to priority date, source of water, and type of use;

(b) Identify the land to which the replacement water right permit is appurtenant and the owner(s) of that land;

(c) Apportion the rate and, if applicable, the duty, or, if applicable, the acre-foot allowance in proportion to the amount of land to which the replacement water right permits are appurtenant.

(3) The replacement water right permits shall not:

(a) Authorize any change to the authorized point(s) of diversion or appropriation, including the addition of a point of diversion or appropriation, and

(b) Authorize any change to the authorized place of use outside of its original perimeters as exhibited on the original water right application map or approved permit amendment application map.

Stat. Auth.:
Stats. Implemented: ORS 537.225
Hist.: WRD 4-2014, f. & cert. ef. 11-25-14

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Rule Caption: Rulemaking amends Division 33 Upper Columbia Rules to achieve consistency with ODFW Habitat Mitigation rules.
Adm. Order No.: WRD 5-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 11-25-14
Notice Publication Date: 9-1-2014
Rules Amended: 690-033-0120
Subject: Within OWRD's current Division 33 Upper Columbia Rules, OAR 690-033-0120(4) references the ODFW Fish and Wildlife Habitat Mitigation Policy rule that was subsequently modified after adoption of these rules. The rule amendment to OAR 690-033-0120(4) is to reference current ODFW Implementation of Department Habitat Mitigation Recommendations (OAR 635-415-0025). This amendment results in OAR 690-033-0120(4) being consistent with ODFW rules. In addition, this rule change removes two unnecessary hyphens [OAR 690-033-0120(1) & (2)(a)], updates the title of the Northwest Power Planning Council to its current title and updates the statutory reference for fish screen design, installation, operation specifications and passage requirements [OAR 690-033-0120(2)(c)] to achieve consistency with current ODFW revised statute references.
Rules Coordinator: Joshua Spansail—(503) 986-0874

690-033-0120
Determination of Consistency With the Fish and Wildlife Program

(1) To determine whether a proposed use is consistent with the Fish and Wildlife Program, the Department shall consult with the Northwest Power and Conservation Council, ODFW, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Indian tribes and appropriate local governments. If the Department determines that a proposed use of water is inconsistent with the Fish and Wildlife Program and cannot be conditioned to achieve consistency, the application shall be presumed to impair or be detrimental to the public interest.

(2) The applicant shall provide information to show compliance with the following standards which will form the basis for permit conditions:

(a) The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140;

(b) The proposed use does not involve hydraulically connected groundwater with potential for substantial interference as listed in OAR 690-009 (division 9 of this Chapter) during the time period of April 15 to September 30, except that which is artificially recharged or as otherwise provided in OAR 690-033-0140;

(c) The proposed use complies with screen design, installation, operation specifications and passage requirements as listed in ORS 498.301 through 498.346 and 509.580 through 509.910;

(d) The proposed use complies with existing state and federal water quality standards; and

(e) The proposed use complies with water use measurement, recording and reporting required by the Director.

(3) Based on the consultation in section (1) of this rule, the proposed use may be further conditioned so that, if the riparian area is disturbed in the process of developing a point of diversion, the riparian area is restored or enhanced.

(4) If a proposed use is not consistent with the Fish and Wildlife Program, the applicant may propose mitigation compatible with sections (2) and (3) of this rule. The Director shall determine if the proposed use with mitigation is consistent with the Fish and Wildlife Program. For purposes of mitigation, the ODFW rules regarding Implementation of Department Habitat Mitigation Recommendations, OAR 635-415-0025 adopted April 21, 2000 and effective May 1, 2000 shall be followed.

Stat. Auth.: ORS 536.027 & 537.140 - 537.190
Stats. Implemented: ORS 537.140 - 537.190
Hist.: WRD 10-1994, f. & cert. ef. 9-21-94; WRD 5-2014, f. & cert. ef. 11-25-14

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Rule Caption: Adjustment of transaction fees set by rule.
Adm. Order No.: WRD 6-2014
Filed with Sec. of State: 11-25-2014
Certified to be Effective: 1-1-15
Notice Publication Date: 9-1-2014
Rules Amended: 690-310-0080, 690-340-0030, 690-340-0040, 690-382-0400
Subject: HB 2259 (2013) authorized transaction fee increases that average 13% to cover annual inflationary costs over a four-year period. Most of the fee adjustments are made in statute; those fees set in rule are addressed in this rulemaking.
Rules Coordinator: Joshua Spansail—(503) 986-0874

690-310-0080
Initial Review

(1) If the proposed use is not prohibited by statute, the Department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the Department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(2) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in 690-310-0070, the Department shall send by regular mail, or with the consent of the recipient, by electronic means to the applicant an initial review report setting forth the Department's preliminary determinations. The applicant shall have 14 days from the date the Department sends the initial review report within which to notify the Department to stop processing the application or to proceed with the application. If the applicant notifies the Department to stop processing the application, the Department shall return the application and all except $225 of any fees paid by the

applicant. If the Department does not receive a timely response from the applicant, the Department shall proceed with the review of the application.

Stat. Auth.: ORS 536.027
Stats. Implemented: ORS 537.150 & 537.620
Hist.: WRD 1-1996, f. & cert. ef. 1-31-96; WRD 1-2012, f 1-31-12, cert. ef. 2-1-12; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

690-340-0030
Limited License

(1) A request for a limited license shall be submitted on a form provided by the Water Resources Department, and shall be accompanied by the following:

(a) The fee for examination and recording:

(A) $1150 for a limited license filing requesting the use of water for Aquifer Storage and Recovery testing purposes.

