

6-15

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 [June 15, 2006] by the
Date prior to or same as filing date

9007-1
SSFW

Department of Consumer and Business Services, Office of Minority Women and Emerging Small Business	445	
Agency and Division	Administrative Rules Chapter Number	
Sheila Haywood (Sheila.l.haywood@state.or.us)	350 Winter Street NE, Salem OR 97309-0405	503-947-7950 – Office 503-373-7041 - Fax
Rules Coordinator	Address	Telephone

to become effective [Upon Filing]. Rulemaking Notice was published in the [November, 2005] Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

The Emerging Small Business eligibility requirements are modified to create a two-tier designation system.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

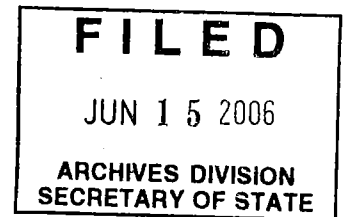
AMEND: 445-050-0115, 445-050-0125 and 445-050-0135

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 200.055



Stats. Implemented: Oregon Laws Chapter 683

RULE SUMMARY

These rule changes implement the following changes made by 2005 Oregon Laws Chapter 683 :
Creates a two-tier system for certification of emerging small businesses and modifies the qualifications by increasing the employee and gross-receipts thresholds. "Tier one firm" means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for a business performing construction, as defined in ORS 446.310, or \$600,000 for a business not performing construction. "Tier two firm" means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for a business performing construction, as defined in ORS 446.310, or \$1 million for a business not performing construction.

Increases the limit on certification from seven to twelve years, six years at each tier. Allows reinstatement of a formerly certified business if the business still qualifies as an emerging small business and has eligibility remaining.

Transfers the Emerging Small Business Account from the Consumer and Business Services Fund to the State Highway Fund.

Authorized Signer

Printed name

Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

445-050-0115

Eligibility Standards

- (1) To be eligible for certification as an ESB, a business must meet all the following criteria:
- (a) A firm must be in existence, operational and in business for a profit;
 - (b) Have average, annual gross receipts over the last three years not exceeding \$1.5 million for tier one construction firms and \$600,000 for tier one non-construction firms; and \$3 million for tier two construction firms and \$1 million for tier two non-construction firms.
 - (c) The department will adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index (CPI) for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.
 - (d) If a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department will extend the tier one designation of the firm for an additional year. A tier one firm may receive the extension only once.
 - (e) Have its principal place of business located in the State of Oregon, as determined by tax filing status;
 - (f) Be independent. An ESB is not eligible if it is a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.
 - (g) Be properly licensed and if required, legally registered in this state: (e.g., registered as a domestic corporation or partnership, assumed business name filed, Construction Contractors Board registration, etc.);
 - (h) Have fewer than 20 full-time equivalent employees in tier one and have fewer than 30 full-time equivalent employees in tier two. A full-time equivalent employee is calculated as follows:
 - (A) Hours worked by part-time and seasonal employees shall be converted into full-time equivalent employee hours by dividing the total hours worked by all part-time and seasonal employees by 2080.
 - (B) The owners of the firm shall not be considered full-time equivalent employees.
 - (C) The year period during which full-time equivalent employees shall be calculated shall be the same period as the ESB's tax year.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0115; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0125

Application Form and Procedure

- (1) OMWESB will utilize ORS 200.005 to review for eligibility for certification as an ESB tier one or tier two.
- (2) Application Form. Firms wishing to be certified as ESBs shall complete the application form provided by OMWESB.
- (3) Submittal of application. The completed application form, together with all required supporting documentation, shall be submitted to the Office of Minority, Women and Emerging Small Business, 350 Winter St NE, Salem, PO Box 14480, OR 97309-0405
- (4) Processing applications. The OMWESB will conduct a review and take action on completed

applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.

(5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the applicable laws of the State of Oregon. As part of its investigation, OMWESB may require owners to provide information in addition to that requested on the application forms. The applicant has the burden of proving that it is eligible for certification and re-certification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. Certification may be revoked at any time if the OMWESB determines that the ESB no longer meets the eligibility standards. The ESB shall notify OMWESB within 30 days of any changes in its ownership which may affect its continued eligibility as an ESB. Failure to notify OMWESB may result in denial/decertification.

(6) The applicable emerging small business size standard for each applicant set out in OAR 445-050-0115(1)(b) shall be determined by the firm's primary area of work. Registration of the firm with Construction Contractors and/or Landscape Contractors Board will establish a firm as a construction firm. A construction-related trucking firm will also be considered a construction firm for the purposes of this program.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0125; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0135

Recertification

(1) Certification as an ESB is valid for three years from the date of certification.

(2) A recertification notice shall be sent to certified ESBs 60 days prior to expiration of current certification. The ESB shall promptly return the recertification application along with any requested documentation (e.g., evidence of change in ownership; federal tax returns for the last year, etc.). Recertification is not automatic. The applicant must demonstrate that their business still meets the criteria set out in OAR 445-050-0105 through 445-050-0165.

(3) The signed and notarized recertification application shall be reviewed by the OMWESB staff to determine the ESB's continued eligibility. A request to verify information submitted to OMWESB may be required.

(4) Failure to return the completed recertification application by the expiration date shall result in administrative closure of the file.

(5) Firms may only be certified as an ESB for a maximum of twelve consecutive years from original certification date or 13 years for tier 1 firms that meet the criteria for eligibility standards under OAR 445-050-0115 (d).

(6) An annual affidavit of "no change" will be sent to the firm approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous year, and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0135; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00