

OFFICE OF THE SECRETARY OF STATE
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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
03/23/2021 12:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates definition of "infant" to align with Registered Family Child Care rules.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/05/2021 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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700 Summer Street NE
Suite 350
Salem, OR 97301

Filed By:
Remember Watts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/26/2021

TIME: 5:30 PM - 6:30 PM

OFFICER: Remy Watts

ADDRESS: Hearing will be virtual

700 Summer Street NE

Suite 350

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19, this hearing will only be held VIRTUALLY. Please refer to the Early Learning Division website for information on how to join the public hearing.

[https://oregonearlylearning.com/meeting/april-2021-rules-public-hearin](https://oregonearlylearning.com/meeting/april-2021-rules-public-hearing)

NEED FOR THE RULE(S):

Current Certified Center (CC) and Certified Family (CF) Child Care rules define infant as a child who is at least six weeks of age but is not yet walking alone. Registered Family Child Care rules were updated to define an infant as a child who is at least six weeks of age up to 12 months of age. The rules need to align for consistency of enforcement and because it is not appropriate to define the age grouping of a child by their physical abilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Statutory Authority:
329A.260

Registered Family Child Care "infant" definition:

OAR 414-250-0010 (10)

FISCAL AND ECONOMIC IMPACT:

None anticipated.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) There is no anticipated economic affect of this definition update.

(2) (a) There are 868 Certified Family Child Care Homes and 1173 Certified Centers.

(b) There is no anticipated increase in reporting, recordkeeping, or administrative activities for facilities to comply with the rule.

(c) There is no anticipated increase cost to professional services, equipment supplies, labor, or increased administration to comply with the rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

As this is a minor edit to align rules with no anticipated fiscal impact, providers were not engaged in the rule update.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

As this is a minor edit to align rules with no anticipated fiscal impact, there was no anticipated need for a Rules Advisory Committee.

RULES PROPOSED:

414-300-0005, 414-350-0010

AMEND: 414-300-0005

RULE SUMMARY: To match the current Registered Family definition: "Infant" means a child who is at least six weeks of age up to 12 months of age (OAR rule 414-250-0010 (10)).

CHANGES TO RULE:

414-300-0005

Definitions ¶¶

The following words and terms, when used in OAR 414-300-0000 through 414-300-0415, have the following meanings:¶¶

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.¶¶

(2) "Attendance" means children actually present in the center at any given time.¶¶

- (3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.¶
- (4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.¶
- (5) "Central Background Registry" means OCC's Registry of individuals who have been approved to be associated with a child care facility in Oregon pursuant to ORS 329A.030 and OAR 414-061-0000 through 414-061-0120.¶
- (a) "CBR Enrollment" means approval for a 5 year period to be enrolled in the CBR following an Oregon State Police criminal records check, child abuse and neglect records check, checks of adult protective services and foster care certification and an FBI records check.¶
- (b) "CBR Conditional Enrollment" means temporary approval to be enrolled in the CBR following a Oregon State Police records check and child abuse and neglect records check but prior to receipt by OCC of the results of the required FBI records check.¶
- (6) "Certificate" means the document that is issued by OCC to a child care center pursuant to ORS 329A.280.¶
- (7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:¶
- (a) In the home of the child;¶
- (b) By the child's parent or guardian, or person acting in loco parentis;¶
- (c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;¶
- (d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or¶
- (e) By providers of medical services.¶
- (8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.¶
- (9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.¶
- (10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.¶
- (11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.¶
- (12) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 329A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.¶
- (13) "Civil Penalty" means a fine imposed by OCC on a facility for violation of these rules.¶
- (14) "Comparable group care program" means a program which has the following elements:¶
- (a) Staff are supervised by knowledgeable professionals;¶
- (b) Training of staff is provided or required annually;¶
- (c) Group size is similar to a certified child care facility;¶
- (d) Curriculum is age appropriate; and¶
- (e) The program is not providing uncertified drop-in care.¶
- (15) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.¶
- (16) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.¶