(B) $575 for renewal of a limited license for Aquifer Storage and Recovery testing purposes.

(C) $575 for modification of a limited license for Aquifer Storage and Recovery testing purposes.

(D) $1150 for a limited license filing requesting the use of water for Artificial Groundwater Recharge purposes.

(E) For limited license applications, $280 for the first point of diversion plus $30 for each additional point of diversion; and

(a) A completed water availability statement from the local watermaster on forms provided by the department; and

(b) A site map of reproducible quality, drawn to a standard, even scale of not less than 2 inches = 1 mile, showing:

(A) The locations of all proposed points of diversion referenced by coordinates or by bearing and distance to the nearest established or projected public land survey corner;

(B) The general course of the source for the proposed use, if applicable;

(C) Other topographical features such as roads, streams, railroads, etc., which may be helpful in locating the diversion points in the field.

(2) The Director shall provide notice of the request to the public in the same manner as other water use applications, but may approve the license after 14 days from the date of mailing of the weekly public notice, upon a finding that the proposed water use will not impair or be detrimental to the public interest.

(3) Each limited license shall be limited to an area within a single drainage basin.

(4) Except for a licensee using water under a limited license issued in conjunction with an enforcement order, the licensee shall give notice to the watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use.

(5) The licensee shall maintain a record of use, including the total number of hours of pumping, an estimate of the total quantity pumped, and the categories of beneficial use to which the water is applied. The record of use shall be submitted to the watermaster upon request.

(6) The Director may revoke the right to use water for any reason described in ORS 537.143(2). Such revocation may be prompted by field regulatory activities or by any other reason.

(7) A limited license does not receive a priority date and is not protected under ORS 540.045.

Stat. Auth.: ORS 536.027, 595 & 654
Stats. Implemented: ORS 537.143 & 537.144
Hist.: WRD 6-1989(Temp), f. 9-29-89, cert. ef. 10-3-89; WRD 9-1989, f. & cert. ef. 11-20-89; WRD 16-1990, f. & cert. ef. 8-23-90; WRD 9-1992, f. & cert. ef. 7-1-92, Renumbered from 690-011-0082; WRD 5-1994, f. & cert. ef. 4-13-94; WRD 5-1995(Temp), f. & cert. ef. 8-4-95; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0046; WRD 5-2004, f. & cert. ef. 6-15-04; WRD 9-2009, f. 12-8-09, cert. ef. 12-15-09; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

690-340-0040
Registration of Water Use for Road Maintenance and Construction

(1) A request by a public agency to register water use for road and highway maintenance, construction and reconstruction shall be submitted on a form provided by the Water Resources Department and shall include at least the following:

(a) The name and authorized agent of the public agency;

(b) The address and telephone number of the agency's authorized agent;

(c) If the source of water to be used for the agency's road maintenance or construction program:

(A) Is groundwater, attach copy of well log or description of the well;

(B) Is surface water, identify the name of the source and the stream, or river the source is tributary to.

(d) The maximum amount of water to be used during the calendar year in gallons or acre-feet;

(e) The maximum amount of water to be used during any 24-hour period in gallons or acre-feet;

(f) A map indicating the location(s) of the point(s) of diversion of water to be used for road maintenance or construction (the map shall be of sufficient scale to establish the location(s) of the point(s) of diversion to the nearest quarter section, township and range);

(g) A fee in the amount of $340 (more than one point of diversion may be identified per registration); and

(h) If water is obtained from a well, conveyance or storage facility that has a perfected or certificated water right:

(A) Provide the permit or certificate number or the court decree identification of the right; and

(B) Written authorization from the owner of the right that allows use of water from the well, conveyance or storage facility.

(2) The registrant may use either a county road map or a Water Resources Department basin map to indicate the location(s) of point(s) of diversion. Counties may submit one registration for all uses within the county. State-wide public agencies shall submit one registration for each of the agencies administrative units. (The Oregon Department of Transportation shall submit one registration for each of its Regions within which road construction or maintenance water is to be used). Federal agencies with jurisdiction over roads/highways shall submit one registration for each of their administrative units.

(3) An Oregon Department of Fish and Wildlife "Requirements for Small Pump Screen", Self-Certification form shall accompany the registration form.

(4) As used in this rule, public agency means:

(a) The State of Oregon or any agency of the State of Oregon;

(b) A county or a special road district of a county;

(c) A city, town or incorporated municipality; and

(d) Any federal agency that has jurisdiction over a roadway in this state.

(5) The registration is subject to the following terms:

(a) Water use authorized by the registration shall not have priority over any existing water right;

(b) Water use authorized by the registration shall be subordinate to all future permitted or certificated water rights;

(c) Water use authorized under the registration shall not exceed 50,000 gallons from a single source during any 24-hour period;

(d) The registration shall be valid until the public agency voluntarily withdraws the registration or the public agency fails to file the annual renewal statement as required under section (8) of this rule;

(e) No person may construct any dam, reservoir or other impoundment facility to divert water from within a designated scenic waterway;

(f) Under no circumstances may the registrant cause the water course to be dewatered to a degree that the live, continuous flow is obstructed;

(g) The department may require the public agency to cease diversion of water at any time the director has reason to believe use of water under the registration is causing a significant adverse impact upon:

(A) The affected watershed; or

(B) Any existing water right; and

(h) The registrant shall notify the watermaster for the district in which the water is to be diverted not fewer than 30 days nor more than 60 days prior to the date diversion under the registration is to be initiated. If the proposed diversion is within or above a designated scenic waterway, the registrant shall not withdraw water under the registration until the watermaster provides written findings that the proposed withdrawal will not interfere with the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife uses.

