

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on November 2, 1998 by the  
Date prior to or same as filing date.

Water Resources Department - Division  
Agency and Division

690  
Administrative Rules Chapter Number

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to become effective November 2, 1998 Rulemaking Notice was published in the June 1998 Oregon Bulletin.\*\*  
Date upon filing or later Month and Year

**RULEMAKING ACTION**  
List each rule number separately, 000-000-0000.

**ADOPT:**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 690-004-0010 and 690-004-0020

**AMEND: None**

**REPEAL: None**

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.  
Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

RS 36.224 and ORS 539.005(2)  
Stat. Auth.: ORS

None  
Other Authority

ORS 36.224(4) and ORS 5539.010 through 539.220  
Stats. Implemented: ORS

**RULE SUMMARY**

OAR 690-004-0010 insures coordination between the confidentiality and admissibility provisions of ORS 36.220 through 36.238 and ORS 192.410 to 192.505 (public records law), and the admissibility provisions of ORS 40.190 (Oregon Evidence Code 408).

OAR 690-004-0020 makes mediation communications non-discoverable and inadmissible in any subsequent administrative, judicial or arbitration proceeding of all of the conditions of the rule are met, including designation of the mediation and identification of the particular mediation session as one to which the rule applies. This is essentially the same type of protection available to the parties in a lawsuit when they engage in settlement negotiations. OAR 690-004-0020 does not make mediation communications ins such mediation sessions "confidential."

  
Authorized Signer

11/2/98  
Date

\*Copies include a photocopy of this certificate with paper copy of each rule listed in the Rulemaking Action.

\*\*The *Oregon Bulletin* is published on the 1<sup>st</sup> of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 p.m. on the 15<sup>th</sup> day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 p.m. on the preceding workday.

November 2, 1998

OREGON ADMINISTRATIVE RULES  
WATER RESOURCES DEPARTMENT  
CHAPTER 690  
DIVISION 4  
PROCEDURAL RULES FOR MEDIATION COMMUNICATIONS

**Exemption from Disclosure under ORS 192.410 to 192.505 and Inadmissibility of Mediation Communications Pursuant to ORS 40.190 (OEC Rule 408).**

**690-004-0010** (1) Except to the extent that rules of this agency adopted pursuant to Oregon Laws 1997, chapter 670 make mediation communications confidential, any mediation communications that are public records, as defined in ORS 192.410(4), are not confidential unless the substance of such communication is confidential under state or federal law. Mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(2) Nothing in this rule affects any confidentiality created by other law.

(3) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408).

(4) The words and phrases used in this rule have the same meaning as given to them in Oregon Laws 1997, chapter 670, section 11.

Stat. Auth.: ORS 36.224 and ORS 539.005(2)

Stats. Implemented: ORS 36.224(4) and ORS 539.010 through 539.220

Hist: WRD -1998, f. & cert. ef. 11-2-98

**Applicability of Rules and Inadmissibility of Certain Mediation Communications in Large, Multi-party Mediation**

**690-004-0020** (1) Except as provided in this rule, or in other rules adopted by this agency pursuant to Oregon Laws 1997, chapter 670, section 3, or by other state or federal law, mediation communications in a mediation session may not be disclosed in any subsequent administrative, judicial or arbitration proceeding or introduced into evidence in any subsequent proceeding so long as:

(a) The mediation is one for which:

(A) The agency is a party as defined in Oregon Laws 1997, chapter 670, section 11, or is mediating a dispute as to which the agency has regulatory authority;

(B) A mediator is assisting and facilitating the parties to reach a mutually acceptable resolution of the issues in controversy;

(C) There are 15 or more parties to the mediation, regardless of whether or not all the parties