- (17) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.¶
- (18) "Enrollment" means all children registered to attend the center.¶
- (19) "Group" means a specific number of children assigned to specific staff.¶
- (20) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.¶
- (21) "Head Teacher" means the person(s) who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.¶
- (22) "Infant" means a child who is a least six weeks of age ~~but is not yet walking alone~~ up to 12 months of age.¶
- (23) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.¶
- (24) "Night Care" means care given to children who sleep at the child care center for all or part of the night.¶
- (25) "Non-serious Violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-300-0005(424)¶
- (26) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of the Office of Child Care.¶
- (27) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.¶
- (28) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.¶
- (29) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.¶
- (30) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.¶
- (31) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.¶
- (32) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.¶
- (33) "Parent cooperative" means a child care program in which:¶
- (a) Care is provided by parents on a rotating basis;¶
 - (b) Membership in the cooperative includes parents;¶
 - (c) There are written policies and procedures; and¶
 - (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.¶
- (34) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care under the direct control of the child care facility.¶
- (35) "Preschool-Age Child" means a child who is 36 months of age to eligible to attend kindergarten or above in public school.¶
- (36) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to eligible to attend kindergarten.¶
- (37) "Program" means all activities and care provided for the children during their hours of attendance at the center.¶
- (38) "Qualifying Teaching Experience" means:¶
- (a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at

least three-hour blocks, within a 36-month period;¶

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.¶

(39) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.¶

(40) "School-Age Child" means a child eligible to attend kindergarten or above in public school. This includes the months from the end of the prior school year to the start of the kindergarten school year.¶

(41) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.¶

(42) "Serious complaint" means a complaint filed against:¶

(a) A certified child care center by a person who has alleged that:¶

(A) Children are in imminent danger;¶

(B) There are more children in care than allowed by certified capacity;¶

(C) Corporal punishment is being used;¶

(D) Children are not being supervised;¶

(E) Multiple or serious fire, health or safety hazards are present in the center;¶

(F) Extreme unsanitary conditions are present in the center; or¶

(G) Adults are in the center who are not enrolled in the Central Background Registry; or¶

(b) A facility providing child care, as defined ORS 329A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.¶

(43) "Serious Injury or Incident" means any of the following: ¶

(a) Injury requiring surgery;¶

(b) Injury requiring admission to a hospital;¶

(c) Injury requiring emergency medical attention;¶

(d) Choking and unexpected breathing problems;¶

(e) Unconsciousness;¶

(f) Concussion;¶

(g) Poisoning;¶

(h) Medication overdose;¶

(i) Broken bone;¶

(j) Severe head or neck injury;¶

(k) Chemical contact in eyes, mouth, skin, inhalation or ingestion;¶

(l) All burns;¶

(m) Allergic reaction requiring administration of Epi-Pen;¶

(n) Severe bleeding or stitches;¶

(o) Shock or confused state;¶

(p) Near-drowning.¶

(44) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:¶

(a) Children are in imminent danger;¶

(b) There are more children in care than allowed by law;¶

(c) Corporal punishment is being used;¶

(d) Children are not being supervised;¶

(e) Multiple or serious fire, health or safety hazards are present in the ~~home~~center;¶

(f) Extreme unsanitary conditions are present in the center;¶

(g) Adults are in the center who are not enrolled in the Central Background Registry; or¶

- (h) A facility is providing child care as defined in ORS 329A.250(4) which is not a certified child care center, by a person who has alleged that there are more children in care than allowed by law.¶
- (45) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.¶
- (46) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.¶
- (47) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.¶
- (48) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.¶
- (49) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.¶
- (50) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.¶
- (51) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.¶
- (52) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.¶
- (53) "Unsupervised Access to Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or staff with supervisory authority.¶
- (54) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS 329A

AMEND: 414-350-0010

RULE SUMMARY: To match the current Registered Family definition: "Infant" means a child who is at least six weeks of age up to 12 months of age (OAR 414-250-0010 (10)).