(6) The registrant may authorize any person(s) to divert, transport or apply water under the registration; however, the registrant is responsible for the acts of such person(s) as authorized by the registration and these rules.

(7) The registrant shall provide copies of its registration form and map to the local office of the Oregon Department of Fish and Wildlife (ODFW) at least 30 days before water use under the registration is initiated. If sensitive, threatened or endangered aquatic species are present in the stream(s) proposed as a source(s) of water under the registration and such species may be adversely affected by withdrawal of water by the registrant, ODFW shall advise the watermaster to direct the registrant to withdraw water from an alternative location(s) or stream(s) wherein the proposed withdrawal will not cause significant adverse impact to the affected watershed.

(8) The public agency must submit an annual renewal statement on or before February 1 of each calendar year. The annual renewal statement shall be accompanied with a $60 renewal fee and shall specify any change in:

(a) The registrant's map;

(b) The sources of water to be used;

(c) The maximum amount of water to be used during the calendar year or during any 24-hour period; and

(d) A map delineating any changes in the he location(s) of point(s) of diversion.

Stat. Auth.: ORS 536.027
Statutes Implemented: ORS 537.040
Hist.: WRD 6-1995, f. & cert. ef. 6-10-94; WRD 1-1996, f. & cert. ef. 1-31-96, Renumbered from 690-011-0047; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

690-382-0400
Application for Modification of Certificate of Registration

Each application for modification of a certificate of registration shall be prepared in ink or printed on a form provided by the Department. Applications shall contain the following minimum information concerning the certificate of registration and any appurtenant water right or permit, if applicable:

(1) Applicant's name, mailing address, and telephone number.

(2) Type of change proposed.

(3) Name appearing on the certificate of registration.

(4) Certificate of registration number for the registration to be modified.

(5) Water right certificate, permit, or certificate of registration numbers, as applicable, for any layered water uses subject to transfer, permits, or certificates of registration.

(6) Source of water as described on the certificate of registration.

(7) Date of priority.

(8) The authorized and proposed point(s) of appropriation located accurately in reference to a public land survey corner, if applicable.

(9) The authorized and proposed use of water, if applicable.

(10) The authorized and proposed place of use identified by its location within the public land survey and tax lot number, if applicable.

(11) A map prepared pursuant to OAR 690-380-3100, except it need not be prepared by a water rights examiner.

(12) Land use information as outlined in the Department's Land Use Planning Procedures Guide, except for those modifications that meet the following four requirements:

(a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;

(b) That involve changes in place of use only;

(c) That do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and

(d) That involve irrigation water uses only.

(13) For a change in point of appropriation, copies of water well reports for the authorized and proposed point of appropriation. If water well reports are not available, a description of the construction of each well, including but not limited to, well depth, static water level, casing size, and any other necessary information to establish the ground water body developed or proposed to be developed.

(14) A listing of the names and mailing addresses of:

(a) All affected local governments, including but not limited to, county, city, municipal corporations, and tribal governments; and

(b) Any district in which the affected registration is located or that serves the registration and any district in which the affected registration would be located or that would serve the registration after the proposed modification.

(15) An oath that the information contained in the application is true and accurate.

(16) The following information related to the authority of the applicant to pursue the proposed modification:

(a) A signed statement that the applicant understands that, upon receipt of the draft preliminary determination described in OAR 690-382-0700(4) and prior to Department recognition of the modification, the applicant will be required to provide the landownership information and evidence identified in 690-382-0700(5) to demonstrate that the applicant is authorized to pursue the modification;

(b) A statement affirming that the applicant is a municipality as defined in ORS 540.510(3)(b) and that the right is in the name of the municipality or a predecessor; or

(c) Documentation that the applicant is an entity with the authority to condemn property and is acquiring by condemnation the property to which the certificate of registration proposed for modification is appurtenant. Such an entity may only apply for recognition of a modification under this subsection if it has filed a condemnation action to acquire the property and deposited the funds with the court as required by ORS 35.265. Such an entity need not obtain the consent or authorization for the change from any other person or entity.

(17) The signature of the applicant, and if an entity, the title of the person signing the form.

(18) The appropriate fee required under ORS 537.610 as follows:

(a) For examination of an application to only change the place of use under a certificate of registration, $875.

(b) For examination of all other applications to modify a certificate of registration, $1,250.

Stat. Auth.: ORS 536.025; 536.027, 537.610, 540.531, HB 2123 (ch. 614, 2005 Oregon Water Laws)
Stats. Implemented: ORS 537.610, 540.505-540.532, HB 2123 (ch. 614, 2005 Oregon Water Laws)
Hist.: WRD 5-2006, f. & cert. ef. 10-6-06; WRD 8-2009, f. 12-8-09, cert. ef. 12-15-09; WRD 6-2014, f. 11-25-14, cert. ef. 1-1-15