*Note: These rules were filed with the Office of the Secretary of State and took effect on November 2, 1998. The rules are subject to non-substantive modifications such as renumbering and correction of typographical errors pursuant to ORS 183.360 (2)(a) when published by the Secretary of State*

participate in each mediation session; and

(D) The agency designates in writing that this rule may apply and provides a copy of the designation along with a copy of this rule to the mediator and to those parties to the mediation that are known to the agency. The designation required by this section must contain sufficient information to identify the mediation, including a brief description of the dispute or issues to be resolved, and the names of those parties to the mediation that are known to the agency; and

(b) The specific mediation session is one for which:

(A) The agency or the mediator and at least one party other than the agency are present;

(B) A party to the mediation or the mediator requests that this rule apply; and

(C) If present, the agency agrees to have this rule apply; and

(c) The agency or the mediator notifies all persons in attendance at the beginning of the mediation session that the session is being conducted under OAR 690-0004-0020 and that any communications in the session may not be disclosed or introduced as evidence in any subsequent proceeding except as otherwise provided by OAR 690-0004-0020 or by other rules adopted by the agency pursuant to Oregon Laws 1997, chapter 670 or by other state or federal law.

(2) The agency may declare that certain mediation communications are not subject to the inadmissibility or non-disclosure provided by this rule. This declaration must:

(a) Be included in the designation provided in paragraph (1)(a)(D), or in an amendment to the declaration in which case the agency must mail or deliver a copy of the designation to all parties listed in the original designation and any other parties that are known to the agency; and

(b) Identify the mediation communications that, pursuant to this section, may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding.

(3) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408).

(4) Nothing in this rule affects any confidentiality created by other law.

(5) The words and phrases used in this rule have the same meaning as given to them in Oregon Laws 1997, chapter 670, section 11.

(6) Any statements, memoranda, work products, documents and other materials otherwise subject to discovery that were not prepared specifically for use in the mediation may be disclosed and may be introduced as evidence in a subsequent proceeding.

(7) Any mediation communications that are public records as defined in ORS 192.410(4) and were not specifically prepared for use in the mediation may be disclosed in a subsequent proceeding and may be introduced into evidence unless the substance of the communication is confidential under state or federal law.

(8) A party may disclose confidential mediation communications that were made in a mediation session covered by this rule in a subsequent proceeding if all the parties to the mediation session agree in writing to the disclosure. A communication that has been disclosed may be introduced into evidence in a subsequent proceeding.

(9) A mediator may disclose confidential mediation communications that were made in a mediation session covered by this rule in any subsequent proceeding if all the parties to the mediation session and the mediator agree in writing to the disclosure. A communication that has

been disclosed may be introduced into evidence in subsequent proceedings.

(10) A mediation communication may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(11) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule may be disclosed to the extent necessary to make such a report. A communication that has been disclosed may be introduced as evidence in a subsequent proceeding.

(12) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation session may disclose mediation communications, and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(13) In an action for damages or other relief between a party to the mediation session and a mediator or mediation program, mediation communications may be disclosed in a subsequent proceeding and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(14) A written mediation communication may be disclosed in a subsequent proceeding and may be introduced as evidence by the party who prepared the communication so long as it does not contain information from another party to the mediation session or the mediator, or information that is otherwise confidential under state or federal law.

(15) When the only parties to the mediation session are public bodies, mediation communications and mediation agreements are not confidential except to the extent those communications or agreements are exempt from disclosure under ORS 192.410 to 192.505.

(16) When the parties to the mediation session include a private party and two or more public bodies, mediation communications may be disclosed and may be introduced as evidence in a subsequent proceeding if the laws, rules or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation session are not confidential.

(17) The terms of any mediation agreement may be disclosed and may be introduced as evidence in a subsequent proceeding.

(18) When a person acts as the mediator in the mediation session and also acts as the hearing officer in a contested case involving some or all of the same matters, the communications in the mediation session may be disclosed and may be introduced as evidence in a subsequent proceeding.

(19) Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690.

Stat. Auth.: ORS 36.224 and ORS 539.005(2)

Stats. Implemented: ORS 36.224(4) and ORS 539.010 through 539.220

Hist: WRD -1998, f. & cert. ef. 11-2-98