CHANGES TO RULE:

414-350-0010

Definitions ¶¶

The following words and terms, when used in OAR 414-350-0000 through 414-350-0405, have the following meanings:¶¶

- (1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.¶¶
- (2) "Attendance" means children actually present in the home at any given time.¶¶
- (3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.¶¶
- (4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.¶¶
- (5) "Central Background Registry" means OCC's Registry of individuals who have been approved to be associated with a child care facility in Oregon pursuant to ORS 329A.030 and OAR 414-061-0000 through 414-061-0120.¶¶
- (a) "CBR Enrollment" means approval for a 5 year period to be enrolled in the CBR following an Oregon State Police criminal records check, child abuse and neglect records check, checks of adult protective services and foster care certification and an FBI records check.¶¶
- (b) "CBR Conditional Enrollment" means temporary approval to be enrolled in the CBR following a Oregon State Police records check and child abuse and neglect records check but prior to receipt by OCC of the results of the required FBI records check.¶¶
- (6) "Certificate" means the document that is issued by OCC to a certified family child care home pursuant to ORS 329A.280.¶¶
- (7) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has a certificate to care for a maximum of 16 children at any one time.¶¶
- (8) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:¶¶
 - (a) In the home of the child;¶¶
 - (b) By the child's parent or guardian, or person acting in loco parentis;¶¶
 - (c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;¶¶
 - (d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;¶¶
 - (e) By providers of medical services; or¶¶
 - (f) By a person who is a member of the child's extended family, as determined by OCC on a case-by-case basis.¶¶
- (9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.¶¶
- (10) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.¶¶
- (11) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 329A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.¶¶

- (12) "Civil Penalty" means a fine imposed by OCC on a provider for violation of these rules.¶
- (13) "Enrollment" means all children registered to attend the certified family child care home.¶
- (14) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.¶
- (15) "Infant" means a child who is at least 6 weeks of age ~~but is not yet walking alone~~ up to 12 months of age.¶
- (16) "Night Care" means care given to children who sleep at the home for all or part of the night.¶
- (17) "Nonserious violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-350-0010(33).¶
- (18) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of the Office of Child Care.¶
- (19) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.¶
- (20) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.¶
- (21) "Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.¶
- (22) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.¶
- (23) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.¶
- (24) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.¶
- (25) "Preschool Age Child" means a child 36 months of age to eligible to attend kindergarten or above in public school.¶
- (26) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.¶
- (27) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certificate is issued. In a certified family child care home, the provider is the operator.¶
- (28) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.¶
- (29) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.¶
- (30) "School-Age Child" means a child eligible to attend kindergarten or above in public school. This includes the months from the end of the prior school year to the start of the kindergarten school year.¶
- (31) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:¶
- (a) Children are in imminent danger;¶
 - (b) There are more children in care than allowed by certified capacity;¶
 - (c) Corporal punishment is being used;¶
 - (d) Children are not being supervised;¶
 - (e) Multiple or serious fire, health or safety hazards are present in the home;¶

- (f) Extreme unsanitary conditions are present in the home; or¶
- (g) Adults are in the home who are not enrolled in the Central Background Registry.¶

(32) "Serious Injury or Incident" means any of the following: ¶

- (a) Injury requiring surgery;¶
- (b) Injury requiring admission to a hospital;¶
- (c) Injury requiring emergency medical attention;¶
- (d) Choking and unexpected breathing problems;¶
- (e) Unconsciousness;¶
- (f) Concussion;¶
- (g) Poisoning;¶
- (h) Medication overdose;¶
- (i) Broken bone;¶
- (j) Severe head or neck injury;¶
- (k) Chemical contact in eyes, mouth, skin, inhalation or ingestion;¶
- (l) All burns;¶
- (m) Allergic reaction requiring administration of Epi-Pen;¶
- (n) Severe bleeding or stitches;¶
- (o) Shock or confused state;¶
- (p) Near-drowning.¶

(33) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:¶

- (a) Children are in imminent danger;¶
- (b) There are more children in care than allowed by law;¶
- (c) Corporal punishment is being used;¶
- (d) Children are not being supervised;¶
- (e) Multiple or serious fire, health or safety hazards are present in the home;¶
- (f) Extreme unsanitary conditions are present in the home; or¶
- (g) Adults are in the home who are not enrolled in the Office of Child Care's Central Background Registry¶

(34) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.¶

(35) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.¶

(36) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.¶

(37) "Unsupervised Access to Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or staff with supervisory authority.¶

(368) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS chapter 329A