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
104-010-0005	12-15-2014	Amend	1-1-2015
213-060-0010	1-1-2015	Adopt	1-1-2015
213-060-0020	1-1-2015	Adopt	1-1-2015
213-060-0030	1-1-2015	Adopt	1-1-2015
213-060-0050	1-1-2015	Adopt	1-1-2015
213-060-0060	1-1-2015	Adopt	1-1-2015
213-060-0070	1-1-2015	Adopt	1-1-2015
213-060-0080	1-1-2015	Adopt	1-1-2015
213-060-0095	1-1-2015	Adopt	1-1-2015
213-060-0130	1-1-2015	Adopt	1-1-2015
213-060-0140	1-1-2015	Adopt	1-1-2015
291-016-0020	12-3-2014	Amend	1-1-2015
291-016-0020(T)	12-3-2014	Repeal	1-1-2015
291-016-0120	12-3-2014	Adopt	1-1-2015
291-016-0120(T)	12-3-2014	Repeal	1-1-2015
291-109-0120	11-19-2014	Amend	1-1-2015
291-109-0140	11-19-2014	Amend	1-1-2015
291-109-0150	11-19-2014	Amend	1-1-2015
291-109-0160	11-19-2014	Amend	1-1-2015
291-109-0170	11-19-2014	Amend	1-1-2015
291-109-0180	11-19-2014	Amend	1-1-2015
291-109-0200	11-19-2014	Renumber	1-1-2015
309-031-0010	12-12-2014	Amend(T)	1-1-2015
309-114-0005	12-1-2014	Amend(T)	1-1-2015
309-114-0025	12-1-2014	Amend(T)	1-1-2015
330-070-0010	1-1-2015	Amend	1-1-2015
330-070-0013	1-1-2015	Amend	1-1-2015
330-070-0020	1-1-2015	Amend	1-1-2015
330-070-0021	1-1-2015	Amend	1-1-2015
330-070-0022	1-1-2015	Amend	1-1-2015
330-070-0025	1-1-2015	Amend	1-1-2015
330-070-0026	1-1-2015	Amend	1-1-2015
330-070-0027	1-1-2015	Amend	1-1-2015
330-070-0029	1-1-2015	Amend	1-1-2015
330-070-0040	1-1-2015	Amend	1-1-2015
330-070-0045	1-1-2015	Amend	1-1-2015
330-070-0059	1-1-2015	Amend	1-1-2015
330-070-0060	1-1-2015	Amend	1-1-2015
330-070-0062	1-1-2015	Amend	1-1-2015
330-070-0063	1-1-2015	Amend	1-1-2015
330-070-0064	1-1-2015	Amend	1-1-2015
330-070-0070	1-1-2015	Amend	1-1-2015
330-070-0073	1-1-2015	Amend	1-1-2015
330-070-0073(T)	1-1-2015	Repeal	1-1-2015
330-070-0076	1-1-2015	Adopt	1-1-2015
330-070-0078	1-1-2015	Adopt	1-1-2015
330-070-0089	1-1-2015	Amend	1-1-2015
330-070-0091	1-1-2015	Repeal	1-1-2015
331-410-0050	12-1-2014	Amend	1-1-2015
331-800-0010	1-1-2015	Amend	1-1-2015
331-800-0020	1-1-2015	Amend	1-1-2015
331-810-0010	1-1-2015	Adopt	1-1-2015
331-810-0020	1-1-2015	Amend	1-1-2015
331-810-0025	1-1-2015	Adopt	1-1-2015
331-810-0030	1-1-2015	Repeal	1-1-2015
331-810-0031	1-1-2015	Adopt	1-1-2015
331-810-0038	1-1-2015	Repeal	1-1-2015
331-810-0040	1-1-2015	Amend	1-1-2015
331-810-0050	1-1-2015	Repeal	1-1-2015
331-810-0055	1-1-2015	Amend	1-1-2015
331-810-0060	1-1-2015	Adopt	1-1-2015
331-820-0010	1-1-2015	Repeal	1-1-2015
331-820-0020	1-1-2015	Amend	1-1-2015
331-830-0005	1-1-2015	Repeal	1-1-2015
331-830-0010	1-1-2015	Amend	1-1-2015
331-830-0020	1-1-2015	Amend	1-1-2015
331-840-0010	1-1-2015	Amend	1-1-2015
331-840-0020	1-1-2015	Amend	1-1-2015
331-840-0030	1-1-2015	Repeal	1-1-2015
331-840-0040	1-1-2015	Amend	1-1-2015
331-840-0050	1-1-2015	Repeal	1-1-2015
331-840-0060	1-1-2015	Amend	1-1-2015
331-840-0070	1-1-2015	Amend	1-1-2015
331-850-0010	1-1-2015	Amend	1-1-2015
335-005-0026	11-17-2014	Adopt	1-1-2015
339-010-0006	11-20-2014	Adopt	1-1-2015
407-007-0210	12-1-2014	Amend	1-1-2015
407-007-0220	12-1-2014	Amend	1-1-2015
407-007-0230	12-1-2014	Amend	1-1-2015
407-007-0240	12-1-2014	Amend	1-1-2015
407-007-0250	12-1-2014	Amend	1-1-2015
407-007-0275	12-1-2014	Amend	1-1-2015
407-007-0277	12-1-2014	Amend	1-1-2015
407-007-0280	12-1-2014	Amend	1-1-2015
407-007-0290	12-1-2014	Amend	1-1-2015
407-007-0300	12-1-2014	Amend	1-1-2015
407-007-0315	12-1-2014	Amend	1-1-2015
407-007-0330	12-1-2014	Amend	1-1-2015
407-007-0335	12-1-2014	Amend	1-1-2015
407-007-0340	12-1-2014	Amend	1-1-2015
407-007-0350	12-1-2014	Amend	1-1-2015
407-007-0600	12-1-2014	Adopt	1-1-2015
407-007-0610	12-1-2014	Adopt	1-1-2015
407-007-0620	12-1-2014	Adopt	1-1-2015
407-007-0630	12-1-2014	Adopt	1-1-2015
407-007-0640	12-1-2014	Adopt	1-1-2015
410-050-0861	12-1-2014	Amend	1-1-2015
410-050-0861(T)	12-1-2014	Repeal	1-1-2015
410-121-0030	12-12-2014	Amend	1-1-2015
410-121-0030	12-12-2014	Amend(T)	1-1-2015
410-121-0030(T)	12-12-2014	Repeal	1-1-2015
410-121-0040	12-12-2014	Amend	1-1-2015
410-121-0040	12-12-2014	Amend(T)	1-1-2015
410-121-0040(T)	12-12-2014	Repeal	1-1-2015
410-130-0160	1-1-2015	Amend(T)	1-1-2015
410-130-0240	1-1-2015	Amend	1-1-2015
410-141-0060	1-1-2015	Amend(T)	1-1-2015
410-141-0420	1-1-2015	Amend	1-1-2015
410-141-0420(T)	1-1-2015	Repeal	1-1-2015
410-141-3060	12-27-2014	Amend(T)	1-1-2015
410-141-3060	1-1-2015	Amend	1-1-2015
410-141-3060	1-1-2015	Amend(T)	1-1-2015

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin
410-141-3060(T)	1-1-2015	Repeal	1-1-2015
410-141-3420	1-1-2015	Amend	1-1-2015
410-141-3420(T)	1-1-2015	Repeal	1-1-2015
411-020-0000	1-1-2015	Amend	1-1-2015
411-020-0002	1-1-2015	Amend	1-1-2015
411-020-0010	1-1-2015	Amend	1-1-2015
411-020-0015	1-1-2015	Amend	1-1-2015
411-020-0020	1-1-2015	Amend	1-1-2015
411-020-0025	1-1-2015	Amend	1-1-2015
411-020-0030	1-1-2015	Amend	1-1-2015
411-020-0040	1-1-2015	Amend	1-1-2015
411-020-0060	1-1-2015	Amend	1-1-2015
411-020-0080	1-1-2015	Amend	1-1-2015
411-020-0085	1-1-2015	Amend	1-1-2015
411-020-0090	1-1-2015	Amend	1-1-2015
411-020-0100	1-1-2015	Amend	1-1-2015
411-020-0110	1-1-2015	Amend	1-1-2015
411-020-0120	1-1-2015	Amend	1-1-2015
411-020-0123	1-1-2015	Amend	1-1-2015
411-020-0130	1-1-2015	Amend	1-1-2015
414-400-0000	11-25-2014	Amend	1-1-2015
414-400-0010	11-25-2014	Amend	1-1-2015
414-400-0020	11-25-2014	Amend	1-1-2015
414-400-0031	11-25-2014	Amend	1-1-2015
414-400-0033	11-25-2014	Renumber	1-1-2015
414-400-0040	11-25-2014	Amend	1-1-2015
414-400-0050	11-25-2014	Amend	1-1-2015
414-400-0060	11-25-2014	Amend	1-1-2015
414-400-0080	11-25-2014	Amend	1-1-2015
414-400-0090	11-25-2014	Adopt	1-1-2015
414-400-0095	11-25-2014	Adopt	1-1-2015
414-700-0000	11-25-2014	Amend	1-1-2015
414-700-0010	11-25-2014	Amend	1-1-2015
414-700-0020	11-25-2014	Amend	1-1-2015
414-700-0030	11-25-2014	Amend	1-1-2015
414-700-0040	11-25-2014	Amend	1-1-2015
414-700-0050	11-25-2014	Amend	1-1-2015
414-700-0060	11-25-2014	Amend	1-1-2015
414-700-0070	11-25-2014	Amend	1-1-2015
414-700-0080	11-25-2014	Amend	1-1-2015
414-700-0090	11-25-2014	Amend	1-1-2015
418-010-0010	12-1-2014	Adopt	1-1-2015
418-010-0020	12-1-2014	Adopt	1-1-2015
418-010-0030	12-1-2014	Adopt	1-1-2015
418-010-0040	12-1-2014	Adopt	1-1-2015
418-020-0010	12-1-2014	Adopt	1-1-2015
418-020-0020	12-1-2014	Adopt	1-1-2015
418-020-0030	12-1-2014	Adopt	1-1-2015
418-020-0040	12-1-2014	Adopt	1-1-2015
418-020-0050	12-1-2014	Adopt	1-1-2015
418-020-0060	12-1-2014	Adopt	1-1-2015
418-030-0000	12-1-2014	Adopt	1-1-2015
418-030-0010	12-1-2014	Adopt	1-1-2015
418-030-0020	12-1-2014	Adopt	1-1-2015
423-045-0005	11-25-2014	Am. & Ren.	1-1-2015
423-045-0010	11-25-2014	Am. & Ren.	1-1-2015
423-045-0015	11-25-2014	Am. & Ren.	1-1-2015
436-050-0003	1-1-2015	Amend	1-1-2015
436-050-0175	1-1-2015	Amend	1-1-2015
438-006-0020	1-1-2015	Amend	1-1-2015
438-013-0025	1-1-2015	Amend	1-1-2015
459-007-0009	11-21-2014	Amend(T)	1-1-2015
459-050-0076	11-21-2014	Amend	1-1-2015
459-050-0120	11-21-2014	Amend	1-1-2015
461-125-0370	12-8-2014	Amend(T)	1-1-2015
461-125-0370(T)	12-8-2014	Suspend	1-1-2015
462-150-0030	11-21-2014	Amend	1-1-2015
579-020-0006	12-1-2014	Amend(T)	1-1-2015
581-018-0133	12-4-2014	Adopt	1-1-2015
581-020-0060	12-4-2014	Renumber	1-1-2015
581-020-0065	12-4-2014	Renumber	1-1-2015
581-020-0070	12-4-2014	Renumber	1-1-2015
581-020-0075	12-4-2014	Renumber	1-1-2015
581-020-0080	12-4-2014	Renumber	1-1-2015
581-020-0085	12-4-2014	Renumber	1-1-2015
581-020-0090	12-4-2014	Renumber	1-1-2015
581-022-1661	12-4-2014	Amend	1-1-2015
635-004-0275	1-1-2015	Amend(T)	1-1-2015
635-004-0355	1-1-2015	Amend(T)	1-1-2015
635-005-0465	11-25-2014	Amend(T)	1-1-2015
635-005-0485	11-25-2014	Amend(T)	1-1-2015
635-006-0209	1-1-2015	Amend(T)	1-1-2015
635-041-0063	11-25-2014	Amend(T)	1-1-2015
635-041-0063(T)	11-25-2014	Suspend	1-1-2015
635-041-0525	1-1-2015	Adopt	1-1-2015
635-048-0005	12-10-2014	Amend	1-1-2015
635-065-0760	1-1-2015	Amend(T)	1-1-2015
635-440-0001	12-8-2014	Adopt	1-1-2015
635-440-0005	12-8-2014	Adopt	1-1-2015
635-440-0010	12-8-2014	Adopt	1-1-2015
635-440-0015	12-8-2014	Adopt	1-1-2015
635-440-0020	12-8-2014	Adopt	1-1-2015
635-440-0025	12-8-2014	Adopt	1-1-2015
635-440-0030	12-8-2014	Adopt	1-1-2015
635-440-0035	12-8-2014	Adopt	1-1-2015
690-033-0120	11-25-2014	Amend	1-1-2015
690-200-0005	11-25-2014	Amend	1-1-2015
690-210-0310	11-25-2014	Amend	1-1-2015
690-210-0340	11-25-2014	Amend	1-1-2015
690-215-0045	11-25-2014	Amend	1-1-2015
690-240-0005	11-25-2014	Amend	1-1-2015
690-240-0035	11-25-2014	Amend	1-1-2015
690-240-0046	11-25-2014	Amend	1-1-2015
690-310-0080	1-1-2015	Amend	1-1-2015
690-325-0010	11-25-2014	Adopt	1-1-2015
690-325-0020	11-25-2014	Adopt	1-1-2015
690-325-0030	11-25-2014	Adopt	1-1-2015
690-325-0040	11-25-2014	Adopt	1-1-2015
690-325-0050	11-25-2014	Adopt	1-1-2015
690-325-0060	11-25-2014	Adopt	1-1-2015
690-325-0070	11-25-2014	Adopt	1-1-2015
690-325-0080	11-25-2014	Adopt	1-1-2015

OAR Number	Effective	Action	Bulletin
690-325-0090	11-25-2014	Adopt	1-1-2015
690-325-0100	11-25-2014	Adopt	1-1-2015
690-325-0110	11-25-2014	Adopt	1-1-2015
690-340-0030	1-1-2015	Amend	1-1-2015
690-340-0040	1-1-2015	Amend	1-1-2015
690-382-0400	1-1-2015	Amend	1-1-2015
710-010-0000	11-30-2014	Adopt	1-1-2015
734-035-0010	12-8-2014	Amend	1-1-2015
734-035-0040	12-8-2014	Amend	1-1-2015
734-035-0200	12-8-2014	Adopt	1-1-2015
734-035-0200(T)	12-8-2014	Repeal	1-1-2015
735-022-0065	1-1-2015	Adopt	1-1-2015
735-062-0005	12-1-2014	Amend	1-1-2015
735-062-0007	12-1-2014	Amend	1-1-2015
735-062-0010	12-1-2014	Amend	1-1-2015
735-062-0015	12-1-2014	Amend	1-1-2015
735-062-0030	12-1-2014	Amend	1-1-2015
735-062-0040	12-1-2014	Amend	1-1-2015
735-062-0096	12-1-2014	Amend	1-1-2015
735-062-0110	12-1-2014	Amend	1-1-2015
735-062-0125	12-1-2014	Amend	1-1-2015
735-062-0200	12-1-2014	Amend	1-1-2015
735-170-0000	7-1-2015	Amend	1-1-2015
735-170-0010	7-1-2015	Amend	1-1-2015
735-170-0015	7-1-2015	Adopt	1-1-2015
735-170-0020	7-1-2015	Amend	1-1-2015
735-170-0035	7-1-2015	Adopt	1-1-2015
735-170-0040	7-1-2015	Amend	1-1-2015
735-170-0045	7-1-2015	Amend	1-1-2015
735-170-0105	7-1-2015	Amend	1-1-2015
735-174-0000	7-1-2015	Amend	1-1-2015
735-174-0020	7-1-2015	Amend	1-1-2015
735-174-0030	7-1-2015	Amend	1-1-2015
735-174-0040	7-1-2015	Amend	1-1-2015
735-174-0045	7-1-2015	Amend	1-1-2015
735-176-0000	7-1-2015	Repeal	1-1-2015
735-176-0010	7-1-2015	Repeal	1-1-2015
735-176-0017	7-1-2015	Repeal	1-1-2015
735-176-0019	7-1-2015	Repeal	1-1-2015
735-176-0020	7-1-2015	Repeal	1-1-2015
735-176-0021	7-1-2015	Repeal	1-1-2015
735-176-0022	7-1-2015	Repeal	1-1-2015
735-176-0023	7-1-2015	Repeal	1-1-2015
735-176-0030	7-1-2015	Repeal	1-1-2015
735-176-0040	7-1-2015	Repeal	1-1-2015
735-176-0045	7-1-2015	Repeal	1-1-2015
735-176-0100	7-1-2015	Adopt	1-1-2015
735-176-0110	7-1-2015	Adopt	1-1-2015
735-176-0120	7-1-2015	Adopt	1-1-2015
735-176-0130	7-1-2015	Adopt	1-1-2015
735-176-0140	7-1-2015	Adopt	1-1-2015
735-176-0150	7-1-2015	Adopt	1-1-2015
735-176-0160	7-1-2015	Adopt	1-1-2015
735-176-0170	7-1-2015	Adopt	1-1-2015
735-176-0180	7-1-2015	Adopt	1-1-2015
735-176-0190	7-1-2015	Adopt	1-1-2015
735-176-0200	7-1-2015	Adopt	1-1-2015
735-176-0210	7-1-2015	Adopt	1-1-2015
801-001-0000	1-8-2015	Amend	1-1-2015
801-001-0005	1-8-2015	Amend	1-1-2015
801-001-0015	1-8-2015	Repeal	1-1-2015
801-001-0020	1-8-2015	Repeal	1-1-2015
801-001-0035	1-8-2015	Amend	1-1-2015
801-005-0010	1-8-2015	Amend	1-1-2015
801-010-0010	1-8-2015	Amend	1-1-2015
801-010-0045	1-8-2015	Amend	1-1-2015
801-010-0050	1-8-2015	Amend	1-1-2015
801-010-0060	1-8-2015	Amend	1-1-2015
801-010-0065	1-8-2015	Amend	1-1-2015
801-010-0073	1-8-2015	Amend	1-1-2015
801-010-0078	1-8-2015	Repeal	1-1-2015
801-010-0079	1-8-2015	Amend	1-1-2015
801-010-0080	1-8-2015	Amend	1-1-2015
801-010-0100	1-8-2015	Amend	1-1-2015
801-010-0110	1-8-2015	Amend	1-1-2015
801-010-0120	1-8-2015	Amend	1-1-2015
801-010-0125	1-8-2015	Repeal	1-1-2015
801-010-0130	1-8-2015	Amend	1-1-2015
801-010-0345	1-8-2015	Amend	1-1-2015
801-030-0005	1-8-2015	Amend	1-1-2015
801-030-0010	1-8-2015	Amend	1-1-2015
801-030-0015	1-8-2015	Amend	1-1-2015
801-030-0020	1-8-2015	Amend	1-1-2015
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804-010-0000	11-19-2014	Amend	1-1-2015
804-010-0010	11-19-2014	Amend	1-1-2015
804-010-0020	11-19-2014	Amend	1-1-2015
804-020-0001	11-19-2014	Amend	1-1-2015
804-020-0003	11-19-2014	Amend	1-1-2015
804-020-0005	11-19-2014	Amend	1-1-2015
804-020-0010	11-19-2014	Amend	1-1-2015
804-020-0015	11-19-2014	Amend	1-1-2015
804-020-0030	11-19-2014	Amend	1-1-2015
804-020-0045	11-19-2014	Amend	1-1-2015
804-022-0000	11-19-2014	Amend	1-1-2015
804-022-0015	11-19-2014	Amend	1-1-2015
804-040-0000	11-19-2014	Amend	1-1-2015
808-003-0065	12-1-2014	Amend	1-1-2015
808-003-0231	12-1-2014	Adopt	1-1-2015
808-008-0425	12-1-2014	Amend	1-1-2015
809-001-0015	12-5-2014	Amend	1-1-2015
809-040-0001	12-5-2014	Amend	1-1-2015
809-050-0020	12-5-2014	Repeal	1-1-2015
809-050-0050	12-5-2014	Amend	1-1-2015
809-050-0050(T)	12-5-2014	Repeal	1-1-2015
813-055-0001	12-2-2014	Amend	1-1-2015
813-055-0095	12-2-2014	Repeal	1-1-2015
813-055-0105	12-2-2014	Repeal	1-1-2015
813-055-0115	12-2-2014	Repeal	1-1-2015
813-090-0005	12-2-2014	Amend	1-1-2015
813-090-0005(T)	12-2-2014	Repeal	1-1-2015
813-090-0010	12-2-2014	Amend	1-1-2015
813-090-0010(T)	12-2-2014	Repeal	1-1-2015
813-090-0015	12-2-2014	Amend	1-1-2015

OAR Number	Effective	Action	Bulletin
813-090-0015(T)	12-2-2014	Repeal	1-1-2015
813-090-0027	12-2-2014	Repeal	1-1-2015
813-090-0031	12-2-2014	Amend	1-1-2015
813-090-0031(T)	12-2-2014	Repeal	1-1-2015
813-090-0036	12-2-2014	Amend	1-1-2015
813-090-0036(T)	12-2-2014	Repeal	1-1-2015
813-090-0037	12-2-2014	Amend	1-1-2015
813-090-0037(T)	12-2-2014	Repeal	1-1-2015
813-090-0039	12-2-2014	Amend	1-1-2015
813-090-0039(T)	12-2-2014	Repeal	1-1-2015
813-090-0055	12-2-2014	Adopt	1-1-2015
813-090-0064	12-2-2014	Adopt	1-1-2015
813-090-0080	12-2-2014	Amend	1-1-2015
813-090-0080(T)	12-2-2014	Repeal	1-1-2015
813-090-0095	12-2-2014	Repeal	1-1-2015
813-090-0110(T)	12-2-2014	Repeal	1-1-2015
813-110-0005	12-2-2014	Amend	1-1-2015
813-110-0005(T)	12-2-2014	Repeal	1-1-2015
813-110-0015	12-2-2014	Amend	1-1-2015
813-110-0020	12-2-2014	Amend	1-1-2015
813-110-0021	12-2-2014	Amend	1-1-2015
813-110-0026	12-2-2014	Amend	1-1-2015
813-110-0027	12-2-2014	Amend	1-1-2015
813-110-0030	12-2-2014	Amend	1-1-2015
813-110-0031	12-2-2014	Adopt	1-1-2015
813-110-0032	12-2-2014	Renumber	1-1-2015
813-110-0034	12-2-2014	Repeal	1-1-2015
813-110-0040	12-2-2014	Repeal	1-1-2015
813-110-0045	12-2-2014	Repeal	1-1-2015
824-030-0030	12-2-2014	Amend(T)	1-1-2015
839-009-0210	11-20-2014	Amend(T)	1-1-2015
839-009-0340	11-20-2014	Amend(T)	1-1-2015
839-025-0700	1-1-2015	Amend	1-1-2015
851-050-0000	1-1-2015	Amend	1-1-2015
851-050-0142	1-1-2015	Amend	1-1-2015
851-056-0000	1-1-2015	Amend	1-1-2015
851-056-0004	1-1-2015	Amend	1-1-2015
851-056-0006	1-1-2015	Amend	1-1-2015
851-056-0008	1-1-2015	Amend	1-1-2015
851-056-0010	1-1-2015	Amend	1-1-2015
851-056-0012	1-1-2015	Amend	1-1-2015
851-056-0014	1-1-2015	Amend	1-1-2015
851-056-0016	1-1-2015	Amend	1-1-2015
851-056-0018	1-1-2015	Amend	1-1-2015
851-056-0020	1-1-2015	Amend	1-1-2015
851-056-0022	1-1-2015	Amend	1-1-2015
851-056-0026	1-1-2015	Amend	1-1-2015
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851-061-0030	1-1-2015	Amend	1-1-2015
851-061-0040	1-1-2015	Amend	1-1-2015
851-061-0050	1-1-2015	Amend	1-1-2015
851-061-0070	1-1-2015	Amend	1-1-2015
851-061-0080	1-1-2015	Amend	1-1-2015
851-061-0090	1-1-2015	Amend	1-1-2015
851-062-0010	1-1-2015	Amend	1-1-2015
851-062-0016	1-1-2015	Repeal	1-1-2015
851-062-0050	1-1-2015	Amend	1-1-2015
851-062-0070	1-1-2015	Amend	1-1-2015
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851-063-0030	1-1-2015	Amend	1-1-2015
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851-063-0090	1-1-2015	Amend	1-1-2015
851-063-0100	1-1-2015	Amend	1-1-2015
851-063-0110	1-1-2015	Amend	1-1-2015
852-005-0005	1-1-2015	Amend	1-1-2015
852-010-0005	1-1-2015	Amend	1-1-2015
852-010-0015	1-1-2015	Amend	1-1-2015
852-010-0020	1-1-2015	Amend	1-1-2015
852-010-0023	1-1-2015	Amend	1-1-2015
852-010-0024	1-1-2015	Adopt	1-1-2015
852-010-0051	1-1-2015	Amend	1-1-2015
852-010-0080	1-1-2015	Amend	1-1-2015
852-020-0029	1-1-2015	Amend	1-1-2015
852-020-0031	1-1-2015	Amend	1-1-2015
852-020-0035	1-1-2015	Amend	1-1-2015
852-020-0060	1-1-2015	Amend	1-1-2015
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852-050-0021	1-1-2015	Amend	1-1-2015
852-050-0025	1-1-2015	Amend	1-1-2015
852-060-0025	1-1-2015	Amend	1-1-2015
852-060-0027	1-1-2015	Amend	1-1-2015
852-070-0010	1-1-2015	Amend	1-1-2015
852-070-0016	1-1-2015	Amend	1-1-2015
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852-070-0025	1-1-2015	Amend	1-1-2015
852-070-0030	1-1-2015	Amend	1-1-2015
852-070-0035	1-1-2015	Amend	1-1-2015
852-070-0055	1-1-2015	Amend	1-1-2015
852-080-0040	1-1-2015	Amend	1-1-2015
855-044-0070	12-4-2014	Amend	1-1-2015
856-010-0010	11-26-2014	Amend	1-1-2015
856-010-0011	11-26-2014	Amend	1-1-2015
856-010-0012	11-26-2014	Amend	1-1-2015
858-010-0010	11-17-2014	Amend	1-1-2015
858-010-0015	11-17-2014	Amend	1-1-2015
858-010-0036	11-17-2014	Amend	1-1-2015
858-030-0005	11-17-2014	Amend	1-1-2015
860-085-0500	12-3-2014	Adopt	1-1-2015
860-085-0550	12-3-2014	Adopt	1-1-2015
860-085-0600	12-3-2014	Adopt	1-1-2015
860-085-0650	12-3-2014	Adopt	1-1-2015
860-085-0700	12-3-2014	Adopt	1-1-2015
860-085-0750	12-3-2014	Adopt	1-1-2015